

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

***Weekly follow-up: 22 – 26 Jan.***

## **The National High Court annuls the CNMC's decision in the case S/DC/0579/16 DERIVADOS FINANCIEROS**

### **The CNMC Decision**

On 13 February 2018, the CNMC issued a decision in case S/DC/0579/16 DERIVADOS FINANCIEROS, sanctioning four financial entities for practices contrary to Article 1 of the LDC and Article 101 of the TFEU, considered as a single and continuous infringement carried out from 2006 to 2016.

The conduct consisted of agreements on fixing the interest rate of financial derivatives outside the knowledge of the client-investor, who believed that said interest rate corresponded to the market price at that time.

The fine to the financial entities amounted to 91 million euros.

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

The National Court ("AN") considers proven the conduct carried out by the financial entities for certain operations. With the evidence available in the case file, the last proven operation was on 2 February 2012. Therefore, in order to prove that the infringement is single and continuous, the CNMC had to prove the continuity of the conduct between 2 February 2012 and 15 April 2016, the date on which the proceedings were initiated.

For proving continuity during the mentioned period, the CNMC must prove that the financial institutions carried out complementary actions beyond February 2012 that contributed to the execution of the common plan and responded to the same objective.

In this regard, the AN considers that the CNMC has not provided enough evidence to appreciate the participation of the financial entities beyond 2012, which prevents it from considering the continuity of the conduct.

In light of the above, the AN determines that the conduct was time-barred as four years have elapsed since the date of the last evidence available and the date the proceedings were initiated, which entails the nullity of the decision.