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Cartels

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Overview of the law and enforcement regime relating to cartels

The Spanish Competition Act (Law 15/2007, of 3 July, on the Defence of Competition, or SCA) modernised competition law and optimised the institutional framework of competition enforcement in Spain. The SCA reflected the changes introduced at the time at EU level, particularly Regulation 1/2003, which de-centralised the enforcement of EU competition law, fostering the role of national competition authorities (NCAs) in its application and enforcement. In addition, Royal Decree 2295/2004 was enacted to implement all the amendments made at EU level to competition law provisions. Later, Law 3/2013 provided for the creation of a new authority in charge of both competition and regulatory matters, the *Comisión Nacional de los Mercados y la Competencia* (National Markets and Competition Commission, or CNMC).

Likewise, the Spanish Government adopted Royal Decree 261/2008 for the implementation of the Competition Act (RD 261/2008), which came into force on 28 February 2008 and develops substantive and procedural matters enshrined in the SCA, such as the leniency programme, *de minimis* conduct, functions of the CNMC with regard to the promotion of competition, collaboration mechanisms with regional competition authorities, the European Commission or other NCAs, etc. Furthermore, the CNMC is entitled to apply Article 101 of the Treaty on the Functioning of the European Union (TFEU) in cases in which restrictive practices undertaken in Spain potentially affect trade between EU Member States.

In addition, Spain implemented the EU Directive on Antitrust Damages Actions by means of Royal Decree-Law 9/2017 (RDL 9/2017), which amends the SCA and the Civil Procedure Act.

Last but not least, in April 2021, Spain enacted Royal Decree-Law 7/2021, transposing Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (Directive ECN+). The Directive ECN+ introduces relevant changes to the Spanish competition law regime. Additionally, the vast majority of infringements provided for by the law will be considered "very serious", which means that in all those cases, fines of up to 10% of worldwide turnover may be imposed.

The Directive ECN+ also strengthens the CNMC's powers of inspection and investigation. Thus, in addition to the inspections in both investigated companies and in the homes of their employees, the

Directive ECN+ provides for access to any other places, including the headquarters or offices of third parties, where relevant information of the investigated company may be found.

The CNMC sometimes resorts to soft law by adopting non-binding guidelines to clarify the interpretation of competition law provisions based on case law and its own decisional practice:

- A communication on the calculation of fines, which was published in February 2009. However, the Supreme Court quashed this communication via a number of judgments in 2015. A new communication on fines has just been issued in March 2026.
- In June 2013, the former CNC published its Communication on the Leniency Programme, which replaced the former provisional guidelines relating to the handling of applications for exemptions and reduction of fines published in February 2008. Said guidelines aimed to explain practical aspects of leniency applications while increasing transparency.
- Since October 2015, natural and legal persons sanctioned for serious infringements that distort competition can be banned from contracting with public bodies for up to three years pursuant to Article 71.1.b of the Public Sector Contracts Law (*Ley de Contratos del Sector Público*). The aforesaid prohibition was applied by the CNMC for the first time in 2019.
- In July 2016, the CNMC issued a communication on inspections where it summarised: (i) the legal framework; (ii) the powers of investigation of the CNMC; (iii) the procedure in which investigations are carried out; (iv) a detailed description of the duties of the companies under investigation; and (v) lastly, a list of conducts that may be considered as an obstruction to dawn raids.
- The CNMC published, in October 2018, provisional indications on the determination of sanctions under Articles 1, 2 and 3 SCA and 101 and 102 TFEU.
- More recently, in June 2020, the CNMC published Antitrust Compliance Program Guidelines as a way of fostering the use of compliance programmes by businesses in Spain. The document offers assistance to companies in their efforts of implementation and development of compliance programmes that can be effective in preventing or mitigating anticompetitive conduct. For that purpose, the CNMC lays down the basic criteria that it deems relevant to make a compliance programme effective. Similarly, the Guidelines introduce incentives to encourage companies to make such efforts, as well as to enhance collaboration between companies and the CNMC through the use of this tool, particularly with regard to leniency applications.

