

# SPANISH COMPETITION *Highlights ...*

**Weekly follow-up: 24 Apr – 28 Apr.**

## **The CJEU extends the Competition Authorities decision's effects...**

The Commercial Court of Madrid was hearing an action for damages and an action for the nullity of a supply contract brought by petrol stations against Repsol. These actions were based on the firmness that the resolution of the competition authority had acquired, declaring the existence of a prohibited practice.

In the context of these actions, the Court referred a question to the CJEU for a preliminary ruling on the scope of the firmness of the decision of a competition authority. It asked whether it could serve as a basis for establishing the existence of an infringement in relation to the actions brought.

## **The CJEU ruling and its effects...**

The CJEU declares that in order to ensure the effective application of Articles 101 and 102 TFEU, the finding by a competition authority of an infringement of competition law, once firm, proves the existence of that infringement in the absence of proof to the contrary, provided that its nature and its material, personal, temporal and territorial scope correspond to those of the infringement found in that decision.

As a consequence of the above: (i) Firm Competition Authorities decisions may be enforceable not only in damages actions but also in actions to declare the nullity of a contract contrary to competition law, and (ii) the burden of proof is shifted to the defendant.

Furthermore, the Court reminds the *Delimitis* reasoning on when the full nullity provided in Article 101(2) TFEU concerns the entire agreement (i.e., when the 101(1) prohibited elements cannot be separated from the agreement itself).

## **The Spanish courts are active in raising questions for preliminary rulings...**

- Case C-882/19, *Sumal v Mercedes Benz Truck España*, concerning the liability of subsidiary companies.
- Case C-267/20, *Volvo AB, DAF Trucks NV*, concerning the limitation period and the presumption of damage.
- Case C-312/21, *Tráficos Manuel Ferrer*, in relation to the costs and the judicial assessment of the damage.