CARTEL DAMAGES CLAIMS GROWING CONCERN FOR CLIENTS - BROSETA

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Actions for damages related to cartels are a major concern for clients as competition authorities step up the fight against such infringements, says Carlos Vérgez, head of competition at Broseta in Madrid.

"Antitrust and cartel enforcement continues to be one of the main areas of activity for competition authorities at European Union and national level," he explains. "In Spain, the CNMC (Comisión Nacional de los Mercados y la Competencia) is not only maintaining its scrutiny of cartels – including bid-rigging – but is also expected to set up an economic intelligence unit, with the aim of using statistic tools to unveil collusive behavior." Nevertheless, Vérgez believes it remains to be seen whether the expected increase in litigation related to damages actions acts as a disincentive for using the leniency system, which may in turn reduce the number of cartels unveiled by competition authorities.
However, Vérgez says that actions for damages is a key concern of clients because, while actions in

Europe are unlikely to reach the level of countries such as the US, they are still expected to increase considerably. “This is an area in which it will no longer be rare for companies to find themselves not only as defendants but sometimes as applicants too, since cartels entered into by their suppliers/clients may also have harmful effects that could create incentives to obtain compensation,” he explains. And while December 2016 was the time limit for member states to implement the EU Directive on damages, not all EU countries have adopted the necessary national legislation to implement it. “Spain only recently adopted legislation in May 2017,” he adds. This represents an opportunity for law firms to not only provide clients with litigation and competition law-related services, but also advise on the potential commercial impact. “All of this will be crucial to defend clients’ interests,” says Vérgez.