Business Strategies and the Small Professional Firm: Evidence from the Conveyancing Market

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ABSTRACT. This paper examines the use of business strategies by firms of solicitors in England. Although still often seen as the epitome of the traditional profession, recent deregulation and liberalisation of the legal services market has forced solicitors to consider the use of more business-like approaches to the operations of their firms. Using the framework provided by John Kay, it is possible to identify 'distinctive capabilities' among some firms in the provision of conveyancing, despite the fact that this is a relatively routine service provided mainly by small professional firms. The use of reputation is crucial here. Analysis of the conduct of sample firms suggests that business strategies can be identified with respect to pricing and advertising, and that the advertising behaviour of law firms closely matches the predictions of relevant economic theory. The paper concludes that it is meaningful to speak of strategy among at least some small professional firms.

I. Introduction

In recent years a literature on business strategy has developed which has a clear basis in economic theory (e.g. Porter, 1985; Kay, 1993). This literature implicitly deals with the strategies of large, often multinational, enterprises; it is less clear that such an approach can readily be applied to the small business sector. The present paper examines the application of one such framework to a sample of small professional businesses; solicitors firms in England engaged in conveyancing (the transfer of title to land).

Recent changes in the legal profession in the U.K. represent a fruitful area of research for economists. Underlying this is the dual nature of the law firm: on the one hand, a provider of what can be a highly personal professional service, surrounded by an ethos of probity and ethical behaviour; and on the other, a profit making enterprise, designed to provide its partners with a standard of living commensurate with their professional standing. While by no means incompatible, the strains between these two facets have been heightened by the process of deregulation, which has increased both internal and external competition to solicitors and placed a premium on a business-like approach to the conduct of law firms.

This is particularly true of the field of conveyancing, which represents an extremely important element of the income of the profession (Smith, 1994), and which has been subject to a particularly intense process of liberalisation. Since 1984 the system of self-regulation in the solicitors' profession in England has been substantially modified. This was initially prompted by a series of reports in the 1970s by the Monopolies and Mergers Commission which concluded that restrictions on the freedom of solicitors to advertise were anticompetitive. In 1984 the Law Society responded by relaxing the restriction on advertising by its members, and further relaxation occurred in 1987. Also in 1987, the solicitors' monopoly on conveyancing for reward was broken by the Building Societies Act, which introduced the paraprofession of licensed conveyancer empowered to carry out conveyancing but not other forms of legal work. The Courts and Legal

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Services Act (1990) further provided that financial institutions could be permitted to provide conveyancing services to their clients, although the provisions of this Act have not yet been implemented. Given these changes, it is reasonable to hypothesise that that law firms will have appraised both the extent to which they are involved in the conveyancing market, and their methods of operation in this sector.

This is the subject of the present paper. An attempt is made to discover to what extent coherent business strategies are followed by such firms, and what form such strategies may take. However, this has to be seen in the context of a profession composed largely of small firms, many of which are sole practioners. The key issues to be addressed are therefore as follows. First, is it meaningful to conceive of 'strategy' with respect to a service provided principally by small professional firms? And second, if this is the case, what forms of business strategy are used, and can they be clearly linked to the tenets of economic theory?

II. Conceptual framework

The framework within which the strategies of law firms are analysed is derived from John Kay's *Foundations of Corporate Success*.[1] Kay's basic thesis is that the foundations of corporate success are unique to each company; if this were not so, other firms would quickly adopt identical strategies and eliminate any competitive advantage derived from such behaviour. He therefore explicitly rejects the approach of finding generic strategies ('recipes') which provide the key to success. Nevertheless, Kay argues that it is possible to provide a framework within which to analyse how successful firms (i.e. those whose activities add value for at least some stakeholders) become so, and that this revolves around an understanding of the firms' relationships with their various stakeholders, including employees, customers and shareholders or partners.

> The successful firm is one which creates a distinctive character in these relationships and which operates in an environment which maximises the value of that distinctiveness. [Kay's book] is concerned with the nature of these relationships, the ways in which they achieve distinctiveness, and how effective companies select and manage their environment in the light of these capabilities. (p. vii).

The framework for analysis which this provides ('the structure of strategy') entails four key elements.[2]

1. *Identifying distinctive capabilities*

Distinctive capabilities simply means the ability to do something which competitors (actual or potential) cannot. Kay identifies four sources of such advantages.

a) Architecture – the ability to build and sustain long-term relationships with employees, customers, suppliers and others, and to establish an environment that penalises opportunistic behaviour. Such a capability will frequently involve forebearance, trust, and the use of network relationships both internally and externally.
b) Reputation – a key method by which information is conveyed to consumers. The value of reputation depends on how consumers gather information about the product or service in question; it is more valuable for experience than for search goods (Nelson, 1970, 1974), and is particularly valuable in markets in which product quality can only be recognised by long-term experience.
c) Innovation – the introduction of a new product or service which customers value, or an innovative method of delivering such a product or service.
d) Strategic assets – not the result of a firm's attributes, but the result of market position or dominance. These are of three main types: natural monopoly; sunk costs not readily matched by a competitor; and government action through licensing or regulation.

