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01 Representative CNMC merger decisions, May - December 2025.

Firms	Notification threshold	Economic sector	Decision
IRESTAL / THIELMANN	Market share	Manufacture of lightweight metal containers and packaging	Phase I clearance (9 May)
AUREN PARTNER – OMPANIONCO / AUREN HOLDING	Turnover	Accounting, bookkeeping, auditing and tax consultancy activities	Phase I clearance (14 May)
MIURA – SOCIOS ACTUALES – SAESCO / CARDIOLINK	Market share	Manufacture of medical and dental instruments and supplies	Phase I clearance (19 May)
OXIMESA / ESTEVE TEJIN HEALTHCARE	Market share	Manufacture of industrial gases	Phase I clearance (28 May)
KUEHNE NAGEL / TDN	Turnover	Transport of goods by road	Phase I clearance (28 May)
STONESHIELD-COLONIAL / GS JALOR	Not disclosed	Rental of real estate for own account	Phase I clearance (11 June)
SLAM / ELIANCE	Market share	Passenger air transportation	Phase I clearance (11 June)
FAST FORWARD / PROCENESA	Not disclosed	Insurance	Phase I clearance (18 June)
ASSA ABLOY HOLDING AB / CALMELL	Not disclosed	Printing and reproduction of recorded media	Phase I clearance (18 June)
ATITLAN / STONESHIELD / FRANAMA / GAVIOTA	Market share and turnover	Manufacture of plastic products for construction purposes	Phase I clearance (18 June)
GRUPO VALL COMPANYS – INCARLOPSA – COSTA BRAVA / INGA FOOD S.A.	Turnover	Pig farming	Phase I clearance (18 June)
CFA / GLOBAL AVIATION INVESTMENT	Market share	Repair of fabricated metal products, machinery and equipment	Phase I clearance (18 June)
PELAYO / SLA / IMA / PRESTIMA	Not disclosed	Supporting activities for land transport	Phase I clearance (18 June)
HM – HOSPITAL SANTISIMA TRINIDAD	Not disclosed	Hospital activities	Phase I clearance (25 June)
ILERNA BIDCO / GRUPO CAMPUS EDUCATIVO	Market share	Post-secondary education	Phase I clearance (25 June)
BOLUDA / BMT	Market share	Maritime sector	Phase I clearance (25 June)
PÉREZ Y CÍA / MARTICO	Not disclosed	Not disclosed	Phase I clearance (25 June)
GRUPO MHP / UVESA	Turnover	Other livestock holdings	Phase I clearance (25 June)
IBERDROLA / HGSA – MADE – EESAU	Market share	Production of electric power	Phase I clearance (2 July)
TREADWAY / GRUPO EYSA	Market share and turnover	Supporting activities for transport	Phase I clearance (2 July)
FONSAGRADA / HOSPES	Market share	Accommodation services	Phase I clearance (2 July)
MONTPLET / CORPFIN / EDS	Turnover	Manufacture of other basic organic chemical products	Phase I clearance (2 July)
MEMORA / SEVER	Market share	Funeral services and related activities	Phase I clearance (15 July)
FN BROWNING GROUP / SOFISPORT	Market share	Manufacture of weapons and ammunition	Phase I clearance (15 July)
TEOFARMA / UCB PHARMA GMBH	Market share	Manufacture of pharmaceutical products	Phase I clearance (23 July)
GRUPO VAL COMPANYS / AGROALIMENTARIA CHICO	Turnover	Pig farming	Phase I clearance (23 July)
WABTEC / DELLNER	Not disclosed	Manufacture of railway locomotives and rolling stock	Phase I clearance (23 July)
NIDO / LIVENSA	Market share	Real estate development	Phase I clearance (23 July)
REPSOL – MEMENTO GESTION / ODF	Turnover	Production, transport and distribution of electricity	Phase I clearance (23 July)
AZORA / MED PLAYA HOTELS	Market share and turnover	Accommodation services	Phase I clearance (30 July)
GPNL INTERNATIONAL HOLDING / URBAN SPORTS	Market share	Gym activities	Phase I clearance with commitments (22 August)
SWISS LIFE / EDUCARE	Turnover	Education	Phase I clearance (25 September)

02 *BBVA/Sabadell*: the highly controversial merger review of the BBVA/Sabadell hostile takeover has prompted scrutiny under Spanish and EU law.

The much expected Government authorization (**Decision**) in phase III for Sabadell's takeover offer by BBVA has unveiled one more episode in the European landscape of questionable political intervention aiming to serve particular interests (diametrically opposed to the general interest the current Government nominally seeks to protect). The conditions included in the Decision were on top of the conditions which had already been ordered by CNMC, which remain in place.

The Decision is based on the provision of the Competition Act which enables the Government to intervene in CNMC conditional, or prohibition merger conditions based on reasons of general interest distinct from competition. The issues of general interest invoked by the Decision are *(i)* the adequate safeguard of the goals of sector regulation related to economic growth and business activity; *(ii)* protection of employment; *(iii)* territorial cohesion; *(iv)* social policies related to the work of the bank foundations; *(v)* promotion of research and development. The explanation provided to substantiate why intervention is required to safeguard any of the alleged public policy goals, in spite of the Government's efforts, remains open to discussion: for instance, a larger bank would arguably provide a financially sounder platform for business activity and social activity, and even protection of employment is arguably better served if a general gain on banking competitiveness (nationally and internationally) is achieved. Any possibility of adverse antitrust effects flowing from the concentration is addressed by the CNMC conditions. The same goes for protection of any research and development projects that could be at stake, which could arguably be better served by a larger, stronger, institution (if at all, with inclusion of a specific condition aimed at protecting specific projects identified). Finally, territorial cohesion within Spain would arguably be better served by combining two banking institutions of regional origin into a single, larger, national institution.

The protection of the general interest goals invoked is entrusted to the condition attached by the Government to the merger authorization: BBVA and Sabadell must keep legal personality, balance sheet and management separated for at least three years. The effectiveness of the Government condition is subject to monitoring; and the Government may decide to extend its duration for two additional years. The Decision also states that the management separation must include *at least* the maintenance of separate decision-making in connection with matters which affect credit and financing, particularly to SMEs; human resources; branch network and banking services; social work through the two respective foundations. Hence, it seems that the separation of management between both banks does not necessarily have to extend to the entire business or operative areas, but only to the ones expressly pointed out (which are quite broad anyway, but do not seem to comprehend all the activities of a large, multi-product bank). This might easily provide fertile ground for BBVA to invoke the proportionality principle, as perhaps a lesser degree of intervention might suffice. The Government attempts to address this concern by explaining that the multiple interests affected and scale of the transaction require avoiding partial conditions, opting of a single, global merger condition.

In practice, however, it seems that the conditions attached to the Decision amount to a very substantial limitation tantamount to a prohibition to fully implement the takeover offer for three (possibly five) years. It is a creative outcome short of outright prohibition (off bounds for the Government under existing law). Yet it poses a lot of legal doubts in terms of proportionality, leaving aside practical questions such as the fact that, five years down the line, a lot of things might have happened, and the legal and market context is as of today largely unpredictable.

With that in mind, BBVA has been left with the option of either abandoning the takeover offer or continue with it accepting the Government conditions, with or without filing an appeal against the Decision before the Supreme Court. The Supreme Court is the highest judicial body with a track record of independence, having overturned the other historic Government merger decision in the hostile takeover *Gas Natural/Endesa* (see prior discussion here). Also, there is Supreme Court case law from the beginning of the century (*Prosegur/Blindados del Norte* case, 2002) annulling Government merger conditions on the basis that these amounted to a disproportionate intervention in the freedom of enterprise. Proportionality is, therefore, a key legal principle in the area, as rightly identified by the Decision.

