The Autorité de la concurrence closes an ex officio complaint in the notarial sector

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Background

Believing that the creation of offices permitted by the Macron Law would have "*the natural consequence of increasing intra-professional competition*" and not intending "*that discounts in fees be used as a commercial argument*" by notaries in the *département*, during a general meeting on 17 May 2018 the Chamber of Notaries of Ille-et-Vilaine adopted a resolution instituting a contribution of 50% on fees subject to a total discount.

By a decision of 19 September 2019, the *Autorité* investigated ex officio in order to assess whether this contribution was likely to hinder free competition.

In practice, it appears from the investigation that this contribution was never called upon, since this would have required the prior modification of the internal rules of procedure of the departmental chamber by a ruling of the Minister of Justice. The Supreme Council of Notaries (*Conseil Supérieur du Notariat* - CSN) refused to submit this resolution to the French Ministry of Justice, judging it to be contrary to the national inter-court regulation, insofar as it would have resulted, *de facto*, in prohibiting total discounts of fees.

This practice, which was intended to deprive notaries of their autonomy in granting this type of discount - and therefore in setting prices - was nevertheless likely to fall within the category of "price agreements", and was therefore an infringement by object of competition law.

However, on its own initiative, the Chamber of Notaries of Ille-et-Vilaine removed the contentious resolution at its general meeting of 28 May 2021. It also informed the notaries in its area of jurisdiction of this removal through an information

bulletin.

The Autorité decided to close its ex officio investigation, since these measures, which were adopted spontaneously by the departmental chamber, put an end to the competition concerns that might have arisen from the practice.

The ex officio investigation of the Autorité de la concurrence

Following an investigation by the Investigation Services, the *Autorité* performed an ex officio investigation in September 2019 into practices implemented in the notarial sector.

The purpose of this ex officio investigation was to assess the lawfulness of a resolution adopted by the Chamber of Notaries of Ille-et-Vilaine, introducing a contribution of 50% on the total remittance of fees.

The contribution system

To defray its expenses, each departmental Chamber of Notaries decides, in a general meeting, on the basis and rate of the contributions to be paid by the notaries within its jurisdiction. The CSN and the French Regional and local administration (*Conseil régional*) are also required to collect fees to finance their operating expenses[1].

The system of discounts and rebate contributions

In addition to the discounts that notaries may grant when the price of a service is determined in proportion to the value of a property or right (Article L. 444-2 of the French Commercial Code (Code de commerce)), notaries have the option of

waiving the full amount of the fees received for the same case (Article R. 444-70 of the same Code).

The total fee discount may, to a certain extent, give rise to the collection of a contribution by the professional bodies. Historically, therefore, the CSN has instituted a contribution of 4% on the fees given up in full by notaries.

The vote for a contribution at the rate of 50% on the total discounts on fees by the Chamber of Notaries of Ille-et-Vilaine

At the general meeting of 17 May 2018, the Chamber of Notaries of Ille-et-Vilaine adopted a resolution creating a contribution on fees remitted in full, at the rate of 50%.

This fee was agreed in response to the increase in the number of notaries within the département, following the implementation of the Law of 6 August 2015 ("Macron Law"), to discourage notaries from using this type of discount, and therefore from competing.

The non-implementation of the resolution

The investigation revealed that the practice in question was never implemented. Indeed, the entry into force of the contribution, initially scheduled for 1 September 2018, would have required the modification of the internal rules of procedure of the Chamber of Notaries of Ille-et-Vilaine, which must be approved by order of the Minister of Justice. However, the CSN refused to submit the resolution to the French Ministry of Justice, considering it contrary to the National inter-court regulations. The President of Chamber confirmed that this contribution had therefore never been called upon.

A resolution likely to raise competition concerns...

Insofar as it was intended to deprive notaries of their autonomy in granting discounts[2] - and hence in setting prices - the contested contribution was therefore likely to fall within the category of price cartels, i.e. infringements by object, for which a demonstration of anticompetitive effects is not required. It could, therefore, give rise to competition concerns on the part of the *Autorité*.

... but removed by the Chamber of Notaries of Ille-et-Vilaine

However, at its general meeting of 28 May 2021, the Chamber of Notaries of Ille-et-Vilaine spontaneously agreed to remove the resolution of 17 May 2018 introducing the contentious contribution. It also notified the result of the vote to all the notaries in Ille-et-Vilaine via an information bulletin.

Closure of the ex officio investigation

The *Autorité* considered that, in the case in point, the measures voluntarily implemented by the Chamber of Notaries of Ille-et-Vilaine were such as to eliminate the risk that the notaries within its jurisdiction would be dissuaded from granting full fee discounts to their clients.

Accordingly, it decided to close the ex officio investigation.

[1]*Article 12 of Decree No. 45-0117 of 19 December 1945 for the application of the status of notaries.*

[2]*For an example in a different sector, see: Judgment of the General Court of the European Union of 19 March 2003, CMA CGM, T 213/00.*

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