2. *Deriving competitive advantage from these distinctive capabilities*

A distinctive capability becomes of competitive advantage to a firm only when applied to an appropriate market, and so firms must decide what business they should be in to maximise the benefit of the capabilities which they have identified.

3. *Ensuring that the competitive advantage is sustainable and appropriable*

Only if the unique nature of a distinctive capability can be sustained will it continue to be a competitive advantage to the firm. In addition, the firm must take steps to ensure that it can appropriate the added value which is created by its competitive advantage, and ensure its distribution among an appropriate set of stakeholders.

4. *Business strategy – maximising the value of competitive advantage*

Having decided where its strengths lie and in what markets they are best exploited, the firm must decide on an appropriate business strategy to maximise the added value it derives from its competitive advantage. Important elements of this process involve relationships with competitors through pricing and market positioning, and relationships with customers through advertising and branding.

The choice of Kay's framework of analysis over more established approaches (for example Porter, 1985) is because of the former's recognition of the economic importance of certain attributes which are of the essence for the small professional firm. Foremost among these is the acceptance of reputation and architecture as possible sources of advantage in the market place. In adddition, as is explored below, the apparent willingness of many law firms to allow (indeed encourage) clients to share in the added value created by the firms' activities is virtually inexplicable unless analysed in the framework which Kay provides of appropriability based on forebearance and trust.

III. Sample and research method

The initial data set was derived from a telephone survey of solicitors firms in 27 travel-to-work areas (TTWAs) in England and Wales. The survey produced information on the firms' conveyancing practices, their advertising and promotional behaviour, and the fees which they would charge for three standardised conveyancing transactions. Usable data were derived from 537 firms; further details of the sampling process and the information derived from the telephone interviews can be found in Stephen *et al.* (1994). The mean number of solicitors per firm in the sample was 5.2, with 25% of the sample firms being sole practitioners.

While useful for the statistical and econometric analysis of aggregate behaviour on pricing, the telephone survey was not a suitable mechanism for obtaining the detailed information necessary to determine the extent and nature of strategic behaviour of law firms. A further series of more extensive face-to-face interviews was therefore carried out with conveyancing partners of a sub-sample of the initial 537 firms. These semi-structured interviews were designed to collect information on the issues highlighted in the previous section. Thirty-seven interviews were carried out with firms which had shown some evidence in the telephone interviews of serious consideration of their position in the conveyancing market. These firms were located in six English towns and cities; Newcastle, Birmingham, Harrogate, Huddersfield, Norwich, and Manchester.

The size distribution of sample firms is shown in Figure 1.

IV. Distinctive capabilities

The first important issue was the extent to which the sample firms were able to point to some particular distinctive capability which they possessed. In the framework suggested by Kay, this issue is independent of the choice of market in which such a capability can be best exploited. However, this independence is meaningless for our sample firms; since all of them[3] were involved in the conveyancing market and had deliberately chosen to be so, our concern was with what distinctive capability they considered themselves to have *in conveyancing*.

To soften the blow of such a fundamental question, it was explained that our interest was in what the firm had to offer which provided success in the conveyancing market: why, ultimately, did clients come to them rather than go to some other firm? Clearly, many partners had given little thought to such a question, and several of those who did attempt an answer were extremely vague, giving replies such as "having years of experience", or "offering a good all-round service". Only nine firms displayed a clearly-articulated distinctive capability which they genuinely believed

