



**International  
Competition  
Network**

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**Spain**

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# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]<sup>1</sup>

## 1. Information on the law relating to cartels

<b>A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]</b>	Competition Act 15/2007, 3 July 2007. <a href="#">Spanish version</a> . English version on going in the CNMC's website. National Authority for Markets and Competition (CNMC) Constitution Act 3/2013. <a href="#">Spanish version</a> . Public Sector Contracts Act 9/2017 approving the transposition of the European Parliament and Council Directives 2014/23/UE and 2014/24/UE of 26 February 2014, 8 November 2017. <a href="#">Spanish version</a> .
<b>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b>	Royal Decree 261/2008, 22 February 2008, approving the Defence of Competition Regulation (RDC). <a href="#">Spanish version</a> . Royal Decree 657/2013, 30 August, approving the Organisational Charter of the National Markets and Competition Commission. <a href="#">Spanish version</a> . <a href="#">English version</a>

<sup>1</sup> Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence Act 1/2002, of 21 February 2022. <a href="#">Spanish version.</a>
<b>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b>	<p>Communication on Termination by Commitments of Infringement Proceedings, 2011. <a href="#">Spanish version.</a></p> <p>Communication on Leniency Programme, 2013. <a href="#">English version.</a> <a href="#">Spanish version.</a></p> <p>Informative note on the inspections carried out by the Competition Directorate of the CNMC in matters of Defense of Competition, 2016. <a href="#">Spanish version.</a></p> <p>Guide against fraud in public bidding, 2017. <a href="#">Spanish version.</a></p> <p>CNMC's Provisional guidelines on the method of setting fines, 2018. <a href="#">English version.</a> <a href="#">Spanish version.</a></p> <p>Guide for the presentation of economic reports by the Competition Directorate of the CNMC, 2018. <a href="#">Spanish version.</a></p> <p>Guide on the treatment of confidential information and personal data in procedures for the defense of Competition Law under Lay 15/2007, 2020. <a href="#">Spanish version.</a></p> <p>Antitrust compliance programme guidelines, 2020. <a href="#">English version.</a> <a href="#">Spanish version.</a></p> <p>Communication 1/2022, of May 24, from the CNMC on the holding of hearings in the procedures provided for in the Competition Act, 2022. <a href="#">Spanish version.</a></p>
<b>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</b>	<p>Royal Decree-Law 9/2017, 26 May, implementing several European directives in the financial, trade and health care market, amending Competition Act 15/2007. <a href="#">Spanish version.</a></p> <p>Royal Decree-Law 7/2021, 27 April, implementing several European directives in competence, money laundering, credit institution, telecommunications, tributary measures, prevention and repair of environmental damages, posting of workers in the provision of transnational services and consumer defence, amending Competition Act 15/2007 in competence, money laundering, credit institution, telecommunications, tributary measures, prevention and repair of environmental damages, posting of workers in the provision of transnational services and consumer defence, amending Competition Act 15/2007. <a href="#">Spanish version.</a></p>

## 2. Scope and nature of prohibition on cartels

<b>A. Does your law or case law define the term "cartel"? [Please quote.]</b>	Yes, Article 1 of the Competition Act 15/2007 refers to prohibited conducts and in particular to collusive conducts, in which cartels are included:
<b>If not, please indicate the term you use instead. [Please quote.]</b>	<i>"1. All agreements, collective decisions or recommendations, or concerted or consciously parallel practices are prohibited, which have as their object, produce or may produce the effect of prevention, restriction or distortion of competition in all or part of the national market and, in particular, those which consist of:</i>

	<p>a) <i>The direct or indirect fixing of prices or any other trading or service conditions.</i></p> <p>b) <i>The limitation or control of production, distribution, technical development or investment.</i></p> <p>c) <i>The share-out of the market or sources of supply.</i></p> <p>d) <i>The application, in trading or service relationships, of dissimilar conditions to equivalent transactions, thereby placing some competitors at a disadvantage compared with others.</i></p> <p>e) <i>The subordination of the conclusion of contracts to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of these contracts."</i></p> <p>In addition, the 4th Additional Provision of the Competition Act 15/2007, amended by the Royal Decree-Law 9/2017, 26 May, defines a cartel as <i>"any agreement or concerted practice among two or more competitors which have as their object, to coordinate its competitive behavior in the market or to have an impact on the competitive parameters such as fixing or coordinating the purchase or selling price or any other trade condition, even related to intellectual or industrial property rights; assigning production or sales quotas; market and clients sharing, including bid rigging, import or export restrictions, or the measures against free competition taken against any other competitor"</i>.</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" – e.g.: price fixing, market sharing, bid rigging or production or sales quotas<sup>2</sup>) and other types of "cartels"? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</b></p>	<p>The Competition Act does not distinguish between very serious cartel behaviour (hardcore cartels) and other kind of cartels.</p> <p>Article 1, Section 1 of the Competition Act includes a non-exhaustive list of collusive conducts (see question No 2/A below) among which cartels are included. Notwithstanding, in the graduation of the various infringements set out in the Competition Act, cartels are classified as very serious infringements in Art. 62.4.a):</p> <p><i>"a) The collusive conduct typified in Article 1 of the Competition Act and in the Article 101 of the Treaty on the Functioning of the European Union."</i></p>
<p><b>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</b></p>	<p>The following exceptions are included in Section 3, 4 and 5 of Article 1 of the Competition Act 15/2007, reducing the general ban on collusive conducts to agreements, decisions, recommendations, and practices that contribute to improve the production or the commercialisation and distribution of goods and services or to promote technical or economic progress, without the need for any prior decision for this purpose, providing that:</p> <p>a) They allow consumers a fair share of its benefits.</p> <p>b) They do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and</p>

<sup>2</sup> In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as "hardcore cartels". Hereinafter this terminology is used.

	<p>c) They do not afford participating undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.</p> <p>Additionally, Article 4 of the Competition Act exempts the conducts exempted by the law (without prejudice to the eventual application of the Community provisions regarding competition, the prohibitions of this chapter shall not apply to conduct those results from the application of an Act) and Article 5 of the Competition Act exempts the "Conducts of minor importance" from the general ban:</p> <p><i>"The prohibitions included in Articles 1 to 3 of this Act shall not apply to conducts which, due to their scant importance, are not capable of significantly affecting competition. The criteria for demarcating conduct of minor importance shall be determined according to regulations, taking into account, among others, the market share".</i></p> <p>Nevertheless Article 2 of the RDC excludes the application of this exemption to a cartel infringement: <i>"conducts shall not be classified as of minor importance if they are carried on between competitors and, directly or indirectly, in isolation or in combination with other factors under the control of the participating companies, have as their object: a) the fixing of prices when selling the products to third parties; b) the limitation of output or sales; c) the allocation of markets or customers, including fraudulent bids, or restriction of imports or exports".</i></p> <p>Finally, in the Communication on Termination by Commitments of Infringement Proceedings is established that this type of procedure will not be initiated when the investigation involves a violation of Article 1 of the Competition Act in relation to a cartel.</p>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i><sup>3</sup>? [If the situation differs for civil, administrative and criminal liability, please clarify this.]</b></p>	<p>Yes, it is illegal <i>per se</i>.</p>
<p><b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b></p>	<p>The participation in a cartel in the Spanish jurisdiction is an administrative infringement, not a criminal offence.</p>

### 3. Investigating institution(s)

<p><b>A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation</b></p>	<p>Spain's National Authority for Markets and Competition (Comisión Nacional de los Mercados y de la Competencia, CNMC) is since its inception in Act 3/2013, 4 June 2013, the agency which investigates infringements at national or supra regional level in the Spanish jurisdiction.</p>
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<sup>3</sup> For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

