

## ***SPANISH COMPETITION***

# ***Highlights...***

***Weekly follow-up: 13 - 17 Nov.***

### **The CNMC closes a complaint against DAF Trucks and its distribution system**

MECÁNICAS HERCAS, S.L. ("MHSL") complained to the Comisión Nacional de los Mercados y de la Competencia ("CNMC") that DAF TRUCKS, N.V. ("DAF-NV") and its subsidiary company DAF VEHÍCULOS INDUSTRIALES, S.A.U. ("DAVISA") (together as "DAF") were carrying out conducts prohibited by Articles 1 LDC and 101 TFEU.

#### **The conducts and the affected markets**

The conducts in question consist in the alleged prohibitions imposed by DAF on MHSL (i) to join its after-sales service network (where DAF operates in an open distribution system) and (ii) to resale vehicles of other competing brands (where DAF operates in a selective distribution system).

The markets affected by these conducts would be the market for the distribution, purchase, sale or resale of motor vehicles and the market for the after-sales servicing of commercial vehicles. On these markets DAF is active upstream (manufacturing) and MHSL downstream (distribution).

#### **Application of Regulation 330/2010**

Considering the vertical relationship between the parties, the case deal with a vertical agreement which falls within the scope of the General Block Exemption Regulation 330/2010 on vertical agreements ("Regulation") and therefore the conducts referred to above must be analysed in the light of the Regulation. Conducts covered by the Regulation are exempted from infringement of Article 101(1) TFEU or 1(1) LDC.

For the Regulation to be applicable and for companies to benefit for the exemption, the parties' market share must be 30% or below in the affected markets. This first requirement is fulfilled by all the companies concerned.

Secondly, it is necessary to analyse whether the conduct constitutes hardcore restrictions (Art. 4) or excluded restrictions (Art. 5). In the first case, the entire agreement will be declared null and void, while in the second case the nullity will be limited to the clause concerned.

The CNMC concludes in this case that the conducts are not anti-competitive and are covered by the exemption as it has not been established that MHSL does not offer DAF's after-sales services network and that it has not been excluded from DAF's sales network for distributing competing brands.