



To publicly declare the need of a price increase in a sector can turn out to be costly

Resolution of the Spanish Competition Authority (CNC) of 26 of September of 2012 (Case S/0335/11 CEOE)

Background

In the framework of the International Tourism Fair in Spain of 2011, one of the vice-presidents of the Spanish Confederation of Business Organisations (CEOE for its Spanish acronym) declared the following at a round table:

"at the risk that there may be someone in this room with authority to initiate proceedings against me, increase the prices, increase the prices. I think that at present Spain is far below the prices that (...) the Spanish hotel and catering trade deserves for the business quality. In 2011 there are many hotels (...) with prices 20% below 2007. (...) this is unviable, something goes wrong (...)"

Several days later, in an interview published in the journal *Cinco Días*, such vice-president responded as follows to the question whether hotel prices would increase in 2011: *"(...) There is room. I believe that in 2011 an increase of 6% or 7% would be a reasonable increase."*

When can a conduct be defined as a collective recommendation?

The CNC reminds that in order to determine if a conduct can be defined as a collective recommendation contrary to the antitrust law what must be taken into account is: (i) the content of the recommendation, (ii) the spreading of the recommendation, and (iii) the person making it. If the analysis of these factors shows that the conduct is aimed at restricting competition, it is neither necessary to analyze

other factors as intent, degree of compliance with the recommendation, nor to define the relevant market.

With regard to the content of the statements, the CNC considers that they launched a specific signal to the hotel sector, capable of favoring a common rule of behavior (increase the prices), and at the same time the consumers were made aware of the inevitability of such price increase. Regarding their spreading, the statements were made in an important fair where many entrepreneurs from the sector had gathered, and several media have echoed the statements. With respect to the authorship, it is considered that the reference to a possible disciplinary proceeding shows that the vice-president was aware that his statements could be interpreted as made by virtue of his position in the CEOE. Moreover, the CEOE did not publicly express its disagreement with such statements at any time. In any case, the CNC reminds that managers of associations have to be aware that their public messages can be considered illegal and can entail personal responsibilities if they are capable of unifying the behavior of their associates, even when the manager declares that they are statements made in their personal capacity.

On the basis of the foregoing, the CNC concludes that the statements of the vice-president are capable of distorting free competition and it imposes a 150.000 Euros fine on the CEOE and another 50.000 Euros fine on the vice-president in his personal capacity.