<p><b>of responsibilities]</b></p>	<p>The Competition Directorate within the CNMC is the department in charge of investigating antitrust infringements, and cartel ones including at a national or supra regional level.</p> <p>The CNMC Council is the collective decision-making body in relation to the resolution of cases, functions conferred on the CNMC. The Council has two chambers, one dedicated to competition issues and another dedicated to regulatory supervision. The CNMC President chairs the Competition Chamber and resolves the infringement competition proceedings, including cartel cases.</p> <p>Besides, although the CNMC is responsible for preserving, guaranteeing and promoting the existence of effective competition in the markets at the national level, the Autonomous Communities also have their own authorities for defending competition in cases whose scope does not go beyond the territory of the respective region. Therefore, Regional Competition Authorities are responsible for exercising the competences described in the Competition Act when such conduct, without affecting a sphere that is higher than that of an Autonomous Community (regional markets) or than that of the national market affects or may affect free competition in the sphere of the respective Autonomous Community (Article 1 of Act 1/2002).</p>
<p><b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b></p>	<p>Comisión Nacional de los Mercados y la Competencia (CNMC): <a href="https://www.cnmc.es/">https://www.cnmc.es/</a> [Information available in English, Spanish, Català, Euskera and Galego].</p> <p>Address:</p> <p>Alcalá, 47 (28014 Madrid) Telephone: +34 914329600  Barquillo, 5 (28004 Madrid) Telephone: +34 914329600  Bolivia, 56 (08018 Barcelona) Telephone: +34 936036200</p> <p>Competition Directorate: Barquillo, 5 (28004, Madrid), Telephone: +34917876841 <a href="mailto:dc@cnmc.es">dc@cnmc.es</a>.</p>
<p><b>C. Information point for potential complainants:</b></p>	<p><a href="#">Comisión Nacional de los Mercados y de la Competencia</a>, by clicking "<a href="#">Competition</a>" and "<a href="#">Services available to you</a>".</p>
<p><b>D. Contact point where complaints can be lodged:</b></p>	<p><a href="#">Electronic contact point</a>, by clicking "<a href="#">Competition</a>" and "<a href="#">Filing a complaint</a>".</p> <p>Registry Office: Alcalá, 47, 28014 Madrid/Barquillo, 5, 28004 Madrid/Bolivia, 56, 08018 Barcelona</p>
<p><b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b></p>	<p>Yes. The Competition Act 15/2007 sets out mechanisms for the coordination of all the administrative bodies that intervene in the application of the Act, with the object of safeguarding the consistency of the competition policy, efficiency in the allocation of public resources and the legal certainty of economic operators.</p> <p>According to Article 15 of the Competition Act, the CNMC shall obtain from the competent autonomous body a mandatory, non-binding report, in relation to the conduct set out in Articles 1, 2 and 3 of the Competition Act or Articles 101 and 102 TFEU that, affecting a supra-autonomous sphere or the national market, have a significant effect in the territory of the respective Autonomous Community. The CNMC and Regional Competition Authorities may request the mutual assistance of their personnel.</p>

#### 4. Decision-making institution(s)<sup>4</sup> [to be filled in only if this is different from the investigating agency]

<b>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</b>	<p>As mentioned above, the Council of the CNMC is the collective decision-making body in relation to the resolution functions conferred on the CNMC. The Competition Directorate within the CNMC is the department in charge of investigating all antitrust infringements, cartel ones included at a national or supra regional level. Both the Council and the Competition Directorate belong to the same Agency, the CNMC, so they are not two different agencies but units within the same Agency.</p>
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	<p>N/A</p>
<b>C. Contact point for questions and consultations:</b>	<p>N/A</p>
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	<p>N/A</p>
<b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b>	<p>N/A</p>

#### 5. Handling complaints and initiation of proceedings

<b>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</b>	<p>According to Article 49 of Competition Act 15/2007, the proceedings are initiated ex officio by the Competition Directorate, be it on its own initiative or that of the Council of the CNMC or by complaint. Any natural or legal person interested or not, may submit a complaint.</p> <p>The Competition Directorate shall institute proceedings when rational signs are observed of the existence of a prohibited conduct and shall notify the interested parties of the decision to institute proceedings, except when prioritization criteria are met, including: i) few indications, ii) limited effects, iii) other more appropriate avenues, so that the Competition Directorate will not initiate such proceedings if the case is not considered a priority.</p>
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<sup>4</sup> Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>As for the leniency programme, according to Article 46 and 50 of Royal Decree 261/2008, 22 February, which implements Article 65 and 66 of the Competition Act 15/2007, the procedure for exemption from payment or reduction of the fine will be initiated at the initiative of the company or natural person that has participated in the cartel, who must for such purpose submit to the Competition Directorate a leniency application with the information and relevant evidence mentioned in those articles.</p>
<p><b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</b></p>	<p>Complaints addressed to the Competition Directorate must contain, at minimum, the following information, stated in Article 25.2 of the Royal Decree 261/2008 and in the form of its Annex I:</p> <ul style="list-style-type: none"> <li>a) Full individual or corporate name, address, telephone and fax number of the complainants and, in case they are acting through a representative, evidence of the representative capacity and address for the purpose of notifications.</li> <li>b) Full individual or corporate name, address and, if applicable, telephone and fax number or any other relevant electronic media of the accused.</li> <li>c) Facts from which derives the existence of a violation and evidence thereof, if applicable, and definition and structure of the relevant market.</li> <li>d) If applicable, justification of standing as interested party in eventual disciplinary proceeding.</li> </ul> <p>This written complaint can be submitted to the CNMC through its <a href="#">website page</a>, by clicking "<a href="#">Competition</a>" and then "<a href="#">Filing a complaint</a>", by fax or directly on the Registry Office (Alcalá, 47 or Barquillo, 5 in Madrid and Bolivia, 56 in Barcelona).</p> <p>Concerning the leniency programme, the leniency application could be addressed to the Competition Directorate in writing, orally or through the <a href="#">CNMC Electronic Register</a>, by clicking "<a href="#">Competition</a>" and then "<a href="#">Leniency requests for fine exemption or reduction</a>". Although the leniency application may be submitted at any office authorized as official register under Article 16 of the Act 39/2015 of the Common Administrative Procedure of Public Administrations, the entry date and time of those leniency applications determining their reception order will be that of their registration in the CNMC register. As it is said before, the CNMC may accept oral leniency applications. To do so, it will arrange a meeting at the CNMC offices and, after the recording has been transcribed, the declaration will be registered. The transcript's entry date and time at the CNMC register will determine the order of receipt of that leniency application. The oral leniency application will be recorded and transcribed using the CNMC's own resources, upon prior review of the recording and verification of the accuracy of the transcript with the leniency applicant, and the applicant will not be allowed to use recording devices.</p>
<p><b>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</b></p>	<p>Any natural or legal person may submit a complaint against a cartel. The complaint must meet the legal requirements set out in Article 25 of Royal Decree 261/2008 and according to paragraph 5 of this Article 25, "<i>the filing of a complaint does not bind the Competition Directorate to initiate a sanctioning procedure</i>".</p>



	<p>The Competition Directorate will communicate to the complainant the non-initiation of the procedure when it is a complaint that does not constitute a priority in accordance with the provisions of Article 49.4 of the Competition Act. In any other case, the decision of the Council of the National Commission for Markets and Competition, at the proposal of the Competition Directorate, not to initiate proceedings, shall be communicated to the complainant, stating the reasons for not initiating proceedings in accordance with the provisions of Article 49.3 of the Competition Act, 15/2007.</p>
<p><b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</b></p>	<p>Submission of a complaint in due form does not oblige the Competition Directorate to open a formal proceeding. According to Article 49 of the Competition Act, the Competition Directorate shall institute proceedings when rational signs of the existence of a prohibited conduct are observed, and it shall notify the interested parties of the decision to open proceedings. On the contrary, when it would be observed there is no rational evidence which may constitute an infringement, it would not initiate proceedings and it shall be notified to the complainant, indicating the reasons for not initiating the proceeding in accordance with Article 49 of the Competition Act 15/2007. Furthermore, modifications introduced in the Competition Act in 2021 allow the Competition Directorate to proceed with the prioritization of cases, where this unit is authorized not to initiate proceedings in those cases where there has been a complaint filed and it does not constitute a priority. This shall be communicated to the Council and then, if there is no opposition, to the complainant. Prioritization criteria, according to the Competition Act 15/2007, include, among others:</p> <ul style="list-style-type: none"> <li>i) Provides few elements of proof or weak indications, in which the probability of the Competition Directorate proving the conduct is reduced.</li> <li>ii) Refers to infringements whose potential scope is limited, or its potential damage posed to consumers or productive competitiveness is limited.</li> <li>ii) Refers to conducts whose prevention and eradication is feasible through other legal means to preserve and promote competition, and thus improving resource allocation and efficiency within the CNMC.</li> </ul>
<p><b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b></p>	<p>Yes, according to Article 49 of the Competition Act 15/2007, the CNMC is required to issue a decision addressed to the complainant motivating the reasons not to pursue a complaint and not to initiate the proceedings.</p>
<p><b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b></p>	<p>No, there is not any time limit counted from the date of receipt of a complaint by the competition agency for taking the decision whether to investigate or reject it.</p>