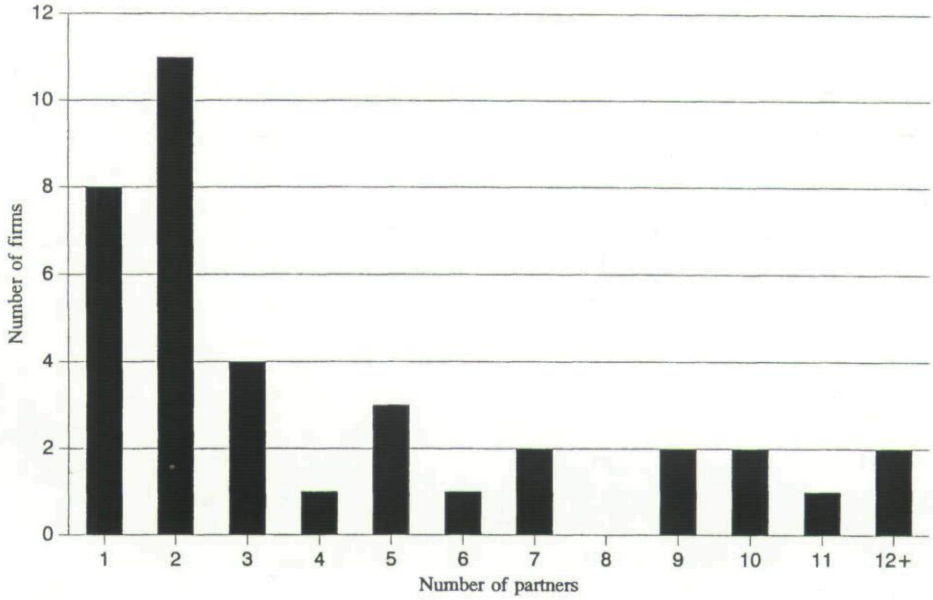

Fig. 1. Sample firms by number of partners.

themselves to possess, and a further two had identified a desired capability and had taken concrete steps to achieve it. In addition, two firms (K and M) did not specifically claim to possess a distinctive capability, but clearly did so through the reputation they had built up in the local conveyancing market. For example, firm M derived around one third of its business from conveyancing, and concentrated totally on existing clients and recommendations. Although professing only vague distinctive capabilities such as "a high reputation and a traditional service", this firm was able to command relatively high fees but with a system in which the work was almost totally performed by unqualified staff. The ability to charge premium prices for a low-cost service suggests a clear distinctive capability. These firms are listed in Table I.

Of the thirteen firms in Table I, seven derived their distinctive capability solely from reputation, one solely from architecture, one solely from innovation, three from a combination of reputation and innovation, and one from a combination of reputation and architecture.[4] The emphasis on architecture and reputation is unsurprising in the legal profession, where so much stress is still placed on professional standing and close links with clients. Kay stresses that reputation takes time to build up, but is slow to fade and the easiest of the competitive advantages to sustain, and several of the firms listed in Table I had evidently invested considerable time and effort in building up and portraying the correct image. Most of the firms which had a capability rooted in reputation stressed that quality of service was where the advantage lay; but this clearly meant different things to different firms. Some linked quality clearly to speed, and several (F, G, and I) had achieved this by moving much of the routine work of conveyancing away from partners, and making heavy use of computerised packages and protocols which could be used by part-qualified or even unqualified staff. Firm I was adamant that it was clearly enhancing quality of service by so doing. By contrast, firm H felt that a quality reputation was best achieved by guaranteeing that *all* work relating to each conveyancing transaction was carried out by a qualified solicitor (generally a partner).

The one firm (D) which employed both reputation and architecture as distinctive capabilities did so as part of the firm's generally up-market image. This firm, the largest in the sample, concentrated on the upper end of the housing market, and made full use of the social contacts possessed by its partners. This represents a move back to basics for this firm; during the late 1980s and early 1990s the firm established a 'cheap and cheerful'

TABLE I
Distinctive capabilities

Firm	Nature of distinctive capability	Classification
A	Clear efficiency targets on all aspects of conveyancing, coupled with commitment to customer care and quality.	Reputation
B	"Best, cheapest, and fastest!", based on a strong network of local estate agents.	Architecture
C	In process of formulating strategic plan based on highly individual service but without high overheads.	Reputation
D	Very comprehensive service coupled with high prices. Social networks important.	Reputation/Architecture
E	"Team system" of delivery, coupled with spread of offices (9) and hi-tech conveyancing.	Innovation
F	Use of technology and clear commitment to service evidenced by use of conveyancing protocol.	Reputation
G	High-speed service, but geared towards providing clients with detailed (financial) information at any time during transaction.	Reputation
H	Guaranteed low fixed fee for all properties, but with all work guaranteed to be done by a qualified solicitor. Moving towards franchise idea – several small duplicate offices.	Reputation/Innovation
I	Attempting to build clear reputation based on speed and thoroughness in conveyancing.	Reputation
J	Local experience, but coupled with flexibility of delivery (e.g. runs clinic until 9pm). Also a registered financial adviser.	Reputation/Innovation
K	High level of local knowledge, coupled with unstuffy approach and guarantee of competitive fees.	Reputation
L	Highly computerised (dedicated conveyancing package) and guaranteed speed of service.	Innovation/Reputation
M	Recommendations only. High quality reputation coupled with low-cost delivery.	Reputation

conveyancing system, aiming for a high volume, low price approach using a heavily computerised system and the maximum use of unqualified clerical staff. With the slump in the housing market this approach began to make a loss, and has now been completely abandoned.

