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Article

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Prof. Jo Seldeslachts, Ph.D., Research Associate, Department Firms and Markets at DIW Berlin

TEN QUESTIONS TO JO SELDESLACHTS

»Clients prefer flat fee contracts«

1. Mr. Seldeslachts, you analyzed a client's choice of contract in auctions where Dutch law firms compete for cases. What was the aim of your investigation? *The aim was to look at a completely different environment where lawyers could offer contracts to clients, who were then actually able to choose from among several lawyers and various kinds of contracts.*
2. Why did you choose an auction for your investigation? *It is a very rare type of competitive environment for legal services and we thought it would be very interesting to look deeper into that.*
3. Which type of contract do clients prefer: hourly fees or flat fees? *Clearly, at least as far as the data show, clients prefer to have flat fee contracts or fixed fee contracts as opposed to hourly fee contracts.*
4. How do you explain the finding that clients prefer flat fees? *We really would have liked to have gone deeper into the exact answer to that question, but with the data we have, we cannot really know exactly why. The only thing we can see from the data is that clients do prefer flat fee contracts, and we can hypothesize that perhaps this is because they know what they are getting in terms of monetary value.*
5. Would you say that an hourly fee is in the interest of the lawyer instead of the client? *That is probably too general. With hourly fee contracts, there is the potential risk that the lawyer will work too many hours and charge too much. This is not the case with a flat fee contract. That we can say for sure. The client knows in advance what he or she is getting. We can say that a flat fee contract reduces the risk of potential overpayment.*
6. But how can a client tell if a flat fee is too high? *That's a good question. There is no way. A priori the client has no control, but the environment of the auction lets several lawyers compete against each other. At least that is the assumption we make, and this shows up in our data as well. If there are several lawyers who are competing directly against each other, these flat fee contracts will also be competitive.*
7. Do business clients make different choices from private clients? *Small businesses with relatively small legal cases benefit in the same way from these auctions and this type of contract as do private clients. If the businesses are large, and the cases are large and complex, then of course this type of environment and this type of contract may not be optimal. So essentially, the more complex the case is and the less certain the outcome, the more you might want to go back to a different type of contract.*
8. Hourly fees for legal services are very popular. Is this because clients are normally not in the position to choose from among different types of contracts? *Yes. We have thoroughly researched this problem in the Netherlands. There are very few law firms that offer a different fee structure apart from hourly fees. So the clients are just faced with this type of contract—and on top of that, they are often told that hourly fees are in their best interest.*
9. But again, doesn't that make it very likely that hourly fees are purely for the benefit of the lawyer? *We cannot confirm that one hundred percent, but that is indeed our suspicion. In the Netherlands and virtually all other European countries as well as the USA, the legal service industry is very intransparent and not competitive. I think one can assume that hourly fees are more in the lawyers' favor than in the clients' favor. The argument that lawyers put forward is that with hourly fees, they are not limited by a flat fee and are able to do their best work.*
10. Were clients who opted for flat fee contracts more satisfied with the service they received than were clients who chose hourly fees? *We asked all clients afterwards whether they were satisfied or not. We cannot distinguish whether they were more satisfied with flat fees or with hourly fees, but we know that the level of satisfaction was not very different across different fee structures.*

Interview by Erich Wittenberg



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