The European Commission (**EC**) has shown some interest in the matter, although it has not yet made clear what its legal basis for potential action in this matter might be. The takeover offer has national dimension. As a result of this, the EC cannot avail itself of Article 21 EUMR, which enables the EC to act against national government interference in mergers with Community dimension unless the Government has genuine national interest concerns. Yet, the principles surrounding application of Article 21 EUMR could apply to BBVA's takeover offer *mutatis mutandis*. In an already well-known EC case (*VIG* Decision) the EC has made it clear that a sham invocation of national interest principles under FDI screening rules would be incompatible with EU law. Even if Article 21 EUMR is not applicable to this matter, it cannot be ruled out that the EC scrutinizes the Decision on the basis that the takeover offer for Sabadell is not genuinely capable of posing a threat to the principles invoked by the Government and/or that those principles are themselves a sham invocation (which is compounded by the politically motivated debate around the takeover offer). Even if Article 21 EUMR does not apply, the EU law principles on free circulation of capital could still be invoked by the EC. The other recent precedent potentially applicable to the case is the Court of Justice of the EU *Xella Magyarország* case, where the Court opined on the merits of the national or public interest grounds invoked by the Member State and on the proportionality of the member State measures adopted against the concentration. Precedents under both Article 21 EUMR and EU fundamental circulation freedoms also include EC decisions around the competitive takeover offer for Endesa.

Both the *VIG* and *Xella Magyar* cases refer to the interaction of EU law with national FDI screening. Formally, the Government intervention in the BBVA/Sabadell takeover is based on very similar legal grounds as those existing in the FDI screening laws: Article 10 of the Competition Act refers to the power of the Government to intervene in mergers on grounds of 'general interest' which include areas such as *national defence and security*; *protection of security or public health*, as mere examples; on the other hand, Article 7 of Law 19/2003, of 4 July, on foreign investment, as amended, provides the basis for FDI screening and Government authorization regarding investments which may affect activities related to *national defence, or activities that affect or may affect the public order, public security and public health*.

Indeed, the rationale for FDI intervention seems very close to the legal basis afforded to the Government to intervene under the Competition Act, prompting a clear analogy between the Member State action in the *VIG* and *Xella Magyar* cases and the Government intervention in the BBVA/Sabadell transaction.

In the end BBVA decided to go ahead with the merger under the tough conditions imposed; however, BBVA ultimately abandonded the merger because the price of Sabadell stock had raised so much and the conditions were so tough that this was no longer deemed a viable transaction. BBVA is known to have appealed the merger Decision before the Supreme Court (Court with sole jurisdiction to review Cabinet decisions).

03 *Curium*. First Decision blocking a merger under the 2007 Competition Act issued by the Spanish National Competition and Markets Commission (Decision of 6 October 2025, *Curium/Irab*).

On 6 October 2025, CNMC has prohibited acquisition of Institut de Radiofarmacia Aplicada de Barcelona (**IRAB**) by Curium Pharma Holding Spain (**Curium**), under file number C/1501/24. The decision follows a Phase II investigation into the markets for *(i)* supply of PET (positron emission tomography) radiopharmaceuticals, which are used in cancer diagnosis, and *(ii)* contract manufacturing services for PET radiopharmaceuticals (**CMO**) in Spain's North-East.

Risks for the maintenance of competition identified by the CNMC.

(1) PET tracers have extremely short half-lives and cannot be stored, which means competition is inherently local around each cyclotron (a type of particle accelerator required to produce the tracers). Curium already has significant production capacity in Spain, in the form of two proprietary cyclotrons and the commercial operation of five public ones. IRAB, the target, owns a key cyclotron in Barcelona, so that the analysis of the CNMC has focused on that region.

(2) Regarding market for PET radiopharmaceuticals supply, the CNMC has found that the combined market shares amount to 90-100% concerning the supply of PET PSMA tracers (a type of tracer used in prostate oncology).

(3) When it comes to the CMO market, as a result of the transaction the number of suppliers operating a cyclotron would go from three to two as a result of the transaction, reducing the CMO options available to actual or potential competitors wishing to supply PET PSMA tracers. The concerns are exacerbated by the fact that IRAB is the only independent operator in the market, not having a PET radiopharmaceuticals portfolio of its own capable of competing downstream with those of its clients.

(4) The CNMC has concluded the existence of potential risks of higher prices and reduced variety of PET PSMA tracers The CNMC considers a risk of barriers to entry and expansion being increased, even to the point that the transaction could have resulted in market foreclosure, stemming from the loss of the sole independent cyclotron operator from the CMO market in the area. In addition, the CNMC has identified an increased risk of coordinated effects in the affected markets.

(5) Although nothing is mentioned in this regard in the press release, according to the Phase 2 decision summary, the CNMC also entertained concerns in the field of innovation, given the loss of a key player in Spain in the contract manufacturing of radiopharmaceuticals under development.

Commitments offered by Curium.

Curium offered behavioural commitments during the proceedings, but the CNMC deemed the package insufficient and ineffective to remedy the concerns identified during its assessment. The CNMC has concluded that no viable conditions could have been imposed in potential phase II approval decision to offset the said concerns.

The tough stance of the CNMC is, at least to a certain extent, surprising, since the CNMC has cleared even merger to monopoly transactions in phase II subject to commitments. For Instance, in a merger to monopoly in the port services sector in 2021 (merger file *Mooring Port/Cemesa Amarres*, file C/1134/20) the CNMC granted the approval subject to a remedy of cap pricing by the merged entity during five years since closing. This merger precedent was issued during the current CNMC presidency.

Besides, there are precedents in the neighbouring market of SPECT radiopharmaceuticals where the CNMC seems to have adopted a far more lenient stance (file *Glo Bidco/Mallinckrodt*, C/0803/16). The said transaction was approved in 2017 in phase 1 without remedies, despite market shares reaching between 80-90% in some of the narrower markets considered then. Having said that, it should be noted that in the said case the market for radiopharmaceuticals CMO, crucial in the Curium transaction, was not an affected market; and that this merger decision was issued prior to the current CNMC presidency.

Potential final say by the Council of Ministers under public-interest grounds.

Under public-interest review mechanism in the Spanish Competition Act (relevant to prohibition and conditional approval decisions), the CNMC must now refer the case to the Ministry of Economy, which may propose elevating the decision to the Council of Ministers. Under the said mechanism, the Government can (conditionally or unconditionally) authorise a prohibited transaction on public-interest grounds. This public-interest review mechanism has only been used twice: once years ago in a politically charged television merger of *Antena 3/La Sexta*; and recently in connection with the (even more politically charged) recent approval of the public bid launched by bank BBVA over Banco Sabadell, a competitor (file C/1470/24). Although it cannot be ruled out that the *Curium* decision reaches the Council of Ministers, in principle it is not a clear candidate, given the absence of political implications.

04 M&A in the area of data centres: merger Control and FDI Screening.

The growing digitization of the economy and ever-increasing need for data storage and computing power has positioned data centre infrastructures as assets of vital importance. As a result, mergers and acquisitions in this sector have attracted the attention of competition and foreign investment control authorities. As 2025 enters its final phase, we take a pause to share some experience tackling sensitive merger control and foreign direct investment (**FDI**) screening processes in this context.

Merger control and relevant market definition as initial task.