## 6. Leniency policy<sup>5</sup>

<p><b>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</b></p>	<p>According to the Spanish jurisdiction, leniency programme refers to the situations and the exemptions and reductions of fines provided for in Articles 65 and 66 of the Competition Act 15/2007, respectively.</p>
<p><b>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</b></p>	<p>Spanish jurisdiction offers full leniency (Art. 65 Competition Act) and/or partial leniency (Art. 66 Competition Act 15/2007). Arts. 65 and 66 of Competition Act, developed by Arts. 46 to 53 of the Competition Regulation, allow the CNMC to grant exemptions from payment of fines or reductions to the amount of fines to undertakings or individuals that inform the CNMC of the existence of a cartel and their participation or responsibility in it, accompanied by the substantive evidence at their disposal or that may be obtained through an internal investigation.</p>
<p><b>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</b></p>	<p>According to Article 65 Competition Act, to be exempted from paying the fine for which it might otherwise be liable, the applicant must be the first to provide the Competition Directorate with sufficient information and evidence to order an inspection in relation to a cartel or to establish the existence of a cartel infringement.</p> <p>a) The first undertaking and/or individual who, in the view of the CNMC, provides the Competition Directorate with the necessary evidence to order an inspection in a cartel investigation may qualify for exemption from payment of the fine. This requirement will be deemed fulfilled if the applicant's contribution allows the Competition Directorate to order an inspection, no matter whether it is successful or not or it is even carried out in case the Competition Directorate chose to employ other investigative measures.</p> <p>b) Alternatively, an exemption from payment of the fine may be granted to the first undertaking and/or individual that submits evidence, which, in the judgment of the CNMC, allows to legally verify the existence of an infringement of Art. 1 Competition Act and, if applicable, of Art. 101 TFEU, if a conditional exemption had not been granted under the preceding point in relation to the same cartel.</p> <p>The exemption from payment of the fine granted to an undertaking shall also benefit its legal representatives or the people comprising management bodies and who have taken part in the agreement or decision, providing that they have collaborated with the CNMC (Article 65.3 Competition Act).</p>
<p><b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b></p>	<p>Yes, this comprises the eligibility criteria to grant leniency. The Competition Directorate will not grant a conditional exemption if, at the time the application is submitted, it has already sufficient evidence to carry out an inspection or to establish the cartel infringement without having to rely on the submission of the exemption applicant, even if it cannot do so at the same level of detail or with the same breadth of scope.</p>

<sup>5</sup> For the purposes of this template the notion of 'leniency' covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like 'leniency' 'amnesty' and 'immunity' are considered as synonyms.

<p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	<p>If the CNMC receives more than one leniency application in relation to the same cartel, it will examine the applications by order of receipt. The element which is relevant to provide with enough evidence to order an inspection or to declare the existence of an infringement is, if at the date this evidence is submitted, the CNMC does not already have enough evidence to order such an inspection or to establish the existence of an infringement.</p>
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>A leniency application may be submitted by any undertaking or individual (directly or through their duly evidenced legal representatives) that participate in a cartel affecting the whole or part of the national territory. Eligibility to be considered a leniency applicant under the above criteria extends to undertakings and individual that may be considered responsible for a cartel, and hence liable for the applicable sanction, irrespective of whether that responsibility derives from their direct involvement in the cartel, from their decisive influence as parent company or as a successor undertaking to the one that originally participated in the cartel.</p> <p>Given that under Article 63.2 Competition Act fines may be levied on each of the legal representatives of the people in executive bodies of the economic operators, undertakings, associations, unions or groupings that have taken part in the anti-competitive agreement or decisions, such people may also file a leniency application in their own name.</p>
<p><b>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</b></p>	<p>According to Article 65 Competition Act and Arts. 46 and 52 Competition Regulation, the general conditions to meet are the following: to provide the CNMC with decisive evidence, maintain cooperation throughout the proceeding, cease the infringement (except in those situations in which the CNMC deems it necessary that said participation continues in order to preserve the effectiveness of an inspection), not to have destroyed evidence related to the application for exemption nor to have disclosed, directly or indirectly, to third parties other than the Competition Authorities, the fact of its contemplated application or any of the content and not having adopted measures to oblige other undertakings to participate in the infringement.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</b></p>	<p>Leniency applicants that do not meet the requirements to qualify for exemption may be able to benefit from a reduction in the amount of the fine that would otherwise be levied on them, if they provide evidence of the alleged infringement with significant added value relative to the evidence already in the CNMC's possession and comply with Article 66.1 Competition Act requirements over the course of the proceeding.</p> <p>According to Article 66.1 Competition Act, a reduction application may be submitted by an undertaking or individual participating in a cartel and that does not qualify for exemption, either because exemption is not available or because the applicant coerced other cartel participants and is therefore disqualified from seeking exemption.</p> <p>The availability conditions to meet are:</p> <p>a) To provide with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the CNMC's possession, and</p>

	<p>b) To maintain cooperation throughout, stop the involvement in the infringement and not to have destroyed any evidence related to the leniency application, nor to have disclosed, directly or indirectly, to third parties other than the Competition Authorities, the application's existence nor any of its content.</p> <p>The evidence provided should include a significant added value in the sense of Article 49 Competition Regulation which states that:</p> <p><i>“2. Evidence will be considered to provide significant added value when that evidence, whether by its nature or level of detail, reinforces the National Competition Authority’s ability to prove the relevant facts.”</i></p> <p>To analyse if the evidence submitted by the reduction applicant provides with significant added value, the evidence must be assessed in terms of its intrinsic value (due to its nature or its level of detail), for grounding the Competition Directorate’s decision in relation to factual or legally relevant circumstances.</p> <p>Depending on the individual cases, significant facts for determining added value may include, among others, the type of document, its date, background and author, its recipient, the occasion, and purpose for which it was issued, the place where it has been kept and its specific content, in particular, clarifying the meaning of codes, key terms, etc.</p> <p>In this regard, in the current state of Spanish and EU case-law and practice, information and incriminating evidence directly related to the facts provided by the reduction applicant are considered to have greater probative value than an indirect evidence; testimony (statements, recordings, etc) on the facts in which the author has taken part in attached to its leniency application have greater probative value than the indirect testimonies it may submit, and written evidence dating from the period in which the investigated facts took place (minutes, e-mails, letters, faxes, etc) provided with the leniency application are of greater probative value than those dated at a later time, for example. Due to the above-mentioned criteria, a particularly high probative value must be attached to the information or statements provided by the leniency applicant, including his guilty incrimination, other cartel participants, undertakings and/or individuals.</p> <p>The reduction applications’ order will be determined according to the CNMC register entry date, time and the evidence provided by the reduction applicant.</p> <p>The new evidence submitted by the reduction applicant must serve to uncover new facts or responsibilities with respect to the investigated cartel or to complete the accounting of the facts and the assignment of liabilities.</p> <p>This is the case, for example, if the new evidence submitted by the applicant allows the CNMC to prove in detail certain facts of the case, supporting other evidence, strengthening, or increasing the credibility or reliability of the evidence already available.</p>
<p><b>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the</b></p>	<p>The leniency applicant must fully cooperate with the CNMC, continuously and diligently until the conclusion of the proceeding. According to Article 52 Competition Regulation, the leniency applicant must comply with the following requirements:</p>

