The Autorité de la concurrence hands down fines for cartel practices to two joint service offices and several of their members, all court bailiffs in Paris and Seine-Saint-Denis départements

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Background

Following the complaint from court bailiffs' offices, today the *Autorité* issues two decisions imposing fines on the Bureau de signification de Paris ("BSP") and some of its members for anticompetitive agreement practices, all holding office as court bailiffs in Paris (75), as well as the 'Société civile de moyens des études et groupement des huissiers de justice de Seine-Saint-Denis' ("SCM 93") and all of its members, all holding office as court bailiffs in Seine-Saint-Denis (93).

The *Autorité* considered that the membership conditions in the BSP and SCM 93 were anticompetitive insofar as, firstly, membership in these joint offices confers a significant competitive advantage on their members, and secondly, these conditions were laid down or applied in a non-objective, non-transparent and discriminatory manner.

In this regard, by offering immediate access to a pooled service by sworn clerks, membership in the BSP and SCM 93 allows affiliated offices to significantly reduce their operating costs, while significantly improving the quality of service offered to their customers. Since this significant competitive advantage cannot otherwise be enjoyed, membership in the BSP and SCM 93 is of strategic interest to all court bailiffs' offices in their respective departments, especially for newly established offices.

Moreover, the BSP and SCM 93 proposed and then implemented the non-objective, non-transparent and discriminatory membership conditions that were adopted by their members at their general meeting, in particular for court bailiffs holding office pursuant to the "Macron Law". Specifically, the accused demanded from the candidates for membership, primarily court bailiffs holding office pursuant to the "Macron Law", payment of a prohibitive entry fee (between €100,000 and €300,000).

The *Autorité* also imposed a sanction on SCM 93 and its members under the prohibition of cartels, for having inserted a customer allocation clause in the internal rules of procedure of SCM 93.

In Paris, the BCS and its members did not dispute the fact that they had adopted membership requirements that were laid down or applied in a non-objective, non-transparent and discriminatory manner. They therefore benefited from a settlement procedure, following which the *Autorité* imposed fines on them, totalling €320,000 euros for the BCS, and a cumulative amount of €538,800 for the various members concerned (i.e. 51 court bailiffs holding office in Paris).

In Seine-Saint-Denis *département*, the accused were handed down penalties for two cartel practices (pertaining to membership conditions and customer allocation, respectively). They incurred financial penalties, respectively, of €396,888 for SCM 93, and a cumulative amount of €595,700 for the various members concerned (i.e. 26 court bailiffs holding office in Seine-Saint-Denis). However, having been placed under judicial liquidation, no fine was imposed on SCM 93, in accordance with the decision-making practice of the *Autorité*. Similarly, the cumulative amount of the fines imposed on its members was reduced to €485,350, taking into account the financial difficulties that some of them were in.

The fines imposed:

BCS Paris and its members: €858,800

Members of SCM 93: €485,350

Total: €1,344,150

Service of a document

The service of a document is a formality performed by a court bailiff or a sworn clerk, whereby an individual is informed of the content of a legal document. A certain number of legal documents or decisions must be served, such as, in the case of judicial documents, subpoenas and writs of summons, or, in the case of extrajudicial documents, offers or requests for renewing commercial leases or assigning businesses.

Around thirty years ago, the court bailiffs of the *départments* concerned founded the BSP in Paris (in 1988) and the SCM 93 in Seine-Saint-Denis (in 1992) in the form of civil companies. The object of these "joint service offices" in their articles of association is, for the benefit of their members and by the combined effort of the latter, to reduce the cost of certain services relating to the exercise of their profession, and in particular the service of documents by court bailiffs.

Within these joint offices, the clerks collect the documents to be served from the affiliated offices, hold them and sort them before serving them on behalf of the bailiffs. Prior to the entry into force of Law No. 2015-990 of 6 August 2015 (referred to as the "Macron Law"), the BSP and SCM 93 therefore grouped together all or almost all of the court bailiffs' offices in each of the two departments concerned.