A revision of the 2020 Antitrust Compliance Program Guidelines has been required by developments such as the abovementioned Directive ECN+, the Directive on internal reporting channels, and the CNMC's own experience. An update is needed to soften overly strict requirements that discourage the adoption or improvement of compliance programmes. In order to revise the 2020 Guide, a public consultation was opened to gather the opinions of interested parties.

Overview of investigative powers in Spain

The DC may conduct the necessary inspections of the companies or associations, the private domicile of the entrepreneurs, administrators and other personnel of the companies that may be in possession of relevant information without prior notice. The DC must issue an investigation order, which must contain: (i) the object and purpose of the inspection; (ii) the date on which it will commence; and (iii) reference to the sanctions provided for in the SCA in case the subjects under investigation do not submit to the inspections or obstruct them.

The exercise of inspection powers involving the restriction of a fundamental right, *i.e.*, the inviolability of the home, will require judicial authorisation. Normally, the CNMC requests judicial authorisation prior to the inspection from the competent judicial body.

CNMC inspectors and authorised personnel may access any premises, facilities, land and means of transport of the inspected entities and parties. In turn, they may seal premises, books or documentation, electronic devices and other goods. They may also examine any documentation on paper, computer or electronic support.

Likewise, in connection with the above, the CNMC may also make copies of books or documents and request explanations of relevant facts or documents from the company's representative or staff member.

Entities are obliged to submit to inspections. The refusal of the entity will result in the initiation of a sanctioning proceeding.

The CNMC may send a request for information to the suspected companies or to other third parties. Should these parties fail to collaborate with the CNMC by not responding to such requests or by providing incomplete or misleading information, the CNMC may impose fines of up to 5% of the total turn-over of the infringing company. As an example, the CNMC fined Mediapro €200,000 on 31 July 2012 and a €1,285,649 fine upon Cementos Portland on 31 May 2012. In April 2016, the CNMC imposed a fine to a company for providing a turnover figure lower than the one included in its annual accounts (Decision of the CNMC of 7 April 2016, *URBAN*, file SNC/DC/008/16).

Investigations into business and residential premises will be carried out by the CNMC (or Regional Competition Authorities) officials. They will have been duly authorised by the Director of Competition, with the corresponding judicial authorisation, should the affected party fail to provide its consent. See above comments regarding inspections in private domiciles.

Overview of cartel enforcement activity during the last 12 months

- Upon receiving information regarding a possible violation of SCA, the Competition Directorate has the authority to initiate a preliminary investigation. In 2024, six new investigations were initiated. Four of them led to the opening of a sanctioning proceeding. At the same time, the number of complaints closed through the non-prioritisation option provided for in Article 49.4 SCA has increased from two cases in 2022 to 14 instances in which this option was used in 2024.
- In 2024, the Competition Directorate conducted five inspections as part of four proceedings. A total of 14 company premises were inspected. Additionally, two officials from the Competition Directorate provided support during an inspection carried out by the Aragon Competition Defense Service as part of our collaboration with the competition authorities of the autonomous communities.
- In 2024, two penalty decisions issued by the CNMC concluded that there had been collusive conduct prohibited by Article 1 SCA Law and Article 101 of the TFEU. In the *Food Supply* case, the CNMC fined a total of €3.13 million against seven companies involved in three different cartels for the allocation of the market for food supply to hospitals, nursing homes, prisons, and military facilities in various regions of Spain. In addition, the Council decided to fine five executives of these companies €176,100 for their participation in the events. Two of the three cartels operated through market-sharing agreements by submitting cover bids, while another involved the collaboration of a public procurement consulting firm that acted as a facilitator (Decision of 10 July 2024, *SUMINISTRO DE ALIMENTOS*, file S/0016/21). On the other hand, this is the first CNMC ruling in which cumulative fines exceeding €60,000 are imposed on an executive for their participation in each of the sanctioned cartels. In the case of the *Electronic Auction Platform*, the CNMC Council imposed a fine of €2.46 million on the General Council of Court Attorneys (CGPE) for having made a collective price recommendation, in violation of Article 1 of the Competition Law and Article 101 TFEU, and for a violation of Article 3 of the Competition Law for seriously distorting competition through acts of unfair competition (Decision of 4 October 2024, *PLATAFORMA DE SUBASTAS ELECTRÓNICAS*, file S/0001/21).

