

## Service-based Innovation and Market Innovation – Illustrated through a Radical Business Model Change in a Personal Injury Lawyer Company #)

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### ABSTRACT

The focus of this paper is innovation in the commercial service sector. It is motivated by a desire to help create greater understanding of service and market innovation. Our research question is: How can we illustrate the integration between the concepts of service-based innovation and market innovation through a study of changes to legal services within compensation law?

A concept described as “service-based innovation” is introduced as a new and alternative paradigm to the dominant understanding of innovation, which is tied to technology and tangible products. Based on marketing theory the concepts of service-based innovation and market innovation are connected and combined in order to contribute to conceptual advances. In terms of theoretical and analytical generalizations we conclude that integrating the concept of service-based innovation with the concept of market innovation seems to be a fruitful approach. The four interacting layers in service-based innovation can be tied both to a new marketing object and to a new market object, where the market object originates from the marketing object. We base our work on the following typology for Layers 1-4 in the applied model for service-based innovation:

- 1) The world of consumption
- 2) The service provider’s business model and strategic values
- 3) Means of marketing and efforts to make the service available (the world of circulation)
- 4) The world of production

Here Layer 1 represents the target: Penetration into the world of consumption is the aim of the efforts. The other layers contain the necessary ingredients – in the shape of values, strategies, actions, and knowledge – for successfully generating the desired “goods” for the benefit of the consumers, the beneficiaries.

Keywords: Service-based innovation, market innovation, law firm, personal injury claims, ErstatningsAdvokaterne

## INTRODUCTION

“Service” covers a wide range of economic activities involving both goods and persons. According to classical service management or marketing theory, a service is a problem solution which engages the service provider and the customer/client in an interactive process (Eigler and Langeard, 1988; Grønroos, 2000; Gallouj and Djellal, 2010).

In order to understand and perhaps also to facilitate or create innovation in service businesses, there are therefore good reasons to take the relationship between service provider and clients as the starting point. Some of the services that are produced are provided by the public sector – and this is especially the case for personal services. In the public sector there is a limited, or non-existent, market in which the clients can choose between different service providers. Our focus in this paper, however, is on *commercial* services, which involve the provision and sale of service goods – and the demand for such goods – in a market where clients do have a choice between different market objects and goods. Thus what we are dealing with is market innovation connected to service innovation – a context in which market shaping and the processes associated with it are of great interest.

When Schumpeter published *The Theory of Economic Development* (1912) a hundred years ago, his list<sup>1</sup> of examples of innovations given in the book included “the opening up of a new market”. A century later, innovation and models of innovation are still tied primarily to manufacturing and physical production rather than to services, despite the more complex nature of Schumpeter’s framework (Fagerberg, 2005). Many scholars have over the intervening years regarded services as secondary to physical production and technology. However, there is an increasing tendency to understand modern economies as service economies, and to accept that services contribute to the value creation in these economies (e.g. Gallouj and Djellal, 2010).

The origin of the word “innovation” is the Latin word “innovare”, which means to renew or revive, or to create something new. A distinction is commonly made between invention and innovation. Invention represents the idea; innovation its commercial realisation. Invention and innovation each requires a different type of knowledge and different qualities. For example, “to be able to turn an invention into an innovation, a firm normally needs to combine several different types of knowledge, capabilities, skills and resources” (Fagerberg, 2005, p. 5). Fagerberg links Schumpeter’s (1912) concept of the “entrepreneur” to the qualities needed for innovation. See also Kalsaas (2012), where the concept of the entrepreneur is used as one of the factors in understanding and explaining the occurrence of a specific major innovation in the oil- and gas industry over a 10-year period. Kalsaas (2012) argues that it is difficult to understand this achievement without taking into consideration the role played by entrepreneurs who were willing to take great risks in order to succeed in creating something they believed in.

Based on Howells’ (2000), Barcet (2010) outlines a new paradigm for understanding and developing service innovations. Barcet points out that the old (“traditional”) paradigm takes a manufacturing approach to innovation and the innovation process. The new paradigm – which Barcet calls “service based innovation” – is, according to the same author, “first and foremost a change in perspective, which to a certain degree implies a new way of looking at the roles of the actors and mechanisms that create value followed by a change in identification of results and finally of quantity” (p. 52). According to Barcet (op cit.), the

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<sup>1</sup> Schumpeter defined innovation as involving a new product, which could mean improved quality, a new production method, the opening up of a new market, the introduction of new raw materials, or the adoption of new organizational structures.

innovation lies in the combination of the elements used in the service-based innovation, and in the organization of workflows, resources and skills; not in the single elements as such. It is made effort in the paper to combine this more structural innovation perspective with that of a market process perspective to also address market innovation. Thus the purpose of this paper can be defined as seeking to contribute to a better understanding of service and market innovation.

The theoretical basis informing the paper is illustrated with a case taken from the personal injury claims field. A law firm was established 10 years ago, starting up with a business model that was new in this field. The firm opted for a strong specialization in the area of compensation law that meant limiting its business area to dealing only with personal injury, and accepting only the injured party as clients; it pursued new forms of marketing of the services; and it introduced new ways of setting the price of the service products. The firm operates in a commercial service field where the service product can be described as complex; the field involves a strong profession; and this field has received little attention from the service perspective drawn up above. Thus we regard the chosen case as a critical one (Yin, 1989) – one that provides a good basis for studying the phenomena in question. The validity of the study is based on analytical generalisation (Yin, 1989). This method allows in-depth exploration of questions of “how” and “why” based on the theoretically informed case study. Thus, our case study represents an incremental test of existing theory, and may serve as a basis for modifying it. However, our study also brings new ideas to the field through our integration of the concepts of service-based innovation and market process innovation (MacInnis 2011). Conceptual advances in theories are critical to knowledge development and theory revisions in order to avoid “saturation” (Zaltman, LeMasters, and Heffering 1985). However, since our study includes only a limited number of interviews, we cannot claim to offer an exhausting test of the theory; all we can say with certainty is that we *illustrate* the studied phenomena. Nevertheless, the greater the number of instances of support for the theory’s correctness or usefulness found in the data, the stronger its claim. This is how theoretically informed case studies make their contribution to research.

