

Table of Contents

- 01 Spain / Mergers:** selected merger decisions adopted in Spain between May and October 2017.
- 02 Spain / Abuse of Dominance / IMS Health:** the NMCC closes proceedings against IMS Health by means of a commitments decision (Decision of 13 July 2017, file S/DC/0567/15 *Estudios de Mercado Industria Farmacéutica*).
- 03 Spain / Abuse of dominance / Nokia:** the NMCC fines Nokia for abuse of dominant position (Decision of 8 June 2017, file S/DC/0557/15 *NOKIA*).
- 04 Spain / Restrictive Agreements / Spanish Basketball Clubs Association:** the NMCC has fined Spanish Basketball Associations for charging excessive, unequal and discriminatory economic-administrative conditions (Decision of 11 April 2017, file S/DC/0558/15 *ACB*).
- 05 Spain / Restrictive Agreements / Schweppes:** the NMCC closes proceedings against Schweppes by means of a commitments decision (Decision of 29 June 2017, file S/DC/0548/15 *SCHWEPPE*). Reference to the Advocate General's opinion in the Schweppes trade mark matter (case C-291/16 *Schweppes SA v Red Paralela SL*).
- 06 Spain / Restrictive Agreements / Medicinal gases:** the NMCC closes the medical gases investigation due to insufficient evidence (Decision of 13 July 2017, file S/DC/0561/15 *GASES MEDICINALES*).
- 07 Spain / Gun-jumping / Consenur:** the NMCC has fined Consenur for failure to notify the acquisition of certain assets of Cathisa Medioambiente (Decision of 14 March 2017, file SNC/DC/0074/16 *CONSENU*).
- 08 Spain / Monitoring of Merger Remedies / Telefonica/Digital+ merger Decision:** Telefonica should compensate competitors for excess payments in the rental of pay-TV channels resulting from the Telefonica/Digital+ merger conditions (Decision of 4 May 2017, file VC/0612/14 *TELEFONICA/DTS*).
- 09 Spain / Judicial Activity / Telephone operators:** the High Court has annulled the fine imposed by the NMCC on Telefonica, Vodafone and Orange resulting from the investigation on excessive pricing in the SMS and MMS market (Judgment of 1 September 2017, case 036/2013).
- 10 Spain / Judicial Activity / Repsol:** the High Court reverses Repsol antitrust fine (Judgment of 28 July 2017, case 7/2015).
- 11 EU law / Judicial Activity / Intel:** the ECJ quashes the Judgment of the General Court confirming the EC decision that fined Intel in 2009 (Judgment of 6 September 2017, C-413/14 P).
- 12 EU law / Mergers/ Banco Santander-Banco Popular:** Banco Santander wins EU approval to acquire Banco Popular, after Article 7 ECMR derogation decision based on the EU mechanism for insolvent financial institutions.

01 Selected merger decisions authorized by the NMCC between May and October 2017.

Firms	Notification threshold	Economic sector	Decision
Douglas / Bodybell	Market share and turnover	Perfumery and cosmetics	First-phase clearance (25 May)
Lincoln Electric France / Air Liquide Welding	Market share	Manufacture of metal products	First-phase clearance (1 June)
LBO France Gestión / Grupo HMY	N/A	Furniture manufacturing	First-phase clearance (1 June)
IFF / Naturgas Energía Distribución	Turnover	Pipeline distribution of gas fuels	First-phase clearance (15 June)
Corpfin / Grupo 5	Market share	Residences assistance	First-phase clearance (15 June)
Cepsa / Villanueva / Paz	Turnover	Fuel trade	First-phase clearance (15 June)
ZMJ / CRCI / Negocio SG	Market share	Manufacturing of engines and parts	First-phase clearance (29 June)
Euskaltel / Telecable de Asturias	Market share and turnover	Telecommunications	First-phase clearance (29 June)
Fouradvance / Svenson	Market share	Specialized medicine	First-phase clearance (6 July)
Integra / Codman Neurosurgery Business	Market share	Manufacture of medical and dental instruments and supplies	First-phase clearance (13 July)
Bidafarma / Cofaga	Market share and turnover	Wholesale commerce of pharmaceuticals	First-phase clearance (13 July)
Bidafarma / Cofabu	Market share	Wholesale commerce of pharmaceuticals	First-phase clearance (13 July)
Alligator / 3M Attenti	Market share	Public administration and defence	First-phase clearance (13 July)
Fam AB / SPS business of Sandvik Aktiebolag	Market share	Manufacture of machinery	First-phase clearance (13 July)
Santa Lucía / Unicaja Banco / Aviva Vida / Unicorp Vida / Caja España Vida	Turnover	Insurance and pension funds	First-phase clearance (13 July)
Brussels Airlines / TCAB – assets-	Market share	Air transportation of passengers	First-phase clearance (13 July)
Maritime / Reyser	Market share	Activities attached to maritime transport	First-phase clearance (13 July)
Ald Automotive / BBVA Autorenting	Turnover	Rental of cars and light motor vehicles	First-phase clearance (20 July)

