

# COVID-19: PRESSURE POINTS: THE CNMC HAS ANNOUNCED ACTIONS TO PREVENT ANTICOMPETITIVE PRACTICES AND MARKET ABUSE IN THE CONTEXT OF THE COVID-19 HEALTH CRISIS (SPAIN)

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Legal Briefings - By **Henar González, Manuel Contreras and Pilar Carrasco**

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The Spanish National Markets and Competition Commission (*Comisión Nacional de los Mercados y la Competencia*, or “**CNMC**”) has announced that, although administrative terms and deadlines have been frozen as a result of the state of emergency announced by the Spanish government, it will continue to process proceedings that are essential to safeguard the general public interest and ensure that the markets function properly.

Specifically, the CNMC will continue to pursue actions necessary to supervise and control the markets to both safeguard and promote competition as well as in the context of sector-specific regulations.

The CNMC has also announced that, after having launched a whistleblowing hotline and enquiries tool connected to the current health crisis, it has already opened a number of investigations in the financial services, funeral services and health product manufacturing markets.

In less than one week, the CNMC's whistleblowing and enquiries tool has received more than 50 complaints and enquiries from operators regarding temporary cooperation arrangements that they wish to put in place in light of competition provisions.

## **THE CNMC'S DECISION ON ADMINISTRATIVE DEADLINES AND TIME PERIODS**

On 14 March 2020, Spain's Official State Journal (*Boletín Oficial del Estado*) published Royal Decree 463/2020, of 14 March, which declares the state of emergency to tackle the health emergency caused by COVID-19, which entered into force on that same date. Since the Royal Decree was published, **deadlines and time periods connected to proceedings pursued before public sector entities have been frozen.**

However, the Royal Decree also established that it was possible for a body to decide – on justified grounds – to continue certain ongoing proceedings and to open others in relation to events triggered by the state of emergency itself.

In that context, the CNMC has announced **two specific courses of action:**

- It will continue to pursue proceedings that are essential for safeguarding the general public interest and to ensure the proper functioning of the markets, in respect of the following subject matter: (i) the circulars connected to the CNMC's action plan for 2019 and 2020 and actions for implementing them; (ii) the CNMC's settlement role in the electricity and natural gas sectors; and, in general, (iii) the CNMC's role in ensuring control in any market in the current situation.
- It will authorise the CNMC's Regulatory Supervision Committee (*Sala de Supervisión Regulatoria*) and Competition Committee (*Sala de Competencia*) to take any action or make demands for information to private or public entities with the aim of preventing anticompetitive practices and abuse in the regulated markets.

# INVESTIGATIONS OPENED BY THE CNMC

On 31 March, the CNMC announced that it was launching **an online whistleblowing hotline and enquiries platform to receive competition law complaints or enquiries in relation to measures or practices connected to** the health crises caused by the **COVID-19** outbreak.

The CNMC has announced that in its first week the hotline received **more than 50 complaints of anticompetitive conduct related to COVID-19** and that, on the back of those complaints, it has **opened investigations in the financial services, funeral services and health product manufacturing markets:**

- In the financial services sector, the CNMC is analysing whether the requirement imposed by some financial institutions to provide an additional guarantee (in particular, taking out life insurance) to grant state-guaranteed loans (ICO credit) and other financial aid as a result of the extraordinary regulations approved to tackle the COVID-19 health crisis could amount to anticompetitive conduct – by distorting free competition – and be detrimental to the public interest in the context of the COVID-19 health crisis.
- In the case of the funeral services sector, the CNMC is investigating whether the prices charged by a number of funeral service companies during the health crisis could be due to anticompetitive arrangements among competitors or to aggressive unfair practices that are objectively contrary to the requirements of good faith.
- The CNMC has also explained that it is closely monitoring pricing in the health products sector (such as sanitising gels and raw materials used in their manufacture (ethanol)) and market shortages with the aim of identifying and, as appropriate, penalising anticompetitive practices due to potential price increases.

## ENQUIRIES ON COMPETITORS ARRANGEMENTS

The CNMC has also announced that it has **authorised a number of commercial arrangements entered into between competitors to counter the impact of the health crisis caused by the COVID-19 outbreak**. The CNMC has pointed out that competition regulations continue to apply and that the authorised measures in the current context are temporary, given the exceptional situation, and should be withdrawn as soon as the affected sectors are able to organise themselves and companies are able to operate freely again.

[COVID-19 Europe](#)

[Navigating the COVID-19 Outbreak](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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