



SPAIN

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1. Relevant legislation

Ley 15/2007, de 3 de julio, de Defensa de la Competencia (Spanish Defence of Competition Act). *Real Decreto 261/2008, de 22 de febrero, por el que se aprueba el Reglamento de Defensa de la Competencia* (Spanish Regulation developing the Spanish Defence of Competition Act).

2. Authority

Comisión Nacional de los Mercados y la Competencia
(National Commission of Markets and Competition or CNMC)

www.cnmc.es

3. Types of transactions caught

Under Spanish Law, an economic concentration shall be deemed to arise when a stable change of control takes place regarding the whole or part of one or more undertakings resulting from:

- a) The merger of two or more previously independent undertakings, or
- b) The acquisition by an undertaking of control of the whole or part of one or more undertakings.
- c) The creation of a joint venture and, in general, the acquisition of the joint control of one or more undertakings, when they perform on a lasting basis the functions of an autonomous economic entity.

For the above purposes, control shall be constituted by contracts, rights or any other means which, having regard to the considerations of fact or law involved, that confer the possibility of exercising decisive influence on an undertaking and, in particular by:

- a) ownership or the right to use all or part of the assets of an undertaking,
- b) contracts, rights or any other means which confer decisive influence on the composition, voting or decisions of the organs of the undertaking.

In any event, this control shall be considered to exist when the conditions set out in Article 4 of the Securities Market Act 24/1988, of 28 July, occur.

4. Thresholds

The control procedure shall apply to economic concentrations when at least one of the following two circumstances arise:

- a) When, as a consequence of the concentration, a share equal to or over 30% of the relevant market of product or service is acquired or increased within in Spain or in a geographic market defined within Spain.
- b) When the overall turnover in Spain of all the participants in the concentration exceeds, in the last financial year, the amount of EUR 240 million, provided that at least two of the participants individually generated in Spain a turnover exceeding EUR 60 million.

5. Exceptions

- For circumstance a) indicated above in 4.:
 - Exception: When the overall turnover in Spain of the acquired company or of the assets acquired in the last financial year do not exceed the amount of EUR 10 million, provided the participating undertakings do not reach, individually or jointly, a share equal to or over than 50% in any of the affected markets within Spain or in a geographic market defined within Spain.
- Concentrations under the EU scope according the European Council (EC) Merger Regulation are excluded from the scope of Spanish Competition rules, unless the concentration has been referred by the European Commission to the CNMC.

6. Notifying parties

- They are required to notify:
 - Together, the parties involved in a merger, in the creation of a joint venture or in the acquisition of joint control over all or part of one or more companies.
 - Individually, the party that acquires exclusive control over all or part of one or more companies

7. Submission deadline

Party (-ies) are obliged to notify any time in advance of the implementation of a concentration falling under the scope of Spanish Competition rules. A prohibition to implement the operation shall be in force until a decision (tacitly or expressly) of the CNMC is final (*stand still obligation*).

Exceptionally, it is possible for the CNMC to lift (fully or in part) the *stand still obligation* subject to motivated request made by the interested party(-ies) grounded, for instance, in the possible failure of the operation and the economic advantages to be lost if the concentration is not implemented before the authorisation is obtained.

8. Filing fees

- When the notification is made under the *abbreviated filling form*, a fixed fee of EUR 1530.15, subject to specific conditions provided by the Spanish Competition rules.
- When the notification is made under the *ordinary filling form*, according Spanish Competition rules:
 - A fee of EUR 5,502.15 when the overall turnover in Spain of all the participants in the concentration is equal or inferior to EUR 240 million.
 - A fee of EUR 11,004.31 when the overall turnover in Spain of all the participants in the concentration is equal or inferior to EUR 480 million.
 - A fee of EUR 22,008.62 when the overall turnover in Spain of all the participants in the concentration is equal or inferior to EUR 3,000 million.
 - A fee of EUR 43,944 when the overall turnover in Spain of all the participants in the concentration is over EUR 3,000 million and an additional amount of EUR 11,004.31

for every additional EUR 3,000 million in which said turnover exceeds the previous amount, up to a maximum limit of EUR 109,806.