CVL 3 SAS / Tiama Group	Market share	Testing and technical analysis	First-phase clearance (20 July)
Uvesa / Sada	Market share	Processing and preservation of poultry	First-phase clearance (20 July)
Banco Santander / Santander Elavon Merchant Services – SEMS-	Turnover	Financial services (except insurance and pension funds)	First-phase clearance (27 July)
Vinci energies / Acuntia	Turnover	Programming and consulting	First-phase clearance (27 July)
Noatum Maritime / Noatum Port –assets-	Market share	Storage and transport activities	First-phase clearance (27 July)
Cosco / Noatum Port	Turnover	Maritime transport of goods	First-phase clearance (30 August)
Banco Popular / Aliseda	Turnover	Real estate financing activities	First-phase clearance (30 August)
Dominion / The Phone House Spain	Turnover	Wholesale commerce	First-phase clearance (30 August)
Meif 5 Arena / Empark	Market share	Land transport activities	First-phase clearance (7 September)
OTTP / Memora	Market share	Funeral and related activities	First-phase clearance (7 September)
LSFX Flavum Bidco S.L. / Pigments I B.V	Market share and turnover	Manufacture of colourings and pigments	First-phase clearance (28 September)
Natus / Integra –assets-	Market share	Manufacture of medical and dental devices	First-phase clearance (5 October)
Vidrala / Santos Barosa	Market share and turnover	Manufacture of glass and glass products	First-phase clearance (5 October)
Equinix / TGS	Market share	Services related to information and computer technologies	First-phase clearance (5 October)
GRS / Nissan – Lithium battery business-	Market share	Manufacture of electrical material and equipment	First-phase clearance (5 October)

02 Spain – Abuse of Dominance - The Spanish Competition Authority (NMCC) closes proceedings against IMS Health by means of a commitments Decision (Decision of 13 July 2017, file S/DC/0567/15 Estudios de Mercado Industria Farmacéutica).

On 13 July 2017, the NMCC closed the Article 102 TFEU and Article 2 of the Spanish Competition Act (**Competition Act**) proceedings related to the supply of pharmaceutical marketing data to IMS Health (**IMS**) by means of a commitments decision.

The NMCC initiated the investigation, as a result of the complaint lodged by Health market Research España (**HmR**) against IMS for abuse of dominant position by establishing a network of data supply agreements containing a number of provisions having an effect akin to exclusive supply. The data supply agreement contained most favored client clauses under which IMS was to be afforded at least similar terms and economic conditions as those granted to other information companies to which the data supplier (distribution wholesaler) supplied the pharmaceutical marketing information, or similar terms as those afforded internally to its relevant business unit in case the distribution wholesaler itself competed with IMS. The agreements also overcompensated pharmacies that supplied IMS exclusively and also overcompensated (although to a lesser degree) if that exclusive supply was breached in favor of (only) a single competitor of IMS.

The NMCC agreed to close the case with the following commitments aiming at limiting IMS's contractual freedom in connection with the purchase of data:

(a) IMS gives up the contractual provisions of most favored client. In practice, this means that wholesalers are now allowed to give IMS'

competitors (such as HmR) better contractual conditions than those afforded to IMS.

(b) IMS gives up the contractual provision of anticipated termination by means of which IMS may terminate the data supply agreement in case the wholesaler decides to sell the pharmaceutical data to third parties or decides to compete with IMS itself.

(c) IMS commits not to increase the established percentages of reduction of price paid in consideration for the pharmaceutical marketing data (40% in case a wholesaler supplies its data to one operator other than IMS and 60% in case of supply to two or more operators other than IMS). Moreover, those price reductions may not be applied retroactively.