Key issues in relation to enforcement policy

Following the transposition of the Directive ECN+, the Spanish authority now has explicit authority to dismiss complaints based on criteria of public interest and resource prioritisation. This allows the CNMC to focus on high-impact cartels or systemic sectors, optimising its deterrent effect rather than overwhelming the system with cases of limited economic significance.

As for the sectors subject to enforcement measures, the CNMC has maintained a constant focus on the construction sector and public tenders, dismantling various cartels engaged in bid-rigging. However, in recent years, intensive scrutiny has emerged regarding the digital economy and technology platforms, as well as the energy and financial sectors. The authority has shown growing interest in pricing algorithms and the use of data as a barrier to entry, adapting its investigative tools to the technical complexity of modern markets. Furthermore, the agri-food sector remains a priority due to the social sensitivity of food prices and the enforcement of the Food Chain Act.

Regarding types of violations, the exchange of strategic information has established itself as one of the most litigious areas. Spain has extensive experience in prosecuting "triangular" information exchanges or "hub-and-spoke" structures. In these cases, competing companies (the "spokes") are sanctioned when they do not communicate directly with one another but instead use a common third party – such as a supplier, distributor, or consulting firm (the "hub") – to coordinate their commercial conduct.

Finally, the treatment of vertical restraints in Spain closely follows European Union guidelines, though with its own nuances regarding the intensity of oversight. While vertical agreements typically benefit from block exemption regulations, the CNMC maintains a "zero-tolerance" policy toward particularly serious restrictions, such as resale price maintenance (RPM). Recently, the authority has focused on restrictions on online sales and price parity clauses on digital platforms, considering that these practices may segment the national market or unduly limit the competitive pressure that e-commerce exerts on traditional distribution channels. For example, the penalty imposed by the CNMC in 2024 on Booking.com, amounting to a fine of €413.2 million, in which the CNMC found that Booking.com had abused its dominant position by imposing unfair commercial terms on hotels in Spain. Among the practices identified was the use of price parity clauses which, combined with other ranking mechanisms in the algorithm, prevented hotels from offering competitive prices outside its platform, limiting the commercial freedom of the establishments and harming competition among travel agencies (Decision of 29 July 2024, *BOOKING*, file S/0005/21).

Key issues in relation to investigation and decision-making procedures

The Spanish competition law system is characterised by a model of an independent administrative body, the CNMC, which combines investigative and adjudicatory functions. To mitigate the risks of lack of impartiality inherent in this structure, the SCA mandates a strict functional separation between the Competition Directorate, responsible for investigating and drafting the statement of facts, and the CNMC Council, which acts as the decision-making body. This design aims to ensure that those who propose the sanction are not the same as those who ultimately impose it, thereby establishing a system of internal checks and balances that, although often criticised by companies, is endorsed by the case law provided that the right to defence is respected.

The treatment of legal professional privilege in Spain follows a similar approach to that of the European Union, protecting confidential communications between the client and their external attorney for the purpose of exercising the right to defence. However, this protection does not extend uniformly to in-house counsel, which generates recurring debates regarding unequal treatment.

Regarding procedural safeguards, access to the case file is a fundamental milestone that is generally granted following notification of the Statement of Charges, allowing the parties concerned to review

the evidence against them before submitting their defences. Unlike the European Union system, Spain does not have a figure equivalent to the Hearing Officer who independently resolves procedural disputes during the investigation; these issues are typically resolved before the investigating body itself or, as a last resort, through an appeal against the final decision. As a general rule, procedural decisions are not independently appealable unless they directly or indirectly decide the merits of the case, determine the impossibility of continuing the proceedings, or harm fundamental defence rights.

