

SUMMARY OF CASE S/0127/09 PROCURADORES

I. BACKGROUND

1.- On 29 December 2008 the Spanish competition authority, the Comisión Nacional de la Competencia (CNC) received a complaint from a court procurator of the association of court procurators of Madrid against the Council General of Procurators in Spain (Consejo General de Procuradores de los Tribunales de España)¹ for alleged conducts prohibited by articles 1 and 2 of the Spanish Competition Act 15/2007 of 3 July 2007 (published in BOE of 4 July — LDC), in relation to article 30.1 of Royal Decree 1281/2002 of 5 December 2002 approving the General Statute of Court Procurators in Spain, which provides that *“a Procurator who agrees to represent a client in a matter in which another colleague is acting or has acted before the same court is obliged to pay the disbursements and fees that have accrued at the time of the substitution. This does not restrict the client’s right to change Procurators. If there is no agreement between the procurators, the sums will be fixed by the Governing Board of the College.”*

According to the complaint, the statutory provisions on substitution of procurators in article 30.1 of the General Statute constituted a barrier to exercise of the profession, because its effect was to reserve certain professional activities for the procurators who could pay large sums in the event of substitution, apart from providing a corporatist protection of the interests of procurators to the detriment of consumers, who were not allowed to go to a different procurator until they paid off their debts to the previous one.

2.- The Investigations Division (ID) proposed that the CNC Council dismiss the case for lack of evidence of infringement of the LDC, because even though article 30.1 of the General Statute could restrict free competition between procurators, the effects would be minimal because it only applied to two Colleges in Asturias.

3.- The CNC Council, however, resolved on 16 June 2009: *“To return to the ID the preliminary inquiries in the record of case S/0127/09, Procuradores, in order to continue pursuing the case by opening formal proceedings against the Council General of Procurators in Spain for the terms of article 30.1 of the General Statute”*.

4.- Consequently, on 1 July 2009 the ID opened a formal investigation for anti-competitive practices prohibited by article 1 of the LDC.

5.- On 9 October 2009 the Statement of Objections was issued, with the conclusion that article 30.1 of the General Statute, approved by Royal Decree 1281/2002 of 5 December 2002, violated article 1 of the LDC, and liability for the infraction rests with the Council General of Procurators.

¹ The senior association of court procurators (*procuradores*) for matters of representation, consultation, coordination and management of their affairs, at the national and international level, and the only national body with disciplinary powers for procurators. It is organised as a corporation under public law, with its own legal personality and full capacity to pursue its objects. Its executive bodies are the Standing Committee, the Executive Committee and its President.

6.- On 18 January 2010 the ID resolved to pursue a negotiated settlement for the case at the proposal of the Council General of Procurators.

II. PROPOSED COMMITMENTS

The Council General of Procurators Council offered the following commitments:

1. To reword article 30 of the General Statute to read as follows:

“Art. 30. Collaboration between professionals in the event of substitution.

The outgoing procurator is obliged to return the documents in his possession and provide the incoming procurator with the information needed to continue effective exercise of the principal's representation in the proceedings.”

2. To propose, for the new General Statute—which was being drawn up at that time— similar wording to the above in relation to the rules on substitution of procurators.

III. ASSESSMENT

In its 16 June 2009 resolution on the case of reference, the CNC Council held, as indicated in the report on public procurators published by the CNC,² that article 30.1 of the General Statute of Procurators:

“... makes the substitution of Procurators and competition between them extremely difficult. For the purposes of the question that we are considering in this section, it means an entry cost for any Procurator who wishes to change his territorial demarcation because he is attracted by a potentially greater volume of business. However, in addition to that, it also significantly restricts the possibility of consumers exercising their right to choose a Procurator, as it imposes costs on such a change.

The Council of State, in its report on the General Statute of Procurators, indicated that this provision of the Statute was “excessive”, amongst other reasons because it shifted matters that belong to the relationship between the old Procurator and his client to the new Procurator.

In the CNC’s opinion, this provision of the Statute represents a clear barrier to competition for which there is no justification. Moreover, so far as we are aware, it is not found in any other profession. It should therefore be removed. It should be remembered in relation to this question that the 1997 amendment of the Professional Associations Act clearly removed the possibility of professional associations being able to demand a “venia” for the change or substitution of professionals. A “venia” was an authorisation that the first professional had to give to the second professional when the client decided to replace the first professional with the second professional; the problem was that on

² Report on Anti-Competitive Restrictions in the Rules and Regulations that Govern the Activity of Court Procurators (20 May 2009), paragraphs 211 to 214.

many occasions this authorisation became a real barrier, precisely because of the requirement for financial compensation of this kind.”

Consequently, the Investigations Division concluded (and the Council decided on 20 May 2010) that the commitments offered by the Council General of Procurators resolved the anti-competitive effects of article 30.1 of the Statute by removing from the rules on substitution of procurators any and all reference to the obligation of the incoming procurator to pay the expenses and fees earned at the time of the substitution by the outgoing procurator. This was the obligation that had led to the opening of the probe. The elimination was also to be maintained in the draft of the new version that was soon to replace the General Statute then in force.

To ensure compliance with the commitments and allow their fulfilment to be monitored by the ID of the CNC, the CNC Council resolved that the Council General of Procurators in Spain must give notice of the negotiated settlement to all of its member local and regional colleges of procurators in order for each of them, in turn, to forward it to their members. The resolution also required the Council General of Procurators to forward to the CNC Investigations Division the supporting documents evidencing that these notifications had been carried out.