For the most part, the data is based on a series of dialogues and interviews with one of the two founding partners of the firm ErstatningsAdvokaterne (a name which translates as “the compensation lawyers”). However, information and quality assurance was also contributed by the other founding partner, and by a third lawyer who has risen in the ranks from initially being taken on as a law student and assistant lawyer. The primary data was supplemented with newspaper cuttings from various court cases, and related to market reactions to the law firm’s inception in 2002.

The rest of this paper is organised as follows: A theoretical overview of market-shaping mechanisms is presented, and followed by a presentation of theories about service-based innovation. Based on the concept of service-based innovation the two perspectives (service-based innovation and market process innovation) are then combined, providing the foundation for a further specification of the research question. The empirical chapter describes and explains the development of the case company in the field of legal compensation and personal injury claims; the firm’s positioning of a new marketing object and market good; the ways in which this new service is produced; and market responses. A theoretically oriented analysis is then offered; and finally, the paper is rounded off with a series of empirical and conceptual conclusions.

## MARKET SHAPING

A market is understood in this paper as a socio-technical organization that connects many actors and objects and serves to facilitate comparison between arrays of market goods, including services. Finch and Geiger (2010) see markets as social-technical spaces in which

actors transform products into goods, especially by taking advantage of the calculating capacities of the market actors. Market goods can be constituted by both physical products and services. A product “is an economic good from the point of view of its production, circulation and consumption”, and “an economic good implies a degree of stabilization of the characteristics that are associated with it, which explain why it is in demand” (Callon et al., 2002, p. 197). Finch and Geiger (2010) interpret this to mean that markets transform products into goods temporarily by enabling the actors to compare them with each other according to a series of dimensions and qualities. These dimensions and qualities are part of the calculative effort undertaken by buyers and sellers.

According to Finch and Geiger, “market objects” can only be assessed in the market space. In contrast, “marketing objects” are understood as objects of change that also involve relationships to buyers and sellers outside the market space. Furthermore, they argue, it is the cutting of their connections to the realms of production and consumption when they move into the market space that turns products into market objects. This requires that market boundaries are temporarily stabilized. The cut-off mechanism is also described as “disentangling”. “Overflow” of the market is the reverse mechanism. “Overflow” destabilizes the market through the introduction of new market objects (goods to be exchanged, to be bought and sold), and new marketing objects (products and services to be made and used). The success of market objects and marketing objects can be seen as manifestations that the boundaries are sufficiently stable to allow the actors to perform their comparisons.

Finch and Geiger (op cit.) use the phrase “marketing object” to identify an object which is a market good in the market space and at the same time also a product within production and consumption. This is to signal that market boundaries are dynamic, porous and contentious. Boundaries are dynamic because, “first, actors’ practices of positioning goods in markets can often secure only vulnerable positions because they concern sellers and buyers developing practical theories about one another, which are mediated by the marketing object. The critical referents (“each other”) are prone to change and be changed. Second, by seeking or changing a position, actors relinquish their grasp of the object and show that it is for a period of time a market good, in which positions are negotiated in relation to other market goods” (p. 241).

Finch and Geiger (op cit.) give two primary reasons for their strong focus on marketing objects. One is tied to the conviction developed by marketers since the late 1980s that the role of marketing is to persuade organizations to become market or customer facing. They argue that this has been complicated by the recent perspective developed in market studies that relationships between producers and consumers, buyers and sellers, emerge in markets – seen as social spaces – and are mediated by objects. Therefore there can only be indirect relationships between producers and consumers, buyers and sellers, as their mediation by a market’s objects is weak. The other reason is that marketing objects are related to the ANT-perspective (Latour, 2005), which is concerned with the interactions of human and non-human elements in descriptions of action. In this way ANT can help marketing researchers examine the intricate networks and interaction of market actors, the authors argue.

By positioning a marketing object, marketers provide information and arguments in order to enable market actors to calculate differences and similarities with other market goods. This helps disentangle the market good from the sphere of production and consumption. However, but Finch and Geiger (op cit.) argue that this disentangling is done with reference to the cultural worlds of consumption and often production, thus re-entangling the object in these worlds.

Araujo and Kjellberg (2009) conceive Marketing as a set of techniques that help regulate exchange and marketing as a set of practices that contribute to the construction of markets and other economic orders. Finch and Geiger (op cit.) introduce the concept of “framing” to grasp some of the dynamics related to markets, and to explain why market boundaries tend to

be porous and active and thus to allow marketers' positioning and repositioning efforts to make sense in the worlds of the market and consumption. "Framing" implies that market actors anticipate markets, and the movement of objects through markets, by being reflexive of market boundaries (Kjellberg and Helgesson, 2006). Framing shows the instability of markets as a basis for comparison, and of market boundaries as passive markers of overflow, and thus the impossibility of disentangling the market's version of good and product from the outside world and cultural meaning (Slater, 2002).

#### SERVICE-BASED INNOVATION – A NEW PARADIGM IN INNOVATION

Barcet (2010) suggest that the proposed new paradigm, denoted "service-based innovation", can be implemented on two different levels. He identifies the first of these levels as "the goods<sup>2</sup> and services integration process". We will here take a closer look at the second level, namely contexts where technology or tangible products do not play the central role: contexts one might call "pure service". Barcet's innovation model has four layers:

- Layer 1: The client(s) or beneficiaries. The system on which the service acts.
- Layer 2: The service provider. The specificity of the offer and commitments.
- Layer 3: Organization. A coordinated set of activities.
- Layer 4: Internal and external operators.

One of the ideas of the innovation model is that while each layer addresses separate issues, the layers also work together. The first layer focuses on the impact of the innovation on the users/clients. Central questions are whether the impact of the service is short-lived or sustainable; whether it is financial or non-financial; whether learning while using is involved; and whether the client is able to compare effects. According to Barcet (2010), the methods for handling these aspects are relatively underdeveloped, because "it requires anticipation of all the effects of the service and the necessary client or beneficiaries' behavior" (p. 55). In Layer 1 it is important to define the actions and behaviour that are necessary in order to produce the desired effects; to design the learning process needed to achieve the required concept; and to define the process of harnessing information held by the client in order for the informative resources to become part of the service supply system. The essential questions in Layer 1 are "why" and "for whom".