(d) IMS commits to give up the contractual provision that wholesalers must notify IMS three months in advance the data supply to third parties other than IMS or the wholesalers' intention to start providing the services in competition with IMS.

Furthermore, IMS is obliged to keep those commitments in force indefinitely, as long as there is not a relevant modification in the structure of the market which would have to be previously authorized by the CNMC.

Finally, IMS undertakes to send the CNMC (i) the data supply agreements between IMS and the wholesalers, with the due modifications, (ii) any agreements between IMS and wholesalers signed subsequent to the CNMC commitments Decision, and (iii) on the first Friday of the month of December of each year (from adoption of the commitments Decision) a written report indicating IMS' concrete actions with a view to fulfilling the above commitments.

03 Spain – Abuse of Dominance - The NMCC fines Nokia for abuse of dominant position (Decision of 8 June 2017, file S/DC/0557/15 NOKIA).

The NMCC has fined €1.74 million on Nokia Solutions and Networks Spain, S.L. (**Nokia**).

The NMCC considered that Nokia abused its dominant position by engaging in margin squeeze practices when the State-owned railway manager *Administrador de Infraestructuras Ferroviarias (ADIF)* tendered the maintenance services for the GSM-R (Global System for Mobile Communications – Railway) telecommunications network.

The Decision stems from a complaint filed by Kapsch Carriercom España, S.L.U. (**Kapsch**), Nokia's competitor in this market.

Nokia abused its dominant position in the wholesale markets for the support and supply of spare parts for the maintenance of Nokia GSM-R mobile telecommunications equipment. Nokia offered wholesale and retail prices that prevented competitors from competing in the retail market for the maintenance of GSM-R mobile telecommunications facilities in Spain. As a result, Nokia was the only company to compete in the ADIF tender; Kapsch withdrew from the tender because it was unable to provide a competitive offer, amongst other reasons, due to the high price of Nokia's technical assistance. As a result, ADIF awarded the contract to Nokia in December 2014.

The NMCC states that Nokia's conduct caused the exclusion of its rival and that competition was harmed in the ADIF tender, which probably influenced the final price paid by ADIF.

04 Spain - Restrictive Agreements - The NMCC has fined the Spanish Basketball Associations for charging excessive, unequal and discriminatory economic conditions (Decision of 11 April 2017, file S/DC/0558/15 ACB).

On April 11th, the NMCC has condemned the Spanish Basketball Clubs Association (**Asociación de Clubes de Baloncesto** or **ACB**) for breaching the national provision on restrictive practices, Article 1 Competition Act. The ACB has been fined €400,000.

According to the NMCC, the ACB forced excessive, unequal and discriminatory economic and administrative conditions in 1991 on those basketball clubs, which had been promoted to the ACB League but had never been part of the ACB previously.

First, the ACB established the "ACB canon" (an entry fee), a mechanism which partly retained future teams' revenues; according to the NMCC, the ACB canon is disproportionate, as it is higher than the average annual revenue of any club joining the ACB and exceeding the annual profits of the members of the ACB (especially the newly promoted clubs).

Secondly, the ACB created a fund for relegations and promotions (*Fondo de Ascensos y Descensos* or "FRAD"). Entrant teams were expected to contribute to the FRAD, to compensate for the economic loss caused by the demotion from the ACB to a lower division.

The NMCC considers that these conditions have prevented the promotion of several clubs to the ACB League and have distorted the ability of newly promoted clubs to compete.

05 Spain - Restrictive Agreements - The NMCC closes proceedings against Schweppes by means of a commitments decision (Decision of 29 June 2017, file S/DC/0548/15 SCHWEPPEES). Reference to the Advocate General's opinion in the Schweppes trademark matter (case C-291/16 Schweppes SA v Red Paralela SL).

The NMCC has closed with commitments an investigation against Schweppes, S.A. related to restrictions of parallel trade.

The Coca-Cola group and Orangina Schweppes Holding B.V. (**OSHBV**) share the ownership of the Schweppes trademark in the EU. Coca-Cola owns the Schweppes trademark in the UK and ten other EU Member States, whereas OSHBV owns, through its subsidiaries, the trademark in Spain and in 20 other countries, 16 of which are EU Member States: Schweppes, S.A., is the exclusive licensee of the trademark in Spain.