<p><b>investigating agency during the proceedings, etc.]</b></p>	<p>a) To provide the Competition Directorate without delay all the relevant information and evidence relating to the alleged cartel in their possession of or available to the applicant.</p> <p>b) To remain available for the Competition Directorate to respond without delay to all requests that can contribute to establish the facts.</p> <p>c) To facilitate the Competition Directorate to interview the employees and current executives of the company and, if applicable, former executives.</p> <p>d) To abstain from destroying, falsifying, or concealing relevant information or evidence relating to the alleged cartel from the very moment it contemplates applying for exemption or reduction of the amount of the fine.</p> <p>e) To abstain from disclosing the filing of the application for exemption or reduction of the fine, as well as the content of the application, from the very moment it contemplates its filing.</p> <p>Leniency applicants who hinder the investigation or the proceeding by not giving their full cooperation will not be eligible for leniency.</p>
<p><b>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</b></p>	<p>As for the content of leniency applications, whether they may be written or oral, to exempt or reduce the fine, in addition to an acknowledgement of the leniency applicant's involvement in the cartel, the leniency application must contain the following information:</p> <p>a) On the applicant: full individual or corporate name, taxpayer identification number, address, contact person, telephone number, fax number and, for applications filed by individual entrepreneurs or entities without legal personality that operate under a trade name, the full names and addresses of the owners or partners and contact details. For applications filed by a legal representative on behalf of his or her principal, identity of the representative and a copy of the power of attorney.</p> <p>b) On the rest of the cartel participants: full individual or corporate name, taxpayer identification number, address, telephone number, fax number.</p> <p>c) Detailed description of the cartel:</p> <ul style="list-style-type: none"> <li>– Aims, activities and functioning.</li> <li>– Affected products, services and territory.</li> <li>– Structure of the market affected by the cartel (sellers, buyers, market shares, and any other information on the market that may be significant in relation to the cartel).</li> <li>– Duration and nature of the cartel.</li> <li>– Form and scope of the participation of the applicant and of the rest of the cartel participants.</li> </ul> <p>d) List of leniency applications that the applicant has submitted or will submit to other Competition Authorities in respect to the same cartel, with the obligation to update this information if other applications are subsequently submitted. In addition, the applicant must confirm to the Investigations Division that it has not revealed, directly or indirectly, its intention to submit the leniency application or its content to any third parties other than those Competition Authorities.</p>

	<p>e) Description of the actions taken before issuing the leniency application to check that the applicant's participation in the cartel has ended and that no evidence of the cartel has been destroyed or tampered with at the time the leniency application is submitted.</p> <p>In addition to that, the leniency application must include the information and evidence of the cartel, in particular, all contemporaneous evidence in the applicant's possession that proves the cartel's existence, such as:</p> <p>a) Statements, minutes, summaries, annotations, e-mails, faxes, recordings, etc., that contain information on the dates, locations and identities of the individuals or undertakings who participated in the cartel meetings or other contacts between cartel participants, as well as the content of those meetings or contacts and supporting evidence.</p> <p>b) Information on the actions carried out by cartel participants, with supporting materials that evidence those actions (statements, minutes, e-mails, faxes, etc.).</p> <p>c) Statements, agreements, travel documents, commercial documents, circulars, e-mails, letters, minutes, faxes, recordings, etc., that refer to the existence, objective, functioning and scope of the cartel, as well as to the cartel participants.</p> <p>d) Statistics or other data referring to the facts described and that demonstrate the existence and participation in the cartel (the evolution and formation of prices, sale or bidding conditions, usual conditions of the transactions, etc.).</p>
<p><b>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</b></p>	<p>Yes, there are different procedural steps. Concerning full leniency, according to Article 47 Competition Regulation, the Competition Directorate will check the information and evidence submitted and analyse if it fulfils the conditions set in Article 65.1 Competition Act. If this is the case, it will grant conditional exemption from payment of the fine, reporting the leniency applicant in time. At the end of the proceeding, if the leniency applicant has complied with the requirements set out in Article 65.2 Competition Act, the Council of the CNMC, following the draft resolution by the Competition Directorate, will grant the leniency applicant the exemption from payment of the fine in the resolution that puts and end to the proceeding. In relation to partial leniency, according to Article 50 Competition Act, the Competition Directorate, no later than the SO' notification, will report to the leniency applicant of its proposal to reduce the fine to the CNMC Council on fulfilment of the requirements established in Article 66.1 Competition Act or that such proposal has not been made due to lack of the requirements' fulfilment to get the reduction. If the application for reduction of the fine is submitted after the notification of the SO, the Competition Directorate will inform the leniency applicant of its proposal for reduction of the fine in the resolution proposal of the proceedings. The Council of the CNMC will set the percentage reduction that applies in the resolution that puts and end to the proceeding.</p>
<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>Concerning full leniency, when the Competition Directorate checks that the leniency applicant fulfils the requirements of Article 65.1 Competition Act, it will notify the leniency applicant (Article 47 Competition Regulation).</p>

	<p>The Director of Competition can grant the conditional exemption to the leniency applicant before an inspection has been carried out, in the event provided for in Article 65.1(a) Competition Act, or before notification of the SO in the event provided for in Article 65.1(b) Competition Act.</p> <p>Once the exemption is granted by the Director of Competition, it has provisional nature. It implies the investigative body's acknowledgement that the application meets the requirements at the time the decision is adopted and having regard to the information available at that time.</p> <p>Therefore, the Competition Directorate will specify, on a reasoned basis, both in the SO and in the Draft Resolution (PR), whether the conditional exemption that was granted is confirmed, and progressively evaluating the applicant's fulfilment of its cooperation duties throughout the proceeding. If the Competition Directorate considers such duties have been breached, it will report and submit a reasoned proposal to the CNMC Council not to grant the exemption, so the applicant can submit the pleadings it deems fit on the matter.</p> <p>As for partial leniency, at the time of issuing the SO, the Competition Directorate will inform the leniency applicant about its proposal to the CNMC Council whether to reduce the amount of the fine having fulfilled the requirements established in Article 66.1 Competition Act or to reject the reduction of the fine for not having fulfilled the requirements to obtain reduction (Article 50 Competition Regulation).</p> <p>In case of a successful application, the Competition Directorate will propose the applicable reduction according to the order of the applications' submission within the Draft Resolution: the first reduction applicant who meets the significant added value test will get a reduction between 30 and 50% of the fine; the second a reduction between 20 and 30% and the successive applicants a reduction of up to 20%, setting the order of those successive applicants.</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>At the end of the proceeding, if the exemption applicant has fulfilled all the requirements, following the proposal of the Competition Directorate, the CNMC Council will grant the applicant exemption from payment of the fine in the Resolution that ends the proceeding.</p> <p>In its Resolution, the CNMC Council, following the Competition Directorate's draft proposal, will also state the percentage reduction of the fine within the relevant band, provided the reduction applicant has complied with its duty to cooperate.</p>
<p><b>M. Do you have a marker<sup>6</sup> system? If yes, please describe it.</b></p>	<p>Yes, we have. Before the modification of the Competition Act 15/2007 in 2021, the marker system, although not formally included in the law, existed in a substantive way.</p> <p>The reform operated in the Competition Act in 2021, with a new Article 65.5, includes a marker system, so that the immunity applicant may request a marker to preserve its position meanwhile it gathers all evidence and information necessary to accompany the application, meeting the criteria set out in Article 65.1.</p>

<sup>6</sup> A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

	Once the evidence has been submitted within the deadline granted, the filing date and time for the leniency application will be the date and time of the marker, but if the evidence is submitted after the granted deadline, this new submission's date and time will be the one considered for the immunity application.
<b>N. Does the system provide for any extra credit<sup>7</sup> for disclosing additional violations? [e.g. a hardcore cartel in another market]</b>	No, the Spanish system does not provide with any extra credit for disclosing additional violations.
<b>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</b>	Yes, the CNMC must treat the submission of a leniency application and the identity of the leniency applicant as confidential. The Competition Directorate will set up a separate special file with the leniency application and its attached documents. The parties will have access to the leniency application contents which, being part of this special confidential file, are needed to appeal the SO. Nevertheless, no copies can be obtained of any oral or written statement made by the leniency applicant to be submitted within the leniency application (Article 51 Competition Regulation).
<b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b>	As a rule, the CNMC's Council decision rejecting a leniency application cannot be appealed before the Court (Article 48 Competition Act).  Nevertheless, the Competition Directorate's Resolutions rejecting a leniency application -not granting conditional exemption- could be appealed before the CNMC's Council if the leniency applicant alleges irreparable violation of his fundamental rights or legitimate interests.
<b>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</b>	In the <a href="#">CNMC website</a> it is listed the contact point to get assistance on how to submit a leniency application and the information about the submission of a leniency application through the CNMC Electronic Register.  Furthermore, if there is a need for any type of clarification on how to submit the application, it is possible to this contact the CNMC's Leniency Unit: +34 91 787 68 44.
<b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b>	No, but the CNMC's Council will not grant the applicant the exemption from payment of the fine in the final Decision if the leniency applicant has not met the requirements established in Article 65.1 Competition Act. In this case, the final decision of the CNMC's Council can be appealed.
<b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b>	No, the Spanish competition policy does not allow for "affirmative leniency".

<sup>7</sup> Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.