As international practitioners know, Spain's most distinctive feature in merger control is the market share threshold, which often makes it of the essence to take an upfront position on the issue of relevant market definition. The market share threshold is triggered by the acquisition of 30% market share in a product market in Spain or a part thereof (which is raised to 50% if the target's Spanish turnover is below €10 million). Due to the literal wording of the Competition Act it is generally accepted that, even if a relevant geographic market is EEA or worldwide, the market share figure to be considered for threshold purposes is the market share in Spain or a part thereof taken as percentage of merging parties' sales over total sales in Spain (or the relevant region or part thereof) alone.[1]

Data centres provide colocation services, which include the rental of physical space, connectivity, and equipment hosting services.

Over a decade ago, the National Markets and Competition Commission (**CNMC**) examined the market for equipment housing and server hosting services.[2] The line between those services was already at the time blurred due to supply-side substitutability. A bit later, in its Decision of 30 October 2014, *Abertis/Telefónica -Activos-* (file C/0604/14), the CNMC defined colocation services as those that include the leasing of space, the provision of access to power, security, and the air conditioning conditions necessary for the installation of computing equipment.

But the most significant debate for merger reportability purposes refers to the geographic delimitation of the market and, in particular, whether the market is national or local. If the relevant geographic market is defined narrowly (i.e., locally) this can have the effect of inflating market shares, making it easier that the market share threshold is met if the merging parties have a relatively strong presence in a given city or locality; with the effect that a merger filing can be required in small transactions and/or in the absence of any overlaps. The latest position on this point is in the Decision of 13 December 2023, *Lyntia/Evolution* (file C/1422/23), where the CNMC has found that the relevant geographic market must be defined at circa 50 kilometers from the city where the data centre is located.

This approach is based on European Commission (e.g., Decisions of 13 November 2015, *Equinix/Telecity*, case M.7678 and 7 July 2020, *Colony Capital/PSP/NGD*, case M.9843). The Commission's reasoning is based on the fact that most customers seek colocation services in very specific areas to ensure low latency and facilitate physical access to equipment.

Despite the precedents, there are competitive arguments to support the view that the relevant geographic market for data centre services is national in scope and certainly beyond a 50 kilometers' radius:

- **Geographic concentration of supply:** the deployment of data centres in Spain is highly concentrated in a few strategic locations (Madrid, Barcelona, Valencia, etc.). Demand is, in fact, met from these central nodes at the national level, rather than locally.
- **Remote nature of the service:** data centre services are inherently "remote". Companies do not need to be physically close to contract colocation space. Operation and monitoring are performed remotely, and data centres offer managed remote support services.
- **Connectivity and redundancy prevail over over proximity:** customers value national and international connectivity, service level agreements, and redundancy over proximity. It is common practice for companies to demand support from multiple geographic locations to ensure business continuity, redundancy and resilience to failures.
- **National network infrastructures:** major fiber optic networks have interurban and national coverage, allowing access to data centres from anywhere in Spain. Physical proximity is no longer a differentiating factor when the network is fast, redundant, and accessible throughout the country.
- **Empirical evidence of trade flows:** commercial dealing patterns show that companies in one region engage services in other regions, implying that trade flows for data centre services take place on a nationwide basis.

Caution is advised when dealing with this matter to consider all factors, perspectives and risks, with a view to delineating an optimal strategy and avoid administrative liabilities.

FDI screening of investments in data centres.

Acquisitions of substantial stakes in critical assets by foreign (non-EU/EFTA)[3] investors must be assessed under the FDI screening regime.[4]

1 Article 8 of Law 15/2007, of 3 July, on Competition.

2 Decision of 29 July 2011, *Telefónica/Acens* (file C/369/11)

3 EU investors are also subject to FDI screening if the target is a listed company or if the value of the investment in Spain exceeds €500 million.

4 The applicable rules are laid down, amongst others, in Law 19/2003, of 4 July, on the regime of movement of capital, foreign economic transactions and money laundering, as amended; and its implementing Regulation contained in Royal Decree 571/2023, of 4 July 2023, on foreign investments.

The notification requirement for foreign investors is triggered in two ways: (i) by the sector of activity of the company being acquired; or (ii) by virtue of the characteristics of the investor.

Regarding the sector of activity, the regulation focuses on the acquisition of companies that operate critical infrastructures (physical or virtual), key technologies for industrial leadership, or that provide essential supplies whose interruption would have a significant impact on security, public order, or social and economic well-being. In the case of data centres, consideration must be given amongst others to (i) the particular role and customers of the target; (ii) to whether the target is included in the Ministry of the Interior's Critical Infrastructure Catalogue, or whether or not it has received public funding from national or EU R&D programs.

Second, consideration must also be given to whether the transaction could be notifiable if the investor is considered a "qualified" entity, for example, if it is directly or indirectly controlled by a foreign government, or if it has participated in activities that affect security or public order in other EU member states.

In the case of data centres, these can be quite sensitive infrastructures and a first requirement in the context of an M&A transaction must lie in understanding whether or not the asset has been catalogued as critical infrastructure by the Government. If it is, then the asset is deemed sensitive for FDI screening purposes. Another matter to be looked at is whether or not the target has received public financing for research and development activities.

In conclusion, investments in data centres in Spain can pose some regulatory challenges, though if properly managed they can be solved easily in most instances. The debate on the delimitation of the geographic market highlights the need for a flexible legal interpretation that adapts to the dynamics of a globalized and digital economy, where connectivity and redundancy, rather than physical proximity, define competition. It is an evolving process, which is still not concluded on the regulatory front and where appropriate analysis and right approach to the authorities is of the essence. FDI screening in this area can also be dealt with easily in most cases, with an Authority that is eager to help and to facilitate investments generally, always with the limitations imposed by issues such as the identity of the ultimate ownership of the investor.

SPAIN NCA ACTIVITY: CNMC ANTITRUST INVESTIGATIONS AND FINING ACTIVITY BY THE FOOD CHAIN REGULATORY AUTHORITY.

05 The CNMC fines Eólica de Alfoz €958,593 and prohibits it from participating in public contracts for six months (Decision of 30 July 2025, *EÓLICA DE ALFOZ*, file S/0011/23).

On July 2025, the CNMC sanctioned wind power company Eólica de Alfoz for favoring projects that belonged to its business group, incurring in an abuse of its dominant position as a "single point of contact for the access node" (**Decision**). The single point of contact for an access node refers to a situation in which one power generation company is (or was, as the regulation has now changed) appointed as the sole contact with the electricity transport company regarding the access to transport network for all the power generation companies in the catchment area. The CNMC imposed a fine of almost €1.000.000. Besides the fine, the CNMC has banned the company from taking part in public procurement. Although the CNMC has been imposing the prohibition to contract in many of its decisions lately, this is the first time that the CNMC itself declares the scope and duration of the prohibition. Up to know, the prohibitions were referred to the Public Procurement Consultive Board (Ministry of Finance) for the scope and duration to be established.

When defining the scope of this prohibition, the CNMC considered the geographic and the material scope. Regarding the geographic scope, the CNMC extended the ban to the national level. While the infringement was local, its consequences were deemed to have supra-regional implications for the national electricity generation market. This broad view was further justified by the CNMC in the strategic nature of the power transmission network. Concerning the material scope, the prohibition was specifically tailored to Eólica Alfoz's corporate activities (not spreading to other group activities).

When it comes to the duration of the prohibition, the CNMC established a six-month duration. According to the Decision, the CNMC initially took the view that a longer duration should be imposed, given that the infringement had lasted for more than two years. However, the CNMC considered two key mitigating factors. First, it acknowledged the absence of any direct impact on public procurement processes, as the abuse took place in a private market governed by sector-specific regulations rather than under the Public Sector Contracts Law. Second, the financial penalty, set at a 3.5% rate, lies within the lower half of the statutory range for very serious infringements. Balancing the long duration of the abuse against these countervailing considerations, the CNMC concluded that a six-month prohibition period was sufficient to ensure a deterrent effect without being disproportionate to the specific nature of the offence.

