

SPANISH COMPETITION *Highlights...*

Weekly follow-up: 17 Jul – 24 Jul.

The CNMC publishes guidelines to facilitate quantification of damages in private actions for competition law infringements.

Individuals affected by anti-competitive conducts have the right to claim a compensation for the damages arising from the infringers' practices before the courts. However, the quantification of the same can be complex, which can also lead to the loss of its effectiveness.

In order to facilitate the damages calculation, the CNMC has elaborated guidelines for judges, lawyers, experts and consumers for when intervening in damages actions for competition law infringements ("*Guía sobre cuantificación de daños por infracciones del derecho de la competencia*"). These Guidelines follow the path initiated by the EC ("*Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser*" (2019/C 267/07)), and they are not mandatory for any of the parties involved in the judicial procedure.

The process

The CNMC has submitted drafts of this guide to public consultation on two occasions. The first public consultation took place on 30 July 2021 and the second on 27 September 2022. In this regard, some of the contributions received have been incorporated into the final document.

In addition, the CNMC has held several meetings and working sessions to prepare the final document. The preparation of this guide is part of the CNMC Action Plan for 2023.

The content of the guidelines

The guidelines address relevant issues such as the following:

- Regarding general issues: (i) anti-competitive conduct subject to sanctions or (ii) the passing-on theory, among others.
- Regarding expert reports: (i) market characteristics, (ii) theory of harm, (iii) techniques used and presentation of results, among others.
- Regarding methodology for damages quantification: (i) comparative methods, (ii) methods based on cost and financial analysis and (iii) simulation models.
- Regarding the capitalisation of damages: (i) methods of calculation, (ii) rates and (iii) temporal delimitation of interest.

Differences in the quantification of the damages caused by price increases and exclusionary practices are also discussed therein.

It also includes a list of checks aimed at verifying the reliability of the quantification.