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***Highlights…***

***Weekly follow-up: 3 Apr – 7 Apr.***

***SPANISH COMPETITION***

**The Spanish Supreme Court (TS) will rule on the Competition Authorities competence to impose a ban on contracting with the public administration**

In December 2019, the Catalan Competition Authority ("**ACCO**") [sanctioned](http://acco.gencat.cat/web/.content/80_acco/documents/arxius/actuacions/20200121_Resolucion-exp.-94.18-PUB.pdf) two companies for bid-rigging the public tenders of the Meteorological Service of Catalonia ("**SMC**") and banned both from contracting with the SMC for 18 months. The undertakings appealed the decision. In both cases, the High Court of Justice of Catalonia ruled the partial annulment of the fine.

Once again, both companies challenged the judgement. Now, the TS has admitted the cassation appeal in order to complete, nuance or clarify the caselaw on which is the competent administrative authority to impose the prohibition to procure with the public administration.

**The coexistence of different approaches. Clarification is needed…**

To date, the CNMC has never determined the scope and duration of the procurement bans imposed in its resolutions but has referred this task to the State Public Procurement Advisory Board. However, and despite the lack of any explicit legal authorization to do so:

1. Regional competition authorities have determined the scope and duration in some of their resolutions.
2. In November 2022, the CNMC launched a public consultation on the [draft Communication](https://www.cnmc.es/sites/default/files/editor_contenidos/Competencia/1_Comunicacion_AJ_02_22_Borrador%20comunicaci%C3%B3n%20prohibici%C3%B3n%20de%20contratar%20CNMC.pdf) on the criteria for the determination of the contracting ban. One of the most controversial aspects is the assumption of the existence of the CNMC's competence to set the scope and duration of the prohibition.

In addition, is yet to be clarified by the CJEU under the preliminary ruling [C-66/22](https://curia.europa.eu/juris/document/document.jsf?text=&docid=259771&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7683977), whether the exclusion of an economic operator provided for [in Directive 2014/24/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=ES) is strictly a matter subject to the decision of the contracting authority (not a competition authority); and whether the national legislator can replace the role of the contracting authority by a decision of a competition authority imposing the prohibition as an ancillary sanction (as pursued by the Spanish Competition Authorities).