Leniency/amnesty regime

The leniency programme entered therefore into force in February 2008. Following the EU model, the programme offers immunity from fines or reduction of the fine. Leniency is open not only to undertakings but also to individuals (either because the original applicant is an individual or because the company requests that leniency be extended to its employees). The moment at which participants in a cartel reveal information (prior to or following the opening of an investigation) is relevant not only for immunity applicants (who must be the first to report the information), but also for undertakings or individuals seeking partial leniency. The range for the reduction of the fine imposed depends on that timing: 30% to 50% for the second party revealing information; 20% to 30% for the third party; and up to 20% for the remaining parties.

Immunity is therefore reserved for the first undertaking that provides evidence that, in the view of the CNMC, it will be enabled to carry out an inspection or to find an infringement of Article 1 SCA, and this is subject to the condition that the CNMC does not already have sufficient evidence on the infringement. Cartel instigators are excluded from the benefit of immunity. To benefit, the applicant is required to: cooperate fully throughout the investigation; end its involvement in the alleged cartel immediately following its application, unless otherwise directed by the CNMC to preserve the effectiveness of the inspections; not destroy relevant evidence relating to its application; and not disclose to third parties other than the European Commission or any other national authorities its intention to submit an application or its content.

Companies or individuals who subsequently provide additional evidence may have their fines reduced by up to 50%. Reductions can be granted when the undertaking provides the CNMC with evidence of the alleged infringement that represents significant "added value" with respect to the evidence already in the CNMC's possession. Furthermore, the applicant must meet the cumulative conditions set out above *mutatis mutandis*.

Administrative settlement of cases

There is no settlement or similar procedure applicable to cartels in Spain.

However, there is a commitment termination system regulated by Article 52 SCA (roughly equivalent to Article 9 EU Regulation 1/2003), which allows for the closure of a sanctioning proceeding without the imposition of a fine, provided that the company under investigation proposes and implements a series of commitments that address the anti-competitive effects identified.

Third-party complaints

Any third party with a legitimate interest – or even without one, through a public complaint – may file a complaint with the CNMC's Competition Directorate. The complaint must include a detailed description of the facts, identification of the companies involved, and, if possible, evidence supporting the suspicion of a cartel. Once received, a confidential investigation phase begins to determine whether there are reasonable grounds to suspect an infringement.

Regarding the obligation to investigate, the CNMC has no absolute legal obligation to initiate a sanctioning proceeding for every complaint. The authority has a margin of technical discretion to prioritise cases

based on their impact on the market or the public interest. However, it is required to examine the complaint and issue a reasoned decision; it cannot simply ignore it. If the evidence is solid, a decision to initiate proceedings is issued, thereby commencing the formal investigation.

If the CNMC decides not to initiate proceedings or to dismiss the case, the complainants (provided they have the status of an interested party) have a full right of appeal. They may file an appeal for reconsideration with the CNMC Council itself or proceed directly to administrative litigation before the High Court. Spanish courts are strict on this point: they require that the dismissal be sufficiently justified and not arbitrary.

Civil penalties and sanctions

The SCA includes a classification of infringements according to their seriousness (minor, serious and very serious). By way of example, cartels between competing companies are classified as very serious, anticompetitive vertical agreements as serious, as well as obstruction of CNMC inspections and, as minor infringements, having submitted a merger notification to the CNMC after the deadlines or failing to notify a merger requested by the CNMC.

The amount of the fine depends on the seriousness of the infringement, up to 1% (for minor infringements), 5% (for serious infringements) and 10% (for very serious infringements) of the total turnover of the infringing undertaking in the business year immediately preceding that of the imposition of the fine. When turnover cannot be calculated, the Council can impose a fine of up to €10 million.

Natural and legal persons sanctioned for serious infringements that distort competition can be banned from contracting with public bodies for up to three years. This prohibition can be applied in addition to the penalties set out in the SCA. The CNMC made use of this prerogative for the first time in March 2019 in connection with tenders of railway infrastructure (case S/DC/0598/2016, *Electrificación y Electromecánicas Ferroviarias*).

