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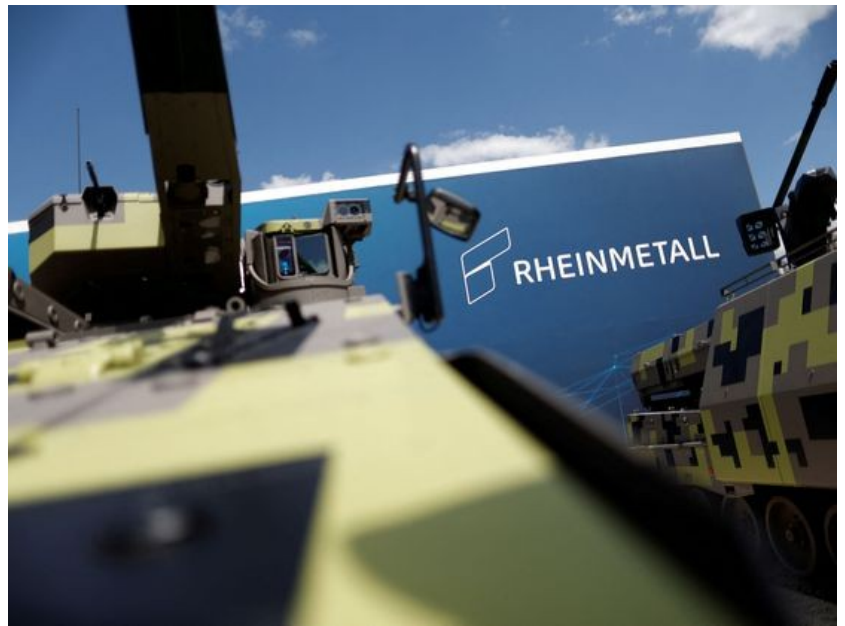
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Legal

COMPETITION

The CNMC leaves the purchase of Expal by German military giant Rheinmetall up in the air

The Council of the body headed by Cani Fernández confirms that there was harm in the approval of phase 1 of the operation and it will be up to the National Court to decide whether the case needs to be reviewed again



Rheinmetall logo (Reuters/Benoit Tessier)

By **Alejandro Galisteo**

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EC EXCLUSIVE

L The **National Commission on Markets and Competition (CNMC)** has declared harmful—that is, contrary to the interest and liable to be overturned by the courts—the authorization it granted in February 2023 for the purchase by German arms giant **Rheinmetall** of **Expal Systems**, the historic Spanish company specializing in ammunition, founded as **Explosivos Alaveses S.A.**

The transaction, **valued at €1.2 billion** and initially approved without conditions, is now in doubt following the decision taken by the CNMC Council and notified to the parties on Wednesday, according to information obtained *by El Confidencial*. This is the first time in history that the regulator has resorted to this measure to challenge a merger authorization issued by itself.

This resolution puts **an end to the administrative procedure** for declaring harmfulness, confirming after a "thorough" review process, according to sources familiar with the process, in which the parties **"have been heard,"** that the resolution authorizing the purchase of **Expal** is harmful to the public interest.

As reported yesterday by the competition specialist *Global Competition Review*, the CNMC informed Rheinmetall that it considers that the arms company **"concealed key information** about its activities in the nitrocellulose market, **an essential ingredient in the manufacture of explosives."**

A statement that cannot be challenged

The declaration of harmfulness is a unique procedural step because it allows the **Administration to challenge its own actions favorable** to a third party if it believes that they were issued with incomplete information or contrary to the general interest.

According to the **Administrative Procedure Act**, this declaration is not subject to appeal, and the CNMC now **has two months** to file a formal complaint with the **National Court**. It will be this court that decides whether to annul the phase I authorization that the regulator granted a year and a half ago. If the annulment is successful, Rheinmetall **will**, in principle, **have to re-notify the merger**, although the novelty of the process opens up an uncertain procedural scenario.