But the use of architecture is not restricted to 'traditional' solicitors' values. The very antithesis of the traditional legal firm is firm B, essentially a conveyancing shop totally dedicated to the delivery of low-price conveyancing with minimal overheads based on scale economies. The senior partner in this firm categorically stated himself to be "more of a business man than a solicitor",[5] and yet his distinctive capability nevertheless rested on the firm's strong network of local estate agents from which most of firm B's business was obtained.

Innovation is characterised by Kay as being the most difficult of the competitive strategies to sustain, because it is always likely to be imitated by a rival. In addition, one of the reasons why conveyancing was chosen for the wider study was because of its standardised nature, leading to an expectation that innovation would be an unlikely source of competitive advantage. Neverthless, four of the firms which clearly possessed a distinctive capability had it based either partly or, in one case, wholly on innovation. In all cases the innovation related to the delivery of the conveyancing service rather than the service itself. The most notable of these was firm E, which operates a 'team system' of delivering conveyancing services. This firm has nine offices, but has solicitors at only two of them on a permanent basis. Clients seeking telephone quotations for conveyancing may do so from any office using a freephone system, but once some interest is shown the client comes into the nearest office and one of the teams of solicitors goes to see him or her, and deals with the client through the local office until the transaction is complete. In conjunction with the cultivation of local estate agents, this was considered a cost-effective method of providing conveyancing services while optimising the benefit of a branch network. While in principle open to imitation, this could not be done without a correspondingly large branch network, which most firms do not possess.[6]

It should be noted that this firm was not large, comprising five partners and three qualified assistants. Indeed, in general the possession of a distinctive capability is not a function of size. In particular, none of the five mid-sized firms (between nine and eleven partners) had a distinctive capability, while almost half of the two-partner firms did so (Table II).

TABLE II
Firms with 'distinctive capabilities' by size

No. partners	Yes	No
1	2	6
2	5	6
3	1	3
4	0	1
5	2	1
6	0	1
7	1	1
9	0	2
10	0	2
11	0	1
12+	2	0
Total	13	24

V. Sustaining and appropriating added value

There is little point in a firm possessing some competitive advantage unless it can ensure two things; first, that the advantage is sustainable, and second, that the firm can appropriate the added value which the competitive advantage provides. As was indicated earlier, a competitive advantage based on reputation is characterised by Kay (1993) as being the easiest to sustain, but takes the longest time to build up. While some of the firms in Table I clearly sought their reputation specifically within the field of conveyancing, others (A, C, D and K) appeared to be able to transfer the value of their reputation from other more general aspects of their provision of legal services.

Because of the danger of imitation, innovation is a more successful basis for sustainable competitive advantage if backed up with other competitive advantages. Several firms in Table I had established such a link, a clear example being firm H, which had established a local reputation based on carrying out fixed-price conveyancing but with the guarantee that all the work would be performed by a qualified solicitor, rather than being farmed out to a part-qualified or unqualified member of staff. However, this firm (which had only two partners) was also in the process of developing an innovative style of service delivery, based on a franchise system. This involves the establishment of a series of small duplicate offices carrying the 'brand name' and reputation of the parent firm, without the franchisees necessarily having any direct property rights in the parent. Clearly, it was hoped that this innovation would add to the profitability of the enterprise, but the long-term competitive advantage was firmly rooted in its reputation, and was not dependent on the innovation.

The issue of appropriability is more difficult to assess directly. The aim is to turn the added value derived from a competitive advantage into profit for the firm. No information was available on the profitability or cost structures of the partnerships which were interviewed, and even if this information were available, it would be no easy matter to determine how much of the profit derived from the competitive advantages discussed earlier. There is, however, one issue which is worth commenting on. Many of the interviewed firms, including several of those listed in Table I, put great emphasis on developing a reputation for friendliness, decency and fair play in commercial activities.[7] It would be easy to dismiss this as having little to do with business conduct – everyone likes to be liked. However, when seen from the standpoint of the appropriability of added value, these sort of statements begin to have a different meaning. Law firms have many stakeholders (individuals or groups possessing property rights) other than the partners who are the residual claimants, and one important group of stakeholders are the firms' clients. Kay (1993) stresses that, especially where a competitive advantage is built on reputation or architecture, it is important to let other stakeholders share in some of the gains:

> '. . . reputations can easily turn sour if customers feel that too high a price is being extracted, The objective is to be seen as 'a good company to do business with'. (p. 187).

