Kluwer Competition Law Blog

May You Live Interesting Times: A Year (and a Quarter) in Review in Spanish Merger Control

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It has been another exciting year in Spanish Merger Control. To the overarching importance of the pandemic, we have to add political appointments, more Phase II investigations and resort to innovative packages of remedies.

The Spanish Enforcer in Times of Pandemic

In June 2020, the council of the *Comisión Nacional de Mercados y de la Competencia* ("**CNMC**") was renovated almost in its entirety. The Council is the decision making body of the CNMC. Ms Cani Fernández is the new President of the Spanish Competition Authority, replacing Mr Jose María Marín Quemada. Mr Ángel Torres will be the new vice president of the organization and responsible for the Regulation Room, while Ms Pilar Sánchez, Mr Carlos Aguilar and Mr Josep Maria Salas join as directors.

With wide experience in private practice, and a former Associate Professor of Competition law at the Carlos III University in Madrid and the Toulouse School of Economics, Ms Fernandez's appointment has been received with a rare positive unanimity by the community of antitrust practitioners in Spain since she is perceived to bring expertise to the decision making of the CNMC. A regular in international fora, the tenure of Ms Fernández is likely to align the priorities of the CNMC (hitherto arguably focused on hardcore cartels) with the most sophisticated enforcers in the world, in particular the European Commission. The digital economy, innovation and competition and sustainability are thus likely to feature high in the agenda of the Spanish trustbusters.

Rightly or wrongly, the new council has been analysed mainly from a political perspective by the Spanish press, with Mr Fernández having been an advisor to the Cabinet of the Spanish Prime Minister Pedro Sánchez and all the new appointments at the Council of the CNMC allegedly having close links to the political parties supporting the coalition in office in Spain (namely the Spanish socialist party, left of left arguably populist Podemos and left-leaning Catalan independentists ERC).

Except perhaps for very high profile transactions, Spanish Merger control is likely to remain a relatively technical and non-political enterprise, with the widely respected Beatriz de Guindos retaining her tenure as Head of the Directorate for Investigation in charge of Competition law including mergers.

The number of transactions notified in 2020 to the CNMC declined by 20.93 % from 2019 (from 86 to 68). During the past five years, the number of reportable transactions has decreased over 34.62 % (from 104 in 2016 to 68 in 2020), a figure which cannot entirely be explained by the decline of the Spanish economy over 2020 as a result of the covid-19 pandemic and which perhaps is linked to the difficulties which working remote entails for the authority (and all of us).

Even though the deadlines for administrative proceedings were suspended on March 2020 under the Royal Decree 463/2020, of 14 March, declaring the State of Alarm in Spain to manage the health crisis situation caused by COVID-19 pandemic,[1] the CNMC continued reviewing transactions when so requested by the notifying partiers.[2] In fact, from 14 March 2020 to 2 June 2020, the CNMC approved 12 transactions between companies.

Spain in Figures

As the Spanish economy recovered its activity, so did the number of notified transactions. During the first quarter of 2021,[3] 42 transactions were notified to the CNMC, namely 82,61 % more than in the first quarter of 2020 (23 transactions notified).

The industries with the most notified transactions in 2020 were manufacturing (13 cases), information technology and telecommunications (9 cases), chemicals and pharmaceuticals (8 cases), energy (6 cases), transport (5 cases), and foodstuffs (5 cases). During the first quarter of 2021, the sectors that stand out are manufacturing (6 cases), funerary services (4 cases), energy (4 cases), telecommunications (3 cases), transport (3 cases) and insurance (3 cases). This is broadly consistent with previous years and arguably a result of the market share threshold. In a recent speech before the Spanish Congress,[4] Ms Fernández has indicated the CNMC is monitoring closely those industries which may be most affected by the coronavirus crisis including pharmaceuticals, insurance, financial and funerary services.

Spain's merger control system continues to be relatively agile. The average duration of an initial ("Phase I") investigation is c. 20 days, *i.e.*, around ten days less than the one-month legal deadline. The average duration of an in-depth ("Phase II") investigation depends on the particularities of the case. For instance, in the transaction C/1052/19 *Cimsa/Activos Cemex* (the only Phase II transaction the CNMC decided in 2020), 14 months elapsed between the decision to initiate the phase II and the approval of the transaction.

Overall levels of intervention remain relatively low. Overall, in 2020 the non-intervention rate is 85.94% of the total number of decisions in 2020 (55 out of 64 decisions).

