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Pérez-Llorca

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The Spanish Competition Authority extends the prohibition on contracting with the public sector to vertical agreements, specifying the scope and duration of the prohibition.

Summary

The Spanish Competition Authority ('CNMC') has issued a new ruling in the 'ICON case' (S/0015/23) in which, in response to a serious infringement of Spanish competition law regarding vertical agreements, it has imposed a fine on the infringing company, as well as a ban on contracting with the public sector, specifying the scope and duration of the ban in its ruling.

Background

I.C.O.N. Europe, S.L. ('ICON') is a Spanish company whose business consists of marketing hairdressing and cosmetic products. Between 2010 and 2014, it engaged in a series of anti-competitive practices against its distributors, consisting of price fixing and the imposition of commercial conditions for the resale of its products.

These practices consisted of the following:

a. In the wholesale channel, clauses in its distribution contracts obliged its distributors to respect the sales prices set by ICON.
b. In the retail channel, distributors operating online were forced to comply with the retail prices set by ICON through the repeated sending of mandatory price lists.

To ensure compliance with these conditions by its distributors, ICON deployed surveillance systems, as well as reprisals and threats against those distributors who did not comply with these conditions.

The CNMC has declared that these practices are contrary to Article 1 of the Spanish Competition Law, which prohibits any practice that has the object or effect of preventing or restricting competition.

As a result of this conduct, ICON has been sanctioned with:

a. A fine of around 1.2 million EUR.

b. A ban on contracting with public sector entities throughout Spain, in relation to contracts for the supply of hair care products, for a period of five months (this period has been considered appropriate and proportionate given the seriousness of the infringement).

This ban on contracting with the public sector has been applied only to ICON, and not to any other company that may be part of the group, as their direct or indirect participation in the sanctioned conduct has not been proven.

Relevance of the case

The possibility of imposing a ban on contracting with public sector entities as a result of a serious infringement of competition rules is not new. This possibility was provided for in Article 71.1.b) of the Public Sector Contracts Law following the amendment introduced in 2023. In addition, the CNMC itself published Communication 1/2023, with specific criteria for applying this ban.

Unlike some regional competition authorities that had already applied this prohibition on contracting with the public sector setting specific limits, until now, the CNMC had only issued one ruling, in the 'Eólica del Alfoz case' (S/0011/23). In that case, it had specifically applied the prohibition on contracting with the public sector, setting the geographical scope, material scope, and duration of such prohibition.

Despite the complexity of setting the limits of a ban on contracting with the public sector, the ruling in the ICON case highlights the CNMC's tendency to reinforce its deterrent role, agreeing to apply such a ban, in a specific manner, on individuals or legal entities for a serious infringement of competition law.

Through the ICON ruling, the CNMC thus appears to reaffirm the criteria previously established in the Eólica del Alfoz case. This means that when a company commits a serious breach of Spanish competition rules, including in vertical cases, it now faces not only substantial fines but also additional consequences that may be more far?reaching and potentially strategic for its business.

Given this approach, companies operating in Spain would be well advised to intensify their compliance efforts, including preventive guidance on competition rules and careful participation in administrative proceedings before the competition authority, as well as in any subsequent legal proceedings.