



## Competition, public procurement, and easier complaints

### *Resolution of the CNMC of 17 of August of 2021*

The promotion of competition in public procurement has become one of the main investigation focuses of the Spanish Competition Authority (CNMC). Between 2015 and 2019, as per the 2019 CNMC *Guide on the benefits of competition for consumers*, approximately 50% of the sanctions imposed by the CNMC were related to the dismantling of cartels in public tenders. Apart from becoming increasingly important for the CNMC, unlawful practices in this field have also gained sophistication. Such sophistication, however, does not relieve companies from its responsibility, rather the opposite. This decision of the CNMC is a proof of this.

#### **Sophistication of the cartel as an aggravating factor**

In this Resolution, the CNMC sanctions 12 companies with 61.28M Eur for their participation in a cartel consisting of the alteration, from 2014 to 2018, of the tenders for road maintenance and operation services called by the former Ministry of Development. Companies participating in the cartel periodically coordinated the economic offers to be presented in the tenders in coffee-meetings held at their headquarters and in public places. The particularity of this case is the sophistication of the mechanism implemented by the offenders, a mechanism that the CNMC describes as “extraordinarily complex”. Companies participating in the cartel classified the tenders in groups and agreed on common

criteria for economic offers to be submitted in the tenders of each group. Each group of tenders was assigned a “bag” of points, and then such points were consumed by companies based on a group-specific formula that considered the level of discounts offered by each company. The higher the discounts, the more points consumed.

Considering this sophistication, as well as the high degree of alteration of the general interest, the CNMC applied an aggravating circumstance to the infringement.

#### **The risk of being caught increases**

Participating in a cartel involves a growing risk. In this case, the CNMC was informed about the existence of the cartel by anonymous complaints, as well as by participating companies that made use of the Leniency Program.

An increasing number of reporting mechanisms and systems to protect whistle-blowers are being developed. In this respect, we note that on 17 December 2021 will the deadline for Member States to adapt their internal regulations to the EU Whistle-blower Directive. The aim of such Directive is to protect whistle-blowers from retaliation. Whistle-blowers may be formal employees of the infringing company but also other persons such as job applicants, former employees, mediators, and journalists.