

CHALLENGING TRADE ASSOCIATIONS - GOLD ABOGADOS

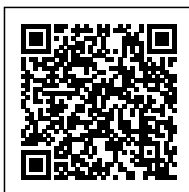
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Gerard Pérez Olmo

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European Commission (EC) guidelines intended to toughen up the enforcement of anti-cartel practices in 2011 may have escaped the attention of many Spanish Trade Associations but they are encouraging an increasingly strict approach by the Spanish competition authority, says Gerard Pérez Olmo, Competition Partner with GOLD Abogados in Madrid.

"The Comisión Nacional de la Competencia (CNC) was one of the first to apply the guidelines to cases involving exchanges of confidential information and has subsequently been quite aggressive in their interpretation."

Many Associations are now finding themselves under stricter scrutiny from the CNC as regards communications between members which is increasing the chances of investigative raids and

enforcement activity. "Albeit an important role of many has traditionally consisted of promoting market studies, including comparing production and sales statistics."

The CNC increasingly believes that this could be deemed as cartel activity even without demonstrating the existence of explicit price fixing or market sharing information between companies. "They are conducting more investigations and being more thorough and this could put many companies and trade associations in a difficult position," says Pérez Olmo.

Very few enforcement cases have yet gone to court, so questions remain whether the judiciary will support or reject such findings. Associations and their members are inevitably looking for advice to help them clarify their positions.

"My advice is to be very cautious if you are a member of a trade organisation or even managing one," he says. "A thorough review of all activities involving exchanges of information between members, not just current but historic information too, may be necessary in order to ensure compliance with cartel rules."