26 October 2009: The Photomaton company

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The Photomaton company makes a commitment to the Autorité de la concurrence
to remove the exclusivity clauses from its contracts and to limit their duration

> *Version française*

After a referral on the merits in 2008 and a request for interim measures by the Cybervitrine company against the practices used by Photomaton, the *Autorité de la concurrence* issued a decision in which it accepts the commitments assumed by Photomaton, renders them mandatory and closes the litigation procedure.

History of the procedure

Cybervitrine, a company involved in the operation and marketing of photo identity booths, claimed that Photomaton was abusing its dominant position on the market of identity photograph booths in France by attempting to lock the market. The complainant primarily denounced the long exclusivity periods (five years) imposed on the site holders, the duration of which could be further artificially prolonged by automatic renewal mechanisms and clauses relative to the entry into force of the contracts.

In its decision 08-D-16 of 3 July 2008, the *Conseil de la Concurrence* (1) had considered that the conditions were not in place for the declaration of emergency measures, but that the practices in question were likely to constitute an abuse of dominant position, with the matter thereafter requiring an examination on the merits.

The competition concerns of the *Autorité*

Photomaton holds a very significant market share, with nearly 82% of the photo booths operated through site holders. Moreover, it enjoys strong renown and operates booths installed in important sites in terms of image and visibility (SNCF, RATP, etc).

In this context, the insertion and combined effect of the various clauses included in the Photomaton contracts appear likely to create market entry barriers for other competitors, by preventing them from accessing sites for an indefinite duration.

Over and above the direct effects, these access difficulties are likely to prevent competitors from gradually attaining the critical size needed in order to be able to respond to invitations to tender involving a large number of sites.

The commitments of Photomaton

In response to the competition concerns of the *Autorité*, the Photomaton company has proposed commitments. These proposals were placed online on the Internet site of the Autorité, in order to gather the views of interested third parties (market test of 16 July 2009).

The *Autorité* considers that these commitments are sufficient to resolve the competition difficulties, and that they are credible and verifiable.

• Photomaton undertakes to no longer enter into contracts containing exclusivity clauses, which, practically speaking, means that in the future, a given operating site may accommodate equipment belonging to competing companies.

• All new contracts will henceforth have a maximum duration of three years, and automatic renewal clauses will lead to renewals having a maximum duration of one year.

• Photomaton undertakes to no longer enter into contracts in which the effective date is offset from the equipment delivery date. It also undertakes to include the fact that each contract only applies to the equipment indicated in the contract.

• Photomaton undertakes to no longer enter into contracts that contain mechanisms that indirectly lead to a situation of exclusivity.

These commitments will be progressively implemented as the deadlines arrive for existing contracts. It is for this reason that Photomaton has undertaken not to oppose any discontinuation of exclusivity requested of it by one of its co-contracting parties, in exchange for a balanced negotiation of the conditions. Moreover, Photomaton has undertaken to inform its co-contracting parties of the assumed commitments and of their scope, so as to guarantee their useful and quick effect on the operation of the market.

(1) Since 2 March 2009, the Autorité de la concurrence has succeeded to the Conseil de la Concurrence (reform brought about by the law on the modernization of the economy of 4 August 2008 and by the ordinance of 13 November 2008).

For more details regarding this matter, the full text of decision 09-D-32 of 26 October 2009, relative to the practices that the Photomaton company implements, is available for consultation on the Internet site of the Autorité de la concurrence : www.autoritedelaconcurrence.fr