This Decision represents a significant milestone in Spanish competition law enforcement, as the first decision to apply detailed criteria for contracting prohibitions without deferring to the public procurement Authority. It sets a clear precedent. Besides, the CNMC's detailed analysis provides a roadmap for how the scope and duration of prohibitions will be set in the future.

06 CNMC Decision of 3 December 2025, *I.C.O.N.*, file S/0015/23 on resale price maintenance (RPM) in the haircare market.

The National Commission for Markets and Competition (**CNMC**) has just fined I.C.O.N. EUROPE, S.L. (**ICON**) for RPM and adopting strategies that eliminate intra-brand competition. The matter stems from a complaint by an undisclosed entity.

Pursuant to the CNMC Decision, ICON implemented a comprehensive price control strategy at two levels of the distribution chain:

- At the wholesale level, ICON granted each of its wholesalers, CÓDIGO ÉTICA S.L. in the Canary Islands and HAIR MASTERY PROFESSIONAL, S.L. distribution rights subject to an obligation to resale prices set by ICON., expressly prohibiting the application of prices lower than those stipulated by the brand. This practice continued uninterrupted from January 2010 to January 2024.

- At the retail segment, ICON designed a nationwide strategy focused on monitoring retail prices and restricting sales through electronic channels. ICON systematically distributed lists of retail prices which, far from being mere recommendations, were mandatory, a practice that the CNMC classified as illegal between September 2017 and May 2023. ICON implemented control systems to tightly monitor the application of prices, discounts and promotional campaigns by its distributors. This control, which ICON's own employees referred to as "police patrols", consisted of reviewing websites to detect deviations from the commercial policy. ICON also threatened retaliatory measures, namely the cessation of supply, against distributors who did not comply with the rules established by ICON on the online marketing of products. Likewise, ICON's own distributors informed ICON of other distributors' deviations.

- In addition, ICON imposed a ban on marketing of its products on Amazon, whereas ICON itself operated on this platform covertly, through the company Transparency Quality S.L., concealing this link from both its commercial network and the CNMC inspectors during the inspection.

The Decision includes some references to WhatsApp communications between ICON and its distributors which indicate poor company compliance policies including invitations to lie to the CNMC in its investigation and wild and express references to enforce and monitor RPM.

The CNMC characterizes the restrictions as 'by object' infringements of Article 101 TFEU and 1 Competition Act. In this specific case, the CNMC determined that ICON's conduct was intrinsically aimed at eliminating intra-brand competition. The nature of the terms imposed by ICON, RPM including prohibition of retail discounts or promotions, all of them responding to the same anti-competitive objective of "preventing a downward price war" and maintaining artificially high and uniform price levels.

The CNMC's ruling addresses the issue of changing law which also changed the characterization of RPM as a very serious and 'not so very serious conduct under the prior Competition Act. The CNMC hence divided the conduct between the period 2010/2017 – 2021 ('serious') and period 2021 – 2024 (very serious infringements under the current legal framework). This impacts quantification of the fine but also statute of limitations.

Although ICON claimed to have a small market share, the CNMC determined that the infringement committed by ICON is sufficiently harmful to competition to be considered a restriction of competition by object, regardless of the effects.

The total amount of the fines amounts to €1,197,907. Some colourful aspects which have not played in ICON's favour include that ICON attempted to align the responses of its distributors to the CNMC information requests in order to simulate that the prices were merely recommended. The infringement in the wholesale market encompasses a fine of €637,907; the infringement in the retail market (online): €560,000.

Another measure imposed on ICON by the CNMC has been the prohibition to contract with the Public Administration in relation to the supply of hair products for a period of five months, following its earlier 2025 practice (see above comment on *Eolica de Alfoz*).

The ICON resolution reaffirms the CNMC's tough position against RPM. The specific case stands out for the elaborate digital methods used by ICON for monitoring and the creation of mutual control networks between distributors to ensure an artificially high-priced market. It is also important to note that the CNMC does not consider that a low market share exempts from liability; and that concealment strategies aggravate the conduct.

07 Spain's Food Chain law enforcement: Pricing and Payment Terms Remain the Achilles' Heel.

The Food Chain Law was designed to rebalance commercial relationships in the agri-food sector. However, its main battleground continues to be compliance with payment deadlines and the correct formalization of contracts, especially regarding price. The analysis of fines from Spain's Food Information and Control Agency (**AICA**) during the first three quarters of 2025 shows these infringements persist across the value chain (see here).

The constant stream of fines published by AICA highlights the risks for companies in Spain that have not adapted their processes to the Food Chain Law. Culture of fines in this sector remains mild, but that may change going forward as inflationary (and therefore, political) pressure on food prices mounts. The main infringements sanctioned in 2025 are:

- Breach of payment deadlines: This is the most recurrent cause for fines in Spain. Fines have reached significant amounts, in some cases exceeding €79,000.
- Failure to include the price in the contract: The Food Chain Law requires the price to be, at a minimum, higher than the production cost, and its omission is severely sanctioned. Fines for this are frequent, ranging from €1,800.60 to €33,000.60.
- Failure to formalize contracts in writing: The absence of written contracts continues to be a reason for penalties. Some fines have exceeded €138,000 in the most serious cases.
- Unilateral price modifications and obstruction of inspections: Other relevant causes are modifying prices not expressly agreed upon and resisting AICA's actions, both punished with considerable fines.

To mitigate these risks in Spain, a thorough review of contract models with transparent pricing mechanics and payment circuits is essential. Contracts must be formalized in writing before the service begins and keeping record of acceptance is important. Automating and monitoring payment due dates are also key to avoiding delays that could lead to fines.

AICA's inspection activity is relentless, and the publication of fines reinforces the need for rigorous compliance. Ignoring the law is a major economic and reputational risk. Companies operating in Spain should carry out targeted training for buying teams as well as conduct internal audits of their contracts and payment processes in order to identify blind spots and adapt operations to avoid or reduce the risk of future fines.

COURT ACTIVITY ON REVIEW AND ANTITRUST DAMAGES CASES.

08 High Court / *Nokia v CNMC*. The High Court confirms Nokia's CNMC fine for price-squeeze (Judgement of the High Court of 3 February 2025, appeal number 47/2018).

The High Court has decided on the appeal filed by Nokia Solutions and Networks Spain, S.L. (**Nokia**) against the CNMC Decision of 8 June 2017, *NOKIA*, file S/DC/0557/15 fining €1,741,478 on Nokia for breach of Article 2 of the Competition Act and Article 102 of the TFEU, following a complaint lodged by Kapsch Carriercom España, S.L.U. (**Kapsch**), another supplier. The facts of the case relate to a public tender called by ADIF (Spain's railway infrastructure manager) on 15 July 2014, for the maintenance of GSM-R mobile telecommunications facilities on train high-speed lines, with Nokia being the main supplier of the technology installed in that network and also holding a dominant position in the relevant market.

The High Court upheld the CNMC's conclusions in the administrative Decision, dismissing Nokia's arguments (lack of evidence and wrong market definition, amongst others). In particular, the High Court highlights the existence of a dominant position held by Nokia prior to, and following, the affected ADIF tender, with market shares of 84.7% and 89.7%, respectively. This dominant position was reinforced by the fact that, in the maintenance and support market, the only supplier capable of offering support for Nokia equipment was Nokia itself.

