29 February 2016: Notaries, bailiffs, court-appointed administrators and liquidators, judicial auctioneers, commercial court registrars

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The Autorité de la concurrence publishes the opinions it issued to the government following yesterday's publication of the decree on the rates of certain law professionals.

> Version française

Following publication in the Official Journal of the French Republic (JORF) of 28 February 2016 of Decree 2016-230 of 26 February 2016 on the rates of certain law professionals and interprofessional funds for access to law and justice, the *Autorité de la concurrence* today makes public the two opinions that it gave to the French Minister of the Economy, Industry and Digital Affairs, on 29 January and 22 February 2016 (Opinions 16-A-03 et 16-A-06).

The government bill underwent some significant changes after study by the French Administrative Supreme Court (*Conseil d'Etat*), in particular with regard to interpretation of the methodology for establishing rates arising from the Law of 6 August 2015 for growth, activity and equality of economic opportunities, known as the "Macron Law".

The adopted method for establishing rates seeks to set rates based on cost of services, while ensuring that professionals receive reasonable remuneration as recommended by the *Autorité de la concurrence* in its Opinion 15-A-02 of 9 January 2015.

The *Autorité* emphasises its preference for a global method of fixing rates, highlighting the advantages of this method in comparison with one that involves payment on a “deed-by-deed” basis. The global method can provide professionals with an incentive to improve their efficiency insofar as since the profession's average costs will be taken into account, they will be encouraged to increase the margin generated by individual improvement in production processes. It likewise fosters professionals with an incentive to develop their provision of services subject to free fees, thus stimulating interprofessional competition.

Aside from the method used to establish rates, the *Autorité de la concurrence* emphasised the need to strengthen competition between professionals, to minimise the instances of price increases envisaged in the bill and finally to clarify some of the draft's provisions. It has, therefore, recommended the following:

- greater flexibility in the discounts that may be granted, by increasing the ceiling rate of the discount (20% rather than the current 10%) and, in the case of commercial real estate, by substituting an increased negotiability of rates (free fees for transactions > 1,000,000 euros) for the discount device capped at 40%;

- removal of the pricing structure for certain optionally notarised deeds drawn up by notaries (such as civil partnerships arrangements - PACS -, real estate divisions, promises of sale, housing and professional property leases), thus broadening the field of deeds in competition that are subject to fees which may be freely agreed with the customer;

- a strict limit on the scope of services and professionals eligible for an emergency rate (30% increase in rate), which could only be applied to strictly defined services needing to be provided urgently on the grounds of an objective situation (such as submission to a judge, expiry of a right or statutory limitation) and which would only apply to bailiffs and judicial auctioneers;

- with regard to the rate increase applied to services provided overseas, pricing more in line with the real cost differentials should be retained. This could be approached on the basis of the differences in price between the overseas

territories concerned and the mainland, with the salary cost share included in a liberal professional's total costs;

- as regards the ceiling on fees related to real estate transfers at 10% of the value of the property, the Autorité proposed that, in order to make this provision operational, the notion of the "sum" of the fees covered by the ceiling should be better defined; specifying the nature of the fees covered: in addition to the proportional fees, fees for formalities and fees linked to the deed.

In a hearing before the Ferrand mission (see report), Bruno Lasserre, the president of the *Autorité de la concurrence* recommended that in the general interest of facilitating the transfer of low-value assets (e.g. rural or forest plots of land), which is encouraged by the Autorité, the objective might also be achieved by means of a cap on registration fees.

> See the full text of Opinions 16-A-03 of 29 January 2016 and 16-A-06 of 22 February 2016 on the draft bill on the rates of certain law professionals and interprofessional funds for access to law and justice envisaged in Article 50 of the Law of 6 August 2015