During 2020, the CNMC granted 58 Phase I clearances of transactions (55 Phase I clearances without commitments and 3 Phase I clearances with commitments – C/1145/20 *Areas / Autogrill*, C/1116/20 *Pigments / Negocio Ferro* and C/1087/19 *Grupo Bimbo / Fábrica de Paterna de Siro* –), being 90.63 % of the total of transactions decided in 2020). The CNMC obtained remedies in 5.17 % of its Phase I clearances during 2020. Conversely, 94,83 % of the approved Phase I transactions were authorized unconditionally.

The CNMC decided to initiate two Phase II proceedings during 2020 (C/1086/19 *Santa Lucía/Funespaña* and C/1134/20 *Mooring Port Services S.L/Clemesa Amarres Bareclona S.A*). This is significantly higher than the figure for previous years (from 2015 to 2017, the Spanish authority did not initiate a single Phase II investigation, and from 2018 to 2019 the Spanish authority initiated one Phase II investigation per year). One of the Phase II investigations (C/1134/20 *Mooring Port Services S.L/Clemesa Amarres Bareclona S.A*) was initiated after the appointment of Ms Cani Fernández as President of the CNMC. The CNMC approved a Phase II with a combination of divestitures and behavioural commitments in 2020 (initiated in 2019): C/1052/19 *Cimsa/Activos Cemex*. No transaction was reviewed by the Government under the so-called "Phase III" during 2020.

During the first quarter of 2021, the CNMC granted 28 Phase I clearances of transactions (26 Phase I clearances without commitments and 2 Phase I clearances with commitments – C/1144/20 *Caixabank / Bankia* and C/1128/20 *Enoplastic / Sparflex* –), being 90,32 % of the total of transactions decided in the first quarter of 2021. The CNMC decided to initiate three Phase II proceedings in this period (C/1162/21 *Albia/Jordial*, C/1151/20 *Memora / Rekalde* and C/1178/21 *Elysius/Juanals*).

Spain continues to vigorously enforce its market share threshold. During 2020, around 36.76 % of the transactions were filed in the application of the country's turnover threshold, 55.88 % under the market share threshold and a 7.35 % in the application of both.

During the first quarter of 2021, around 11.90% of the transactions were filed in the application of country's turnover threshold, around 47.62 % under the market share threshold and a 4.76 % in the application of both. There is a lack of information in this regard in 35.71% of the notified transactions.

There was no litigation deriving from Spanish merger control during 2020 and the first quarter of 2021. Like the European Commission and unlike, *e.g.*, the US antitrust agencies, the powers of the Spanish authority enable it to intervene (and obtains remedies or prohibits transactions) without going to court. Despite the ongoing hype about the CNMC's mixed record in the courts, the parties continue not to challenge the decisions of the CNMC in the domain of merger control.

Noteworthy Transactions

Annex I below depicts the theories of harm the CNMC resorted to when asking to the parties for commitments, and a summary of the commitments during 2020. As can be gathered there, Spain continues extracting substantial remedies including divestitures (*e.g.*, C/1087/19 *Grupo Bimbo / Fábrica de Paterna de Siro*) and R&D related commitments by resorting to innovation theories of harm (*e.g.*, C/1116/20 *Pigments/Negocio Ferro*). C/1087/19 *Grupo Bimbo / Fábrica de Paterna de Siro* was also salient in that the authority analysed portfolio effects, extracting behavioural commitments.

The same information can be found for the first quarter of 2021 in **Annex II**. The highlight so far is the authorisation of the merger between the third and fourth operators in the Spanish banking industry (Bankia and Caixabank) authorised after an extended (4 months) Phase I investigation subject to an elaborate package of what can be characterised as behavioural remedies requesting them not to worse their terms and conditions to their customers in 86 local markets where the transaction would allegedly lead to a monopoly or duopoly (C/1144/20 *Caixabank / Bankia*). In addition, vertical concerns appear to inform the Phase II investigations initiated in the funerary industry (C/1178/21 *Elysius/Juanals and joined cases*).

New FDI Rules

Among the measures adopted by the Spanish Government as a result of the declaration of the state of emergency by means of Royal Decree 436/2020, of 14 March, features prominently the suspension, effective as of 18 March, of the system of deregulation of foreign direct investment in Spain, implemented by Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to address the economic and social impact of COVID-19. The new FDI rules were amended by Royal Decree-Laws 11/2020, of 31 March, and 34/2020, of 17 November.

As a result, the need for authorisation for foreign investments undertaken for by residents of countries outside the European Union (“EU”) and the European Free Trade Association (“EFTA”) became the norm, when it had previously only been required exceptionally, for very specific sectors. It is particularly noteworthy that the rules apply also to acquisitions of non-controlling minority shareholdings when the investor becomes the holder of a stake greater than or equal to 10% of the share capital of the Spanish company.