Discriminatory entry conditions in Paris and Seine-Saint-Denis intended to deter new players from becoming members of the joint office

The articles of association of the joint service offices in question were amended on several occasions to include membership conditions which were non-objective, non-transparent and discriminatory.

The respective articles of association of the BSP and SCM 93 have stipulated, since 2016 for the former and 2017 for the latter, that approval would henceforth be necessary to join these offices, whether the applicants are newly established offices or court bailiffs taking over offices which are already affiliated. However, there was no stipulation as to the conditions under which such approval would be granted. Similarly, a prohibitively high entry fee (€100,000, then €300,000 in Paris, and €100,000 in Seine-Saint-Denis), which is clearly discriminatory, was introduced, to the detriment of these applicants. Although not provided for in any law, BPS also imposed non-transparent, non-objective and discriminatory computer-related requirements on applicants for membership, in order to access its services, which may have deterred them from applying or pursuing their application. Finally, without objective justification, the grounds for exclusion and suspension from the services of BSP were similarly likely to give rise to discrimination.

In both cases, these practices were aimed at dissuading new players from becoming members of the joint office, whereas such membership is a precondition for entering or remaining in the market for court bailiffs' services. The pooling of service activities, to which membership of these offices provides immediate access in their respective areas of competence, does indeed account for a significant reduction in costs and a notable improvement in the quality of service. Consequently, membership gives members a significant competitive advantage that cannot be enjoyed by any other means. From this perspective, membership is of strategic interest for the court bailiffs' offices of the departments concerned and, in particular, for newly established offices.

A customer allocation agreement in Seine-Saint-Denis

The *Autorité* found that a stipulation inserted into the articles of association of SCM 93 on 26 January 2017 was intended to prohibit bailiffs from taking certain steps to (translated) "*procure business or divert business that a fellow bailiff would or should be tasked with*," constituted a customer allocation clause. This is one of the most serious practices in competition law.

The objective of thwarting the legislator's intention to open up the profession

The changes to the membership conditions of the services of BSP and SCM 93 occurred almost concurrently with the adoption and entry into force of the "Macron Law".

In Seine-Saint-Denis, the insertion of a customer allocation clause in the articles of association of SCM 93 also came a few months after the adoption of Law No. 2016-1547 of 18 November 2016 on the modernisation of justice in the 21st century, which authorised personalised solicitation by court bailiffs. The objective pursued by the accused was then clearly in evidence: "*to protect fellow court bailiffs as much as possible and close our office to new players.* […] *since the departmental chamber will be abolished, only the joint office will remain as a control body*"[1].

In both cases, the practices in question are all the more serious as they were intended to thwart the legislator's intention to foster the establishment of new court bailiffs' offices in the concerned *départements*. For the record, Paris and Seine-Saint-Denis are among the areas where the *Autorité* has identified the most potential for setting up new court bailiffs' offices.

Deterrent sanctions

In Paris, neither the BSP nor its 51 members disputed the facts of which they were accused, nor their legal qualification, nor their imputability. They requested the benefit of the settlement procedure, following which the *Autorité* imposed a fine on them totalling €858,800. The *Autorité* also took note of and made binding the commitments proposed by the BSP, which provide, among other things, that the offices resulting from freedom of establishment will benefit from a 15% reduction on service rates during their first year of using the BSP's services.

In Seine-Saint-Denis, a cumulative fine of €485,350 was imposed on the 26 members of SCM 93. Having been placed under judicial liquidation, no fine was

imposed on SCM 93.

Finally, in order to broadly inform the public of the unlawful nature of these different practices, the BSP, on the one hand, and SCM 93 and its members, on the other, undertook to, or were ordered to, publish a summary of their case in specialised media (*Journal des huissiers de justice* and/or website of the section of the court bailiffs of the national chamber of commissioners of justice: www.huissier-justice.fr).

[1] Minutes of the general meeting of SCM 93 of 26 January 2017.

DECISION 22-D-01 OF 13 JANUARY 2022

regarding practices implemented in the court bailiffs sector

See full text of the decision

DECISION 22-D-02 OF 13 JANUARY 2022

regarding practices implemented in the court bailiffs sector

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