Layer 2 covers what services to offer as a response to the needs identified in Layer 1.

Innovation is always a response from a provider. A central concern in the designing of an innovation is to create a visible differentiation from existing competing services.

Furthermore, in the defining of a new concept it is important to clearly specify and delineate the nature of the commitments made by the service provider to her clients. Barcet (2010) ties this to the need to build confidence, to facilitate assessment of the quality of the service on offer, and to facilitate comparison with competing offers. Furthermore, Barcet (2010) argues, this central question is sometimes completely neglected, or it is addressed in an incomplete manner. This can slow down the development of service activities. Another dimension is specification of the values upon which the offering is based. Like goods, services carry psychological, symbolic, artistic and social values. Any offering of service begins as a potential and a promise. Trust and loyalty are built as a result of the effective implementation of this promise. Continuing demand is therefore not the only dimension that makes services sustainable.

Barcet describes the third layer as "organizational technology". Making the service available is a central concern in designing a service provision. The challenge in this layer is how to organize the different activities that are required in order for the service to be implemented.

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<sup>2</sup> "Goods" refers here to tangible products.

This is where the role of the client is defined in terms of what information, resources and actions must be successfully involved.

The fourth layer addresses the means and resources necessarily required to accomplish the innovation. Examples of resources are financial or technological resources, as well as information, skills or knowledge-based resources. Vital or useful resources can be internal or external. The personal relationship dimension of service, Barcet argues, gives particular importance to interpersonal skills and knowing how to act, alongside factual know-how. New information technologies can enable innovation in service. Central questions in Layer 4 are “with whom” and “with what”.

Barcet’s model focuses on the designing of service innovation. It emphasizes that the choices made in each layer are neither linear nor independent, and that the innovation process is one of constant interaction.

### SERVICE INNOVATION AND MARKETING: THE TWO CONCEPTS SEEN TOGETHER

MacInnis (2011) has drawn up a framework for conceptual contributions in marketing. Seeing the concepts of service innovation and marketing together fits into her conceptual goal of “relating” ideas found in different concepts. The focus in our context is to use an integrated perspective in the approach to linkages among constructs, in order to contribute to conceptual advances. We are dealing with two concepts here: service innovation, which is based on a structural perspective; and marketing theory, which is based on a process perspective.

The four-layered service-based innovation model is our starting point. The actual service product, namely the specificity of the offer and the commitments made by the service provider, is found in Layer 2. This service product can be understood as the market object. Next, the content of Layer 1, the system on which the service acts, defines the values and dimensions which allow potential clients to calculate and compare the new service innovation with competing offerings. The service product is transported into a “good” for the users based on the specifications and values in Layer 1.

Layer 3 constitutes a significant component of a marketing object, particularly in terms of getting information about the new values and properties tied to the new market object across to potential clients – i.e. to the world of consumption – and in terms of the resources and actions required to successfully achieve this. Layer 4 can also be tied to the marketing object with regard to the world of production, for instance in the use of technological tools such as IT and the internet to establish contact with the world of consumption. New production methods can also be included here, such as the effort to bring about changes to legal custom in the courts as part of the legal service, involving relationships to a series of different actors. Here we account for the integration of these two concepts. In addition, we use the other parts of the process-oriented marketing theory described above.

When the innovation in the shape of the new market object is launched, it can be expected to lead to an overflow in the market. This overflow destabilizes the market, among other things due to the responses from competitors aimed at restoring market stability and meeting the competition from the new service object. If the service innovation generates changes to how services within a given area are produced and introduced to the world of consumption – for example in such a way that it allows the users to compare quality, price and risk with greater ease – we are dealing with a market change that can be identified as a market innovation. In other words, the innovation can be both a service innovation and a market innovation.

Based on this rationale, which will be used in the analysis of the case, our research question can be specified as the following:

How can we illustrate the integration between the concepts of service-based innovation and market innovation through a study of changes to legal services within compensation law?

## THE SERVICE INNOVATION CASE

### The new marketing object

Ten years ago, two lawyers – friends and entrepreneurs – established a law firm in Aarhus, a city of some 300,000 inhabitants – their home town. Aarhus is located in Denmark, a country with longstanding social-democratic traditions. They chose to name the firm “ErstatningsAdvokaterne”. The name, which translates as “the compensation lawyers”, is itself an important factor in the market innovation, since it reflected a breach with the common practice in the legal sector at the time. At the firm’s inception in 2002 the staff consisted of two lawyers, and two legal secretaries employed in 50 percent positions. Ten years later the staff includes a total of five lawyers; one legal secretary and twelve law students<sup>3</sup> who work part time to illuminate cases; two administrative staff members; and a lawyer who handles cases but does not participate in any court room proceedings. To date, new lawyers and assistant lawyers have primarily been recruited among the law students already working for the firm. Thorough instruction/training of new employees in the firm’s fundamental values and methods is part of the company strategy.

The entrepreneurs had a business idea that was unique with respect to several dimensions and qualities of the market in question – which is limited to the local and national context<sup>4</sup>. A strong driving force and ethical motivation for the founders was the idea that they would provide the injured individuals involved in compensation disputes over personal injury suffered at work, in traffic accidents, or in other contexts, with access to the same top quality legal competence that was already available to and mobilized by insurance companies, and often also the authorities. Thus, the focus was limited to one field only, namely a specialization in personal injuries, and the decision was made to accept only the injured party as clients. Hence the company (ErstatningsAdvokaterne) never represents the insurance companies or the authorities, which are normally the opponents in most cases, although these affluent clients are normally a primary target group for law firms in the personal injury claims field. Most of the company’s competitors take a different attitude, and represent the injured in some cases, and their resourceful counterparts in others. For our case company, an important concern is that if a lawyer accepts all types of cases – which remains the common practice especially for small law firms – unfortunate dependences and conflicts of interest detrimental to the injured client may arise, especially if the lion’s share of the lawyer’s income comes from the injured party’s opponent. The company founders describe their approach as offering the injured persons “a pure product”. The principle of independence also prevents the firm from representing the injured person’s trade union, which they argue may have vested interests that can be detrimental to those of the injured individual in some cases, for example in relation to the question of whether to return to work or accept disability. However, limiting the legal services within personal injury cases to the injured party was not then, and is not now, a unique approach. The entrepreneurs broke out from a law firm that was already pursuing the practice of only representing the injured party in personal injury cases to start their own firm. However, it belongs in this picture that it was one of the founders of our case company who had created this profile together with her then employers

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<sup>3</sup> These are “*bac. jur.*” students, i.e. students who have already completed three years of study.