The High Court also considered proven the practice of margin-squeeze, upholding the CNMC's analysis that the difference between the wholesale price offered by Nokia to Kapsch and the foreseeable costs and revenues of the contract resulted in a negative operating margin of between €1.3 million and €6.1 million.

The High Court concluded that Nokia's conduct had an anti-competitive effect that excluded Kapsch from the tender, dismissing Nokia's appeal.

09 The High Court quashes the CNMC antitrust Decision fining major international and national publishing houses for alleged breaches of Articles 101 TFEU / Article 1 Competition Act.

By judgment of 13 May 2025 the High Court has quashed the CNMC Decision of 30 May 2019, in file S/DC/0594/16 *ANELE* (**Decision**).

The Decision declared that a number of school textbook publishers, as well as the national publishers trade association, ANELE, had incurred in two separate infringements of the prohibition on anticompetitive agreements, under Articles 101 TFEU and 1.1 of the Competition Act. The first infringement relates to the development and application of ANELE's code of conduct, whereas the second referred to an alleged coordination of commercial terms of textbook digital licences.

The CNMC levied fines totalling almost €34 million - all are now annulled.

There is a rule under Spanish antitrust administrative procedure which sets time limits to the investigations of the CNMC, so that the CNMC is barred from adopting an antitrust decision once the limitation term has passed. The High Court has decided the ANELE case on the basis that the investigation was time barred when the CNMC issued a Decision of rectification of errors. The rectification at stake consisted of replacing a particular chart in the Decision (issued several weeks before), modifying the duration of the infringing conduct and the market share of each of the fined companies in the affected market. The High Court considers that the rectification is not a mere correction of a typographical, arithmetical or similar error. This type of rectification is allowed under Spanish administrative procedure rules without difficulty; yet, the rectification carried out by the CNMC modified substantial elements of the antitrust Decision, such as the duration of the infringement, amount of the fines, and market shares, parameters which could impact the individual companies' liability. Under such circumstances, the High Court concludes that the rectification is the administrative act ending the investigation; and that, since the rectification was issued after the expiry of the period provided for in the Competition Act, the procedure had lapsed, rendering the Decision null and void.

The outcome is very positive for the publishers and the publishers' association. However, since the annulment responds to a procedural infringement, the High Court did not have to enter into any discussion on various other arguments raised in the antitrust Decision.

The main infringement declared in the antitrust Decision referred to the implementation of a particular provision included in the code of conduct of the publishers' association, which prevented publishers from indiscriminately offering digital equipment to schools in exchange of schools selecting the textbooks of a publishers. Amongst many, one of the crucial arguments against the Decision was that the said provision in the code of conduct of ANELE was objectively justified, in line with the *Wouters* and *Meca Medina* European Court of Justice case law, as well as the more recent *European Super League* case. Similarly, as in the case of the market for medicines, where doctors prescribe the drug and the patient (or the private or public health insurance) purchases the product, in the case of textbooks the decision-making is not in the hands of the families, but of the schools. Although promotional activities should exist and can indeed help students, when such activities are not linked to academic purposes, then there could be a risk that the decision making in the book selection process is biased. That was the rationale behind the code of conduct provision.

The CNMC Decision in the ANELE case is a stark reminder that authorities should be careful observing individuals rights such as the limitation period of administrative proceedings.

10 Judgment from the Provincial Appellate Court of Madrid delivered in the UEFA, National League, Royal Football Federation (RFEF) *vs.* European Super League (ESL).

The Provincial Appellate Court has delivered its much awaited judgment in response to the appeal filed against the first instance judgment in the Superleague case on 29 October 2025 (the **Judgment**). The matter can be traced back to the 2021 facts where FIFA and UEFA were accused of abusing their dominant position and colluding to prevent the emergence of the new competition, the ESL. The matter reached the Court of Justice of the EU (**CJEU**) who delivered its groundbreaking judgment on 21 December 2023. The CJEU Judgment laid the ground for the regulation of professional football but, it is important to clarify, it did not sanctify the ESL; it rather set out a number of principles to be followed by the professional governing bodies. In essence:

- **Dominant position is not illegal *per se***: The CJEU affirmed that UEFA and FIFA, as governing bodies with a dominant position in organizing football competitions, are allowed to adopt rules, including those for **prior approval** of alternative competitions.
- **Arbitrary power is illegal**: The illegality lies in the *manner* in which that power is exercised. The CJEU ruled that FIFA and UEFA abused their dominant position and restricted competition because their authorization regime lacked a framework of transparent, objective, precise, non-discriminatory, and proportionate substantive criteria and procedural rules. The existing system was, in the specific facts of the case, deemed an unjustified restriction on the freedom to provide services. It is important to bear in mind that the CJEU judged on the facts brought to it at the moment they were put forward to the referring court, *i.e.*, those facts would not hold today.
- **Restriction by object**: Due to the lack of clear and non-discriminatory criteria, the authorization power itself (as configured at the time) was classified as a **restriction by object** under Article 101.1 TFEU.
- **Ownership and monopoly**: The CJEU did **not** question the fundamental monopoly or quasi-regulatory position of the governing bodies, nor did it order their structural separation (*i.e.*, splitting their organizing and regulatory roles). It did, however, question the manner in which such monopoly is exercised.

The CJEU left it for the referring court (First Instance Commercial Court of Madrid) to decide on the application of the principles to the case at hand. The First Instance Commercial Court in its Judgment on 24 May 2024 declared UEFA and FIFA conduct to be contrary to competition as both an abuse of dominant position and a restrictive practice unduly hindering the new competition.

UEFA, RFEF, Liga moved to appeal the first instance judgment. Their core contention is that the initial judgment erred in its application of competition law and failed to adequately consider the objective justifications underpinning the existing European football model.

The Defense of the European Sports Model: Solidarity, Merit, and Open Competition.

Central to the position advocating a cautious approach to the ESL is the European sports model, based on fundamental principles of solidarity, sporting merit, and open competitions, all of which contribute to the social and cultural significance of football. UEFA and FIFA regulations generate crucial efficiencies by ensuring the homogeneity and coordination of competitions within a global calendar, coordination which positively impacts the organization of competitions, health and performance of athletes, and provides consumers with a structured viewing experience which also increases economic output by enabling optimized and maximized viewing. Furthermore, the principle of sporting merit, enshrined in UEFA statutes, guarantees broader participation for professional clubs and players, unlike the closed nature of the proposed Super League. The existing authorization system also protects smaller national leagues and cup competitions.

These efficiencies are not solely sporting but have a clear economic dimension, directly linked to the optimal production and distribution of resources within football. Solidarity (also financial solidarity), the pyramidal structure of sports with promotion and relegation, and player health protection as integral values of the European football model.

At the time the ESL was formed, there was public outcry against the Super League from various stakeholders—national federations, leagues, clubs, and fans, even gorvernments across Europe—. This (and the fact, for instance, that the overwhelming majority of Member States appeared in the oral hearing at the CJEU to oppose the ESL) reflected on a perceived positive impact of the current authorization rules and a negative disruption caused by the (at the time) ESL.

Specifically, a centralized model enables national federations to coordinate their domestic competitions with international ones, and the principle of solidarity ensures the protection of grassroots football and non-professional clubs. Professional clubs gain increased revenue through coordinated calendars and greater participation opportunities in open, merit-based competitions. Players benefit from better health management through coordinated calendars and more opportunities to represent their national teams. The authorization system for competitions is indispensable for achieving these objectives. Centralized organization effectively enables coordination of the global football calendar, protect the integrity of existing competitions, uphold sporting merit, ensure equity and solidarity, and safeguard player health.

