The Merger Control Review

Fourteenth Edition

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The LawReviews

Published in the United Kingdom
by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK
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www.thelawreviews.co.uk

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ISBN 978-1-80449-190-4

Chapter 22

SPAIN

Pedro Callol[1]

I INTRODUCTION

i Regulations

The merger control regime is regulated by the Competition Act[2] and its implementing regulation[3] and interpretative guidelines.

ii Authorities

The national competition authority is the National Competition and Markets Commission (CNMC). The CNMC was created in 2013, bringing together under a single roof the pre-existing National Competition Commission and various national sector regulatory authorities (energy, telecommunications and media, railways, postal services and airports). This affected mergers in regulated sectors, hitherto subject to the need for a cross-report from the relevant regulatory authority.

The CNMC has a dual structure, which is reflected in its regulatory and competition enforcement rules. A collegiate body, the Council, is the decision-making organ of the CNMC. The Council has 10 members, in two chambers of five members each: one chamber deals with competition matters and is presided over by the president of the CNMC; the other deals with regulatory supervision and is led by the vice president. The chambers may meet separately or jointly in a plenary session. The president has the deciding vote in the event of a tied vote at the Council.

In the area of merger control, the Council of Ministers (Cabinet) has a role in problematic mergers where the CNMC considers either prohibition or imposing conditions. This role of the Council of Ministers is further described below.

Appointment of the CNMC Council members, including the president and vice president, is entrusted to the government upon proposal of the Ministry of Economy. Council members are appointed for non-renewable terms of six years.

The bulk of the CNMC is made up of various directorates that deal with investigations and provide the substantial back-office research and knowledge required for the day-to-day work of the CNMC. The Competition Directorate deals with the enforcement of competition law and, in turn, is divided into various sub-directorates of economic intelligence, industry and energy, information society, services, leniency and cartels, and a monitoring sub-directorate.

1 Pedro Callol is a partner at Callol, Coca & Asociados. The author thanks Jorge Vellido for his assistance in updating this chapter.

2 Law 15/2007 of 3 July 2007 on Competition.

3 Royal Decree 261/2008 of 22 February 2008, approving the Competition Implementing Regulation.

There is no specific merger task force, which means that mergers are allocated internally. The Competition Directorate is a professional office with career civil servants who act impartially and with a businesslike attitude when addressing companies' issues.

iii Pre-merger notification and approval

Transactions that qualify as a merger

A concentration takes place when there is (1) a stable change of control of an undertaking as a result of a merger of two previously independent undertakings, (2) an acquisition of control of an undertaking or a part thereof by another undertaking, or (3) the creation of a joint venture (JV) or the acquisition of joint control of an undertaking, provided that the JV is full-function and performs its economic activity on a long-term basis.

An acquisition of control results from contracts, rights or any other means that, taking into account the circumstances of fact and law, confer the possibility of exercising decisive influence over the acquired undertaking. The concept of 'control' encompasses ownership of shares or assets, contracts, rights or other means that provide decisive influence over the composition, deliberations or decisions of the governing organs of the company.

Purely internal restructuring within a company group does not constitute a change of control. Likewise, the acquisition of control must involve a business having access to the market and, therefore, a business to which a market share or market turnover can be assigned. Hence, an acquisition of a business previously providing an internal service solely to the selling group will not amount to a merger, provided that there are no sales from the acquired business to third parties within a start-up period from the acquisition (a start-up period is generally three years). Temporary shareholdings by financial entities, holding companies and receiverships are excluded in the circumstances described by the Competition Act.

Thresholds triggering merger control in Spain

The Competition Act provides that concentrations that meet either of the following thresholds must be notified to the CNMC for merger control purposes:

a that, as a result of the concentration, a market share of 30 per cent or more of the relevant product market in Spain, or a relevant geographical market within Spain, is acquired or increased. A *de minimis* exemption applies if:
   - the turnover of the acquired undertaking in Spain does not exceed €10 million; and
   - the concentration does not lead to acquiring or increasing a market share of 50 per cent or higher in the relevant product or service market or in any other market affected by the concentration; or

b that the aggregated turnover in Spain of the parties to the concentration exceeds €240 million in the previous accounting year, if at least two of the parties to the concentration each have an individual turnover in Spain exceeding €60 million.

