



# Capsulas

## Prohibition on contracting with the public sector due to competition law breaches

*Decision of the Spanish Competition Authority (CNMC) of 30 July 2025*

### Background

Spanish Law on Public Sector Contracts (LCSP - by its Spanish acronym) provides that companies sanctioned for a serious breach of competition law may not enter into contracts with public administrations for the period and to the extent established in the decision of the CNMC or, where applicable, by the Ministry of Finance.

This prohibition on entering public procurement contracts operates as a sanction in addition to the fines established under Spanish Competition Law, and the CNMC has taken the view that it may be applied even where the penalised anti-competitive conduct is not related to public procurement.

Until now, the CNMC's practice had been to include the prohibition on contracting in its decisions without determining its duration or scope. In such cases, the CNMC deferred the decision on these aspects to the Ministry of Finance.

The decision of 30 July 2025 to which this commentary refers was issued in a case where the CNMC considered that a company in the electricity sector had abused its dominant position. This is the first case where the CNMC has directly specified the scope and duration of the prohibition on entering public procurement contracts.

### The prohibition on entering public procurement contracts can be avoided

The LCSP also provides for a mechanism that companies may use to avoid the application of the prohibition on entering public procurement contracts, even if they have been sanctioned for competition law infringements. These are known as self-cleaning measures.

In this respect, the LCSP provides that the prohibition on entering public procurement contracts shall not be declared when two cumulative conditions are met. First, when the company must prove payment or commitment to pay the fines imposed in the sanctioning decision and, second, when the company must have adopted appropriate technical, organisational and personnel measures to prevent future infringements.

Therefore, compliance programmes are extremely important, not only because they reduce the risk of competition law infringements but also because they mitigate the consequences if a breach occurs. However, not every programme qualifies to obtain this benefit. In 2023, the CNMC published a Communication on this matter, emphasising that, to avoid a prohibition on entering public procurement contracts, such programmes must demonstrate a genuine commitment to compliance that is integrated into the company's daily decision-making processes.