By the end of 2013, Schweppes, S.A. realized that some distributors were selling Schweppes tonic water produced by the Coca-Cola group in the UK and in other EU countries. As a result, Schweppes, S.A. initiated judicial proceedings against those distributors for trademark infringement in Spain. Those proceedings were settled on the basis of agreements (**Agreements**) prohibiting distributors from selling in Spain Schweppes tonic water not produced in Spain.

The NMCC considered that the Agreements went beyond what was necessary to protect Schweppes' trademark, since they prevented parallel trade of Schweppes tonic water produced under the OSHBV-owned trademark in other EU countries. Schweppes, S.A. as exclusive licensee of the trademark in Spain, cannot ban imports of Schweppes' products coming from other EU countries when they have been commercialized by OSHBV (parent company and trademark owner) or with OSHBV's consent.

The NMCC agreed to close the case with the following commitments:

- (i) A change in the wording of existing Agreements to reflect that Schweppes only opposes the import, distribution and commercialization of Schweppes tonic water produced in the UK and manufactured by the Coca-Cola group.

- (ii) Future agreements will only ban Schweppes tonic water produced in the UK and manufactured by the Coca-Cola group.
- (iii) Schweppes, S.A. agrees that claims in the framework of ongoing proceedings can only refer to Schweppes tonic water produced in the UK and manufactured by the Coca-Cola group.

Furthermore, on 29 May 2014, Schweppes, S.A. sued the Red Paralela companies before the Commercial Court of Barcelona for infringing its trademark rights. The court referred a question to the European Court of Justice in order to ascertain whether or not EU law precludes Schweppes from invoking the exclusive right it enjoys under trademark law to oppose the importation into and/or marketing in Spain of “Schweppes” goods which come from the United Kingdom, where the trademark is owned by Coca-Cola (case C-291/16 *Schweppes SA v Red Paralela SL*).

On 12 September 2017, Advocate General Mengozzi delivered its Opinion on the case, establishing that the trademark rights may still be exhausted even if goods are imported bearing identical (but distinctly owned) trademarks where it is clear that the trademarks are under “unitary control”. This would still be in line with the prior ECJ case law on divided trademarks (*HAG, IHT* cases), if the divided trademarked goods are put into circulation by a licensor and its licensee, provided a common marketing control system was applied. The Advocate General points out that it is up to the referring national court to examine whether the requirements are met for the exhaustion of the trademark rights in relation to the Schweppes brand.

06 Spain - Restrictive Agreements - The NMCC closes the medical gases investigation due to insufficient evidence (Decision of 13 July 2017, file S/DC/0561/15 GASES MEDICINALES).

The NMCC initiated an investigation on possible anti-competitive practices in the manufacturing and distribution of medical gases, consisting of market sharing, price fixing and the exchange of confidential information.

The NMCC carried out dawn raids at Abelló Linde, S.A., Air Liquide Medicinal, S.L., Sociedad Española de Carburos Metálicos, S.A., Conste, S.A., and Praxair España, S.L. According to the evidence gathered, the Directorate of Competition (DC) concluded the existence of a single and continuous infringement of Article 1 Competition Act, materialized through big-rigging between 2012 and 2014. The DC accused Abelló Linde, S.A., Air Liquide Medicinal, S.L., Grupo Gasmedi, S.L., Praxair España, S.L. and Sociedad Española de Carburos Metálicos, S.A.

Following the replies of the companies to the statement of objections, the Council of the NMCC considered that the companies had presented plausible alternative explanations to the evidence gathered in the investigation. The NMCC

concluded that the evidence did not prove the existence of an infringement.

This is a rare instance of the NMCC formally amending its own actions in the framework of an antitrust investigation (even if it is the Council reversing the Directorate of Competition).

07 Spain – Gun-jumping - The NMCC has fined Consenur for failure to notify the acquisition of certain assets of Cathisa Medioambiente (Decision of 14 March 2017, file SNC/DC/0074/16 CONSENUER).

The NMCC has fined SRL Consenur, S.L.U. (**Consenur**) for having closed the acquisition of Cathisa Medioambiente, S.L., in August 2015 without having notified nor gained the relevant antitrust approval. The transaction was finally notified on June 2016.