At the heart of the legal case lies a key question: whether the abbreviated notification submitted at the time by **Rheinmetall** was valid or not. The regulator authorized the transaction in just **six days**, after concluding that there were no significant horizontal or vertical overlaps. But months later, it emerged that the German company—in addition to manufacturing ammunition and weapons systems—regularly supplied **explosive chemicals** to other companies in the sector, such as nitrocellulose and nitroglycerin. This activity was not included in the original notification. "The decision was made on the basis of incomplete information, and that information affected a **possible vertical closure** in a market that is essential for defense supplies.

This is not a minor detail, it is a variable that could have changed the outcome of the analysis," according to legal sources consulted.

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On the **legal front**, Rheinmetall has been advised, as reported in Global Competition Review, from **Herbert Smith Freehills Kramer**, with **Henar González** in Madrid and **Marcel Nuys** in Düsseldorf, while the Franco-German consortium KNDS, which filed a complaint with the CNMC arguing that the merger harmed competition in markets that were not identified in the notification of the transaction, has relied on **Callol Coca & Asociados**, a law firm specializing in competition and technology/high growth law, for its challenges.

Pedro Callol, managing partner of Callol Coca & Asociados, points out that "the Rheinmetall/Expal merger is **legally extraordinary due to its technical difficulty** in terms of merger control and foreign investment in strategic sectors, and because it is the first time in the history of competition law that the CNMC has exercised this power of review by declaring a merger control decision to be harmful."

Historic fine for concealing information

In April 2024, the CNMC imposed a **fine of €13 million** on Rheinmetall for concealing this information, which was classified as a serious infringement. The company argued that these were one-off or surplus sales, but the regulator proved that there had been continuous and invoiced activity. This sanction was provisionally suspended by the **National Court** while the appeal is being resolved. Now, with the declaration of harmfulness adopted by the **CNMC** Council itself, the debate has moved to a higher level: **determining whether the concealment of data invalidates the merger authorization.**

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If the **National Court** confirms the annulment, Rheinmetall would have to **return to the CNMC's merger desk**. This new review could result in conditional authorization, with remedies aimed at guaranteeing supply to third parties and avoiding the risk of vertical closure.

Industry experts consider a scenario of forced divestment unlikely, but they do see it as plausible that **obligations for the non-discriminatory supply** of nitroglycerin, wet paste, or other strategic inputs will **be imposed** on European operators.

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This is no minor issue. Rheinmetall is one of the few **European manufacturers** capable of producing these explosive precursors on a large scale, and the acquisition of Expal—renamed Rheinmetall Expal Munitions—has strengthened its position in the supply chain. Against the backdrop of the **war in Ukraine, Gaza, and NATO's** rearmament programs, experts stress that unconditional authorization "could now be considered disproportionate by the regulator."

In addition, the harmfulness procedure may overlap with other ongoing proceedings. The competition authorization itself has already been appealed by KNDS before the National Court, which could lead to the accumulation of proceedings. And at the EU level, the CNMC's own sanctioning resolution left open the possibility of referring the facts to the **European Commission** under Article 22 of the Merger Regulation, **if an impact on other Member States is found.**

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At the same time, the **Supreme Court** is processing a separate appeal filed by the Franco-German consortium KNDS against the authorization granted by the **Council of Ministers** in June 2023 under the foreign investment control regime. **KNDS** alleges that the transaction violates European Union common defense principles and is calling for it to be reevaluated to ensure that Expal continues to supply European and NATO manufacturers.

The case breaks new ground for the CNMC. The law states that a declaration of harmfulness can only be adopted within four years of the contested act, after a hearing of the interested party and a favorable opinion **from the CNMC Council.**

Never before **has it been applied to merger control**. From here on, the calendar opens up a horizon in which, in two months, the **CNMC** must file its appeal and the National Court will decide whether the largest corporate move in the ammunition sector in Spain will remain as it is, whether it will be redone with conditions, or whether the courts will endorse the regulator amending its own act in defense of the public interest.



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