Legal representatives or members of the management body of the infringing companies may be fined up to €60,000.

Right of appeal against civil liability and penalties

First, it must be noted that during the CNMC's formal proceedings, the resolutions and acts of the Directorate leading to defencelessness or irreparable damage can be appealed before the Council within 10 days (administrative appeal) and subsequently before the National High Court and (if the conditions for the cassation appeal are met) before the Supreme Court in last instance. For example, in 2024, the Council resolved 19 appeals against the acts of the Directorate where 13 were dismissed, two were dismissed for not meeting procedural requirements, one was upheld in its entirety and three were withdrawn.

Secondly, the decisions – including fining decisions – and acts issued by the Chairman and the Competition Chamber of the Council may only be appealed before the Administrative Chamber of the National High Court within two months (judicial appeal) and, in a second review, appeal is possible in certain cases (*e.g.*, where there is a cassation interest) before the Supreme Court.

Criminal sanctions

Although Spanish criminal cartel prosecutions are in practice rare, the Spanish Criminal Code provides a limited number of provisions regarding unlawful competitive conduct. For instance: (i) Article 284 refers to the alteration of prices resulting from free competition, providing a term of six months to six years imprisonment and fines from one to two years; (ii) Article 262, which refers to bid-rigging in auctions and public tenders, providing a term of one to three years' imprisonment and daily fines from one to two years and a ban for participating in public bids; and (iii) Article 281, which prohibits the withdrawal of raw

materials or essential goods from the market in order to limit supplies or distort prices, providing a term of one to five years imprisonment and fines for one to two years.

Cooperation with other antitrust agencies

The CNMC cooperates with the European Commission and other national EU Competition Authorities throughout the European Competition Network (ECN). Similarly, the CNMC collaborates with other NCAs outside of the EU.

Cross-border issues

The actions of the CNMC and the courts are deeply influenced by their integration into the European system. In Spain, the CNMC does not typically exercise "extraterritorial" jurisdiction: the CNMC has jurisdiction if anti-competitive conduct (even if agreed upon outside Spain) has restrictive effects on the Spanish market.

As for documents and evidence located abroad, it depends on whether they are outside or within the European Union. If they are within the European Union, cooperation is full. Under Council Regulation (EC) No. 1/2003 of 16 December 2002, on the implementation of the competition rules laid down in Articles 81 and 82 of the Treaty, the CNMC may request the competition authority of another country to conduct an inspection within its territory to search for documents that the CNMC needs for a Spanish case.

Developments in private enforcement of antitrust laws

RDL 9/2017 transposed Directive 2014/104/EU of 26 November 2014 on antitrust damages claims, amending the SCA and the Civil Procedure Act.

The main changes introduced are as follows:

(a) increasing the limitation period from one to five years. This period is suspended when a Competition Authority initiates a proceeding;

(b) introducing a presumption of harm in cartel infringements, which generally facilitates claims. Claimants are allowed to obtain full compensation of the damages suffered, comprising the right to be indemnified for actual loss and loss of profit, plus interest;

(c) introducing a presumption of harm to indirect purchasers. Spanish civil law states that the burden of proof in civil proceedings lies with the party that alleges the harm. Thus, indirect purchasers must provide evidence of the defendant's unlawful conduct, the causal link and the existence of harm and its quantification. In the RDL 9/2017, this rule is reversed, introducing a presumption of harm in favour of indirect purchasers. It is relevant to mention here that Spanish Courts have recognised the "passing-on" defence;

(d) introducing specific mechanisms to facilitate claimants' access to relevant documents before substantiating the claim. The pre-trial disclosure process in Spain was rather limited and courts have been reluctant to award broad disclosures of documents to claimants. RDL 9/2017 modifies this regime and makes it easier for claimants to access evidence that is required to substantiate the claim, although claimants must justify the request and provide reasonable available evidence to support a damages claim, and must identify specific items, at least, relevant categories of evidence;