<sup>4</sup> Each country usually has its own laws and legal rules and regulations, different from those of other countries – a fact that limits the market to the domestic rather than an international context.

during her six-year employment in that company – which also worked within criminal law, business law, and family law. With their new concept the founders wanted to narrow down the field of operation even further, limiting their business to working only with personal injury claims rather than also dealing with those other areas of legal assistance. And in choosing this approach the company (ErstatningsAdvokaterne) was unique, and still remains so. The co-founder had been employed by the same firm for some 2-3 years prior to the founding of ErstatningsAdvokaterne, and had worked with personal injury claims for a third law firm prior to this. Another highly specialized law firm taking on only personal injury cases already existed in the same market, but with trade unions (which paid the legal fees on behalf of their members) as clients.

Another dimension and quality of the innovation is the way in which the new market object is priced. The founders introduced the “no cure – no pay” principle, which was a completely new approach in the domestic market for personal injury claims. They quote “equality before the law” as their motivation for making this move, observing that too many people with limited resources were deprived of the compensation that was due to them after injuries sustained in traffic or other accidents because they did not know their rights, or would not take the considerable financial risk of hiring a lawyer – let alone a lawyer specialized within the field. Part of the argument for introducing this principle of result-based pay, which means that the lawyer takes on the greater risk, was that, in their view, too many of the founders’ colleagues accepted payment for work that very obviously had no potential of creating value for the client. However, the principle of “no cure – no pay” is not practised in the pure form typically associated with “American conditions”, where the contract guarantees the lawyer a fixed percentage of the compensation awarded. The lawyers in ErstatningsAdvokaterne focus on wanting to deliver a value-creating service, and as a general rule only charge their clients for services that have resulted in such value creation. The fee varies from none whatsoever to normal hourly fees for legal assistance, depending on the amount of compensation achieved. However, if a client has achieved a considerable compensation but wishes to pursue the case further, he must contribute to the effort by taking on economic risk.

As an extension of this, holistic counselling is part of the product. This includes giving advice spanning all of the financial and legal aspects which follow serious personal injury to a greater or lesser degree. For example, the counselling takes into consideration not only the legal case, but also the work and social situations. Rather than being encouraged to seek even greater compensation, the client may be advised to return to working life if this is considered to be in her best interest overall, even if pursuing the compensation option further would benefit the lawyer.

Furthermore, part of the quality of this new legal service is an active endeavour to overcome the barriers which prevent people from seeking legal advice. This includes a conscious effort to avoid jargon in speech and writing, to be accommodating, and to be on the same wavelength as the client/customer, to listen, see, to be attentive, empathic, answer requests without delay, to give the client frequent updates about the case, etc. In short, to aim for dialogue as defined by Habermas (1984, 1987), and for Kirkegaard’s ideal of “meeting people where they are”.

When the company’s founders established ErstatningsAdvokaterne, a number of clients chose to transfer their cases from existing law firms to this new venture. This is regarded as a very important factor in the firm’s survival through the challenging initial years, as it takes extra time to build a financial basis when operating according to the “no cure – no pay” principle. It is also worth mentioning in this context that a local division of a national bank had sufficient confidence in this initiative to offer the firm considerable overdraft facilities without security.

### Producing the new legal service

The legal method used in the personal injury claims field is not part of the innovation as such, but it helps shed light on the difficult task of balancing the clients' needs and the need to ensure healthy earnings for the service provider.

The first step of this legal method is to gain an overview and to define the facts of the case, before analyzing the legal dispute and issues involved. The legal practice when these factors have been established is to investigate a) whether a statutory rule covering the situation/case already exists, b) whether reference to a situation like the one involved is made in the preliminary documentation for this rule, c) whether a court decision made in a previous case can be used as precedence, or d) whether existing practice can be identified and invoked as a rule. All cases are examined with regard to the facts and legal implications by going through these points. This is followed by a legal assessment of how to solve the dispute considering both the facts and the legal issues involved, and a suggested solution is presented to the customer. Most lawyers stop at this point. But misinterpretations of the statute law and its preparatory documents might be involved; or perhaps the legal practice has been misinterpreted or does not comply with the letter of the law or the preparatory documents or the latest Supreme Court practice; or perhaps legal precedent does not cover the case. Should the law be interpreted differently? Did the application of the law comply with its letter? The lawyers can strive to create a lawmaking process, to shift boundaries. These are difficult considerations, and the data suggests that the lawyers make more money by putting it on the safe winners. One of the company founders says that *“seeking to create a lawmaking process and asking the difficult questions is a time-consuming endeavour, and it generates little money for the case in question. My challenge is to bring the staff members on the offensive, get them to ask the difficult questions. This takes time and is often in direct opposition to turnover, turnover. Push the safe winners through the system. But what is in the client's best interest? I often meet the argument that we cannot make a living from such cases. But we can if we are content to earn good money rather than extremely good money.”*

One of the founders argues that to a great extent, the lawmaking process is governed by money. The insurance companies have the greatest resources, and their external lawyers<sup>5</sup> are the ones whose access to resources enables them to write textbooks for the law courses at university level, to arrange courses, etc. The founders assume that the lawyers engaged by the insurance companies make significantly more money than the lawyers who represent the injured party.