The intriguing aspect of this is that many firms clearly felt that this was an important issue even in the field of conveyancing, the legal service which is closest to being supplied 'off the shelf' and without the bespoke element traditionally associated with professional services. This, it might be thought, is the area where increased competitive pressure coupled with the relative infrequency of purchase and information asymmetry between professional and client might have encouraged firms to attempt to appropriate all (or as much as possible) of the value created by their competitive advantage, regardless of the consequences for their future relationship with the clients concerned.[8] The fact that many firms did not act in this way suggests that 'being a good company to do business with' is not merely a residual aspect of the professional triumphing over the businessman, but that it represents some (tacit) understanding by the firms concerned that the appropriability issue cannot be ignored.

VI. Business strategies

This section examines the techniques which law firms adopt in order to maintain and maximise the returns from their competitive advantage – their business strategies. Two key areas are examined: pricing and advertising.

A. *Pricing*

Elsewhere we have explored the determinants of the fees set by law firms within our sample areas (Love *et al.*, 1992; Stephen *et al.*, 1993). This work suggests that the extent and nature of advertising both at the level of the local market and by individual firms can have a systematic effect on quoted conveyancing fees, as can other variables such as the size of the firm and the level of seller concentration in the local market. While such analysis provides important insights into the aggregate effect of market structure and firm conduct on pricing, our present aim is to go a stage deeper and discover how small law firms use pricing policies as a strategic weapon. This involves a consideration of two key areas:

i) the methods by which law firms set their conveyancing fees;
ii) the extent to which fees are related to cost, and the extent of price discrimination.

The information required to tackle these issues was derived both from the telephone questionnaire and from the subsequent detailed interviews. Each firm interviewed by telephone was asked to provide a quotation for three hypothetical conveyancing transactions.[9] In addition, each respondent was asked the method by which fees were set, and the most common responses to this question are shown in Table III. It should be noted that these responses are not mutually exclusive; on average, each firm gave 1.9 responses to this question, and those listed represent approximately half the total responses given. The overriding impression from the telephone interviews was that many firms had a surprisingly vague method of setting fees, or at least found it difficult to articulate. Nevertheless, it is clear from Table III that competition in the market place is an important determinant of fees (the first and fourth responses), but that property price is also an important factor in determining fees (the second and third responses).[10]

TABLE III
Methods by which fees are set

Method	Percentage of respondents
What the market will bear	24.6
Percentage of property price	24.6
Firm's internal scale	20.3
Awareness of competitors' fees	19.2

Source: Telephone survey.

The in-depth interviews sought more information on the fee-setting process, and especially on the extent to which it was market driven and/or linked directly to costs. Respondents were not prompted on these issues, and usable information was obtained from 27 firms, including all the firms which had some clear distinctive capability. Eleven of the latter firms (out of thirteen) indicated that they took explicit account of 'what the market will bear' in setting their fees, compared with only five of the remaining fourteen respondents. Although the number of unclear responses (ten) precludes statistical testing, the clear impression from this information was that firms possessing a distinctive capability were much more in tune with market conditions with respect to fee setting.

This also relates to the issue of the extent to which costs play a major role in determining the level of fees. In the telephone survey, three quarters of respondents indicated that the conveyancing market had become more competitive during the previous three years. This is unsurprising for a survey which took place towards the end of the biggest slump in the housing market for fifty years, and is supported by evidence that solicitors' conveyancing fees in our sample markets remained virtually unchanged in *nominal* terms between 1989 and 1992 (Stephen *et al.*, 1994). Accompanied by the competition from licensed conveyancers, this suggests that fees were being driven down closer to marginal cost, with relatively little room for most firms to price above cost. Under these circumstances, it might be thought that cost levels would be an important element of the fee structure.

However, only six of the 37 interviewed firms explicitly mentioned cost as a determining factor in setting fees. This cannot be taken as clear evidence that costs are *unimportant* in determining fees; for many years, economists have known that firms frequently adopt 'rules of thumb' in making pricing decisions, with (average) cost-plus pricing being particularly common (Hall and Hitch, 1939; Andrews, 1949), and competition in the market place may be forcing law firms to consider their mark-up rather than their cost base. All six firms which mentioned costs did so in relation to average, not marginal, cost, with the fee required to cover average cost varying from £90 to £350.

The tendency noted in Table III for fees to be related to the price of the property concerned is a common one in conveyancing. The three hypothetical conveyancing transactions in the telephone questionnaire differed only in the price of the property concerned; there was no reason why the cost of the related conveyancing should vary. However, 74 per cent of the respondent firms quoted different fees for all three properties, with a further 10 per cent quoting only two different fees for the three properties. In no case was a lower fee quoted for a more valuable property. This is clear *prima facie* evidence of price discrimination, where two or more similar services are sold at prices that are in different ratios to their marginal costs (Stigler, 1987). There is good reason why firms should engage in such a practice, because it allows the supplier to appropriate part of the consumers' surplus, thereby increasing profits. At one time solicitors in England effectively engaged in institutionalised price discrimination, because the Law Society set a scale of acceptable conveyancing fees based on property prices. However, the scale fee system was abandoned in 1973.