About Spanish Merger Control

There have been over 1,200 notifications of transactions, 27 Phase II investigations and no prohibition decisions issued by the CNMC since the entry into force of the Spanish Competition Act in 2007.

The Spanish Competition Act requires parties to certain mergers and acquisitions to file a notification with, and obtain authorization from, the CNMC prior to consummating the proposed transaction.

Upon filing, a one month waiting period begins during which the parties may not close the transaction. During this window, the CNMC assess whether the transaction is likely to have any anticompetitive effects. If deemed necessary, the CNMC is authorized to extend the waiting period, including by initiating a Phase II investigation.

In those cases where the CNMC decides either to prohibit the transaction or to clear it subject to commitments or conditions, the Ministry of the Economy may ask the Government to decide whether to confirm the CNMC’s decision or authorise it, subject or not to commitments or conditions. In the second case, the Government’s decision must be based on certain specified public interest criteria other than competition. In such cases, the Ministry of the Economy has 15 days to decide whether to ask the Government to intervene. If it does, the government has one month to decide on the transaction. The intervention of the government in merger control proceedings is informally known as ‘Phase III’.

Annex I – Theories of harm the CNMC resorted to when requesting commitments, and summary of commitments, agreed during 2020

Case no.	Decision type	Theories of Harm	Commitments
C/1145/20 ***Areas/Autogrill***	Phase I clearance with commitments	The transaction consisted in the acquisition by AREAS, S.A.U. ("**AREAS**") (a global operator specialised in the field of concession catering) of 100% of the shares of AUTOGRILL IBERIA, S.L.U. (an operator of catering establishments and food and convenience stores located in motorway and highway service areas, as well as in shopping centres, airports and railway stations in Spain). The parties' alleged post-transaction market shares were very high (in the airport of Palma de Mallorca, between 70 – 80% by number of shops and between 80 – 90% by sales; in the Madrid – 'Atocha' railway station, 70 to 80 % both by number of shops and by sales; in the Madrid – 'Chamartín' railway station, 40-50% by number of shops and 50-60% by sales; in the Seville – 'Santa Justa' railway station, between 80-90% by number of shops and between 60-70% by sales). In fact, according to the Spanish Authority, there was a risk that these shares could further increase if, post transaction, the buyer was to be awarded any shops operated by third parties.	For those market segments with the highest shares, the buyer offered: (i) terminating early, in the first quarter of 2021, certain contracts (relating, in particular, to a premise at the Palma de Mallorca airport and another one at the Madrid – 'Atocha' railway station) and (ii) not submitting an offer for the tender of certain premises (one at the Palma de Mallorca airport, one in 'Atocha' railway station and another one at the Seville railway station), which expire in 2021. This will release a total of five premises that belonged to the parties by the end of 2021. Moreover, in an effort to facilitate access to third parties, AREAS (*i.e.*, the buyer) agreed not to exceed the post-transaction joint share following the transaction in the aforementioned locations. The conditions specified above will apply for a period of three years, until 1 January 2024.
C/1116/20 ***Pigments/Negocio Ferro***	Phase I clearance with commitments	The transaction consisted in the acquisition by PIGMENTS SPAIN, S.L. ("**PIGMENTS**") of certain assets and liabilities and several companies (Ferro Spain, Endeka, Endeka Ceramics, Zircosil, Quimicer) previously owned by FERRO CORPORATION ("**FERRO**"). Both PIGMENTS and FERRO were active in the production of products within the ceramic tile sector. According to the CNMC, the main competition risk associated with the transaction derived from a reduction of the innovative effort in the sector and of Acquired Party's innovation expenditure by up to 75-100%. On a general level, pursuant to the authority, competition between companies in the ceramics sector would be reduced in areas such as quality or process improvements and new product development.	**A) Commitment to inform the CNMC about the status of R&D projects** PIGMENTS (*i.e.*, the buyer) agreed to address reports to the CNMC every six months, from the closing of the transaction until the expiration date of these remedies, on the status and progress of existing R&D projects. The information in these reports includes the objective pursued by each innovation project, the assigned and implemented budget, the company in charge, as well as any planned change or modification involving said projects. These reports are intended to facilitate the periodic monitoring of R&D activities of the post-transaction entity. **B) Commitment to ask for the prior authorisation to the CNMC before discontinuing R&D projects** PIGMENTS undertook not to abandon, withdraw, merge or consolidate any R&D project, nor reduce the annual budget assigned to an R&D project by more than an undisclosed percentage between 25 and 35 % of the budget assigned to that project without the prior consent of the CNMC. PIGMENTS will provide the Competition Directorate with technical information proving that the R&D project in question is or has become (i) a genuinely duplicated project with respect to one or more existing R&D projects; (ii) an R&D project whose goals cannot reasonably be expected to be achieved; or (iii) an R&D project that is no longer justified for technical reasons or because the technical means and objectives pursued by it have been improved. **C.) The CNMC may also require additional information from PIGMENTS, or from third parties unrelated to the transaction.**