(e) in line with the Directive, making CNMC's final decisions declaring infringements of competition law binding on Spanish Courts. A final decision made by any other Member State's NCA creates a presumption that a competition law infringement exists;

(f) going beyond the Directive, extending the liability of parent companies for damage caused by their subsidiaries to civil proceedings, and declaring the joint and several liability of all co-infringers in

relation to damages caused as a result of an anti-competitive behaviour. This principle of joint liability is exempted in cases involving small and medium-sized enterprises that meet certain requirements and beneficiaries of immunity; and

(g) declaring the effective compensation of the damages caused before the adoption of a decision by the CNMC as a mitigating factor for the purposes of setting the amount of the antitrust fines.

The Civil Procedure Act and related law regulate the possibility of joining claims by resorting to the following devices:

(i) Joinder of actions: the possibility to join cases with objective (subject matter) or subjective (identity of rights holders) connection is limited by Article 78.1 of the Civil Procedure Act, which restricts joinder if there is risk to legal certainty posed by contradictory, incompatible or mutually exclusive rulings. This has meant that the practice on joinder has been wavering in the past. Courts seem to be getting less reluctant to join cases in view of the massive trucks and other instances of mass litigation.

(ii) Second, the Civil Procedure Act allows consumer and user associations, groups of affected parties, or other legally constituted entities to bring collective actions under a system of "diffuse legitimation". However, this system has been very rarely used in the past for practical reasons and the fact is that there is not a proper regulation of collective claims in force. Consequently, the absence of an efficient mechanism for identifying all affected consumers complicates the management and execution of the actions, making them costly for consumer associations and discouraging their use in practice. Plus, this is a system to join consumer actions, not company claims.

(iii) Assignment of claims. For a long time there has been doubt in Spain as to the legal certainty of assigning rights, because under the Civil Code the debtor company may oppose its own exceptions to the acquirer of the rights. The judgment of the CJEU in the *ASG2* case[1] earlier this year has applied the principle of effectiveness to the national regulations of assignment of rights. This means that national laws that render damages actions excessively difficult should be unapplied. One reading of this is that assignment should be facilitated in instances where there are no clear alternatives in sight. Yet, this is a route still uncertain in Spain.

There is also a much discussed (but not with approval date in sight) draft law[2] (Draft) on class actions currently being processed to adapt to Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC.[3] The Draft enables collective actions by consumers (not companies) and antitrust law is not expressly included.

Due to the political context, it is difficult to give estimated dates for the approval of the Draft into law at this time.

A difficult question can arise regarding the exact date at which the limitation period starts to run. In follow-on cases, this will typically be the day when the administrative antitrust decision is available containing the main information items enabling preparation of the damages claim (this is the case both before and after the Directive was implemented). In the recent judgments of the Supreme Court on the *Trucks* cartel, the court established that the *dies a quo* was the day of publication of the EC Decision.

However, the issue of the *dies a quo* has been clarified recently by two key judgments issued in 2025 by the CJEU in *Nissan Iberia*,[4] and the Supreme Court,[5] respectively; these decisions have clarified, regarding claims based on a National Authority (such as the CNMC) decision enforcing Article 101 TFEU that is contested before the courts, that the *dies a quo* cannot start until that decision has become final, *i.e.*, no subsequent appeal is possible. Hence, the *dies a quo* for the limitation period is the date when the substance of a decision issued by a NCA on the necessary elements, regarding which knowledge is necessary to bring a claim (existence of an infringement of competition law, the existence of harm, the causal link between that harm and that infringement, and the identity of the infringer) becomes final.

In order not to have its action time lapsed, the claimant must, under the Civil Code, either sue or interrupt the limitation period by serving an out-of-court claim before it expires.

Reform proposals

In line with other jurisdictions, there is a notable downward trend in the number of leniency applications, which explains the CNMC's enthusiasm for new AI-based detection tools.