According to the Decision, the NMCC and Consenur agreed on considering relevant the product market for the treatment and disposal of hazardous sanitary waste. However, Consenur argued that the geographic market was national while the NMCC concluded that the geographic market was limited to the Canary Islands where Consenur had a market share of 79 % in 2014.

Consenur was found to have acted negligently as, in case of doubt, Consenur could have applied for formal guidance for a CNMC ruling on whether or not the transaction was reportable. (The Competition Act allows a request for an administrative ruling on whether or not a transaction amounts to a reportable concentration. This procedure is not often used though, as amongst other things, there is not a statutory time limit for the CNMC to rule).

Consenur has been fined a low figure (€20,000), taking into account factors such as the fact that the irregular situation was maintained during a few months and that the merger was finally cleared with a first phase decision as no substantive issues arose.

08 Spain - Monitoring of Merger Remedies - Telefonica should compensate competitors for excess payments in the rental of pay-TV channels resulting from the Telefonica/Digital+ merger conditions (Decision of 4 May 2017, file VC/0612/14 TELEFONICA/DTS).

The NMCC has ordered Telefonica to compensate its competitors Vodafone, Telecable and Total Channel for the excessive wholesale prices paid for football channels Canal+ Liga and Canal+ Partidazo in the season 2015/2016. This order is in the context of monitoring proceedings of the merger conditions attached to the 2015 *Telefonica/Digital+* merger Decision.

Conversely, the NMCC stated that Telefonica can claim from Orange and Open Cable in connection with the low amounts paid to Telefonica under the minimum cost arrangements.

Access to media content was one of the primary concerns under the 2015 *Telefonica/Digital+* merger Decision. Under that merger Decision, Telefonica must give competitors a wholesale offer to access its pay-TV channels and Premium contents commercialized through its own pay-TV platforms. To calculate this wholesale offer, Telefonica should consider, among other elements, the “minimum cost guaranteed” (a standard cost all competitors should pay). After the NMCC decision, Telefonica must compensate operators who paid more than the stipulated.

09 Spain - Judicial Activity - The High Court has annulled the fine on Telefonica, Vodafone and Orange resulting from the investigation on excessive pricing in the SMS and MMS markets (Judgment of 1 September 2017, case 036/2013).

This judgment results from the review of the NMCC Decision declaring excessive pricing incurred by each of the telephone operators in their charges for termination of SMS and MMS messages in their respective networks. There is a separate market for each of the networks of each accused operator.

Each individual dominant position is reinforced by a collective dominant position by the three sanctioned operators (the court cites *Airtours* and the other relevant EU case law and concludes that there is a collective dominant position). The NMCC Decision concluded that each of the three operators abused their dominant position by charging excessive prices in termination charges. The NMCC considers that the collective dominance reinforces the individual abuse, but there is not an abuse of the collective dominant position in this matter.

In connection with the use of economic tools by the NMCC, the Decision recalls EU case law granting the European Commission (EC) wide discretion in connection with complex economic appraisals. However, the High Court recalls the change in the case law, which entails that courts must grant some leeway to the EC (and NMCC) but that does not mean that courts must abstain from any interpretation of the economic data as carried out by the competent administrative body.

Relying on Article 102 TFEU matter (Decision of 22 March 2000, *Coca-Cola c. Commission*, case 125/97), the HC decides that market definition should have been adopted anew. The HC also sees insufficient reasons in the administrative decision regarding market definition, all of which is a cause of invalidity of the Decision, logically because the HC Judgment states that the evidence does not support the existence of a dominant position. Furthermore, there are no interconnection conflicts having been raised by MVOs, and there is evidence of new entry (Yoigo) in 2006 (period of collusion according to the Decision).

10 Spain - Judicial Activity - The High Court upholds Repsol antitrust fine (Judgment of 28 July 2017, case 7/2015).

The High Court has upheld the appeal filed by Repsol S.A. (**Repsol** or **Parent Company**) against the decision of the NMCC declaring the Parent Company guilty of conduct carried out by its subsidiary Repsol Comercial de Productos Petrolíferos, S.A. (**Subsidiary**) (Decision of 2 July 2015, file S/484/13 *REDES ABANDERADAS*).

On 2 July 2015, the NMCC fined Repsol €22,590,000 for a collective recommendation of prices contrary to Article 1 Competition Act and 101 TFEU. The anti-competitive practices took place in the motor fuels market in Spain consisting in price coordination activities and exchanges of information between the wholesale operator and independent operators who belong or have belonged to its network.

