

SPANISH COMPETITION

Highlights...

Weekly follow-up: 19 - 23 Feb.

The CNMC opens a Phase II in Smurfit Bulgaria/Artemis BiB merger under the merger control procedure

The merger and the risks to competition

Smurfit (a subsidiary of the Irish multinational group Smurfit Kappa) notified the acquisition of sole control of the bag-in-box business unit of the Bulgarian company Artemis Ood (Artemis BiB).

On 31 January 2024, the CNMC agreed to initiate the second phase of the analysis of the merger considering the transaction arises some competition concerns. In this respect, the merger gives rise to significant horizontal overlaps in the market for the manufacture and supply of a specific product. This would entail a strengthening of Smurfit's position in the market of non-aseptic food-grade bag-in-box packaging with a capacity of less than 25 litres both in Spain and in the European Economic Area (EEA).

The CNMC, through its market investigation, has determined that the market concerned is a market in which competitors cannot exercise competitive pressure and demand does not have the capacity to influence prices, due to its high fragmentation. However, there are no significant barriers to entry for new competitors.

Phase II of the merger control procedure

If, during the first phase, the CNMC considers that the concentration requires further analysis due to the competition concerns it may raise, the second phase of the procedure will be initiated. In this case the procedure is extended by 3 months.

During this second phase, the CNMC may request further information from different operators in the affected markets. In addition, the notifying parties and interested third parties may submit arguments in defence of their legitimate interests.

The CNMC reminds that the final decision may authorise, agree on commitments, impose conditions or prohibit the transaction.

In 2022, the CNMC resolved 102 merger cases and only in 3 of them it was agreed to initiate the second phase. Of these three cases, two were authorised with commitments and one was declared closed.