The proportion of price discriminating firms in the sub-sample of 37 was identical to that of the larger sample. Of perhaps more interest, however, is the question of the reasons firms gave for engaging in price discrimination (or failing to do so). Despite the fact that ten of the 37 firms quoted the same fee for two of the three hypothetical transactions (and three quoted the same fee for all three), only one firm claimed that it did not at least *attempt* to charge higher fees for higher valued properties; where firms did not do so it was usually because they were restrained by competition in the local market. Several of the firms rationalised the use of price discrimination on the basis that there is a higher risk to the solicitor in a transaction involving a high-priced property, with a commensurately higher indemnity element,[11] although all of these firms also suggested that other reasons were important. Most of the respondents were able to offer no particular reason for the practice, other than it was "an obvious thing to do", or that "clients expect it". However, eight of the firms were explicit in stating that they regarded the price of the property as indicating the client's ability to pay, strongly suggesting that at least some law firms engaging in conveyancing systematically attempt to appropriate consumer surplus in setting their fees.[12]

B. *Advertising*

The role of advertising in the legal profession has been an issue of some controversy, with a clear division between those concerned with the possible impact of advertising on law as a profession (Attanasio, 1984; Paterson, 1984) and others adopting an approach based on the economics literature concerned with the liberalising impact of advertising on the provision of a service to consumers (Stigler, 1961; Telser, 1964; Hudec and Trebilcock, 1982).

Here, however, the issue is advertising as a strategic weapon, that is advertising used ". . . to support competitive advantages which are based on the distinctive capability of supplier reputation." (Kay, 1993, p. 251). This involves two stages. First, an explanation of why professionals may choose to advertise when they are permitted to do so. Second, an analysis of the type and extent of advertising undertaken by firms in our sample, and an examination of the extent to which it corresponds with the relevant theory.

Kay's analysis follows a distinction in the literature between 'search' and 'experience' goods and services (Nelson, 1970, 1974). The former are goods or services for which quality variation is ascertained predominantly by search; that is, by the consumer gathering as much information as possible at reasonable cost from available sources in advance of purchase. However, some goods have qualities which can only be determined by experience, and no amount of search before purchase can substitute for this experience.[13] Nelson (1974) provides evidence that experience goods tend to be more heavily advertised than search goods. This is because the advertising of experience goods does much more than simply relate brand to function – it provides important information about the reputability of the item, and about the commitment of the supplier both to the market and to the good or service being offered. Advertisements for experience goods often convey relatively little 'hard' information about the items in question, since they possess qualities which can only be appreciated by experience. Nevertheless, such advertising has the important function that it displays the supplier's confidence in the good or service, and links the supplier's reputation to satisfaction in use.

Most personal services have mainly long-term experience characteristics; it is difficult to gauge one's satisfaction with a particular hairdresser *ex ante*. Where such services are relatively high-priced and infrequently purchased, the cost of making a mistake is relatively high, and consumers will make use of relevant information available at low cost which helps minimise the likelihood of such an error. Laband (1986) shows that advertisements for high-priced, low frequency items (including several personal services) are much more likely than those for low-priced, frequently purchased items to contain information on the experience of the supplier, and of professional or trade certification. This provides important information on quality, because some minimum competence is guaranteed by professional certification and because any supplier failing to provide the expected level of service may suffer restriction, or even removal, of their practising licence – once again, reputation is the key. Professional services may be considered an extreme form of long-term experience good, and may be more accurately described as a 'credence good' (Darby and Karni, 1973); that is, a good or service the quality of which cannot be readily ascertained by the consumer even after purchase and use. In the case of credence goods, reputation and certification takes on particular significance, because of the information asymmetry which exists between client and professional *ex post* as well as *ex ante*. There is therefore every reason to expect advertising by professionals such as solicitors, and especially by those which rely heavily on reputation. In addition, because quality cannot be deduced by clients and because certification is uniform in the solicitors' profession, the use of other proxy signals of quality which differentiate practitioners may also be an important in consumer choice, and so may be used as competitive weapons.