Indeed, an Economic Intelligence Unit within the CNMC applies advanced technology and big data analysis to improve the detection of anti-competitive practices. The use of BRAVA (an algorithm for monitoring collusion in public tenders) is significant. BRAVA is a machine learning tool developed by the CNMC's Economic Intelligence Unit. It scans public procurement platforms and official gazettes to detect collusion that would otherwise be difficult to detect. BRAVA examines aspects such as: (i) cover bids: detecting simulated bids designed to help a pre-established partner win; (ii) textual/digital fingerprints: detecting whether "rival" bids share the same metadata, digital authors or identical typos, demonstrating that they have been drafted by the same person; or (iii) bid rotation, *i.e.*, recognising groups of companies that take turns to win contracts over several years.

The CNMC has highlighted that BRAVA has achieved an accuracy rate of 90%. One example is from 12 February 2026, when the CNMC officially launched an investigation into 11 engineering consultancies (including companies such as Alauda, Prointec, Heymo and Sener). The CNMC has publicly stated that these companies submitted coordinated bids to manipulate the Ministry of Transport's technical assistance contracts.

We also know of the existence of Alexia, an AI tool that analyses new local laws and regulations, in the context of the CNMC's advisory role, to monitor the anti-competitive effect of laws and regulations.

Beyond fines, the CNMC is increasingly resorting to prohibitions on contracting with public administrations, with the novelty that the CNMC now establishes in its sanctioning resolutions the scope and duration of the prohibition on contracting, without the need to go through further procedures under public administration contract regulations. The latest example is the disqualification of several companies in the Repsol group for engaging in price squeezing in the supply of diesel fuel (prohibition on public procurement in addition to an antitrust fine of €20 million, *DISTRIBUCIÓN HIDROCARBUROS*, file S/0011/22).

Since the ban on contracting began to be applied a few years ago, our team has secured the suspension of two of these bans by the CNMC in cases of cartel behaviour in fuel markets and abuse of a dominant position in access to electricity networks.

There is considerable market activity around mass claims. As stated above, the procedural laws in Spain limit the possibility of such claims and no opt-out or effective collective system is in place. There is, however, a debate in Parliament about a bill that could introduce a collective action regime; however, this is still in the making and subject to contested debate, so it is still unknown what form it will take, if any.

On the enforcement side, the CNMC is nowadays not perceived as being very active in terms of number of investigations, though it is quite active in studies and recommendations. Unfortunately, the CNMC continues to be in the political focus and there are comments from time to time in the public debate about the CNMC being (again) reformed or re-structured.

Endnotes

1 CJEU judgment of 28 January 2025, *ASG2 v. Land Nordrhein-Westfallen*, case C-253/23 (ECLI:EU:C:2024:40).

2 Draft Law on measures relating to the efficiency of the Public Justice Service and collective actions for the protection and defence of the rights and interests of consumers and users. Available here: https://www.congreso.es/public_oficiales/L15/CONG/BOCG/A/BOCG-15-A-48-1.PDF

3 OJ L409, 4.12.2020.

4 CJEU judgment of 4 September 2025, case C-21/24, *Nissan Iberia* (ECLI:EU:C:2025:659). See Paragraph *67*: "*In those circumstances, it must be held that, in so far as the court hearing an action for damages is not bound by the finding of the existence of the infringement concerned unless the decision of the national competition authority has become final, the injured party cannot reasonably be considered to have become aware of the information necessary to bring his or her action for damages on the basis of that decision, and, therefore, the limitation period cannot begin to run before that decision has become final.*"

5 Supreme Court judgment of 5 June 2025, number 889/2025 (ECLI:ES:TS:2025:2621). *"…what is really important is that the definitive determination of the factual elements of the action occurs when the decision becomes final, regardless of the greater or lesser difficulty in knowing the CNC's decision regarding the Supreme Court's ruling*". See also Supreme Court judgment of 17 June 2025, number 2857/25.

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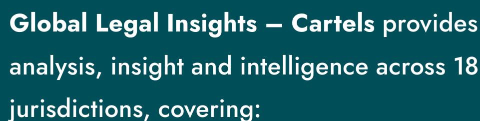

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