

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

***Weekly follow-up: 28 Aug. – 1 Sept.***

## **The National High Court upholds the CNMC's decision to close the case S/DC/0570/15 APROVISIONAMIENTO DIA/EROSKI.**

In 2015, DISTRIBUIDORA INTERNACIONAL DE ALIMENTACIÓN, S.A. ("**DIA**") and EROSKI S. COOP. ("**EROSKI**") signed a cooperation agreement to jointly negotiate with large suppliers.

The Spanish Federation of Food and Drink Industries ("**FIAB**") and the Spanish Association of Branded Products ("**PROMARCA**") complained about possible infringements of Articles 1, 2 and 3 of the Ley de Defensa de la Competencia.

Such conducts concerned: (i) price fixing, (ii) limitation of investments in innovation or promotion, (iii) obligation to apply similar terms to different services, (iv) acceptance of payments and commercial terms unrelated to the main agreement, as well as (v) abuse of dominant position.

### **The decision of the CNMC**

After a preliminary investigation, the CNMC considered the agreement did not fall into Articles 1 and 2 LDC because of the lower combined market shares of the companies involved and that the aim of the agreement was to increase the parties' competitiveness by means of joint negotiations with suppliers and thus to obtain an improvement in the respective purchasing conditions.

It is also remarkable not only the variety of suppliers to which they refer, but also the existence of a third party responsible for the processing of the information of both companies.

In view of the above, the CNMC considered that the infringements alleged by FIAB and PROMARCA did not exist and, therefore, it closed the case.

### **The judgement of the National High Court**

FIAB and PROMARCA appealed the CNMC Decision before the National High Court, claiming that the case should be reopened and that the facts should be properly investigated.

The National High Court points out that a judicial review of the CNMC's decision is limited to verifying that it is not based on materially inaccurate facts, that it is not vitiated by any error of law, nor by any manifest error of assessment or misuse of powers.

In accordance with the foregoing and having analysed the reasoning put forward by the CNMC, the National High Court upheld the CNMC's decision to close the case.