If either of the above thresholds is met, filing is mandatory and the concentration cannot be implemented prior to having been authorised. The Competition Act provides for a derogation system that enables total or partial closing of a merger prior to having gained merger control clearance. This is discussed further in Section III.

In our experience, the market share threshold poses some practical questions; for instance, the market share threshold can be met if the target company alone has a share of 30 per cent (or 50 per cent, as the case may be) in a relevant market, even if the acquirer has a zero per cent market share, although this would be a candidate for a short-form merger

filing and quick review. Market definition must be carried out on the basis of existing merger control practice and precedents persuasive in Spain, including those of the CNMC. Generally, the market share threshold need not be problematic; it can be dealt with expediently and in a constructive fashion.

Finally, the European Commission's Communication on the referral mechanism[4] is likely to affect concentrations that do not meet national thresholds but that may be examined by the Commission under the referral mechanism. The Communication foresees that national competition authorities may refer certain concentrations to the Commission if they significantly affect competition, even though they do not meet applicable national merger control thresholds. Consequently, a concentration that is not reportable under the Spanish Competition Act may end up being examined by the Commission. This will probably cause uncertainty because the referral of the transaction can take place up to six months after the transaction has been closed.[5]

Consequences of failing to notify a reportable transaction

Closing a transaction without having obtained the required merger control approval is a serious infringement under the Competition Act. The CNMC actively monitors gun-jumping, including that of transactions that had to be reported pursuant to the market share threshold, which the CNMC has shown it has the will to enforce (with the majority of gun-jumping investigations being triggered by the market share threshold). Closing a reportable transaction without having gained merger control approval may carry fines of up to 5 per cent of the turnover of the acquiring group. Closing in contravention of the terms of a merger control decision may result in fines of up to 10 per cent of turnover. In April 2021, the Competition Act was amended to clarify, inter alia, that the relevant turnover for the purposes of the calculation of fines is the worldwide turnover of the infringing company. Fines are imposed following a separate administrative investigation into gun-jumping. Furthermore, companies condemned for gun-jumping may potentially be disqualified from supplying goods and services to public administrations under the public procurement laws. The CNMC has been very active in recent years in the prosecution of gun-jumping, particularly when it originates in the non-observance of the market share threshold: 22 investigations for gun-jumping were initiated in 2020 and 18 in 2021, according to the CNMC's own disclosed data.

Filing fee

A filing fee must be paid and proof of payment included as part of the merger filing. The amount of the fee is determined in an annexe to Law 3/2013 of 4 June 2013 on the creation of the CNMC. The amount of the fee (which may be updated annually) is currently as follows:

a €5,502.15 when the aggregate turnover of the merging parties is equal to or less than €240 million;

b €11,004.31 when the aggregate turnover of the merging parties is between €240 million and €480 million;

4 European Commission Communication of 26 March 2021, on guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases.

5 This has been confirmed by the European Union courts (see General Court of the EU, Judgment of 2 September 2022, *Illumina v. Commission*, Case T-227/21, with an appeal before the Court of Justice pending).

c €22,008.62 when the aggregate turnover of the merging parties is between €240 million and €3 billion; and

d a fixed amount of €43,944 when the aggregate turnover of the merging parties is above €3 billion, adding €11,004.31 to the fee for each additional €3 billion of aggregate turnover of the parties, up to a maximum fee of €109,906.

The filing fee for short-form filings is currently €1,576.51.

II YEAR IN REVIEW

The year 2022 has generally continued the trend of recovery and acceleration in the number of concentrations being reviewed, with a slight deceleration in the latter months of the year. The CNMC, with the new presidency in place since autumn 2020, has kept its reinvigorated merger control enforcement, with a substantial number of mergers and investigations for gun-jumping but fewer Phase II mergers than in the previous year. There are no reported Phase II decisions in 2022, though some Phase II reviews have been initiated, including the acquisition of Terminal Ferry of Barcelona by Grimaldi group, which was approved in 2023. The text of this merger decision is not yet available. Therefore, we report below on some representative merger decisions in 2022.

In the area of gun-jumping, the CNMC has fined telecommunications operator Xfera Móviles (Xfera) €1.5 million for implementing a transaction before filing for merger control clearance.[6] As a result of that decision, the CNMC declared that Xfera, part of the MásMóvil group, failed to notify the acquisition of Alma Telecom (Alma) for merger control. Xfera, which implemented the acquisition in December 2020, has received a €1.5 million fine, which is high compared with other prior matters.