9. Proceedings timetable

After notification, the procedure could be finished on a first stage (Phase I) or, in determinate conditions, it could be subject to a second stage (Phase II):

- First Stage: The Council of the CNMC shall issue and notify its resolution within one month. The CNMC might decide to:
 - Authorise the concentration.
 - Subject the authorisation to commitments (proposed by the applicants).
 - Refer the file to the European Commission.
 - Deny the authorisation
 - File the procedure.
 - Initiate a Second Stage.
- Second Stage: The Council of the CNMC shall issue and notify its resolution within two months from the moment Second Stage started. The CNMC might decide to:
 - Authorise the concentration.
 - Subject the authorisation to commitments (proposed by the applicants).
 - Deny the authorisation
 - File the procedure.

All resolutions on Second Stage have to be referred to the Ministry of Economy and Treasury. If it is the case that the CNMC decided to commitments, The Ministry of Economy and Treasury will have 15 business days to issue a report on such issue. In such report, the Ministry of Economy and Treasury may decide to refer its decision to the Council of Ministers. Should it be the case, the Council of Ministers will have one month to issue its decision.

Any of the above mentioned terms can be suspended and extended in practice when the CNMC requests additional information during the procedure.

Appeal procedure:

- Administrative appeal against resolutions and acts issued by the Directorate of Investigation:

The resolutions and acts of the Directorate of Investigation that produce defenselessness or irreparable damage to rights or legitimate interests can be appealed before the Council of the CNMC within 10 business days. The Council will reveal the file so that the parties can make allegations within a period of 15 business days.

- Appeals against resolutions and acts issued by the President and by the Council of the CNMC:

Against the resolutions and acts of the President and the Council of the CNMC, a contentious-administrative appeal can only be filed before the National Court (“Audiencia Nacional”).

In the case of resolutions in the second phase in which the CNMC Council prohibits a concentration or subordinates compliance with commitments or conditions, they will not be effective or enforceable and will not end the administrative process. In these cases, a contentious-administrative appeal may be filed before the National Court.

10. Availability of pre-notification/informal consultation

Previously to the notification, the party (-ies) might r consult to the CNMC if:

- A determinate operation is a concentration according the Spanish Defence of Competition Act.
- A determinate concentration is over the threshold set by the Spanish Defence of Competition Act.

It has to be considered that when, by the means of a consultation made by the party (-ies) or any other mean, the CNMC might investigate whether or not there is a concentration that has to be mandatorily notified under Spanish Competition rules.

11. Test for clearance/prohibition

The CNMC may decide that the concentration may proceed because it does not give rise to serious doubts about its compatibility with Spanish Competition rules.

Particularly, the CNMC shall base its decision in:

- Relevant market(s) structure.
- Relative position in the relevant market of the affected undertaking(s).
- Actual or potential competitive situation of the relevant market(s).
- The possibilities for the consumers and suppliers to access to the market or supply sources.
- The actual and/or potential situation of offer and demand and the ability of economic operators to compensate the market position of the affected companies.
- Economic efficiencies of the proposed concentration.

12. Conditional clearance – remedies

When a concentration can lead to obstacles to the maintenance of effective competition, the notifying parties, on their own initiative or at the request of the CNMC, may propose commitments to resolve those obstacles.

The commitments proposed by the notifying parties may be communicated to the interested parties or to third-party operators in order to assess their suitability to resolve the competition problems arising from the concentration as well as their effects on the markets.

13. Stand-still obligation

See above point 7.

14. Failure to notify/obtain clearance

In the case a concentration falling under the scope of the merger control procedure is not notified but implemented, such a concentration can be declared null and void, and its effects can be brought back to the moment before the merger took place.

Additionally, there are three types of penalties linked to the seriousness of the infringement:

- Minor infringements: fine up to 1 % of the overall turnover of the previous financial year of the company (-ies).
- Serious infringements: fined up to 5 % of the overall turnover of the previous financial year of the company.
- Very serious infringements: fine up to 10 % of the overall turnover of the previous financial year of the company.