Data from the telephone survey suggests that advertising by law firms is indeed common in the sample markets (Table IV). As expected from the discussion above, there is a relative absence of 'hard' data on which potential clients could make a decision about a conveyancing solicitor *ex ante*; very few firms advertise the price of their services, although the use of pricing 'rules of thumb' allows

TABLE IV
Advertising by firms in sample markets

Type	Percentage of firms
Any form of advertising	59%
Media advertising[a]	31%
Enhanced Yellow Pages[b]	50%
Price advertising[c]	4%

Notes:
[a] Print and broadcast media.
[b] Any entry other than the standard free listing.
[c] A media advertisement carrying the fee for a service.
Source: Telephone interviews.

this to occur, at least for conveyancing. Table IV also indicates that Yellow Pages is by far the most widely used form of paid-for advertising medium. This may initially appear odd for providers of a credence service; since relatively little hard information is (or indeed can be) provided by such advertising, what is to be gained by being one of many solicitors appearing in Yellow Pages? Once again, reputation provides the answer. People consulting Yellow Pages are presumably at least strong potential clients, and are therefore keen to acquire any readily-available information on the availability of solicitors,[14] but more importantly to find *ex ante* evidence of reliablility and quality; it is therefore worthwhile for solicitors to advertise where seekers of such information are likely to look. Overall, therefore, the general pattern and extent of solicitor advertising in the sample markets corresponds well with theory.

The proportion of advertisers among the 37 interviewed firms was almost identical to that of the larger sample of 537 firms (62 per cent compared with 59 per cent). Questions on the resons for advertising generally tended to result in relatively vague answers. This perhaps reflects the fact that the predominant form of advertising is Yellow Pages, which can easily be undertaken without being part of an overall advertising plan. However, even the one-third of interviewed firms which had recently undertaken media advertising revealed little evidence of a clear strategy. Only five firms expressed a deliberate aim of having their advertising enhance a desired reputation or image, and all of these were firms with a clear distinctive capability (A, C, H, I and J). Of these, just three had taken professional marketing or advertising advice. This appears to suggest that the relatively widespread use of advertising among law firms does not necessarily indicate a deep commitment to advertising as a strategic weapon in the profession.

Earlier it was argued that, because of the importance of reputation in the work of solicitors and because of information asymmetries between professional and client, the use of proxy signals of quality may be important. By definition, quality signals are difficult to provide for a credence good; however, external accreditation of quality control mechanisms is one method by which this may be done. In the UK, attainment of BS5750 is one example of such a quality proxy. The necessary certification is granted only to those organisations which can demonstrate that they have in place a system for assuring the attainment of a certain quality of service, and procedures for rectifying any evidence of failure to attain this standard. These systems and procedures are externally validated by a nationally-recognised body, and organisations meeting the necessary criteria are granted BS5750 accreditation and permitted (indeed encouraged) to broadcast the fact.

Law firms are among the organisation which may seek such accreditation. It should be noted that this does not guarantee that the quality of service provided is necessarily high; merely that mechanisms exist to ensure its attainment. Nor, of course, can BS5750 accreditation give any indication of legal competence. Nevertheless, it can provide an important signal to prospective clients who have little other objective quality information to hand, and this proxy signal is one which is likely to be contained in accredited firms' advertising and promotional material.

Eight of the sample firms had applied for BS5750 accreditation or were actively considering doing so; of these, six were firms which had exhibited a clear distinctive capability with respect to conveyancing. In addition, several of the firms which had applied for accreditation were very clear about the reasons for doing so; it was clearly seen as a marketing device, one further method of giving them an edge over their competitors.

VII. Conclusions

The research reported here began by selecting Kay (1993) as the conceptual basis for an analysis of strategy by solicitors firms engaging in conveyancing, in the belief that it provided a particularly suitable framework for analysing the activities of the small professional firm. As far as we are aware, this is the first attempt to systematically apply Kay's analysis to empirical research of this kind.

Several findings emerge from the analysis. First, the possession, and efficient exploitation, of distinctive capabilities is not merely a function of size. Several of the smallest firms in our sample clearly enjoyed a competitive advantage over their largest rivals, while medium-sized firms seemed to find this particularly difficult.

Second, there is evidence that the issue of the appropriation of value added is one which has been considered by many of the firms in our sample, and that the need to curb opportunism – even when its exploitation could be to the short-term advantage of the firm – was frequently recognised as being in the long-run interests of all stakeholders.

The remaining findings relate to the types of business stategies pursued by the sample firms. With respect to pricing, firms which exhibited some clear distinctive capability in conveyancing are much more likely to be explicitly market sensitive when setting fees than are firms which lack such a capability. However, this does not imply that they necessarily have more rational or economically objective methods of arriving at these fees. Very few firms made any clear attempt to relate fees to costs, and in the few instances where this did occur average rather than marginal cost was the baseline. Price discrimination was in widespread use, but in many cases this appeared to be by habit rather than in any explicitly profit-enhancing way. With respect to advertising, it was found that such behaviour is extensive among law firms, and that the extent and nature of advertising undertaken by such firms accords with the theory of search, experience and credence goods. As expected, firms exhibiting a clear distinctive capability are markedly more likely to use proxy signals of quality than are other firms.