In its decision, the CNMC concludes that the transaction was subject to merger control because the market share threshold determining reportability was reached in the market for fixed voice termination services. In line with the relevant market definition, according to existing merger control precedents, an operator has a monopoly on fixed voice termination services concerning phone numbers assigned to that operator. In practice, this implies that any acquisition of a telecommunications operator with assigned numbering triggers the merger control filing obligation.

The Competition Act establishes that implementing a reportable transaction before having notified or obtained merger control clearance constitutes a serious infringement, which may attract fines of up to 5 per cent of the global turnover of the infringing company.

The *Xfera* decision provides useful guidance regarding the calculation of gun-jumping fines. The section of the decision dealing with the calculation of the amount of the fine starts with a general consideration of the importance of merger control as a preventive mechanism; hence the importance of complying with merger filing obligations. On that basis, the CNMC dismissed the arguments put forward by Xfera. In particular:

a the CNMC does not consider the absence of substantive effects resulting from the transaction as a mitigating circumstance (the transaction was cleared in Phase I unconditionally once notified upon request by the CNMC). It does not matter that the call termination services market is subject to regulated cap pricing;

6 Decision of 21 December 2022, *Xfera*, file SNC/DC/144/22.

b the decision expressly states that the minor importance of the target is only relevant from the standpoint of the substantive merger control assessment, but immaterial as regards filing obligations. This is reasonable bearing in mind that the market share threshold has no *de minimis* threshold (it only contemplates an increase in market share from 30 per cent to 50 per cent as the threshold if the turnover in Spain of the target does not reach €10 million);

c the decision includes a notable discussion on the existence of intent or negligence (or the lack thereof) on the part of Xfera. Xfera argued before the CNMC that it ignored the fact that Alma was active in the reportable market. Xfera claimed in that regard that the due diligence report drawn up prior to the acquisition included no mention of the assigning of phone numbering to Alma. The CNMC dismissed the argument on the basis that Xfera's diligence obligation could not be extinguished by the mere request for a due diligence report to external advisers; and

d although the amount of the fine is high, its importance is minor if compared with the acquirer's global turnover. For that reason, the CNMC considers that the fine complies with proportionality limits. There are precedents in which the amount of a fine has been lowered in consideration of the limited turnover of the target, but not in this case.

The *Xfera* decision shows how important it is that potential acquirers are extremely diligent when assessing whether a transaction is reportable in Spain. Although a specialist can generally determine the existence (or not) of filing obligations based on CNMC guidance and precedents, it is useful to be aware that it is possible to formally ask the CNMC to issue a decision on reportability if total legal certainty is required. The existence of this mechanism is consistently invoked by the CNMC to dismiss the arguments of parties in gun-jumping cases.

The CNMC authorised, subject to remedies, the acquisition of Cofarcu by Hefame in Phase I.[7] Hefame is a cooperative group whose main activity is the acquisition and distribution of chemicals and pharmaceutical products for use by its members. Cofarcu is a cooperative group that, in essence, purchases and distributes pharmaceutical and parapharmaceutical products to its cooperative members' pharmacies.

Under the projected acquisition, Cofarcu's members could choose either to become members of Hefame or voluntarily withdraw from the cooperative. If they chose to join Hefame, they would be subject to a minimum membership of five years and a minimum purchase obligation of 30 per cent of the members' total purchasing requirements. The CNMC was concerned that these conditions could limit the mobility of pharmacies between cooperatives and the entry of new independent operators. To remedy these concerns, the CNMC agreed to close the proposed transaction subject to the commitments offered by the parties, including the deletion from Hefame's by-laws of the minimum permanence period and the reduction of the minimum purchase volumes from 30 per cent to 25 per cent of the total.

Another interesting decision in the area of electronic platforms is the case involving Wedding Planner, the leading online platform for wedding planning services in Spain, and Zankyou Ventures, the main competitor.[8] The acquisition affects the market for the provision of online search services relating to weddings, and the market of digital platforms for wedding planning services in Spain. This is a typical two-sided market. On one side, the platforms

7 Decision of 26 October 2022, *Hefame/Cofarcu*, file C/1340/22.

8 Decision of 14 December 2022, *Wedding Planner/Zankyou Ventures*, file C/1318/22.

offer information, products, services and tools for wedding planners (who are the end users). On the other side of the market, the platforms offer companies a tool to make their products and services available to end users, sometimes through paid advertising.