C/1087/19 ***Grupo Bimbo / Fábrica de Paterna de Siro***	Phase I clearance with commitments	The transaction consisted in the acquisition by GRUPO BIMBO ("**BIMBO**") (active in the bakery and pastry sector) of an industrial facility for the production of packaged bread, located in Paterna (Valencia), previously owned by GRUPO SIRO ("**SIRO**") (active in the manufacturing of bakery and pastry products). The transaction included a commercial agreement between BIMBO and MERCADONA (a Spanish supermarket chain) to supply private-label packaged bread. SIRO had been supplying that packaged bread to MERCADONA from said factory located in Paterna. Pursuant to the CNMC, the transaction could lead to (A) the reinforcement of BIMBO's position as a brand manufacturer in the wholesale packaged bread market, where it already had, pre-transaction, a share of between 80-90% in volume and between 70-80% in value in mainland Spain; (B) portfolio / conglomerate effects deriving from certain alleged links between the bakery markets with the distributor's brand and the manufacturer's brand, as well as; (C) the possible status of BIMBO as a priority manufacturer of MERCADONA for private label products.	In order to address those concerns, BIMBO undertook to the following: A) To eliminate any potential contractual or *de facto* link between the bakery products of the BIMBO brand and the private-label products supplied to MERCADONA from the target (as previously indicated, a factory located in Paterna). B) Not to initiate negotiations with MERCADONA involving bakery products with the BIMBO brand, in addition to those already supplied to MERCADONA establishments before the purchase of the Paterna factory; and not to introduce new private-label bakery products in MERCADONA, all for a pre-determined undisclosed period equal to or smaller than 15 months. C) Not to agree with MERCADONA on its designation as a priority manufacturer of additional private-label bakery products for MERCADONA as part of any new supply contract. This commitment will apply for an (also unspecified) longer period than the previous one (the open version of the document contains a reference to "?25 months").
C/1052/19 ***Çimsa /Activos Cemex***	Phase II with commitments	The transaction consisted in the acquisition by ÇIMSA ÇIMENTO SANAYI VE TICARET, A.S. ("**ÇIMSA**") (an international cement producer) of the white cement business of the companies CEMEX ESPAÑA OPERACIONES, S.L.U., CEMEX, S.A.B. DE C.V. AND CEMEX ESPAÑA, S.A. ("**CEMEX**") (cement producers as well). Pursuant to the CNMC, ÇIMSA would become the market leader in both bulk ("*a granel*") and bagged ("*en saco*") white cement, with a combined share of over 50% in the case of bulk white cement. According to the authority, the transaction would enhance the already high market share and leadership position that CEMEX had held in bulk white cement in the 400-km area of influence around the plant acquired from CEMEX (located in Buñol), as well as in certain areas of Levante and the south of Spain which exhibit a notable reduction in the number of alternatives for supplying white cement in bulk within a 400-km radius of those areas. The CNMC found that the post-transaction entity would not be subject to sufficient competitive pressure from its competitors in the market, or from potential competitors, and that the reduction in the number of supply alternatives and the stability of the white cement market could lead to risks of coordinated effects after the transaction.	**A) Commitment to divest the Alicante plant and its associated goodwill in favour of CEMENTOS MOLINS ("MOLINS")** ÇIMSA undertook to the long-term transfer of the right to use the Alicante plant, as well as all the assets associated with it, to MOLINS, subject to certain conditions precedents related to obtaining the relevant administrative authorisations. The transfer also included the assets of the Alicante plant that ÇIMSA used in the white cement business, as well as the goodwill associated with this plant, including the list of customers to which ÇIMSA had supplied white cement from this plant for the last three years. ÇIMSA undertook to comply with this condition prior to the main transaction. **B) Commitment related to ÇIMSA's use of CEMEX's Motril plant to supply the customers of both in the south of Spain** ÇIMSA will supply from Motril all those ÇIMSA customers that it had previously supplied from its Seville plant, as well as all the CEMEX customers who had been supplied from Motril prior to this transaction. This commitment will last until 2022. According to the CNMC, this allows these customers to maintain their supply alternatives unchanged by being able to be supplied from Motril for a period of two years, enough time for the new operator, MOLINS, to establish itself in the market, and for customers in the south of Spain to find alternative white cement suppliers, if necessary.

