



## Competition law, to the defense of those who bear the cost of healthcare services

### *Resolution of the Council of the Spanish Competition Authority of 9 of January of 2013, Case S/0299/10, Council of Professional Odontologists and Stomatologists Associations*

In this Resolution, the Spanish Competition Authority (CNC for its acronym in Spanish) declares that the Council of Professional Odontologists and Stomatologists Associations of Spain has infringed the Spanish Competition Law 15/2007, for carrying out acts that entail that dentists get to impose the choice of the dental prosthetics.

An analysis of the Resolution reveals the will of the CNC to perform an extensive analysis of the behaviours of organizations, such as the referred professional Council, in which competitors are grouped together (in this case dentists and stomatologists) to evaluate what effects these behaviours can have in related markets (as it would be, in this case, the market of the manufacture of dental prosthetics).

Moreover, the will of the CNC to attend other interests underlies in the Resolution, in this case the interest of the patients to always obtain products of recognized quality at the best possible price, which requires a reasonable dosis of effective competition.

We highlight the extensive analysis made by the Resolution, because the CNC takes special care of saying that its intention is not to attack the literal content of the Code of Ethics of the Council, which says that the dentist can refuse to attend patients who impose a prosthetic that does not give him any confidence. The CNC recognizes the right of the dentist to freely prescribe, but it considers as illegal the fact that the Council, by means of collegiate agreements

and other acts, recommends a line of common behaviour to all its associates.

The position of the Council, according to the CNC, implies that the behaviour of the dentists must be coordinated so as to always impose the prosthetic of its choice on the patients. By doing it in this manner, according to the CNC, the capacity to compete on prices between dental technicians is limited because the person who has the highest interest in obtaining a lower price, the patient, does not have the option of a real choice.

It is in this field, on the other hand, where the will of the CNC to defend the interests of the patients is revealed, ensuring that they maintain certain ability to make decisions when going to see the dentist. It is especially illustrative that the CNC points out that if the principle of free choice operates in public healthcare, it is all the more important that it does so in the private sector.

Competition law, of which some years ago it was said that it basically aimed at protecting competition per se, without putting too much emphasis on the interests of certain groups, is becoming increasingly oriented towards the protection of those who obtain more benefits from the existence of competition. Therefore, in the field of healthcare services an analysis of conducts is expected from the standpoint of those who bear such cost, both if these are the patients or the taxpayers.