<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.</b></p>	<p>After notification of the SO, the parties in the infringement proceeding will have access to the data and documents, which form part of the separate confidential file with the leniency material submitted within the leniency application, necessary to appeal the SO. Nevertheless, the parties in the proceeding will not get a copy of the statements included in the leniency application submitted by the leniency applicant, which may be seen but not copied.</p> <p>Besides, in the event of judicial review, when the leniency application submitted in the infringement proceeding is sent to the Court, the CNMC will expressly identify the statements made by the leniency applicant, no copies of which will be allowed (Article 51 Competition Regulation). Furthermore, if the documents submitted by a leniency applicant are required by a Court to review the CNMC's conduct before the final CNMC's Council decision is issued, those documents will be submitted under confidential terms, with an express indication to the Court that the documents cannot be reported to third parties.</p> <p>The Competition Act provides a special protection to leniency applications because of the serious inconveniences that could arise from the disclosure of the existence and/or the content of the leniency applications. Not only to maintain the incentives for other competitors in the cartel to submit further leniency applications, but also to protect the CNMC's investigation.</p> <p>Therefore, when the CNMC is compelled to provide with information or give its opinion, under Article 15 of the Civil Procedure Act 1/2000, 7 January 2000, it will keep from submitting data or documents provided by leniency applicants, submitted within the leniency application.</p> <p>In the civil private enforcement actions, which may be brought about in relation to a cartel infringement sanctioned after a proceeding including a leniency application, the CNMC will not provide with any copy of the leniency applicant's statements, as such disclosure would reduce the effectiveness of the leniency program and weaken the fight against cartels.</p>
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## 7. Settlement

<p><b>A. Does your competition regime allow settlement?</b></p> <p>If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).</p>	<p>The Spanish Competition Regime does not allow any kind of settlement throughout the sanctioning proceeding.</p>
<p><b>B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b></p>	<p>N/A</p>
<p><b>C. What is the reward of the settlement for the parties?</b></p>	<p>N/A</p>

<b>D. May a reduction for settling be cumulated with a leniency reward?</b>	N/A
<b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b>	N/A
<b>F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].</b>	N/A
<b>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</b>	N/A
<b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b>	N/A
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	N/A

## 8. Commitment

<b>A. Does your competition regime allow the possibility of commitment?</b>  If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	Articles 52 of the Competition Act and Article 39 of the Competition Regulation and Communication on Termination by Commitments, regulate termination through the acceptance of commitments in investigations into prohibited conducts when the offenders propose commitments that resolve the effects on competition and the public interest is guaranteed.  This is an atypical way of ending an infringement proceeding in which the CNMC terminates the case by accepting certain binding commitments voluntarily offered by the alleged infringing party, without the need for a declaration as to whether the violation has been demonstrated to exist or, consequently, for a penalty to be levied. Therefore, termination of an infringement proceeding by commitments is not a settlement proceeding, which has no reflection in Spain's competition regulation, as stated above.
<b>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</b>	Termination of an infringement proceeding by commitments is a way of finishing an investigation opened due to a possible infringement of competition rules for violation of Articles 1, 2 and/or 3 Competition Act and, if applicable, Articles 101 and/or 102 TFEU.

<p><b>Are there violations which are excluded from the commitment possibility?</b></p>	<p>A termination by commitments is not admissible in those cases in which there are no viable commitments, either to resolve the effects on competition of the conducts or to guarantee the public interest.</p> <p>This procedure will NOT start when the investigation involves a one-off conduct with no continuity or as stated before, a violation of Article 1 Competition Act in relation to a cartel. When the conducts had irreversible effects on competition during a significant period of time or affected a substantial part of the market; when the CNMC or some other Competition Authority has previously declared the alleged perpetrators responsible for a prohibited practice on the basis of similar conducts, or they have been part of a previous termination by commitments for similar practices or discontinuation of the infringement proceeding puts the effectiveness and deterrent effect of competition rules at risk or just when the CNMC deems that an express pronouncement is needed.</p>
<p><b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b></p>	<p>The Competition Directorate will decide to start with this proceeding when the party that requests the beginning has previously contacted the Competition Directorate to analyse the likely termination of the investigation through the agreement on binding commitments; this request is made before the deadline to reply the SO; the request sets out the general contours of the commitments the alleged infringing party would be willing to offer and a statement as to why those commitments are considered adequate and sufficient for allowing a termination of the infringement proceeding.</p>
<p><b>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</b></p>	<p>The commitments that may give rise to a commitment-based termination of a proceeding may be behavioural or structural in nature, or a combination of both. For example, commitments to modify a conduct, to put an end to certain types of arrangements, to eliminate provisions from agreements, contracts or bylaws, to disinvest, to refrain from engaging in certain economic activities, etc.</p> <p>In relation to the acceptance of the commitments proposed, to fulfil the requirements that the commitments must resolve, the CNMC will assess that the proposals meet the following requirements:</p> <ul style="list-style-type: none"> <li>- The offered commitments resolve effectively, clearly and unequivocally the competition problems detected.</li> <li>- The commitments can be implemented quickly and effectively.</li> <li>- Monitoring the fulfilment and effectiveness of the commitments is likely and efficacious.</li> </ul>
<p><b>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</b></p>	<p>The decision to begin this proceeding and to accept the commitments is a discretionary decision from the CNMC. The decision to begin the process of reaching a termination by commitments rests with the Competition Directorate, upon prior proposal by the alleged perpetrators of the prohibited conducts.</p> <p>Nevertheless, the Competition Directorate may invite them to seek a termination by commitments if it deems that the circumstances of the case warrant such termination.</p> <p>This invitation will be issued simultaneously to the opening of the infringement proceeding, although it may also be made after that time, although it should generally be submitted before the end of the stipulated time limit for replying to the SO.</p>

Termination by commitments has a dual objective. The first is quick reestablishment of the conditions of competition that had been jeopardised by the anti-competitive conducts that were detected, by means of commitments that resolve or eliminate competition problems, safeguarding consumer welfare and the public interest. The second objective is to comply with the principle of administrative effectiveness, allowing a more appropriate use of CNMC's resources by helping to reduce investigation work and shorten the time it takes to resolve the infringement proceeding in which a termination by commitments is accepted. For these reasons, the CNMC will value very highly that the proposal for termination by commitments may be submitted in the very earliest stages of the infringement proceeding, with the aim of securing the public interest as set out in Article 52 Competition Act, as stated before (see point 8 letter A above).

This request can be made even if not all the alleged infringers of the investigation participate, although it must cover all the alleged prohibited conducts for which the applicant is responsible that were identified when the proceeding was formally opened or, if applicable, in the statement of objections.

Resolution to begin this procedure will establish, as a rule, a time limit of 15 business days within which the applicant can submit the commitments, unless the commitments were already submitted with the application to start this procedure. Resolution will also stop the time limit for resolving the infringement proceeding until the end of the actions leading to the termination by commitments. The Resolution will be notified to all parties with an interest in the proceeding. Failure to submit the proposal of commitments within the stipulated time frame will be regarded as a withdrawal of the request for termination by commitments, and for this reason, the infringement proceeding will continue. With respect to the rest of the parties of the proceeding who also wish to seek a termination by commitments, they may endorse the commitments submitted or offer their own commitments with respect to the conducts detected.

Competition Directorate will bring before the CNMC Council the termination by commitments proposal, if it believes the commitments offered are proportionate and sufficient for resolving the effects on competition of the conducts investigated and secure the public interest.

CNMC Council may decide:

- To finish the infringement proceeding through a Resolution with commitments, upholding the adequacy of the commitments offered.
- That the commitments offered are not proportionate or do not adequately resolve the effects on competition of the conducts examined in the proceeding so as to secure the public interest and instruct the Competition Directorate to continue the infringement proceeding.
- That there is a need to present new commitments to resolve the problems detected. On those new commitments, the Council will resolve by either declaring termination by commitments or by instructing the Competition Directorate to continue the infringement proceeding.

