



## The Spanish Competition Authority cannot do it all, but it can cooperate to improve the legal framework

*Regarding the Resolution of the Spanish Competition Authority of 24 May 2013, Case Entecoi, and the reform of the rules regarding prices and reimbursement of medicinal products*

### Background

In this case, the company Entecoi decided to file a complaint against the administration of the Autonomous Region of Madrid because it was denied an authorization for a technical project of low-voltage electricity. The complainant put forward that with its refusal, the administration prevented its access to the market, and that free competition was affected.

### Authorizations and competition

The Department of Competition Defense of the Community of Madrid, and also the Spanish Competition Authority (CNC for its Spanish acronym) decided not to initiate any proceedings and to shelve the complaint for understanding that the administration had limited itself to issuing an act within the framework of its administrative powers subordinated to the general interest. Therefore, the resolution points out that the complainant could file an appeal before the administration itself or it could bring legal actions before the contentious jurisdiction, but it could not turn to the bodies in charge of protecting competition.

So far everything seems crystal clear: the CNC cannot interfere in the powers of the administration to evaluate the files that it handles; but there is something more, and this something more deserves to be emphasized.

In the first place, the resolution analyzes in detail the reasons why the authorization was refused

and it concludes that the administrative act has applied the corresponding rules according to their predominant interpretation, quoting for such purpose various judgments of the Supreme Court. Therefore this is not a matter of simply accepting the fact that any administrative act that restricts competition must be accepted, but of analyzing each specific case.

Moreover, the resolution recalls some general ideas that must not be forgotten. The administration must act under the general principle of interpreting restrictively all those powers that could raise entry barriers to the markets. This implies the obligation to more extensively justify the decisions that prevent the access to the provision of a service. The reasoning also includes a reference to Directive 2005/36/EC and to the Law Omnibus: the instruments of intervention of the administrations in the different economic sectors must be analyzed in further detail and must comply with the principles of non-discrimination and justification for overriding interests related to the public interest.

At this stage, when designing the future royal decree on prices and financing of medicinal products, it would be desirable, essential even, to take these principles into account. It is thus a good moment to recall what the CNC has already said in previous reports: to impose limits on the prices of medicinal products that are not reimbursed would demand an "extremely rigorous justification (...) of their necessity and proportionality".