Few of the cases handled by ErstatningsAdvokaterne involve a clear court decision from the outset, however, and the differences between the injured party and the insurance company are often settled out of court. In some cases, a court decision has been made that an injured person is to be compensated for their loss, but without the size of the compensation being exhaustively specified. For example, in a case of amputation, is the cost of a prosthetic limb to be covered only for a few years into the future, or for the duration of the person's life? If the court decision determines that the coverage is time-limited, it begs the question: “why not for life?” Furthermore, even if the court decision specifies that the cost of a prosthetic limb is to be covered, it might not mention a wheelchair, although it might be in the client's best interest to have access to such.

Taking difficult cases, and not least winning them, can have a significant commercial effect. The case firm (ErstatningsAdvokaterne) has taken on several demanding cases, especially during the early years of the company's existence. One example<sup>6</sup> that attracted great media

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<sup>5</sup> The lawyers and legal experts employed in-house by the insurance companies handle the cases internally until a writ is issued in a case. At this point the cases are put out to external law firms, which tend to have a framework contract with the insurance companies.

<sup>6</sup> BT 17 June, 2003; Nord Jyske Stiftstidene 30 August, 2003.

attention, and that later found its way into the legal textbooks, was a traffic injury case from late 1994. Proceeding slowly in a queue of other cars, the injured party's vehicle was hit from behind by a car approaching at 100 km/h. The driver of the first car sustained serious neck injury. Five months later, a blood clot formed in his brain, causing serious paralysis and problems with language. The insurance company covered lost income for the injured person up to the point where he was declared 95 % invalid and 100 % unable to earn a living. At this point recommendations from experts at the National Board of Industrial Injuries in Denmark (Arbejdsskadestyrelsen) and the Danish Medical Legal Council (Rettslægerådet)<sup>7</sup> were used by the insurance company as justification for discontinuing the payments. The medical experts in these bodies held that no connection could be proved between the initial whiplash injury and the thrombosis which followed later. ErstatningsAdvokaterne pursued the matter for the injured person and won the High Court (Landsretten) case nine years after the occurrence of the original accident. The insurance company did not pursue the case to the Supreme Court (Højesteret), and the decision was therefore the final verdict on the matter. The injured person was awarded a significant amount of compensation. Nine out of ten cases handled by the company (ErstatningsAdvokaterne) are settled out of court, however. According to the founders of the law company studied for this paper, what made this case very different is that the High Court (Landsretten) listened to other specialist doctors called as witnesses, thus disregarding the recommendations from the two statutory expert bodies: the Medical Legal Council (Retslægerådet) and the National Board of Industrial Injuries (Arbejdsskadestyrelsen). The fact that the court decision disregarded both of these bodies is historic. It is a very rare occurrence. The norm is for the injured persons to lose their cases when no objective findings can be detected, for example on x-ray or MR scans. Two opposing views of cause and effect seem to collide here: the view of medical science and that of jurisprudence. And the legal advocates for the injured parties rarely manage to convince the court that the recommendation from the Medical Legal Council is only one of many factors in a system where both parties are in principle free to present evidence. Moreover, the legal principle is that the burden of evidence is carried by the injured party, not by the party that caused the injury. Compensation law imposes a very heavy burden of proof on the injured party, the weak party. This is made worse by the fact that the injured party is practically never allowed to present the evidence considered relevant by the injured person or his lawyer – despite the procedural principle of “free presentation of evidence” before the court. In our interviewees' (the company founders') view, this state of affairs in the courtrooms makes a mockery of the constitutional right to try one's case. The procedural tendency to accept the opposing party's protests against evidence proposed by the injured party's lawyer could be substantiated by quoting a whole series of court decisions, they argue.

Moreover, in compensation law the principle of “taking the victim as he is” applies. This means that all compensation cases are unique in the sense that the consequences of the same type of accident can have very different impacts on the injured party from case to case. Some people may become disabled, whereas others may be able to return to working life. During a legal dispute, the opponent's lawyers will seek to find elements in the injured person's past that might cast doubt upon the causal effect between the accident and the suffered impact. This illustrates why a great degree of trust between client and lawyer is vitally important. The lawyer needs to know that she can trust her client to divulge all the relevant information. An article by Håkansson (2010) carries the title “Duels or Duets?” The process taking place

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<sup>7</sup> Arbejdsskadestyrelsen and Retslægerådet are government bodies for market regulation of the personal injury claims field. The former is involved in most personal injuries where a compensation claim is filed. Arbejdsskadestyrelsen has its own secretariat, obtains statements from doctors, and issues recommendations to the parties. Retslægerådet is involved at a later stage in the process and consists of specialist doctors.

between the lawyers of the opposing parties in these cases can only be described as “duels”. However, mutual professional respect is also involved, and experienced lawyers often know their counterparts from earlier cases, and are thus also familiar with the counterpart’s stronger and weaker points, according to our data.

#### The clients and market positioning

One of the first moves made by the founders of the studied company was to register ownership of the web domain ErstatningsAdvokaterne.x, and active use of the internet continues to account for a considerable proportion of the marketing strategy. In most of the cases handled, potential clients are offered a free preliminary assessment of the case. There are no statistics, but an estimated 8 out of 10 case requests received by the company involve such free counselling. These are cases which are assessed by the lawyers to lack the elements that are necessary in order to pursue the case further. There are many examples of insurance companies asking the injured person to contact ErstatningsAdvokaterne for an assessment of their case, according to our company informants. They ascribe this to insurance company uncertainty as to where the cases stand, and a wish on their part to see whether or not the cases make it through the eye of the needle at ErstatningsAdvokaterne.

Furthermore, ErstatningsAdvokaterne advertise their services on Google, which means that a search using the key word ‘Erstatning’ produces a hit for the firm. They have earlier placed advertisements on the front pages of several newspapers. Also, there is an advertising stand on the pavement outside the company offices, of the same type used for example by supermarkets to announce the day’s bargain: *“Have you been in a traffic accident, suffered an occupational injury, a recreational injury or a patient injury? ErstatningsAdvokaterne ensure that you get the optimal compensation. We offer assistance only in personal injury cases and have many years’ experience within this legal field. This is your guarantee for optimal advice.”* The company hires premises in a central location in the city where the head office is located, and is highly visible in the urban environment. Writing articles and giving interviews to the press has been part of the marketing of the company’s service product since its inception.

