The Autorité de la concurrence fines the Bureau Commun de Signification of bailiffs from the département Hauts-de-Seine for anticompetitive agreement

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Background

The *Autorité* issues today a decision sanctioning the Bureau commun de signification of Hauts-de-Seine (joint bureau of service (BCS)), which brings together all the bailiffs of the département Hauts de Seine, for establishing anticompetitive practices. The sanctioned practices consisted in setting discriminatory conditions for bailiffs wishing to join the bureau. Members of the BCS thus imposed on bailiffs who recently benefited from an establishment within the specific framework of the "freedom of establishment" provided for by the "Macron Law", and only to these, a discriminatory and highly prohibitive "fixed entry fee" of € 300,000. This discriminatory practice was such as to make the exercise of the profession more difficult for bailiffs who had benefited from the freedom of establishment and who were starting their activity.

The BCS Hauts-de-Seine, did not dispute the facts or their qualification and applied for a settlement procedure. The fine was handed down to €120,000 and the BCS also made commitments to amend its articles of association.

The service of a document

The service of a document is a procedural aspect carried out by a bailiff, by which he informs a person of the content of a legal document within a framework defined by law. A certain number of documents or court decisions must be served, such as, in the case of judicial documents, subpoenas, or, in the case of extrajudicial documents, offers or requests for renewal of commercial lease or sales of goodwill.

In the département of Hauts-de-Seine, the bailiffs have created, in 1988, the Bureau Commun de Signification des Hauts-de-Seine (Joint Bureau of Services (BCS)), which aims to reduce, for the benefit of its members and by their joint effort, the cost price of certain services regarding the exercise of their profession, and notably the service of documents by bailiffs. Within this structure, the clerks of the BCS thus collect the documents to be served in the offices that are members, deliver them and sort them, before proceeding to their service to the recipients on behalf of the bailiffs. The BCS Hauts-de-Seine consists of 25 bailiffs' offices representing 63 bailiffs or associates, that is to say all bailiffs of the département.

Discriminatory entry terms

The articles of association of the BCS Hauts-de-Seine have been the subject of several amendments to include, from 2015, stipulations regarding seniority conditions, the unanimous acceptance of new members by the partners and the payment by the latter of a financial contribution. The stipulations in question were then amended, in 2018, to include a condition regarding the payment of an entry fee of at least €300,000 (excluding VAT) for any new office resulting from the "free establishment" to access the BCS.

These practices were intended to dissuade new entrants who benefited from the "free establishment" provided for by the "Macron law" to become members

of the BCS Hauts-de-Seine. However, the membership in this structure is a condition for accessing or maintaining in the market of serving documents, and accordingly constitutes a decisive competitive advantage for its members, by reducing costs for members, improving the quality of the service rendered and providing immediate access to the market.

Since 1988, the BCS has also introduced non-objective, non-transparent and discriminatory clauses dealing with the withdrawal and exclusion conditions of the BCS.

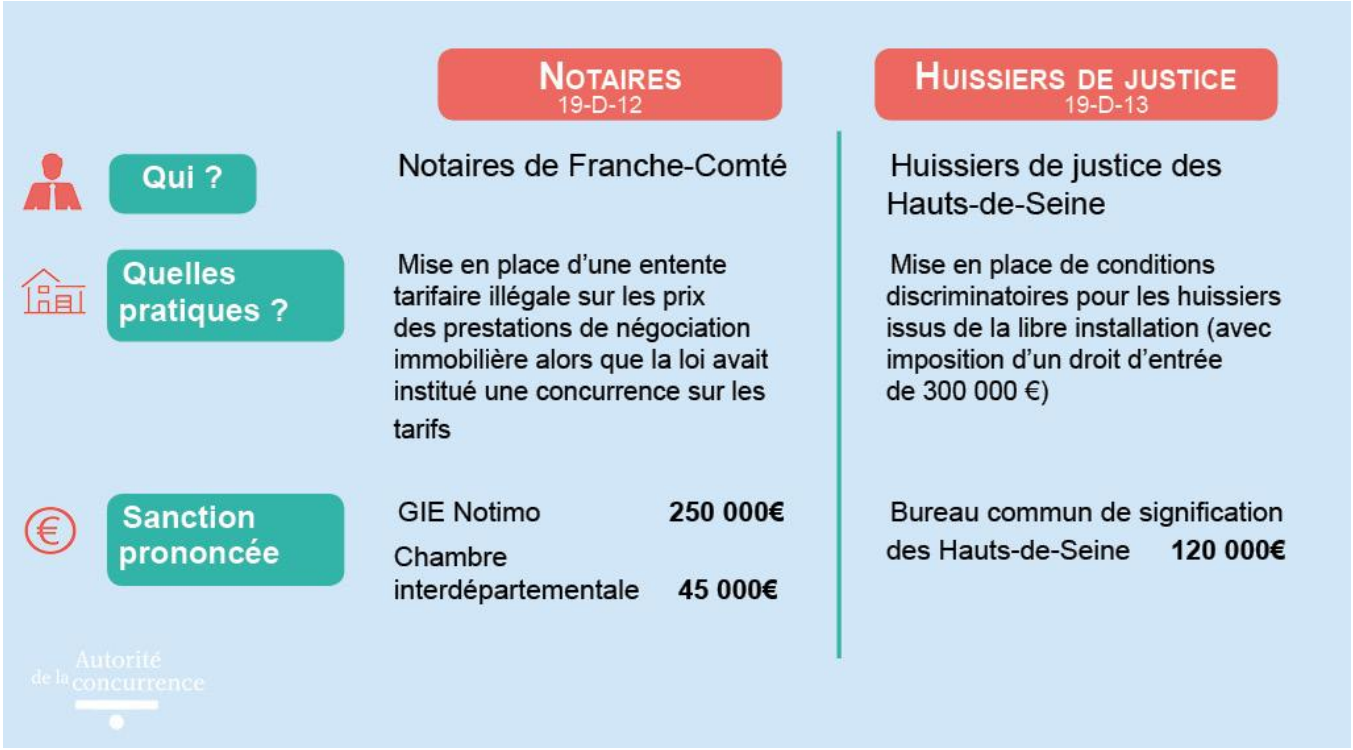
Provisions aiming to defeat the legislator's will to open up the profession

These amendments intervened at the same time as the adoption and the entry into force of the law of 6 August 2015 (Macron Law) and aimed at defeating the will of the legislator to favor the creation of new bailiffs' offices, as well as the competition resulting from the arrival of new colleagues from the "free establishment".

These practices are all the more serious as the département of Hauts-de-Seine was one of the département for which the potential of creating new offices was the most important.

The BCS did not dispute the facts or their qualification and applied for the settlement procedure. Taking into account all these elements, the *Autorité de la concurrence* has consequently handed down a fine of €120,000 to the BCS Hauts-de-Seine. The BCS has additionally committed to amending its articles of association to make them compliant with competition law.

> On this day, the Autorité de la concurrence issued a decision regarding notarie…



DECISION 19-D-13 OF 24 JUNE 2019

regarding practices implemented in the sector of court bailiffs

See full text of the decision

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