<p><b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>No. As stated before, if the infringement proceeding is finalised with a Resolution upholding the adequacy of the commitments offered, there is no declaration of infringement.</p>
<p><b>J. Describe how your authority monitors the parties' compliance to the commitments.</b></p>	<p>CNMC may open a new infringement proceeding under Articles 1, 2 and/or 3 Competition Act and, if applicable, Articles 101 and/or 102 TFEU in the case of breach of the compliance to the commitments, against the same conducts that were the object of the termination by commitments.</p>
<p><b>K. Is there a possibility for parties to appeal a commitment decision at court?</b></p>	<p>As stated before, judicial appeals may be lodged against the final decisions of the CNMC's Council (Article 48 Competition Act) and the decision of the Competition Directorate rejecting the start of this procedure through the acceptance of certain commitments could be appealed before the CNMC's Council if the parties alleged irreparable damages to their rights or legitimate interests.</p>

## 9. Investigative powers of the enforcing institution(s)<sup>8</sup>

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids<sup>9</sup>, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</b></p>	<p>Articles 39 to 40 of the Competition Act describe the investigative measures available to the enforcing agency.</p> <p>Article 39 states that all natural or legal persons and bodies or entities of all public authorities are subject to the duty to cooperate with the CNMC in the exercise of its function to protect free competition. They shall be obliged to provide, at the request of the CNMC and on time, all types of data and information in their possession, which may be necessary for the discharge of the CNMC's functions.</p> <p>Requests for information must be reasoned and be proportionate to the aim pursued. To that end, requests for information shall provide a detailed and specific description of the content of the information sought and shall specify, giving reasons, the purpose of such information and the use given to it. This obligation refers only to the information that may be accessible to the obliged natural or legal persons and without regard to the devices in which the information is contained.</p> <p>Article 39 bis states the possibility of carrying out interviews to any company's representatives, association of companies, any representative of legal persons or any natural person in the cases where they might be in possession of data and information that may be relevant to enforce the applicable law.</p> <p>The reasons to conduct such interviews need to be motivated and in the process of carrying them out, natural or legal persons will not be forced to declare against themselves or to admit any infringement of competition law.</p>
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<sup>8</sup> "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

<sup>9</sup> "Searches/raids" means all types of search, raid or inspection measures.

Interviews will be carried out at the CNMC's offices by its personnel, or if necessary, other Competition Authorities' personnel, although they may also be carried out at the company's headquarters or through any digital means that allow bi-directional and simultaneous communication of image and sound.

Moreover, interviews might be recorded using the means available at the CNMC, not being allowed its recording by the interviewed person, although they may request the minutes of it.

Recordings, transcriptions and the minutes attached will have public nature and will constitute evidence, without prejudice of the applicability of confidentiality treatment.

Article 40 states the possibility to carry out inspections of undertakings, associations of undertakings, private homes of entrepreneurs or any other personnel of such companies which may be in possession of relevant information for the investigation, by the civil servants of the CNMC authorized by the Director of Competition, which have the capacity of agent of the authority.

The Director of Competition will issue an inspection warrant stating the investigated entities or natural persons, the object and aim of the inspection, the dates in which it will be carried out and will also reference the sanctions that might be imposed upon those that may constitute an obstacle to such investigations.

Inspections may be carried out:

- a) In any office or annex of the investigated entity.
- b) At the private homes of natural persons related to those companies, managers or any other company personnel and any other office or annex when there is reasonable suspicion of relevant information.
- c) In the headquarters of the CNMC when the elements of investigation could be examined in them or to analyse and carry out research or to select copies or extracts of documents.

CNMC authorized personnel to carry out inspections have the following powers:

- a) To get into any premises, land and means of transport of the undertaking and associations of undertakings and private homes of entrepreneurs, managers, and other members of the staff of the undertakings. Moreover, they may check the items used in the services or activities of the operators or the persons who carry out the activities referred, the networks they install or operate and as many documents as they are required to possess or retain.
- b) To seal all premises, books or documents and other company property for the time and to the extent necessary to carry out the inspection.
- c) To check the books, registers and other documents relating to the activity in question, regardless of its material format, including computer programs and files of a magnetic, optical or any other nature.
- d) To make or obtain copies or extracts, in any format, of such books or documents.

	<p>e) To retain, for a maximum period of 10 days, the books or documents referred to in letter c).</p> <p>f) To ask any representative or member of the staff of the undertaking or association of undertakings for explanations on acts or documents related to the subject matter and purpose of the inspection and record the answers.</p> <p>g) To ask for the physical presence of the personnel of the investigated entities or people investigated as well as to submit any documents that may be in their power, or any electronic device used by them.</p> <p>The exercise of the powers described in letters a) and b) shall require the express prior consent of the affected party or, failing that, appropriate judicial authorization.</p> <p>Undertakings and natural persons are obliged to comply with inspections authorized by the Director of Competition, including parent companies, subsidiaries or any other related to the same company group in those cases where they might be related to the conducts investigated.</p> <p>The opposition to the inspection being carried out will initiate a sanction procedure as an independent infringement. Undertakings and natural persons and any other personnel being inspected are obliged to collaborate with the civil servants carrying out the inspection.</p> <p>If the undertaking or association of undertakings opposes an inspection ordered by the Director of Competition or there is a risk of such opposition, they must request the corresponding judicial authorization when this involves restriction of fundamental rights from the Court, which shall rule within a maximum period of 48 hours.</p> <p>The public authorities shall provide the necessary protection and aid to the CNMC personnel for the exercising of the functions of inspection.</p> <p>The civil servants with responsibility for the inspection shall draw up a report on their actions. The reports drawn up shall have the status of public documents and, unless proven otherwise, shall evidence the facts underpinning their formalization.</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</b></p>	<p>As stated before, according to Article 40.3 of the Competence Act, inspections authorized by the Director of Competition may be carried out:</p> <p>a) In any office or annex of the investigated entity.</p> <p>b) At the private homes of natural persons related to those companies, managers or any other company personnel and any other office or annex when there is reasonable suspicion of relevant information.</p> <p>c) In the headquarters of the CNMC when the elements of investigation could be examined in them or to analyse and carry out research or to select copies or extracts of documents.</p> <p>The CNMC officials, to exercise this power, shall require the previous and express agreement of the affected party. If the undertaking or association of undertakings opposes an inspection ordered by the Director of Competition or there is a risk of such opposition, they must request the corresponding judicial authorization by the Court.</p>

<p><b>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</b></p>	<p>Article 40.6 Competition Act states that the CNMC personnel, when carrying out an inspection, can examine the books and any other documents that may be accessible to the individual or undertaking being inspected, without regard to the place and device in which the information is contained. This faculty includes, specifically:</p> <p>a) The ability to inspection all documents in written form, including physical documents, contracts, or any other commercial information.</p> <p>b) The ability to inspection all documents and information contained in electronic devices or of electronic nature and any other kind of correspondence between the undertaking or individual and its personnel. This will include all the information contained in electronic systems and devices of the undertaking or individual being inspected as well as the information contained in electronic systems, services or any other device hosted by third parties or serves located in a cloud and any other which may be accessible for the inspected individual or undertaking.</p>
<p><b>D. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b></p>	<p>As a rule, any use of the information that falls outside the scope of the inspection warrant is, in theory, barred. However, documents found by chance, truly fortuitous, during an inspection and not related to it, can be used to begin a further investigation. In such case, the Director of Competition could adopt another inspection decision if there were suspected competition infringements.</p> <p>Besides, if during the further analysis of the information copied during an inspection, the CNMC considers some information, which falls inside the scope of the inspection decision, may also indicate the existence of anti-competitive conduct in another case, the undertaking or association of undertakings raided will be informed about the use of this information, taking into account that it shall only be used for the aims set out in the Competition Act.</p>
<p><b>E. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>No, there have not been any significant legal challenges to the use of investigative measures authorized by the courts.</p>

