

SPANISH COMPETITION *Highlights...*

Weekly follow-up: 12 - 16 Feb.

The Supreme Court admits an appeal in cassation on the liability of public administrations in cartels

The Supreme Court has admitted a cassation appeal, on 12 February 2024, filed by a company sanctioned in the resolution of the Comisión Nacional de los Mercados y la Competencia ("**CNMC**") S/DC/0565/15, *Licitaciones Aplicaciones Informáticas*. The purpose of this appeal is to clarify how the liability of Public Administrations in cartels should be handled and the impact it may have in terms of aggravating or mitigating the penalties for the participating companies.

The Role of the Public Administrations in Resolution

The Resolution, which sanctioned eleven companies for creating a cartel in the supply of computer and data processing services to the public administration, assumed that "*public administrations may have had some impact on the maintenance of the agreements*" through the design of the tender documentation.

However, despite extensive evidence regarding the active role of the Administration in the case, the CNMC did not proceed to investigate it.

The relevance of the Supreme Court's ruling

The Supreme Court appreciates that the objective interest of the case consists of "*clarifying whether the intervention of a Public Administration in the negotiation and management of public tenders can determine an exception of those provided for in art. 1.3 of Law of the Defence of Competition and art. 101.3 TFEU, and whether that intervention can be a relevant factor in the assessment of the aggravating or mitigating circumstances that may be present in relation to each of the participating companies*".

The Supreme Court's ruling will be very relevant insofar as it will establish the case law on whether the liability of public administrations should be investigated when there is no doubt that they are participants in a cartel and thus modulate the sanction of the companies involved.

The Spanish Competition Authority had already attributed liability to an administrative body in the Resolution S/0167/09, *Producers of Grapes and Sherry Wines*, for its participation in price-fixing agreements. However, the CNC didn't impose a sanction to said administrative body due to the "*absence of previous pronouncements*" with recognised the liability of a public administration.