

## **SPANISH COMPETITION**

# ***Highlights...***

***Weekly follow-up: 02 - 06 Oct.***

### **The CNMC investigates possible anti-competitive practices in the agricultural machinery distribution market**

From 26 to 29 September 2023, the Spanish Competition Authority ("CNMC") has carried out inspections at the headquarters of several companies that could be involved in such practices.

#### **The conduct under investigation**

The conducts would consist of market-sharing agreements for the distribution of agricultural machinery in Spain, through the restriction of passive sales to customers located outside the area specified in the distribution contracts.

On several occasions, the CNMC has sanctioned companies for imposing restrictions related to passive sales. For instance, in the decision of 29 October 2019, case S/0629/18, *Asistencia Técnica Vaillant*.

#### **What are passive sales?**

In general terms, passive sales refer to sales made by a distributor to customers directly addressed to him from areas or territories where he has not engaged in promotion and customer acquisition activities.

In general, passive sales cannot be restricted as this constitutes a hardcore restriction set out in Article 4 of the recent Regulation (EU) 2022/720. However, it is foreseen that, in certain cases, and depending on the type of distribution concerned, there may be exceptions to the general rule.

In this regard, and with the aim of providing guidance to economic operators on the application of this Regulation, on 30 June 2022, the European Commission published new Guidelines on vertical restraints, which address, among other issues, passive sales.

As stated in the Guidelines, the most common form of passive sales is via internet. In this respect, it is prohibited to prevent the effective use of the internet by the buyer, including restrictions on the use of online advertising channels or price comparators. However, the possibility of restricting passive sales when they are made through marketplaces, with the aim of preserving quality, positioning or brand image, among others, is made more flexible, provided that the restriction is not aimed at preventing the effective use of the Internet.