The NMCC considered Repsol to be the company solely liable for the anti-competitive conduct taking into account its status as parent company of the group. The NMCC understood that Repsol exerted decisive influence over the Subsidiary in order to hold the former liable for the acts of the Subsidiary, since Repsol owns 99.78% of the share capital of the Subsidiary.

On appeal, the High Court has considered that the constitutional principle of the individual nature of penalties distinguishes, on the one hand, the concept of individual author breaching competition; and on the other hand, the concept of joint liability by exerting decisive influence over its subsidiary (for this reason being “*also*” liable).

The High Court upheld Repsol’s appeal on procedural grounds since the NMCC declared Repsol author and liable for the anticompetitive conduct of the Subsidiary, although Repsol was not the active author of the conduct. Therefore, the CNMC Decision was annulled as it unduly imputed liability to Repsol.

11 EU – Judicial Activity - The ECJ has annulled the Judgment of the General Court confirming the EC decision that fined Intel in 2009 (Judgment of 6 September 2017, C-413/14 P).

The European Court of Justice (ECJ) published its judgement in a highly expected case, largely due to the huge administrative fine of € 1,060 million set by the EC in 2009, but mostly because of its relevance in a very important area of commerce: the legal treatment of discounts by dominant companies.

Depending on the circumstances, a company might be considered dominant with market shares of 40% or more. Intel was easily considered dominant with a greater market share in relevant markets of CPUs where it was active. In particular, one of the major concerns is the possibility of Intel to perpetuate its market position through loyalty discounts to reward computer manufacturers who acquire from Intel the entire (Dell and Lenovo), 95% (HP) or 80% (NEC) of its CPUs needs. The EC accused Intel of preventing or delaying the rise of AMD as alternative supplier. The EC declared the violation of antitrust rules and gave Intel a record fine.

Intel appealed the EC decision before the EU Court of First Instance (nowadays, the General Court), who confirmed it. Today's Judgment solves the appeal lodged by Intel against the Judgment of the General Court. Amongst the various grounds raised by the ECJ is the poor economic reasoning. The ECJ reminds the illegality for dominant companies of binding customers by means of discounts that compensate the exclusive supply. However, the ECJ specifies that, if the dominant company proves the lack of negative effects of this conduct (it has not caused exclusion from the market and it has not produced a restriction of competition), the EC has to analyse the market share, the quota covered by the discounts and also the possibility for a competitor as efficient as the dominant company to offer the same fidelity discount. Only if the answer is in the negative, there is effect on competition to conclude the abusive nature of the discounts.

The ECJ Judgment might have far reaching implications, even in other key ongoing cases, such as the investigation on Google AdSense, where the EC is focusing on the restriction by Google to certain websites to interoperate browsers competing with Google. For the EC, this is a form of exclusivity that prevents entry or expansion of Google's existing competitors.

12 EU – Mergers - Banco Santander wins EU approval to acquire Banco Popular (Decision of 8 August 2017, COMP M.8553).

Banco Santander has acquired Banco Popular for €1 in June, after the European Central Bank declared that the Spanish lender was "failing or likely to fail". The acquisition took place following an auction conducted by the Single Resolution Board and FROB in which Santander was selected as the successful bidder, in the framework of the Single Resolution Single Mechanism approved by EU Regulation 806/2014. Part of the interest in this transaction is the use of this novel financial intervention mechanism.

On August, the 8th, the EC cleared the deal saying it did not raise competition concerns. The EC cited the "generally limited" market shares held by the two companies and the presence of "strong competitors" in all the markets affected by the takeover.

The integration of Santander and Popular will significantly enhance Santander's franchises in both Spain and Portugal. In Spain, Santander reinforces its position as the leading bank by both lending and deposits. The combined business, which will operate under the Santander brand, will have a 25% market share in SME lending in Spain - a key driver of economic growth for the country.

Interestingly, the EC gave Banco Santander permission to close the transaction before receiving EU merger approval, to guarantee financial stability, issuing a Decision under Article 7.3 ECMR (Decision of 7 June 2017, COMP M.8553).

www.callolcoca.com

The information contained in this bulletin must not be applied to particular cases without prior legal advice.