The founders have a clear perception that the principle of “no cure – no pay” and free counselling in the preliminary phase expanded the market for personal injury claims, and that this expansion continues: in other words, that the company’s expansion is not simply a matter of successfully competing for market shares. A more general expansion of the market for providing legal assistance to injured person also seems to have taken place since the founding of ErstatningsAdvokaterne. For example, in 2008 a lawyer from a competing company claimed to see an increasing tendency for the injured party to hire their own lawyer<sup>8</sup>.

However, many cases were also transferred from competitors to this new firm (ErstatningsAdvokaterne) during the initial phase; cf. the description below of reactions in the market which created a good deal of focus through which the new service concept became widely known. With time, recommendations from former clients seem to have increased the share of cases, and the impression of our informants is that the largest cases now arrive via this avenue. There also seems to be an increasing tendency, judging by the distribution of cases, for clients to want legal assistance at an earlier stage in the process of claiming injury compensation: before a legal dispute with the opposing party has occurred. Seeking legal counsel at an early stage is described as a current tendency by the deputy manager of the trade association for the insurance and pension companies, Forsikring & Pension<sup>9</sup>.

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<sup>8</sup> *Dagbladet/Fredriksborg Amts Avis*, 17 May 2008.

<sup>9</sup> See footnote 8.

The whiplash injury example described above – in which the company won the case on behalf of the client despite the recommendations of the specialty doctors in the Medical Legal Council (Rettslegerådet) – generated a flood of new cases. The case was extensively covered by the national media. Many individuals realized that injuries they had sustained as a result of whiplash might entitle them to compensation. However, in legal practice, the weight of the Medical Legal Council’s advice was not altered by the court decision quite to the extent anticipated immediately after the case. Nevertheless, the case exemplifies that taking difficult cases to court can generate increased income through access to new cases and expansion of the market, even if in isolation, the actual case might not be profitable.

The case company (ErstatningsAdvokaterne) has an unsolved challenge in terms of how best to communicate its independence from the clients’ counterparts as an ingredient in the quality of the service on offer. The text used on the advertising stand, quoted above, fails to address this dimension and quality.

The marketing techniques used by ErstatningsAdvokaterne and the company’s use of the internet in the way described above represent a breach with normal practices in the legal profession, where a classified ad hidden inside the newspapers has been the only form of allowable advertising. A spokeswoman for the General Council, the supervisory board of the Danish Bar and Law Society<sup>10</sup>, observed in 2003<sup>11</sup> that one “notices ErstatningsAdvokaterne, because they go outside normal procedures here in Denmark. It is very unusual for a lawyer to say: Come to me, for I am the best”. We can thus see the new marketing and profiling strategy as part of the innovation.

#### The new marketing object and the responses

The establishing of ErstatningsAdvokaterne and the high profile of the company’s service product created a series of reactions in the market. In the early days of its existence, the company was reported to the statutory supervisory body for the law industry (Advokatsamfundet<sup>12</sup>), for its “aggressive marketing”. The case was quietly dismissed without any ruling being offered on the matter. One of the founders compares the indignation generated by their advertising with the similar indignation expressed towards private health enterprises when these started to advertise their services, and suggests that this indignation can be ascribed to a social-democratic context where people have become accustomed to the idea that health services are paid for via taxation, and are provided free of charge by the public sector. Competitors reacted with anonymous statements posted via the internet, such as using the company’s name against it. The word “erstatning” translates as both “compensation” or “damages”, and “substitution”, but the obvious translation given the company’s field of operations and its profile is the former. One competing firm asked: “Erstatning for hvad?” – “Compensation/substitution for what?” The answer provided by the inquirer could only be translated as: “Substitution for real lawyers”. Other statements from competitors described the company owners as “oh so saved”, but not above making money from their convictions. Ten years on, it has become common for lawyers in this market to

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<sup>10</sup> Together with the Disciplinary Board (Advokatnævnet), the General Council (Advokatrådet) is part of the superstructure of the Danish Bar and Law Society (Advokatsamfundet). The General Council gives recommendations and the Disciplinary Board makes the rulings. Registration with the Society is mandatory according to Danish law. The organs are manned by the lawyers themselves, who exert a form of internal self-regulation of the legal profession. The organs can be regarded as part of the market regulation of legal advocacy services.

<sup>11</sup> Nordjyske.dk, 29 October 2003.

<sup>12</sup> See footnote 10.

advertise their services actively on the internet and in other media, and lawyers who work within compensation claims for personal injury now call themselves compensation lawyers. Any internet search confirms this to be the case.

Soon after the company's inception, an insurance company offered ErstatningsAdvokaterne a cooperation deal that would have provided access to a significant volume of cases. The law company has also received similar – albeit less direct – offers later, of cooperation with insurance companies and other interest groups. All such approaches offering cooperation/contracts etc. have been rejected quoting the core of the company's service: the guaranteed legal protection of the injured person, and the independence that enables the company to offer this guarantee.

According to our data, the company's employees are attractive in the eyes of the company's competitors as well as its opponents. One of the informants related that *“our competitors snatch our students as soon as they have completed their training”*. This worries the founders: *“We have trained the new ones in our ethics and our method based on serving only the injured party. Many of those who have completed their training move on to join our competitors, where they work both for the injured party and for the insurance companies and the authorities – despite our heavy emphasis on our values during their training at ErstatningsAdvokaterne”*.

The fee principle of “no cure – no pay” in some cases created much noise in the media, with headlines such as “American conditions”. But it also gave the founders a good deal of attention through media access allowing them to nuance the picture, and thus provided them with opportunities to describe their new service concept. A national radio programme was transmitted under the title “Equally legal” shortly after the company's inception. In this programme one of the founders was invited to a live debate with a competitor and someone who had suffered a personal injury. The founder has fond memories of this occasion, as the injured person gave great praise to the company over the open microphone.

