

THE FINE TUNING OF SPANISH COMPETITION LAW - URÍA MENÉNDEZ

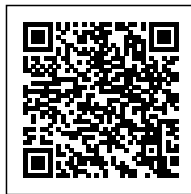
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“The regulators in Portugal are under pressure from both the media and political parties to increase their surveillance on some sectors – particularly financial, oil and gas operations.”
Ricardo Oliveira, PLMJ

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The downturn is not lessening the impact or application of competition law principles

Spanish competition law has seen radical changes in recent years including the introduction of new legislative and regulatory powers. Indicative of this maturing environment is the fact that even in the current difficult economic times competition analysis continues to be rigorous, says Jaime Folguera, Head of Competition at Uría Menéndez.

"Even in the reduced merger clearance area, many of the deals being proposed are nonetheless proving increasingly more difficult to pass. Despite the wider economic scenario it is still not easy to get through the regulatory process even where the target is in financial difficulties."

Regulators are looking very closely at the relative merits of individual transactions, he says. At both the domestic and European level there is a reluctance to follow the 'failing firm' doctrine – where increased flexibility in the application of competition rules is applied to companies very close to collapse.

But the same rigid stance is also seen when analysing behavioural issues, Folguera emphasises. Although there have been some voices claiming that competition law enforcement should be softened during the crisis this has been firmly rejected by the Spanish Competition Authority (Comisión Nacional de la Competencia – CNC).

"The CNC has succeeded in having public opinion on their side and notably so against cartels, which is a dramatic turnaround from perhaps only 10 years ago.

But the fact that companies have been fined does not make others immune from the same risk. Even in highly regulated markets, issues continue to arise."

The work of the regulators therefore continues, albeit the success of the CNC's whistle-blowing and

now leniency programs, and the relatively high level of fines imposed on cartels, has sent out a strong message to the market.

"There is no doubt that as an institution the CNC is a success. It is well-structured, there are clear procedural rules – although some of them are interpreted in a questionable manner – and the result is a much more joined-up Spanish policy. That said, we do still need judges to review its decisions, and to build up the necessary checks and balances, a degree of fine-tuning is always still required," says Folguera.