The Judgment draws substantially from the CJEU *Superleague* case and confirms the findings of the first instance court condemning UEFA, dismissing the possible causes of justification and efficiencies put forward by the appellants. The Judgment relies on the following reasoning:

1. **Framework for Abuse of Dominant Position:** citing the CJEU *Superleague* judgment the Judgment notes that demonstrating an abuse of a dominant position may involve different analytical frameworks depending on the type of conduct. Such an assessment must consider all pertinent factual circumstances, whether related to the conduct itself, the markets in question, or the functioning of competition within those markets, with the aim of proving that the conduct has, at the very least, the capacity to produce exclusionary effects. Such exclusionary effects are confirmed regarding UEFA's examined conduct.

2. **Framework for Anti-Competitive Agreements/Decisions:** Similarly, when determining the existence of an agreement, decision, or concerted practice aimed at preventing, restricting, or distorting **competition** (prohibited by Article 101.1 TFEU), the CJEU *European Superleague Company* judgment requires examining:

    - First, the content of the agreement, decision, or practice.
    - Second, the economic and legal context in which it operates (considering the nature of the goods or services affected and the actual conditions characterizing the functioning and structure of the relevant sectors or markets).
    - Third, the objectives it seeks to achieve (in the sense of objective competition goals, irrespective of the parties' intentions or the pursuit of legitimate objectives, and whether it possesses a sufficient degree of harmfulness to render an examination of its effects unnecessary).

3. **Specifics of Professional Football and Authorization Rules:** The *Superleague* judgment, in examining the qualification of rules on prior authorization of club football competitions and participation of clubs and athletes, acknowledged that the specific characteristics of professional football allow for the legitimacy of subjecting the organization and development of international professional football competitions to common rules. These rules aim to ensure homogeneity and coordination within a global calendar and, more generally, to promote, adequately and effectively, sports competitions based on equal opportunities and merit. This also includes ensuring compliance with these common rules through prior authorization and participation regulations.

4. **Limits on Authorization Rules:** However, the CJEU also clarified that none of the specific characteristics of professional football justify the adoption or application of prior authorization and participation rules that, despite generally conferring on the entity applying them the power to prevent any competitor from accessing the market, are not accompanied by limits, obligations, and control mechanisms capable of excluding the risk of abusive exploitation of a dominant position. More specifically, such rules must be subject to substantive criteria and procedural rules that guarantee their transparent, objective, precise, and non-discriminatory nature.

11 The Supreme Court and the importance of the *dies a quo* in cartel claims (Judgement of the Supreme Court of 5 June 2025, appeal number 2621/2025).

On 5 June 2025 the Supreme Court issued a judgment related to the damages claims following on the envelopes cartel. This judgment is particularly significant as it sets a precedent on the determination of the *dies a quo*, or the date on which the limitation period from bringing an action begins to run.

The judgment decides on the cassation appeals (on point of law only) lodged by both the Spanish Socialist Party (**PSOE**) and the defendants PRINTEOS CARTERA INDUSTRIAL S.L., TOMPLA INDUSTRIA INTERNACIONAL DEL SOBRE S.L., PRINTEOS S.A., and MAESPA MANIPULADOS S.L. (hereinafter, the **Tompla Group**).

The debate on point is when the limitation period for damages action by the injured party began to run. The Supreme Court found that the limitation period cannot begin to run before the injured party has actual or potential knowledge of the elements necessary for the exercise of its action, such as the unlawful conduct, the identity of the perpetrator, the damage and the casual link. The Supreme Court considered that, given that the administrative antitrust Decision was not final and could be revoked, the limitation period could not begin to run, *i.e.*, if there is the possibility of an appeal that could alter its content. The Supreme Court therefore declared that the date on which the decision becomes final is the moment when all the elements necessary for the exercise of the action are formally established as "judicial truth".

In conclusion, the Supreme Court confirmed that the action had not become time-barred, the limitation period being five years from 27 October 2017, the date of the Supreme Court's order dismissing the appeal concerning the judicial review of the administrative decision. Even if the one-year period established in Article 1968 of the Civil Code were to apply, the interruption by the two formal requests sent by the plaintiff in 2018 and 2019 (interrupting the limitation period under the Civil Code) would have prevented the limitation period form expiring.

This case law (and the ensuing CJEU case law discussed below) comes as a reversal to the 2007 Competition Act, one of which highlights, precisely, was to have abrogated the pre-existing legal requirement that antitrust decisions are final for the limitation period in follow-on damages actions to start to count. Somewhat paradoxically, we see a return to pre-2007 law in Spain.

12 CJEU: *Nissan* case. The CJEU confirms that the *dies a quo* for follow-on antitrust damages claims based on NCA decisions is the date when the decision becomes final.

The CJEU has delivered its judgment in *CP v Nissan Iberia* (Judgment of 4 September 2025, case C-21/24), providing crucial confirmation to the Supreme Court case (above) on when the limitation period for filing an antitrust damages claim starts to run. Following the Advocate General's opinion, the CJEU confirms that, for claims based on a contested national competition authority (**NCA**) decision enforcing Article 101 TFEU, the clock cannot start until that decision has become final.

Background.

The case arose from the Spanish car-manufacturers cartel, an infringement of Articles 101 TFEU and 1 of the Spanish Competition Act (**SCA**) declared by the Spanish NCA (Comisión Nacional de los Mercados y la Competencia) in 2015. Nissan and the other sanctioned car manufacturers appealed that decision. The Spanish Supreme Court issued its final judgments confirming the infringement in 2021. In the follow-on damages litigation that ensued, Spanish courts issued conflicting judgments on when the limitation period (dies a quo) starts to run. Some first- and second-instance courts held that the *dies a quo* was the date on which the CNMC decision became final, whereas a majority adopted the more traditional view that time began to run on the date the CNMC decision was published.

In a claim in which Nissan argued that the action was time-barred, a Court of First Instance in Zaragoza referred several questions to the CJEU on 10 January 2024, including whether the limitation period begins to run only once the administrative decision is final.

The CJEU judgment.

The CJEU reasons that, under the pre-Directive one-year limitation period in the Civil Code, the necessary condition for time to start running (the claimant's sufficient knowledge of the infringement) had not been met by the Directive's transposition deadline of 27 December 2016. Because the CNMC's decision was still under appeal and thus not final, the claimant could not be deemed to have the requisite knowledge. In this respect, the CJEU finds that the limitation period cannot begin until the injured party has the indispensable information necessary to bring a damages action successfully. In the context of a follow-on claim involving an NCA decision, such information is the legal certainty that an infringement of Article 101 TFEU occurred. That certainty is only achieved when the NCA's decision becomes final and is not subject to any appeal that could alter its substance.

The Court's reasoning is grounded in the principle of effectiveness, which provides that national rules cannot make it "practically impossible or excessively difficult" to exercise rights granted by EU law. The CJEU distinguishes this situation from its earlier judgment in Heureka (C-605/21), which concerned an EC decision (which are immediately binding on all national courts). By contrast, an NCA decision is not legally binding until it becomes final.

The judgment also addresses, and rejects, the argument that national rules on suspension or interruption of limitation periods could safeguard the principle of effectiveness. The Court notes that the Spanish Civil Code allows the one-year period to be interrupted by an out-of-court claim, and that civil proceedings may be stayed pending judicial review of a CNMC decision. Those mechanisms are neither automatic nor designed to address the specific uncertainty created by years-long judicial appeals of the underlying CNMC decision. They do not guarantee that the limitation period will not expire during the appeal process, and thus they fail to provide an effective remedy.