Three broad conclusions follow from these findings. First, there is some support for Kay's view that the generation of distinctive capabilities are unique to each company. The thirteen firms identified in Table I had approached the difficulties of operating in a competitive market in quite different ways, and it is clear that many of the capabilities which had been generated, especially those which were based on reputation and/or architecture, would have been immensely difficult for other firms to copy.

Second, it is meaningful to conceive of strategy among law firms, even in a profession as steeped in the ethos of personal service and ethical behaviour as solicitors and which is dominated by small-scale providers.

Finally, there is a significant variation in the types of business strategies carried out by law firms, even in the context of a relatively routine service and within the same regulatory regime. Nevertheless, there are systematic influences operating on these strategies which generally conform with the predictions of economic theory, especially with respect to advertising.

The relatively limited size of the sample of firms in the present research suggests that the conclusion must be regarded as tentative, and further research clearly requires to be carried out. For example, no evidence has been provided on the *success* of the strategies pursued by the sample firms in terms of their relative performance, the present aim being to establish whether the use of the term 'business strategy' is meaningful in the context of law firms, rather than to determine the effects of such strategies. Nevertheless, the results discussed above do suggest that applying the principles of economics to the search for business strategies among small professional firms is a worthwhile enterprise.

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Notes

[1] See J. A. Kay (1993).

[2] Kay (1993) also deals with a further element – the part of business strategy concerning relationship with suppliers and distributors. The issue of vertical relationships is of little relevance to our analysis of strategic behaviour in law firms.

[3] There was one exception to this, a firm which had recently taken the decision to withdraw completely from conveyancing.

[4] It may seeem odd that there has been no discussion of strategic assets in this section, given that solicitors are able to carry out conveyancing for reward as a result of professional licensing. However, this applies to all solicitors, and cannot be appropriated by any individual firm as the basis for competitive advantage. In addition, the monopoly which solicitors once enjoyed in conveyancing was broken in 1987 with the introduction of licensed conveyancers.

[5] So much so, that the partner concerned was in the process of becoming a licensed conveyancer, on the understanding that he would therefore be allowed to act for both buyer and seller in a single conveyancing transaction.

[6] The average number of branches possessed by firms in our main sample was approximately two.

[7] This was often coupled with a desire to be seen as business-like and competitive, exemplified by one firm which described the reputation which it *hoped* it possessed as "tough, uncompromising, but helpful".

[8] We are concerned here mainly with clients new to the firm. Existing clients may be expected to be treated with more circumspection.

[9] The transactions were for a hypothetical first-time buyer (in order to eliminate the complication of a related sale), and involved three properties; a £50,000 house with a £30,000 mortgage, an £80,000 house with a £50,000 mortgage, and a £120,000 house with a £80,000 mortgage.

[10] Most internal scales set by firms are in some way related to the purchase/sale price of the property concerned.

[11] There is, however, little evidence of risk being an important element in the general process of fee setting. In the telephone survey less than 9 per cent of respondents indicated that risk relating to the property concerned was in any way involved in the fee decision.

[12] There may appear to be an anomaly in the existence of price discrimination in a market characterised as being highly competitive and price sensitive. However, our previous work shows that the extent of price discrimination is highly variable between local markets, and is heavily influenced by the nature and extent of competitive forces in these markets (Stephen *et al.*, 1993).

[13] In practice, it is recognised that most goods have both search and experience qualities; classification into one or other group depends on how quality variation is *principally* attained. This inevitably leads to some discussion of the correct classification for individual goods and services (see Nelson, 1974, pp. 738–739, and Laband, 1986, p. 518, fn. 3).

More recently, Laband (1991) has suggested a way round this difficulty by using the product price as an objective measure of search versus experience goods. The rationale for this is that as the purchase price of an item increases so does the cost of making a disappointing purchase, and so too does the expected benefit from acquiring pre-purchase information. Unfortunately, such an easily obtainable measure of search versus experience qualities does not apply to conveyancing. Even if the cost of conveyancing were very low, consumers would still have an incentive to gather pre-purchase information. This is because the cost of making a disappointing purchase derives not from the cost of the conveyancing but from the price of the house to which the conveyancing applies. Hence the downside risk (i.e. failure to pass good title) is extremely high relative to income, regardless of the cost of the conveyancing itself.

[14] Even credence services inevitably possess some basic search qualities.

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