## EMPIRICAL ANALYSIS

### The service-based innovation

Applying Barcet's (2010) four-layered innovation model to the concrete case described here allows it to be understood as an innovation in the shape of a new market object within a wider marketing object. Although the law firm is the source of the innovation in the studied case, the starting point for the model is the impact of the innovation on the client, and the improved ability of the new approach to meet the client's needs. Based on our empirical material, the studied case can be identified as containing the following aspects of innovation within the legal assistance field of personal injury compensation claims:

- Layer 1: The impact on the world of consumption, the users, is that they are guaranteed specialized legal advocacy services unhampered by the presence of structural bindings that might potentially stand in the way of safeguarding their wider interests against those of their resourceful opponents both in the short and in the long term. The financial risk involved in consulting a lawyer has been lowered through the introduction of free legal advice during the initial phase, and through the principle of

“no cure – no pay”, which is used in a large proportion of the cases handled. Thus there is no risk that the lawyer might perform expensive services that are very unlikely to create value for the client. Furthermore, the new service product has made it significantly easier for the buyers of compensation services to make their own calculations and compare the new offerings with existing ones in terms of quality, price and financial risk. Furthermore, lowering of the social barrier traditionally erected by the legal profession makes it easier to seek legal assistance.

- Layer 2: Specialization on personal injury compensation claims. Only injured persons are taken on as clients. This represents a break with the tradition that a lawyer can represent everybody’s interests in a neutral manner irrespective of financial ties, and is part of a strong ethical dedication to the interests of the injured party in cases of personal injury. Free counselling is provided in all personal injury cases presented to the service provider. “No cure – no pay” is offered in some cases. Holistic and individual counselling taking into account what is socially and legally the best solution for the individual client is part of the new client-oriented approach. Likewise, a dedication to democratic dialogue with the client and the breaking down of barriers which hamper dialogue – which represents a breach of some of the values perceived as traditionally belonging to the industry – shifts the emphasis in the client’s favour.
- Layer 3: The new service is available through the internet, where potential clients can describe their case in order to have it assessed without having to visit the lawyer’s office. Contrary to the tradition within the field, the new service has been given a name that is tied to the contents of the service. It is therefore easy to find in an internet search. Also contrary to the tradition within the field is the fact that the services are actively promoted. Active use is made of the media: Letters and articles are written and interviews are given in order to shed light on problems concerning the injured party in accidents involving personal injury.
- Layer 4: The production of the legal services is characterised by a great willingness to influence legal custom and usage as well as extrajudicial practices in ways that benefit the clients, and which are often detrimental to short-term earnings, as it is financially more lucrative to concentrate on the simpler cases which generate quick results. The most important knowledge resource feeding into the innovation is the extended experience within the branch of legal issues involved held by the founders. This is combined with an emphasis on in-house training of the assistant lawyers and students. The knowledge basis is further expanded through new experiences and court cases, courses, scholarly articles, and in-house discussion and sparring in difficult cases (organizational learning).

The contents of the company’s innovation confirm Barcet’s (2010) argument that unlike technological and product innovations, service innovations can only rarely be patented; at best, they can be copyrighted. As a result, service innovations are easily copied compared to innovations related to technology and physical products. Hence the company behind a service innovation has less protection, and has greater problems attracting extra income in order to cover the expenses associated with development and implementation during the initial period. This in turn means that the incentives for innovation are relatively small.

In the studied case, we see that parts of ErstatningsAdvokaterne’s concept have been copied, thus changing market practices in the field. This applies above all to the more active marketing of legal advocacy services through the internet and other media. Not least, it also applies to the new practice of giving the law firm a name that reflects the contents of its special expertise, and to the fact that lawyers who represent the injured party now describe themselves as “erstatningsadvokat”, i.e. “compensation” or “injury claim” lawyers. However,

ErstatningsAdvokaterne got there first, and the firm seems to have succeeded in building a brand name within the legal assistance field of personal injury. The greatest innovation made by the firm within this field can perhaps best be described as a paradigm shift – or at least as based on a new ontology of what exists – through the rejection of the idea that lawyers can service all clients without being influenced by financial ties in the market. This may be the most difficult aspect to copy for the company’s competitors, as it often requires accepting lower incomes. The financial sacrifice involved can be a particularly difficult hurdle for small and medium-sized companies.

This point is what was identified in the empirical section as the financially demanding aspect of working actively to change legal custom and usage in favour of the injured party – which requires strong ethical motivation and a dedication to safeguarding the clients’ interests even when the economic mechanisms which govern lawyers’ income suggest pursuing a different strategy. In order to suspend the impact of these economic forces and reduce the dependence on lawyers’ ethical commitment, a solution seen from the clients’ perspective might be that financial compensation is provided by injured persons’ interest groups, but this might also create other bonds for the client, as exemplified in the empirical sections above.

The data demonstrates the vital role of founders and entrepreneurs as triggers for service innovations both when it comes to having ideas (making inventions) and to possessing the determination and willingness to take risks needed to realize the ideas and thus turn them into innovations. The risks involved in this particular case may not have been particularly great since the confidence of a credit institution was gained without personal security, but the fact still remains that the founders were willing to accept reduced income during a transition phase in order to pursue something they believed in. Hence this example confirms the entrepreneur theory (e.g. Feldman and Francis, 2006), which claims that latent entrepreneurs exploit market opportunities, mostly in their own geographical areas. The market in question was probably over-ripe for change, allowing the entrepreneurs to establish their business locally.

#### The generated market innovation

The market boundaries for personal injury claims seem to have enjoyed longstanding stability up to the point when the entrepreneurs behind ErstatningsAdvokaterne launched their service-based innovation as identified above in the four-layer model.

The new company challenged the former market stability with its “pure product” (Layer 2); its active pressure to change legal custom and usage (Layer 4); and its new forms of marketing and positioning (Layer 3); which allowed the buyers of compensation services to make their own calculations and compare the new offerings with existing ones (Layer 1). Such calculations were probably much more complicated and inaccessible to the world of consumption before lawyers started to advertise their services in a way that made each separate dimension transparent, and in this respect the market in question was probably over-ripe for change.