The judgment further touches on publication standards, stating that the final judgment must be officially published, freely accessible to the public, and bear a clearly stated publication date (in this case, the free database operated by the General Council of the Judiciary was considered valid).

Convergent views of the Spanish Supreme Court.

Crucially, the Spanish Supreme Court had already settled the matter for Spain (see comment above) in the same direction as the CJEU. In a follow-on damages action concerning the envelopes cartel (declared by the CNMC in 2013), and citing *Heureka*, the Supreme Court held that the *dies a quo* is the date when the CNMC decision becomes final, in terms similar to those used by the CJEU in Nissan. In particular, the Supreme Court concluded that the date the decision becomes final is the moment when all the elements necessary to bring the claim crystallize as a judicially verified truth.

Implications.

For damages claims following an NCA decision that is appealed before the national courts, the *dies a quo* is now, unequivocally, the date of publication of the final judgment. This provides the legal certainty needed to plan, fund and file claims. A critical immediate implication is that claims previously considered time-barred may be revived by virtue of the CJEU and Supreme Court judgments, effectively resetting the clock. Yet, the question of dies a quo is not fully settled. There is pending litigation where this matter is likely to be further refined, for instance regarding final administrative decisions where the appellate judgments refer only to procedural, not material, points.

SELECTED EUROPEAN COMMISSION (EC) ACTIVITY.

13 EC position on the interpretation and application of the Energy Chapter Treaty as follow up to Achmea and an already well-established case law disputing the validity of international arbitration in the context of intra EU investments (EU Decision 2025/194 of 10 September 2025, on the approval by the Union of the Agreement on the interpretation and application of the Energy Charter Treaty).

By virtue of EU Decision 2025/1904, adopted on September 10, 2025, OJ L19.9.15, the European Union and its Member States have formally approved an agreement (**Agreement**) regarding the interpretation and application of the Energy Charter Treaty. The Agreement marks the definitive end of investor-State arbitrations between EU parties based on Article 26 of the Energy Chapter Treaty (**ECT**).

The Agreement codifies a common understanding that the ECT cannot be a valid legal basis for intra-EU arbitration. This position is rooted in:

- CJEU case law, namely the landmark rulings in *Achmea* (C-284/16) and *Komstroy* (C-741/19) amongst others, and some later decisions by the Commission in the State aid area (*e.g.*, amongst others the 2025 EC Decision in the *Antin* case).
- Primacy of EU Law: The principle that EU law takes precedence over conflicting international treaties between Member States, ensuring that disputes involving EU law remain within the exclusive jurisdiction of the EU judicial system (Art. 267 TFEU).

The Agreement outlines the following measures in connection with ongoing and future disputes:

(a) Prohibition of new claims. No new intra-EU arbitrations may be initiated. States are committed to informing any potential tribunal of this agreement to ensure it declines jurisdiction.
(b) Pending Proceedings. for active cases, Member States must ensure the tribunal is formally notified of the Agreement so that it may declare its lack of competence and terminate the proceedings.
(c) Existing Awards. The Agreement emphasizes that existing awards are unenforceable. Since valid consent to arbitrate was never legally present, these awards lack a legal basis and cannot produce legal effects.
(d) Exception for Finalized Cases. The Agreement does not apply to "settled" cases—awards or transactions that are already final, have been voluntarily complied with, or have been executed under *res judicata* status.

Within the EU: The Agreement provides a clear legal framework to secure the dismissal, annulment, or refusal of enforcement of awards by national courts. Outside the EU, however, tribunals in foreign seats may still assert jurisdiction by invoking the principle of *kompetenz-kompetenz* or the New York Convention, which remains a challenge for Member States in non-EU courts.

The likely outcome is that awards will continue to be enforced, but outside of the EU and seeking assets placed outside of the EU. Hence some Member States being sued in the US, Australia or the UK targeting EU-State owned assets in those countries.

14 EC / *Meta* and *Apple* v. EC. Apple and Meta fined for breaching the Digital Market Act.

On 23 April 2025, the EC announced that Apple and Meta have breached provisions of the Digital Markets Act (**DMA**), resulting in fines of €500 million and €200 million, respectively (**Communication**). These are the first non-compliance decisions under the DMA, heralding a new era of public enforcement and surely private enforcement to come. In summary:

- The first case concerns the designation of Meta as a gatekeeper, under Article 3 of the DMA. This designation is based on Meta's provision of several core platform services (**CPS**) that act as important gateways for business and end users. The identified services include:

    - Facebook and Instagram (online social networking services)
    - WhatsApp and Messenger (number-independent interpersonal communication services)
    - Meta Ads (online advertising service)
    - Marketplace (online intermediation service)

  Based on the above, and despite Meta's arguments that some services should be considered CPS jointly and not separately, the EC considered that they served different purposes and users concluding that these services meet the thresholds set out in Article 3(2) of the DMA, thus justifying their designation as "gatekeepers."

- The second case relates to the investigation of the "Consent or Pay" model, Case DMA.100055: The EC initiated formal proceedings against Meta for its binary "Consent or Pay" method, which consists of offering its users two options, consenting to the processing of their personal data in order to receive personalized advertising or paying a subscription fee to avoid such advertising.

  The EC considers that this model does not comply with Article 5(2) of the DMA, which states that so-called "gatekeepers" must not combine personal data from different services without the explicit consent of users, also, this model did not allow users to exercise their right to freely consent.

  Even if Meta, after numerous exchanges with the EC, introduced another version of the free personalized ads model in November 2024, option that allegedly uses less personal data to display advertisements, the EC found non-compliant the "Consent or Pay" model during the period in which it was offered to users from the entry into force of the DMA until the subsequent modification of that model. Meta received a €200 million fine.

- On the other hand, Apple was investigated for certain practices in its App Store in the DMA case. 100109: On March 25, 2024, the EC opened an investigation against Apple for possible practices contrary to Article 5(4) of the DMA, analyzing whether Apple imposes unjustified restrictions on app developers, specifically, regarding the promotion and sale of products through the various channels within the App Store.

  The EC argues that under the DMA, app developers must be allowed to inform users, via Apple's App Store, about alternative offers outside Apple's App Store and guide them to make purchases elsewhere, free of charge. Therefore, the EC found that Apple breached Article 5(4) of the DMA imposing restrictions to developers, Apple also failed to justify these restrictions as necessary or proportionate. As a result, the EC ordered Apple to remove these restrictions and avoid similar behavior in the future fining Apple €500 million.

15 EC/ *DELIVERY HERO & GLOVO/EC.* The European Commission fines Delivery Hero and Glovo €329 million in a high-profile non-poaching case signalling the risks of minority stakes in a competing business.

The EC announced the launch of an investigation on 23 July 2024, into suspected anti-competitive practices in the online food delivery sector involving Delivery Hero and Glovo between July 2018 and July 2022.

On 2 June 2025, the EC imposed a fine of €329 million on Delivery Hero (**Delivery**) and Glovo for participating in a cartel in which they divided up the market and agreed not to hire staff from the other company. This is the first case in which a cartel in the labor market and the use of a minority stake in a company for anti-competitive purposes have been sanctioned.

In July 2018, Delivery acquired a minority non-controlling stake in Glovo and progressively increased this stake through subsequent investments. In July 2022, Delivery Hero acquired sole control of Glovo. This facilitated the anti-competitive conduct sanctioned by the EC, consisting of:

- Market sharing agreements: The companies allocated geographical territories within the European Economic Area to avoid competing with each other.