## 10. Procedural rights of businesses / individuals

<p><b>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond</b></p>	<p>In the context of cartel cases, interested parties have the same rights of defence as within other prohibition proceedings, set out in Articles 36 to 54 Competition Act and Articles 11 to 41 Competition Regulation:</p> <ul style="list-style-type: none"> <li>– right to know at any time the state of the proceeding,</li> <li>– right to have access to the records and files and to obtain copies of all documents in the file, except for confidential information,</li> </ul>
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<p><b>orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.</b></p>	<ul style="list-style-type: none"> <li>– right to submit any declaration or argument and to provide documents at any stage of the proceedings,</li> <li>– right to be notified of the facts that may constitute an infringement and penalties to be imposed in a SO, of which the interested parties shall be notified so that, within a period of 15 days, they may reply and, as the case may be, propose evidence that they deem pertinent,</li> <li>– right to be notified the proposal for resolution, of which the interested parties shall be notified so that, within a new period of 15 days, they may submit new allegations that they deem appropriate, as well as their request for an oral hearing and the right to obtain information and guidance on legal and technical requirements to submit requests or documents.</li> </ul>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</b></p>	<p>The Competition Act does not set out any difference depending on whether the information is provided under a compulsory legal order or under informal cooperation. This way, any person when submitting documents to the CNMC requests confidential treatment of the data or information, must do so on a reasoned bases before the competent body within the framework of the proceeding in question and must also submit a non-confidential version of those documents. Furthermore, at any time during the proceeding, the CNMC may order, ex officio or at the request of the parties, that the data or documents considered confidential are kept secret, using them to create a separate file (Article 42 Competition Act and Article 20 Competition Regulation).</p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</b></p>	<p>According to Article 68 Competition Act, very serious infringements shall expire after four years, serious ones after two years and minor ones after one year. The term for expiration will be counted from the day when the infringement has been committed or, in the case of continued infringements, as of when they have ceased. After the corresponding expiring of the infringement, the investigation proceeding cannot be reopened.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</b></p>	<p>According to Article 36.1 Competition Act, the maximum period for issuing and notifying the resolution that ends a sanctioning proceeding for restrictive competition conduct will be 18 months as of the date of the institution decision.</p> <p>The expiration of the maximum deadline of 18 months after the proceeding' opening date without a final Decision will cause the proceeding to expire.</p> <p>Nevertheless, Article 37 states the cases of extension of periods and suspension of their computation, in the following cases:</p>

	<p>a) When any interested party has to be called for the rectification of deficiencies, the provision of documents and other necessary elements of judgment.</p> <p>b) When third parties or other organs of the Public Administrations have to be requested to provide documents and other necessary elements.</p> <p>c) When cooperation and coordination with the European Union or with the National Competition Authorities from other countries is necessary.</p> <p>d) When the administrative appeal laid down in Article 47 is lodged or a judicial appeal is lodged.</p> <p>e) When the Council of the CNMC decides the examination of evidence or of complementary actions in accordance with Article 51.</p> <p>f) When a change occurs in the legal assessment of the matter submitted to the Council of the CNMC, in the terms established in Article 51.</p> <p>g) When negotiations are initiated with a view to the conclusion of a conventional termination decision in the terms established in Article 52.</p> <p>Notwithstanding the above-mentioned provisions, the suspension of the maximum period for resolving proceedings shall be decided:</p> <p>a) When the European Commission has instituted proceedings for the application of Article 101 and 102 TFEU in relation to the same facts. The suspension shall be lifted when the European Commission adopts the corresponding decision.</p> <p>b) When the CNMC calls for the notifying parties to rectify deficiencies, provide documents and other necessary elements of judgment for the resolution of a concentration control proceedings, pursuant to the provisions of Sections 4 and 5 of Article 55.</p> <p>c) When the European Commission is informed within the framework of the provisions of Article 11.4 Council Regulation (EC) No. 1/2003, of 16 December 2003, on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU with regard to a proposal for resolution in application of Articles 101 and 102 TFEU.</p> <p>d) When the report of the sectorial regulators is requested in accordance with the provisions of Article 17.2.c) and d) of this Act. This suspension period may not, under any circumstances, exceed three months.</p> <p>The suspension of the maximum periods of resolution shall not necessarily suspend the processing of proceedings and, exceptionally, the extension of the maximum period of resolution may be decided by means of clear motivation of the concurrent circumstances. In the event of deciding the extension of the maximum period, this may not be more than that established for the processing of proceedings.</p>
<p><b>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an</b></p>	<p>According to Article 47 Competition Act, only the resolutions and acts of the Competition Directorate that lead to defencelessness or irreparable damage to rights or legitimate interests may be appealed before the CNMC Council within a period of 10 days after its notification.</p>

<p><b>investigation or a decision regarding sanctions? (see also 15A)</b></p>	<p>Only judicial appeals in the terms of the Administrative Jurisdiction Act 29/1998, 13 July, may be lodged against the resolutions and acts of the Chairman and of the CNMC Council. The deadline to lodge the appeal is two months from the date the resolution has been notified to the parties.</p>
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## 12. Types of decisions

<p><b>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</b></p>	<p>According to Article 53 Competition Act, the resolutions of the CNMC Council may declare:</p> <ul style="list-style-type: none"> <li>a) The existence of a conduct prohibited by the Competition Act or by Articles 101 and 102 TFEU.</li> <li>b) The existence of a conduct that, due to its scant importance, is not capable of significantly affecting competition.</li> <li>c) The existence of prohibited practices not being accredited.</li> </ul>
<p><b>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</b></p>	<p>Other types of decisions on the merits of the case which are particularly relevant in hardcore cartel cases include the prohibition on public procurement to those undertakings or individuals that have been sanctioned (and there is no ulterior appeal possible) in those cases where there has been a serious infringement of Competition Law, among many other situations stated in Article 71 Public Sector Contracts Act, 9/2017.</p> <p>Such prohibition may be exempted in those cases where the criteria set out in Articles 65 and 66 Competition Act (Exemption of the payment of the fine and reduction of the amount of the fine, respectively) are met.</p>
<p><b>C. Can interim measures<sup>10</sup> be ordered during the proceedings in cartel cases? (if different measures for hardcore cartels please describe both<sup>11</sup>.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>Once proceedings have been opened, the CNMC Council may, ex officio, at the request of one of the parties or on the proposal or prior report of the Competition Directorate, adopt interim measures intended to ensure the efficacy of the resolution that may be later issued. Articles 40 and 41 Competition Regulation lay down the types and the procedure for the adoption of the interim measures. The main condition for taking such a decision is to ensure the efficacy of the resolution that may be later issued.</p> <p>So, the CNMC Council may adopt, inter alia, the following interim measures:</p> <ul style="list-style-type: none"> <li>a) Order to cease the conducts referred to by the case or to impose certain conditions thereon to avoid the harm they might cause.</li> <li>b) Guarantee of any kind declared sufficient by the CNMC Council to cover the liability for such damages and losses as could be caused.</li> </ul>

<sup>10</sup> In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<sup>11</sup> Only for agencies which answered “yes” to question 2.B. above

	Interim measures that cause irreparable harm to the interested parties or that imply violations of fundamental rights cannot be imposed.
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### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<b>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</b>	<p>Article 62 Competition Act considers as serious infringements the following conducts:</p> <ul style="list-style-type: none"> <li>– Not to present or doing so in a wrongful way any document or information required by the CNMC when carrying out an inspection or information requirement.</li> <li>– Not to comply with the obligation of being interviewed or to answer the questions posed by the CNMC or doing so in an incomplete, inaccurate or misleading way.</li> <li>– Not to answer the questions posed by the CNMC during an inspection or doing so in an incomplete, inaccurate or misleading way.</li> <li>– To break the seals put in place by the CNMC when carrying out an inspection.</li> </ul> <p>Besides, as we said before, individuals and undertakings are obliged to comply with the inspections approved by the Director of Competition and, in case they refuse to grant access to inspectors once the warrant has been issued, a sanctioning procedure will be opened against them (Article 40.7 Competition Act).</p>
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b>	Procedural sanctions are administrative ones (fines).
<b>C. On whom can procedural sanctions be imposed?</b>	Procedural sanctions can be imposed upon natural (individuals) or legal persons (economic agents, undertakings, associations, unions or groups of them).
<b>D. Criteria for determining the sanction / fine:</b>	The penalty for serious infringements' penalties is a fine up to 5% of the aggregate turnover and very serious offences' penalties. If it is not possible to work out that turnover, the fine will vary from 500.001€ to 10 million € for serious infringements. Administrative fines could be imposed upon individuals up to 60,000€.
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	See answer above.