C/1086/19 *Santa Lucía/Funespaña*	Initiation of Phase II	The transaction consisted in the acquisition by SANTA LUCÍA, S.A. ("**SANTA LUCÍA**") (active in the insurance sector) of the sole control of FUNESPAÑA, S.A. ("**FUNESPAÑA**") (active in the comprehensive provision of funeral services in Spain). FUNESPAÑA was a subsidiary of MAPFRE ESPAÑA S.A. (an insurance company). In practice, the transaction involved the integration of the funeral businesses of FUNESPAÑA and those of ALBIA GESTIÓN DE SERVICIOS, S.L.U. ("**ALBIA**"), a subsidiary of SANTA LUCÍA. Pursuant to the CNMC, the transaction may have anticompetitive effects on the following markets: · **The retail and wholesale markets for the provision of funeral services**: according to the CNMC, there would be a *horizontal* overlap between the activities of (i) ALBIA, (ii) FUNESPAÑA, and (iii) certain companies in which both parties have minority shareholdings (over which SANTA LUCIA also would acquire sole control). Always according to the authority, the transaction represents a merger of the second and third largest operators in the funeral sector, thereby reinforcing ALBIA's position in the retail market for the provision of comprehensive funeral services in Spain, while significantly strengthening its territorial presence by adding to its offer the funeral facilities managed by FUNESPAÑA and its subsidiaries. ALBIA would thus manage 207 mortuaries, 41 crematoria and 26 cemeteries in 194 municipalities (located in 30 provinces belonging to 13 Autonomous Regions). As a result of the transaction, said the CNMC, ALBIA would obtain a share of 100% in the wholesale market for mortuaries in Valdepeñas and 50% in Bilbao (in the same market). In addition, and always according to the CNMC, post-transaction ALBIA would have a market share of 100% of the wholesale mortuary market in 80 municipalities, 100% of the crematoria market in 14 municipalities and 100% of the cemeteries market in 12 municipalities, as well as a market share of 50% of the wholesale mortuaries in 30 municipalities, crematoria in 2 municipalities and cemeteries in one municipality. · **The funeral insurance market**: according to the CNMC, there would be potential *vertical* effects, given the presence of SANTA LUCIA in the funeral insurance sector, and its status as a recipient of funeral sector services. More precisely, the CNMC found that the transaction would strengthen the vertical integration of the SANTA LUCIA group, the alleged leader in the Spanish funeral insurance market (with a 34% share in terms of volume of premiums paid at national level) and the main service provider in the funeral sector. Pursuant to the CNMC, the importance of death insurers as buyers of funeral services in Spain is reflected in the percentage of the deceased in Spain who had death insurance in 2018 (61%). Moreover, the authority found insurance companies have a *de facto* influence on the selection of the funeral company that will provide services to their policyholders and there is a growing vertical integration of insurers with funeral entities. As a result, it is possible to encourage the redirection of the demand of insurers for funeral services to the funeral company of their group, thereby leading to a risk of extending the market power that insurers allegedly enjoy in the death insurance market to the related funeral services market. In this case, the current effects of channelling the funeral services of SANTA LUCIA's policyholders through ALBIA would be increased after the transaction, as the number of locations where they manage funeral facilities would increase substantially. According to the CNMC, the resulting company could be in a position to arbitrarily and unjustifiably raise prices and modify the quality of funeral services to insurers outside its group in those local markets where it had a significant infrastructure of its own. During the first quater of 2021, the CNMC decided to join case C/1086/19 *Santa Lucía/Funespaña* to cases C/1162/2 *Albia/Jordial* and C/1178/21 *Elysius/Juanals* (see below).	No decision yet.

C/1134/20 ***Mooring Port Services S.L/Cemesa Amarres Bareclona S.A.***	Initiation of Phase II	The operation would create a joint venture called AMARRES DE BARCELONA S.L. JV (the "**JV**"), by MOORING & PORT SERVICES, S.L., and CEMESA AMARRES DE BARCELONA, S.A. ("**CEMESA**"), with a 50% shareholding each. The transaction entails the union of the only two companies providing mooring services in this port. According to the CNMC, the merger entailed the creation of a *de facto* monopoly in the mooring ("*amarre*") and unmooring market in the Port of Barcelona. The CNMC identified two potential competition risks: a) The risk that the JV would cease to offer discounts on the maximum tariffs to its customers based on the volume of operations carried out in the mooring and unmooring sector. In this sense, the JV could start to apply the maximum tariffs regulated by the Barcelona Port Authority, with the consequent detriment to mooring service customers. b) The incentive for the resulting entity to leverage its (alleged) resulting dominant position in the mooring and unmooring market to the related auxiliary services markets, in which CEMESA is also present (in the auxiliary technical/nautical and professional diving services). Pursuant to the CNMC, this could take place through bundled offers and exclusive discounts.	No decision yet.

