

# **SPANISH COMPETITION** *Highlights ...*

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

**The Supreme Court allowed the cassation appeal against the judgment of the National High Court which annulled the CNMC's decision in case S/DC/0558/15: ACB.**

The Asociación de Clubes de Baloncesto (ACB) represents and defends the interests of Spanish professional basketball clubs. It is also in charge of managing the professional basketball league ("Liga ACB").

## **The CNMC's Resolution**

On 11 April 2017, the CNMC adopted a Resolution sanctioning the ACB because of the General Assembly Agreements that set the economic conditions for clubs' promotion and relegation.

In addition to sports merits, the promotion of those clubs that had not previously been members of the ACB clubs, required (i) to pay an entry fee and (ii) to contribute to the Promotion and Relegation Regulation Fund. Both amounts were considered disproportionate and discriminatory.

The CNMC assessed that these economic conditions breached art. 1 LDC by distorting competition to the extent that those clubs that could not assume such conditions would not be able to be promoted.

## **The Judgments of the National High Court and the Supreme Court**

The judgment of the National High Court annulled the Resolution on the grounds that the determination of those conditions must be considered a decision of the ACB not an undertakings agreement, having its own legal personality. In this regard, it considered that the conduct could constitute an alleged abuse of a dominant position but not an infringement of art. 1 LDC. An appeal in cassation was brought against that judgment.

The interest of the appeal concerns the possibility of determining the existence of an infringement of art. 1 LDC by the adoption of agreements by the ACB's members with respect to the clubs that have the right to be promoted based on sports merits, and which have not previously been members of the ACB.

The Supreme Court set aside the National High Court's judgment and confirmed the CNMC Resolution. The Supreme Courts ruled the ACB can be sanctioned to the extent that its members are undertakings and the agreements adopted can be sanctioned within the meaning of art. 1 LDC and 101 TFEU.