

SPANISH COMPETITION *Highlights ...*

Weekly follow-up: 5 – 9 June

The National High Court contests the CNMC's Decision in case S/DC/0562/15 Cables BT/MT

The context of the conducts sanctioned by the CNMC

The CNMC found several cartel infringements consisting of the adoption, among others, of price-fixing agreements and projects allocations. All these conducts were qualified as single and continuous infringements.

The court's judgment

The fact that evidence of an infringement were not available for some specific periods has been held not to be an impediment to consider a continuous infringement. However, in order to be able to impute non evidence periods to an undertaking, an objective and concordant indications of a persistent willingness to reactivate the cartel or to adhere to its objectives are required.

On the basis of the foregoing, the National High Court considers that the imputation made by the CNMC to several undertakings regarding the continuous nature of the infringement lacks evidentiary support, since the file evidence did not prove their participation in the allegedly infringement from 2006 to 2013. The consequence of the failure to establish the continuity of the infringement is that some of the conducts are time-bared, which resulted in partial annulment of the Resolution for some companies and full annulment in another case.

Further cases in which the CNMC declared the existence of a single and continuous infringement

- S/0028/20: LEADIANT
- S/DC/0590/16: DAMA VS SGAE
- S/0026/19: MERCK SHARP DOME S.A.

All of them related to abuse of dominance by the infringing companies.