Annex II – Theories of harm the CNMC resorted to when requesting commitments, and summary of commitments, agreed during the first quarter of 2021

Case no.	Decision type	Theories of Harm	Commitments

C/1144/20 ***Caixabank / Bankia***	Phase I clearance with commitments	The transaction consisted in a merger of BANKIA and CAIXABANK. Pre-transaction, Bankia and Caixabank were, respectively, the third and fourth financial entities in the country. According to the CNMC, the transaction creates a "*leader in banking services, in particular in retail banking*". Also pursuant to the authority, the merger posed a threat to effective competition in certain areas of the retail banking market. More precisely: 1. The authority identified 86 postal codes where the resulting entity would either be in a monopoly situation (21 postal codes), or in a duopoly subject to weak competitive pressure (65 postal codes). a) In addition to conducting the analysis at the national and provincial levels, the analysis was also focused local areas based on 1.5-km isochrones from the branches of the resulting bank. b) After comparing the products and conditions offered in the different market segments by both entities and their main competitors, the CNMC concluded that the lack of (or reduced) competitive pressure in these areas would give the resulting entity a high degree of market power that could have adverse effects for consumers located in said postal codes. c) Specifically, a risk of financial exclusion was identified in places where only the parties were present, due to the possibility of closing the bank branches present in those areas after the merger. Likewise, in those environments where there was insufficient competitive pressure from third party operators, the business conditions for previous BANKIA customers could deteriorate. 2. Additionally, the analysis of the ATM market revealed that, for the customers of third parties that had agreements with BANKIA (such as ING, BANCO SABADELL and banks belonging to the EURO6000 network), a possible termination of the agreements, as a result of the merger, would make them unable to access BANKIA's ATM network under the same conditions as before and would require them to pay a higher bank fee. This situation would be specially acute in locations where BANKIA's position in the ATM market was particularly relevant.	**A) In relation to the risks of financial exclusion and the possible tightening of bank fees and commercial conditions** 1. CAIXABANK committed not to leave (except in exceptional cases and subject to prior authorisation from the CNMC) any municipality in which one (or both) of the parties were present and that had no competing branches, so as to avoid financial exclusion in those municipalities. 2. In the 21 postal codes in which CAIXABANK would become a monopolist, CAIXABANK committed to maintain the same conditions and terms for BANKIA's customers that they had for their products. This is guaranteed for a period of 3 years. 3. In the remaining 65 postal codes identified as problematic from a competition perspective, CAIXABANK committed to offer its products, for 3 years, under conditions that were substantially the same as (or "not worse") those offered by CAIXABANK in the three postal codes where it was subject to the greatest competitive pressure. 4. CAIXABANK committed not to charge, for 3 years, in any of the 86 postal codes identified as problematic, bank fees to customers from BANKIA for a teller service when that transaction would have been free under the conditions offered by BANKIA on the merger authorisation date. 5. CAIXABANK committed to inform BANKIA customers (after the CNMC approval of the proposed message) both of the completion of the merger and of the potential changes in products that could affect them. In particular, prior to the implementation of the changes, CAIXABANK had to inform BANKIA customers (i) of the new fees that would apply as a result of the modification of a product or service pursuant to the merger; (ii) of those products offered to CAIXABANK customers for which said BANKIA customers would be eligible and that are comparable to (or better than) the products they had with BANKIA; (iii) that the modifications would go into effect no earlier than 60 days in the case of individual customers (consumers and self-employed workers) and 30 days in the case of other customers; (iv) of the rights available to the customer if there was a change in conditions; and (v) of the customer's right to change banks; 6. CAIXABANK committed to identify BANKIA customers who satisfy the eligibility requirements for CAIXABANK's social (discounted) account and inform them of the possibility of benefiting from the conditions of said account. Likewise, CAIXABANK undertook to maintain, for the duration of this condition, the said social account or an equivalent product, but always under conditions equal to (or more beneficial to) customers than those of the pre-transaction social account. **B) In relation to the risks related to a possible breach of the existing agreements, on the one hand, between BANKIA and ING, and on the other hand, with EURO6000 and BANCO SABADELL, for the use of their ATMs.** **1.** CAIXABANK committed to offer the customers of said entities access to the ATMs that were owned by BANKIA before the merger, for a period of 18 months and under the same economic conditions specified in the aforementioned agreements. **2.** In those cases where the BANKIA ATMs were closed as a result of the merger, CAIXABANK committed to give access to the customers of said previous entities to the nearest CAIXABANK ATM. To this end, CAIXABANK would duly mark the affected ATMs so as to make them easily identifiable by the customers of the corresponding entities.