According to the CNMC, the transaction results in horizontal overlaps with significant market share additions, thus reinforcing Wedding Planner's market position. However, the CNMC also concluded that there are entry barriers, albeit surmountable, such as economies of scale and network economies. Also pursuant to the CNMC, as a result of the transaction, Wedding Planner would strengthen its ability and incentives to impose exclusivity on commercial users on its platforms.

In view of the competitive risks, the CNMC cleared the transaction subject to the following conditions, with the aim of enabling the development of alternative platforms: (1) not to include exclusivity clauses or incentives in contracts with commercial users of the platforms in Spain; (2) not to punish its commercial users for using third-party services; and (3) to communicate the commitments to commercial users.

Also in the area of technology, the CNMC approved, with commitments, the acquisition of Thomson Reuters Spain, Wolters Kluwer Spain and Wolters Kluwer France by Karnov.[9] Karnov is a Swedish group engaged in the provision of legal, tax, accounting, environmental, health and safety information. Thomson Reuters Spain is an indirect subsidiary of Thomson Reuters Group; in Spain it provides legal information services and consulting solutions, software and legal training services. Wolters Kluwer Spain and Wolters Kluwer France are indirect subsidiaries of the parent company of the Wolters Kluwer Group, offering legal information and consulting solutions, software and legal training services locally.

The transaction affected the following markets:

a legal databases in Spain. According to the CNMC, the parties are close competitors in terms of quality and innovation. Also, the transaction resulted in significant horizontal overlaps in a market with substantial entry barriers for new competitors. However, the CNMC discarded the risk of unilateral horizontal effects, in view of mitigating factors, such as the existence of alternatives and the countervailing power of demand;

b publishing and distribution of professional legal publications in Spain (including periodicals, non-periodicals, digital and paper publications). The CNMC has found horizontal overlaps that would increase the capacity and incentive of the merged entity to incorporate exclusivity clauses in its agreements with authors;

c legal management software solutions in Spain. The transaction does not generate significant overlaps in this market; and

d legal technology software solutions and legal training in Spain (both on-site and distance learning). In the case of distance learning, there are overlaps resulting from the transaction but there are alternative operators with significant market shares that would exert significant competitive pressure on Karnov. There are no overlaps regarding on-site training.

9 Decision of 2 November 2022, *Karnov/TR España/WA España*, file C/1295/22.

The CNMC considered sufficient the following commitments, as proposed by Karnov: (1) refraining from making the acquisition (or renewal) of any other product offered by Karnov a condition of the purchase (or renewal) of a legal database or publication subscription; and (2) not including exclusivity clauses or incentives in the contracts entered into (or renewed) with authors that publish with Karnov. The commitments have a duration of three years.

The CNMC has approved at Phase I with commitments the acquisition of IVI-RMA Global, SL (IVI), the leading assisted reproduction treatment company in Spain, by KKR Inception Bidco, SLU (KKR).[10] The operation affects the healthcare sector for assisted reproduction treatments. The CNMC has also analysed IVI's other activities (distribution of biomedical products, genetic testing, and gamete management and donation).

During its analysis of the operation, the CNMC noted the existence of horizontal overlaps with GeneraLife, a KKR portfolio company. The resulting entity would achieve high shares in the provision of fertility services to private patients in Seville, Zaragoza, Murcia and Madrid, with a privileged negotiating position in deciding the type and conditions of services provided.

KKR presented a series of commitments, which the CNMC considered sufficient to address the risks generated by the transaction:

a divestitures of KKR clinics in Seville, Murcia and Zaragoza to eliminate the overlaps arising from the transaction;

b a commitment not to increase prices and not to worsen the commercial conditions of its current services in Madrid. In addition, KKR has committed not to enter into fertility service agreements with the main competitior in Madrid; and

c a commitment to modify an existing exclusive and excessive duration vitrification solutions distribution agreement with the IVI group.

III THE MERGER CONTROL REGIME

i Waiting periods and time frames

Pre-notification is customary and is advised when possible. Pre-notification is not subject to statutory deadlines. In most cases, two or three weeks should be allowed, although it can take longer if the transaction is complex from a competitive standpoint, or if the CNMC requires additional information to be included in the notification form.

The formal merger control investigation is divided into Phase I and Phase II proceedings. The majority of files are cleared in Phase I, whereas only a fraction are referred to Phase II in-depth analysis.