- Exchange of commercially sensitive information: the offenders communicated strategic data that should have been kept confidential to allow for effective competition.

- Non-poaching agreements: both companies agreed not to hire each other's employees.

The collusive conduct described above was sanctioned as a single and continuous infringement (cartel) under Article 101 of the TFEU.

LEGISLATION.

16 Comment – Data Act. The Data Act is now applicable: a turning point into the data community.

12 September 2025 marks a milestone in European data governance: Regulation (EU) 2023/2854, known as the Data Act, is now applicable, establishing harmonised rules for fair access to and use of data.

Its aim is to ensure that users of connected products or related services can access and reuse the data and metadata generated by their use, as well as to promote a fair, competitive and innovation-oriented single market for data.

Objective: to unlock the economic potential of data

The Data Act recognises that data generated by connected products (**IoT**) is a strategic resource for the European economy. As stated in Recital (1), data-driven technologies *"have had transformative effects on all sectors of the economy",* but *"barriers to data sharing* — including lack of interoperability and exclusive control by manufacturers — "*prevent the optimal allocation of data for the benefit of* society" (Recital (2)).

The Regulation therefore creates a horizontal legal framework that defines "*who is entitled to use product data or related service data, under which conditions and on what basis*" (Recital (4)), ensuring fair, reasonable, non-discriminatory and transparent access to data (Article 8).

Portability: companies will have to modify their contracts

The most immediate impact for companies is contractual, but above all operational.

Article 3 of the Data Act imposes an obligation on manufacturers and service providers to design their connected products and related services in such a way that user-generated data and metadata are easily accessible, free of charge and in a structured, machine-readable format.

In addition, Article 5 enshrines the user's right to share this data with third parties of their choice, reinforcing portability beyond the scope of the General Data Protection Regulation (**GDPR**).

This right extends to personal and non-personal data, including the metadata necessary for its interpretation and reuse.

Consequently, companies will need to review their Terms and Conditions and adapt their contracts with customers, partners and suppliers to incorporate clear procedures for access, transfer to a third party of the user's choice and mechanisms to ensure the integrity, quality and security of the data shared.

The Data Act not only imposes rights on users, but also redefines contractual relationships between companies. Chapter IV of the Regulation prohibits unfair contractual terms imposed unilaterally by data controllers, stating that they shall not be binding on the affected party. Article 13.4 lists the content of clauses that should be considered unfair. This aspect is key for digital providers operating in B2B relationships: they will have to balance their data access and exploitation models to avoid imbalances that contravene the new regulation.

A new scenario for the data-driven economy

Beyond contractual obligations, the Data Act redraws the foundations of the digital economy.
As Recital (32) emphasises, the aim of the Regulation is not only to promote new connected products or innovative services, but also *to "stimulate the development of entirely novel services making use of the data concerned*".

This opens the door to a new ecosystem of innovation, where user-generated data becomes accessible input for third parties—for example, developers of artificial intelligence solutions, predictive maintenance services, or interoperable mobility platforms.

However, the same Recital warns of the risk of eroding manufacturers' incentives to invest if the data is used to develop competing products. For this reason, the Regulation expressly prohibits the use of data obtained under the Data Act "*for developing a competing connected product*" (recital 32, final paragraph).

In other words, the Data Act creates an opportunity—a more open and interoperable data market—but also a threat to those who base their *business case* on data exclusivity.

Companies that fail to adapt their strategies risk seeing their competitive position weakened in an environment where data access and reuse will be the norm, not the exception.

AI and data access: a new regulatory driver

The Data Act also has a direct impact on the artificial intelligence (AI) sector.

By facilitating access to massive volumes of industrial and IoT data, the Regulation becomes an enhancer for training AI models and developing data-based services.

However, as Recital (31) points out, data subjects are allowed to protect trade secrets and ensure confidentiality through technical and contractual measures (such as standard clauses or access protocols).

In this way, the regulation seeks to balance innovation and the protection of intangible assets, two essential pillars of the data economy.

Adapt to compete

The entry into force of the Data Act represents a structural change for all organisations that produce, manage or exploit data.

Affected companies must anticipate and audit their contracts, data management systems and access interfaces, ensuring technical and legal compliance before national authorities begin to monitor their effective implementation. In addition, it will be necessary to remain aware, as the European Commission plans to publish recommended "standard clauses" (Chapter IX) to facilitate adaptation and ensure fair conditions in the data market.

The Data Act is not only a regulatory obligation, but also an invitation to redefine data strategy: moving from exclusive ownership to co-creation and responsible value sharing. Those who adapt in time will be in a better position to lead the next phase of the European *data-driven economy*.

COMMENTS ON FOREIGN CASES.

17 United States Eastern District Court of Virginia / *Federal government and seventeen states v Google*. Antitrust Case Against Google's Ad Tech Business (United States District Court for the Eastern District of Virginia, Alexandria Division, Case: 1:23-cv-00108-LMB-JFA).

Because of its counterpart and echo of EU matters, including the antitrust fine and the DoubleClick merger review we have deemed it appropriate to refer to this US matter.

On 24 January 2023, the United States and eight states (**Plaintiffs**) filed a five-count Complaint, which was subsequently joined by nine other states in January 2023, against Google under Section 4 of the Sherman Act, and Section 16 of the Clayton Act, alleging the violation of the Sections 1 and 2 of the Sherman Act. The Plaintiffs alleged that Google unlawfully monopolized three digital advertising (**Ad**) technology markets, an unlawful tying and requested a compensation for monetary damages due to Google's violation of antitrust law, structuring the issues as follows:

- Monopolization of the publisher Ad server market. (**Count I**)
- Monopolization or attempted monopolization of the Ad exchange market. (**Count II**)
- Monopolization of the advertiser Ad network market. (**Count III**)
- Unlawful tying in violation of Sections 1 and 2 of the Sherman Act. (**Count IV**)
- United States had suffered monetary damages from Google's violations of antitrust law. (**Count V**)

The main legal questions raised by the Plaintiffs in the case were:

- Whether there was an independent market for open-web display advertiser Ad networks.
- Whether Google monopolized the publisher Ad server market
- Whether Google monopolized the display Ad exchange market.
- Whether Google unlawfully tied its publisher Ad server (DFP) to its ad exchange (AdX)
- What corrective measures should be implemented to restore competition.

In June 2024, the court dismissed Count V after Google compensated with US$ 2.28 million to the government, eliminating the need for a jury trial.

Since Google acquired DoubleClick in 2008, he has vertically integrated its ad system. Controlling the DFP, AdX and the exclusive access to advertisers through AdWords. This gave Google a strategic advantage and the ability to control a significant part of the digital advertising traffic, especially on the open web, where independent digital media and content companies operate.

Also, it is relevant to mention that that the court considers proven by the Plaintiffs that Google possesses monopoly power. Google's dominance in the market chain means that both publishers and advertisers have had fewer options and faced higher fees. In fact, the court documented how Google for over a decade charged durable supracompetitive prices for AdX and has exhibited an unwillingness to lower rates.

After examining the issues raised and the evidence provided by the Plaintiffs, the Court concluded that Google breached Section 2 of the Sherman Act by deliberately maintaining a monopoly in the markets for DFP and AdX for display advertising on the open web, in addition, it found that Google illegally tied its ad server, DFP, to its AdX, which also constitutes a violation of Sections 1 and 2.

This means that Google was considered liable only for Count I, Count II and Count IV, as previously said Count V was dismissed, and in relation with Count III the Plaintiffs failed to prove the existence of a distinct market for open-web display advertiser ad networks, therefore, Google was not held liable for monopolization in this market area.

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