C/1128/20 ***Enoplastic / Sparflex***	Phase I clearance with commitments	The transaction consisted in the acquisition by ENOFLEX, S.P.A ("**ENOFLEX**") of 99.99% of the shares of SPARFLEX, S.A. ("**SPARFLEX**"). ENOFLEX is the owner of ENOPLASTIC, S.P.A. The companies manufacture different types of capsules for cavas and sparkling wines. The CNMC concluded that the transaction would give rise to significant risks for competition in the market for capsules for cavas and sparkling wines. Specifically, and always according to the CNMC, the transaction could result in price increases or worse service quality once SPARFLEX disappears as the only supply alternative capable of effectively competing with ENOFLEX.	ENOFLEX undertook to sell to a third company (CANALS) certain production lines, their associated goodwill, and the personnel necessary to operate those assets. CANALS was previously approved by the CNMC as a suitable buyer of the assets. The goal of these divestitures is to maintain competitive pressure in the Spanish market, even in the very short term, to the extent that CANALS would be able to start its activity in the national market for the manufacture and marketing of capsules for cavas and sparkling wines practically immediately, while acquiring a position equivalent to that held by ENOFLEX before the transaction.
C/1162/21 ***Albia/Jordial***	Initiation of Phase II	The transaction consists in the acquisition of practically all of the assets related to the provision of funeral services belonging to the company JORDIAL S.L. ("**JORDIAL**") by ALBIA GESTIÓN DE SERVICIOS, S.L.U. ("**ALBIA**") (a company which is active in the comprehensive provision of funeral services in Spain and manages funeral facilities such as mortuaries, crematoria and cemeteries, belonging to the SANTA LUCÍA insurance company). The CNMC was concerned about the potential *vertical* effects of the transaction in these segments: · As regards the wholesale market for mortuary and crematorium services: According to the authority, ALBIA would acquire a significant presence in areas of the province of Burgos (Aranda de Duero and Roa), where ALBIA was not active before. Pursuant to the authority, the transaction would strengthen SANTA LUCIA's ability to provide intra-group funeral services for its policyholders, and potentially also for MAPFRE policyholders (the latter, in the light of the agreement whereby the insurance company MAPFRE undertook to channel the provision of services to its policyholders through the entity resulting from the merger between ALBIA and FUNESPAÑA in operation C/1086/19 *Santa Lucia/Funespaña*, see above), in Aranda de Duero and Roa. · As regards the national retail market for the comprehensive provision of funerary services: ALBIA's presence would be indirectly strengthened by the increased access to mortuary and crematorium facilities that it would have after the transaction, specifically in the province of Burgos. Pursuant to the CNMC, this might allow ALBIA to raise prices and worsen the quality of funeral services provided to uninsured persons and to insured persons who are not from SANTA LUCIA. The CNMC decided to join case C/1162/2 *Albia/Jordial* to case C/1086/19 *Santa Lucía/Funespaña* (see above).	No decision yet.

C/1151/20 ***Memora / Rekalde***	Initiation of Phase II	The transaction consists in the acquisition by MEMORA SERVICIOS FUNERARIOS, S.L.U. ("**MEMORA**") (a company dedicated to the provision of funeral services in various regions of Spain and Portugal) of the companies owned by REKALDE 21 CORPORACIÓN, S.L. that provided funeral, mortuary, crematorium and cemetery management services. According to the CNMC, the transaction could hinder competition in the following markets: · **The wholesale market for mortuary services**: Pursuant to the CNMC, the transaction would reinforce MEMORA's position in this market in the Basque region (in places such as Errenteria and San Sebastián). The company would also get a considerable presence in areas where it was not active in the Basque region (Hernani, Irún, Olaberria, Tolosa, Villabona and Zarauz) and Navarre (Santesteban y Elizondo). · **The wholesale market for crematorium and cemetery services**: MEMORA would acquire a significant presence in areas where it was not active in 4 crematoria located in Errenteria, Olaberria, Villabona and San Sebastián, and in 14 cemeteries located in Guipúzcoa which are publicly owned. · **The national retail market for the provision of comprehensive funeral services market**: in this market the presence of MEMORA would be indirectly reinforced due to the greater access to mortuaries and crematoriums that MEMORA would have post-transaction, specifically in the Basque region and Navarre.	No decision yet.