Phase I proceedings, in principle, last for one month, counted from the date a complete notification is filed with the CNMC. Where the notifying party submits commitments (this possibility exists during the 20-day period after the filing), the Phase I statutory maximum period is extended by 10 days.

The maximum period for Phase II proceedings is two months, counted from the date the CNMC decides to open a Phase II review. The maximum period is extended by 15 days if commitments are submitted in Phase II (the notifying party can offer commitments up to 35 days after the start of Phase II proceedings).

10 Decision of 21 December 2022, *KKR/IVI*, file C/1321/22.

In the event of Phase II decisions blocking or imposing obligations, the Minister of Economy is entitled to refer the case to the Council of Ministers within 15 days of the Phase II decision being issued. If referred to it, the Council of Ministers has one month to issue a final decision, which may confirm the Phase II CNMC decision or may authorise the merger, with or without conditions.

All maximum periods can be interrupted by the CNMC in regulated events, such as formal information requests.

ii Parties' ability to accelerate the review procedure, tender offers and hostile transactions

As discussed, in practice, pre-notification normally makes a review easier.

A merger cannot be closed prior to having gained the prerequisite merger clearance. It is possible to request a derogation from the suspension effect of the merger filing, although this is very rarely granted nowadays. In the past, the exception has been used in limited instances to enable quick closing of a merger in non-problematic geographical areas while enabling a Phase II review limited to problematic areas (e.g., in supermarket, petrol station and other mergers with local geographical markets). As a general rule, in practice, the CNMC has a preference not to use this derogation procedure, as it entails considerable analysis; rather, where possible, the CNMC prefers to move towards quick merger clearance if the circumstances merit it.

Public offers can be launched, including as a condition for the validity of the merger control clearance. The Competition Act enables launching a public tender without having gained merger control, provided that the CNMC is notified of the merger within five days of the formal application for authorisation of the public tender with the Securities Exchange Commission and that the voting rights are not exercised except when required to preserve the value of an investment, with the authorisation of the CNMC.

Hostile public offers are rare in Spain. Past experience shows that hostile takeovers, particularly in strategic sectors, can be extremely complex. The hostile bid for Endesa launched by Gas Natural in 2005 was not successful, and competing offers required intervention from the European Commission under Article 21 of the EC Merger Regulation.[11] In the same transaction, the initial merger control authorisation gained by the first bidder (Gas Natural) was frozen by the Supreme Court on interim review.

iii Third-party access to the file and rights to challenge mergers

Third-party access is expressly contemplated in the Competition Act in Phase II merger proceedings. Parties with a legitimate interest have the possibility to access the merger file and submit comments on the statement of objections and proposed commitments. These are normal dynamics in Phase II, where third parties have a relevant role and provide input that can help shape the outcome of the merger proceedings.

The law does not foresee the possibility that interested parties have a role in Phase I. Phase I proceedings are confidential and the file cannot be accessed by third parties. However, as there is no express provision banning participation of third parties in Phase I merger proceedings, it is accepted, and has become quite standard, that third parties make

11 Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

representations and submissions to the CNMC regarding a merger also during Phase I merger proceedings. An example of this is the *Helios/Quironsalud* merger,[12] in which the participation of a third party in the proceedings was expressly discussed in the merger decision.

The CNMC will listen to third parties' concerns and, if these have merit, the CNMC should be expected to raise the level of scrutiny of a given merger.

Third parties also play a role in reporting mergers that should have been filed for merger review but were not.[13]

iv Resolution of authorities' competition concerns, appeals and judicial review

The CNMC should, at least in theory, solve most initial concerns in pre-notification. The CNMC will make use of formal information requests, stopping the clock when necessary. Once the proposed transaction has been formally filed, the CNMC might be keen, depending on the circumstances, to deal with any questions informally, without stopping the clock (particularly if the transaction has been pre-notified).

Merger decisions by the CNMC may be appealed within two months before the High Court. In instances where the Council of Ministers decides on the merger, the Supreme Court is competent to review the merger decision.

v Effect of regulatory review

Mergers reviewed by the CNMC may be reviewed concurrently by other administrative agencies dealing, for instance, with regulatory and licensing issues. The potential friction and lack of coordination between the CNMC and sector regulators has been minimised in some instances in economic sectors where the CNMC also acts as a regulatory authority. In areas such as banking, where the regulator is not within the CNMC, merger review is suspended while the sector regulator completes its review.

