



## Supreme Court backs the investigatory powers of the Competition Authority

*The Judgement of 6 April 2016 supports the fact that a casual discovery in an inspection serves as grounds to open new disciplinary proceedings*

### Background

This case has its origin in an inspection that the Spanish Competition Authority performed at the offices of Montesa Honda to investigate whether the company had exchanged information and coordinated strategies with its distributors. Following the inspection, the CNMC filed proceedings against Montesa Honda.

A couple of months later, the CNMC opened new proceedings alleging that when revising the information retrieved during the inspection, an email with the subject line "price list", sent by Suzuki to Montesa Honda, had been discovered. The CNMC included this email in the second set of proceedings, which ended with a fine of more than two million euros for the exchange of information between competitors.

Montesa Honda expressed its opposition that the email collected during the inspection related to the first proceeding was included in the second one. The Spanish High Court accepted the appeal alleging that, pursuant to the Order authorising the inspection, the CNMC was only allowed to confiscate documentation regarding the relations of Montesa Honda with its distributors, but not documents concerning relations with its competitors.

In the judgement which is object of our analysis, the Supreme Court annulled the Judgement of the High Court.

### Position of the Supreme Court

The Supreme Court holds the view that the CNMC can search companies to collect evidence of unlawful activities and recognises that the scope of its activities is subject to judicial authorisation. Furthermore, it highlights that Spanish and European case law specify that such searches must be limited to the object of the authorised investigation and that the inspection activities must always be proportionate and aimed at such object. However, this does not mean that only material that is specifically related to such object can be confiscated during the search itself. Should it be the case, inspection activities would be practically impossible according to the Supreme Court.

In this case, inspectors circumscribed to the matters specified in the judicial order; however, due to computer difficulties and the fact that it was impossible to filter a wide range of documentation at the time, a large amount of data was retrieved for analysis at a later date. According to the Court, based on the content of the Inspection Record, the company did not believe such an approach was abusive.

Given that the inspection was carried out pursuant to the law and in an appropriate and proportionate manner, the Supreme Court ruled that the CNMC acted correctly by opening a second set of proceedings based on a document that was obtained during said inspection by chance.