C/1178/21 *Elysius/Juanals*	Initiation of Phase II	The transaction involved the acquisition by ELYSIUS EUROPA, S.L. ("**ELYSIUS**") (a company providing comprehensive provision of funeral services in Spain, mainly in Catalonia, where it managed funeral facilities such as mortuaries, crematoria and cemeteries) of all the share capital of FUNERARIA JUANALS, SA. ("**JUANALS**") (a company active in the comprehensive provision of funeral services in Spain). ELYSIUS is a Spanish parent company, of the ÁLTIMA group and jointly controlled by ALBIA GESTIÓN DE SERVICIOS, S.L.U. ("**ALBIA**") and Grup VFV, S.L. The CNMC considered that the merger may hinder the maintenance of effective competition in the following markets: · **In the wholesale mortuary and cemetery markets**: As a result of the acquisition (and always pursuant to the Spanish authority), ALBIA, through its joint control of ALTIMA, would acquire a "*notable*" presence in the wholesale mortuary and cemetery markets of Calonge i Sant Antoni and the wholesale mortuary and crematorium markets of Sant Feliu de Guixols (both in Girona). Previously JUANALS operated in that region, but Albia was not active there. From a *vertical perspective*, the transaction would strengthen SANTA LUCIA's ability to provide intra-group funeral services for its policyholders, and potentially also for MAPFRE policyholders, in these new locations (Calonge i Sant Antoni and Sant Feliu de Guixols). · **In the national retail market for the comprehensive provision of funeral services**: Pursuant to the CNMC, this transaction would also reinforce ALBIA's presence in the national retail market for the comprehensive provision of funeral services by the increased access to mortuary, crematorium and cemetery facilities that it would have after the transaction, specifically in the province of Girona. This circumstance could affect competition both in the funeral services market and in the insurance market, by allowing ALBIA to raise prices and worsen the quality of funeral services provided to uninsured and non-Santa Lucia policyholders. The CNMC decided to join case C/1178/21 *Elysius/Juanals* to case C/1086/19 *Santa Lucía/Funespaña* (see above).	No decision yet.

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[1] See Third Additional Provision of the *Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*, Spanish Official Gazette no. 67, of 14 March 2020.

[2] See https://www.cnmc.es/la-cnmc-recibe-mas-de-500-quejas-y-consultas-traves-del-buzon-habilitado-durante-la-crisis-del

[3] The data collected is up to 27 April 2021.

[4] Available, in Spanish only, here: https://app.congreso.es/AudiovisualCongreso/audiovisualEmisionSemiDirecto?codOrgano=378&codSesion=18&idLegislaturaElegida=14

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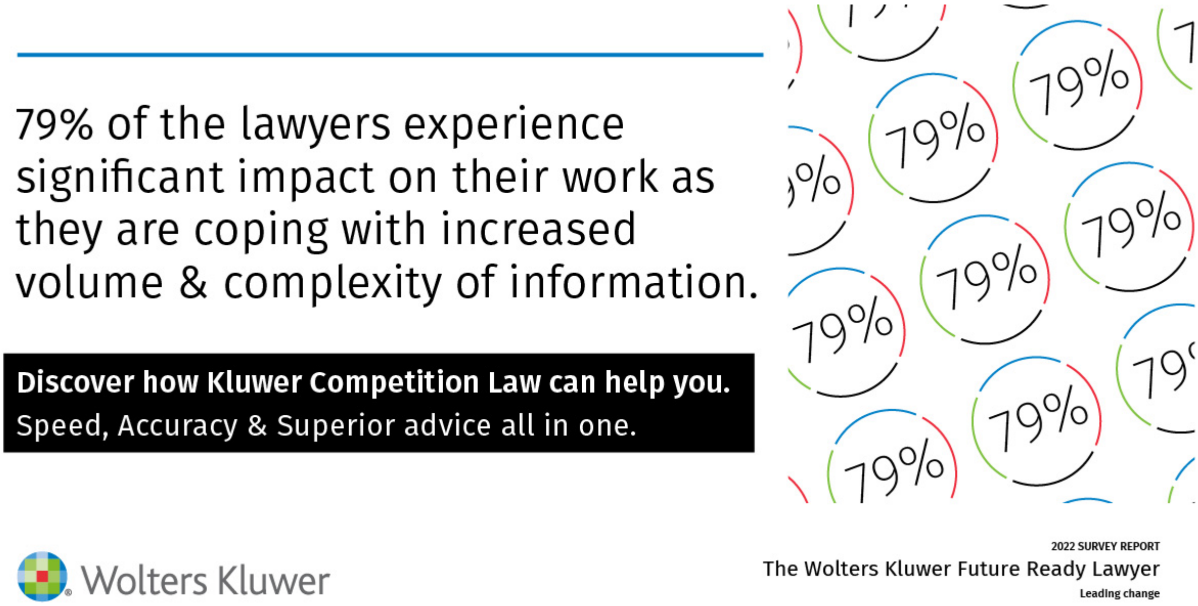

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