The introduction of the four-layer service-based innovation within legal advocacy services appears to have created a shock in the personal injury claims market. As shown in the empirical chapter above, this shock manifested itself as attempts at ridiculing the new firm, and as a report of alleged wrongdoings to the supervisory (self-regulatory) authorities. The press was also active, making much of so-called “American conditions”. However, the media attention, in combination with the fact that important cases were won in the early days to the considerable benefit of the clients, probably helped strengthen the market profile. In terms of countermoves from competing actors, the most obvious examples are the adoption of the company’s naming policy of reflecting the nature of the service on offer (compensation advocacy), and the new strategies for promoting the qualities of the market objects. In

contrast, no other enterprise has adopted the central contents of the company's (ErstatningsAdvokaterne's) business model and innovation of representing only the injured party as far as we have been able to ascertain.

The personal injury claims market has undergone significant changes. Potential clients can now calculate and compare in a novel way the legal advocacy services; the marketing has taken on a new shape and new contents and appears in new channels; and lawyers/advocates within this market are now called compensation lawyers/advocates ("erstatningsadvokater"). In this respect the new company, ErstatningsAdvokaterne, has helped shape the market through the innovative approach it adopted. The market seems to have expanded as a result of the debate surrounding such factors as the inception of the new company and its activities. Furthermore, the public seems to have gained a new awareness that insurance companies are not necessarily supportive of their needs if they suffer personal injuries; on the contrary, insurance companies often seek out strategies to minimize their payments to the injured party<sup>13</sup>.

ErstatningsAdvokaterne positioned their market object with a clear reference to the company's favouring of the injured party's interests both in financial and cultural terms by taking issue with traditional values among lawyers, such as the pervasive failure to provide information about their market objects. The company also sought to reduce the barriers between client and lawyer. These strategies can be understood as introducing the cultural world of consumption into the legal assistance field related to personal injury compensation claims.

## CONCLUSION

The service-based innovation contained in our empirical material from the area of legal assistance in personal injury compensation claim cases can be identified according to a four-layer model where the four layers interact as a consistent whole. The layers are the following: 1) the system on which the legal assistance service acts: the clients (beneficiaries) and the world of consumption within legal compensation claims; 2) the specificity of the offering and the commitment invested by the providers of the legal assistance service; 3) the availability to the world of consumption; and 4) the world of production. The following points summarise and conclude on the impact of the studied case in relation to each of the four layers:

- 1) Significantly improved possibilities for comparing and calculating the cost of different legal assistance services; significantly reduced financial risk for the beneficiaries attached to seeking legal assistance, and improved likelihood that the services will generate value for the clients; legal assistance services based on a greater degree of real dialogue with the clients; services with a greater degree of specialisation; legal assistance services where no economic ties exist between the law company and the clients' counterparts; a relative increase in the number of financially risky cases that are accepted.
- 2) A fundamental ethical commitment to injured persons against insurance companies and authorities; a breach with the anonymous form of marketing previously practiced throughout the legal industry, such as choosing a name for the firm that mirrors its specialisation; new practice of accepting cases only for the injured party due to the conviction that this is the only way to protect the clients against clashes of interests that might work to their disadvantage; greater willingness to accept reductions in earnings through taking on financially risky cases.

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<sup>13</sup> See for example *Dagbladet/Fredriksborg Amts Avis* 17 May 2008.

- 3) Active use of the internet: the beneficiaries can upload descriptions of their cases in order to get an initial assessment free of cost; active use of the media, including writing articles and comments, giving talks. The main office is centrally placed in the city centre of Aarhus, in a location where large numbers of people pass through; active advertising of the qualities of the service in newspapers, on the internet, and on an advertising stand placed on the pavement outside the office.
- 4) Active endeavours to shift legal practices in favour of the injured party; a conscious awareness of the financial laws of such services dictating that lawyers are better off avoiding cases associated with financial risk. Ethically motivated recruitment of students, who are employed in part-time positions – adding youthful energy and great commitment to the office atmosphere, as well as flexibility in terms of the amount of work that can be taken on – although in isolation, this is more costly than employing legal secretaries. Great emphasis on professional updating, as well as on in-house sparring and training of new members of staff.

The data indicates that the service-based innovation described above has generated significant changes in the market for personal injury claims services:

- The positioning of the new marketing object generated overflow and market boundary instability for these services. This can be characterized as a kind of shock that in turn generated attempts from competitors to provoke sanctions against ErstatningsAdvokaterne's new practices.
- The positioning of the new marketing object seems to have altered the market in a lasting manner with respect to how the service providers promote and provide information about their legal assistance services.
- This also seems to have been a central contributing factor in the expansion of the market for legal assistance within personal injury claims.

In this respect the innovation has helped shape the form of the market, while also contributing to its overall expansion. In other words, we are dealing with a market innovation. However, when the new marketing and market object is copied, certain aspects seem to be left out. For example, firms copying the new approach in most other respects have so far failed to adopt the case company's rejection of the idea that lawyers can represent different clients in a neutral manner irrespective of economic ties.

In terms of theoretical and analytical generalizations we can conclude that integrating the concept of service-based innovation with the concept of market innovation seems to be a fruitful approach. The four interacting layers in service-based innovation can be tied both to a new marketing object and to a new market object, where the market object originates from the marketing object. The marketing object is particularly apparent in Layer 3, which is concerned with making the new service available; but also in Layer 4, which focuses on the production of the actual legal assistance services. In contrast, the market object is tied particularly to Layers 1 and 2 in the four-layer innovation model, where Layer 1 specifies the qualities which make the service-based innovation a "good" for the beneficiaries.

The categories which make up the four layers in Barcet's service-based innovation model have proven to be somewhat ambiguous. We have chosen to base our work on the following typology for Layers 1-4:

- 5) The world of consumption
- 6) The service provider's business model and strategic values
- 7) Means of marketing and efforts to make the service available (the world of circulation)
- 8) The world of production

Here Layer 1 represents the target: Penetration into the world of consumption is the aim of the efforts. The other layers contain the necessary ingredients – in the shape of values,

strategies, actions, and knowledge – for successfully generating the desired “goods” for the benefit of the consumers, the beneficiaries.

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