IV OTHER STRATEGIC CONSIDERATIONS

In general, it is far better to pre-notify transactions if at all possible. The CNMC has in the past recommended pre-notification and it clearly dislikes transactions being notified for merger control without pre-notification. Furthermore, pre-notification enables preliminary discussion about many strategic issues, including the recurrent use of the short-form filing, occasionally even in situations not expressly foreseen by the applicable regulation.

Another benefit of pre-notification is the expected timing for approval. Even though, initially, pre-notification implies additional delay, in practice, the CNMC will reduce the time dedicated to the review and often approve more quickly if pre-notification has taken place. In non-problematic cases, recent experience shows that the CNMC often grants approval within 10 to 20 days of filing.

12 Decision of 22 December 2016, *Helios/Quironsalud*, File C/0813/16.

13 For example, decision of 29 July 2010, *Bergé/Maritima Candina*, File R/0006/10.

It is possible to apply for formal guidance from the CNMC regarding whether or not a change of control arises as a result of the projected merger and the merger thresholds are met. One issue here is the lack of a binding deadline for the CNMC to act on a request for formal guidance, an area that might change in the future. For this reason, another course of action regularly used, depending on the circumstances, is that of the *ad cautelam* merger pre-notification, requesting that a concentration be treated as non-reportable and, on a subsidiary basis should the CNMC consider that the concentration is reportable, that the pre-notification is treated as a merger pre-notification so the merger review can start as soon as possible. In practice, and in most cases, this has proved to be a more functional device.

Merger control is an important tool and, in the past, the CNMC has vigorously investigated and pursued gun-jumping or closing of reportable transactions without having obtained the necessary merger clearance. The CNMC has recently made it clear that it is ready to use its powers to punish individual directors and managers for competition breaches (which has not yet materialised in any individuals being fined for gun-jumping, although this situation might change). Likewise, it cannot be ruled out at this stage that gun-jumping will not encompass disqualification from participating in public procurement, though this is yet to be settled.

V OUTLOOK AND CONCLUSIONS

The current CNMC is the result of the integration of Spain's main national regulatory authorities in various network industries and regulated sectors into the competition authority in 2013 (see Section I). The integration was criticised at the time. In the medium to longer term, it cannot be ruled out that a future legal reform will again separate the national regulatory authorities from the competition authority. This possibility has been discussed, although there does not currently appear to be any momentum for it.

The CNMC is well aware that the formal guidance procedure enabling it to give clarity on the reportability of a merger is impaired by the lack of a binding deadline. This may perhaps change by dealing with the matter in new legislation that may be introduced to revert to the previous model of separation between competition enforcer and sector regulators.

The pandemic period has triggered considerable financial difficulty for many companies in a country where tourism and transportation-related activities are very important to the economy. To a great extent, those difficulties have been solved but they still linger in some areas. In this regard, the failing firm defence is acknowledged and may well apply to concentrations in the current circumstances, provided that it can be substantiated and evidenced appropriately. In the past, the CNMC has invoked the failing firm defence in restrictive circumstances only, and has avoided its use in temporary crisis situations (e.g., the *Antena 3/La Sexta* merger).[14] However, the CNMC continues to be sceptical of this line of defence, even in the current climate.

Another area that overlaps with merger control, and that is of direct relevance to concentrations, is that of foreign direct investment (FDI) screening. In April 2020, the government introduced a new FDI screening regime, which is very broad in scope and, like merger control, requires clearance prior to the closing of an acquisition, under penalty of fines of up to the consideration of the transaction. The FDI regime has been reformed several times since its inception in April 2020. At the time of writing, there is a draft

14 Decision of 13 July 2012, *Antena 3/La Sexta*, File C/0432/12.

implementing regulation for the FDI law, which should provide greater detail as to its scope and procedures. However, this remains a draft, implying that the FDI regime poses serious issues of interpretation, pending the approval of the definitive text of the implementing regulation; therefore, careful advice is required.

In principle, no radical changes are expected in the merger control arena in Spain. The CNMC is likely to continue to enforce competition policy vigorously, including merger control laws. Going forward, two possibles cannot be ruled out: (1) that the CNMC will include individuals when imposing fines for gun-jumping, in line with the trend in antitrust enforcement cases; and (2) that, at the administrative enforcement level, the level of fines will increase, in line with other agencies.