## 14. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</b></p>	<p>The sanctions in cartel cases are administrative ones (fines). Such sanctions may be imposed upon economic agents, undertakings, associations, unions or groups of them that, intentionally or by negligence, breach the provisions of the Competition Act and on each of its legal representatives or on the people that compromise their management bodies and have participated in the agreement or decision.</p>
<p><b>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</b></p>	<p>According to Article 64 Competition Act, the criteria in order to determine the amount of the fines include, among others:</p> <ul style="list-style-type: none"> <li>a) The dimension and characteristics of the market affected by the infringement.</li> <li>b) The market share of the undertaking or undertakings responsible for the infringement.</li> <li>c) The scope of the infringement.</li> <li>d) The duration of the infringement.</li> <li>e) The effect of the infringement on the rights and legitimate interests of consumers and users and any other economic operators.</li> <li>f) The illicit gains obtained because of the infringement.</li> <li>g) The aggravating and extenuating circumstances in relation to each of the responsible undertakings.</li> </ul> <p>There could also be aggravating circumstances, including:</p> <ul style="list-style-type: none"> <li>a) The repeated commission of infringements typified in the Competition Act.</li> <li>b) The position of the leader or instigator of the infringement.</li> <li>c) The adoption of measures to impose or guarantee the enforcement of the conduct constituting the infringement.</li> <li>d) The lack of collaboration or obstruction of the inspection tasks, notwithstanding the possible consideration as an independent infringement.</li> </ul> <p>And there could also be extenuating circumstances, such as:</p> <ul style="list-style-type: none"> <li>a) The performance of actions that terminate the infringement.</li> <li>b) The effective non-application of the prohibited conduct.</li> <li>c) The performance of actions intended to repair the damage caused.</li> <li>d) The active and effective collaboration with the CNMC carried out outside the cases of exemption and of reduction of the amount of the fine.</li> </ul>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>Yes, there are some limits to the maximum fines imposed upon undertakings or individuals.</p>

	<p>According to Article 63 Competition Act, the penalty for a minor infringement is a fine of up to 1% of the world aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine. In the case of serious infringement, it could be of up to 5% of the worldwide aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine. And in the case of a very serious infringement comprising a cartel infringement, the fine could be up to 10% of the worldwide aggregate turnover of the infringing undertaking in the year immediately preceding the year of the imposition of the fine.</p> <p>Administrative fines could be imposed upon individuals up to 60,000€.</p> <p>In the event that it is not possible to work out the turnover referred, the infringements shall be sanctioned as follows:</p> <p>a) Minor infringements with a fine between 100,000€ and 500,000€.</p> <p>b) Serious infringements with a fine between 500,001 to 10 million €.</p> <p>c) Very serious infringements with a fine above 10 million €.</p>
<p><b>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>See the information above referring to the CNMC Provisional Communication on the method of setting fines. <a href="#">Spanish version</a>. <a href="#">English version</a>.</p>
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b></p>	<p>Generally, a challenge to a decision imposing a sanction has a suspensive effect on that sanction because when parties appeal Resolutions imposing fines, in the first instance, the National High Court (Audiencia Nacional) grants that suspension if the parties apply for it.</p>

## 15. Possibilities of appeal

<p><b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b></p>	<p>Competition Act sets out an appeal against a decision that states there has been a violation of a prohibition of cartels. According to Article 47 Competition Act, only judicial appeals in the terms of the Administrative Jurisdiction Act 29/1998, 13 July, may be lodged against the resolutions and acts of the Chairman and the CNMC Council.</p> <p>Generally, the grounds of appeals may be questions of law or facts or breaches of procedural requirements.</p>
<p><b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b></p>	<p>According to the Additional Provision 4 of the Act 29/1998, CNMC's Decision should be appealed before the Administrative Section of the National High Court (Audiencia Nacional).</p>

## 16. Private enforcement

<p><b>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</b></p>	<p>Yes, private enforcement of competition law and private damage claims have been possible in Spanish jurisdiction since the accession of Spain to the European Union (1986) and the approval of the former Competition Law (Competition Act 16/1989). Nevertheless, damage claims have been facilitated to a greater extent thanks to the reform operated on the current Competition Act 15/2007 through the Royal Decree-law 9/2017 implementing several European directives in the financial, trade and health care market (including Directive 2014/104/EU or “Damages Directive”), amending Competition Act 15/2007. The Competition Act now includes in Articles 71-81 provisions relating to private enforcement of competition law and private damage claims, applicable in those cases where damage claims are lodged on Spanish territory, irrespective of the infringement being declared by the European Commission or the European Court of Justice or a Competence Authority or Spanish or EU court.</p>
<p><b>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</b></p>	<p>The main provisions regulating private enforcement of competition law in Spanish jurisdiction are now contained in the Competition Act 15/2007 thanks to the reform operated by the Royal Decree-Law 9/2017 implementing several European directives in the financial, trade and health care market, amending Competition Act 15/2007 (Articles 71-81). <a href="#">Competition Act 15/2007 [Spanish version]</a>.</p> <p>Royal Decree-Law 9/2017 included some civil procedural rules about private enforcement issues (such as evidence disclosure) in the reform of the Act 1/2000 of 7 January, on Civil Procedure [articles 283 bis a) - 283 bis k)]. <a href="#">Civil Procedure Act 1/2000 [Spanish version]</a>.</p>
<p><b>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</b></p>	<p>N/A</p>
<p><b>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</b></p>	<p>Competition law actions can arise in contract or tort. In contract, a claim may be brought on the basis of the provisions of nullity of contracts under the Spanish Civil Code. In tort, claimants may base actions on the general Spanish provision for tort liability (Article 1902 Spanish Civil Code) or the Unfair Competition Act, in either case invoking the relevant antitrust provisions contained in the Competition Act or the TFEU.</p> <p>Articles 71 and 72 introduced in the Competition Act through Royal Decree-law 9/2017 specifically establish the liability of competition infringers and rights of claimants to damages.</p>
<p><b>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</b></p>	<p>In Spain both stand-alone and follow-on claims are possible.</p> <p>Any natural or legal person who has suffered harm caused by the anticompetitive conduct may bring a private claim.</p>

<ul style="list-style-type: none"> <li>• <b>is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals?</b></li> <li>• <b>if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised?</b></li> </ul>	<p>To start a claim, it is sufficient that a claimant identifies the parties to the dispute and their home addresses, states in a clear way both the facts (identifying the evidence on which it relies) and the legal grounds of the claim (including why the court has jurisdiction, why the claimant is entitled to make its claim and its legal basis) and setting out what rulings (remedies) are requested from the court.</p> <p>The claimant must plead all the factual and legal arguments on which its claim relies since the Spanish Civil Procedure Act precludes any party from raising new facts and allegations at a later stage in the proceedings, except in limited circumstances. Also, as a rule, the documents supporting the alleged facts and the expert report quantifying damages must be presented alongside the claim.</p> <p>The finding of infringement by a competition agency (CNMC or regional competition authorities) is not required to initiate a private antitrust claim and stand-alone claims are allowed in Spain. Anyway, according to Article 75 of the Competition Act, a declared infringement of Competition Law by firm resolution of a Spanish Competition Authority or a Spanish judicial body will be considered irrefutable when carrying out private enforcement claims before a Spanish judicial body.</p>
<p><b>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</b></p>	<p>Yes, it could be, although breaches of Competition Law are not defined as criminal offences under Spanish law.</p>
<p><b>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</b></p>	<p>Under pre-existing rules before Royal Decree 9/2017, leniency applicants received no specific beneficial treatment in the context of follow-on claims. Nowadays, according to current Article 73.4 Competition Act (included after the reform implemented by Royal Decree 9/2017), immunity recipients are jointly liable with respect to their direct or indirect purchasers or providers – except if full compensation cannot be obtained from co-infringers. Equally, the amount an immunity recipient can be liable to pay in contribution cannot exceed the amount of the harm it caused to its own direct or indirect purchasers and providers and, in relation to harm caused to parties buying from (or selling to) non-infringing parties, its relative responsibility for that harm.</p>
<p><b>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</b></p>	<p>There are no specialised courts in charge of receiving private enforcement claims. According to Spanish Law, commercial courts have been attributed exclusive competence in actions applying competition law by the Judiciary Act 6/1985. Ancillary competition claims can also be brought about before the general first instance civil courts.</p>
<p><b>I. Information about class action opportunities</b></p>	<p>The Spanish Civil Procedure Act provides for a collective action regime that may be used not only in private antitrust cases but in any case, in which a group of persons (consumers) have been affected by the same harmful conduct, although not commonly applied in antitrust cases.</p> <p>Spanish law distinguished between collective actions for the protection of collective or diffuse interests. In the case of collective interest actions, the law confers the right to claim to:</p> <ol style="list-style-type: none"> <li>a) Consumer and user associations.</li> <li>b) Representative associations legally incorporated for the defence of consumer or user rights.</li> </ol>



	<p>c) National (or regional) consumer institutes.</p> <p>d) The attorney general; and</p> <p>e) Ad hoc associations of affected individuals (they must demonstrate that they represent the majority of victims affected by the wrongful conduct).</p> <p>In the case of diffuse interest actions, Spanish law confers the ability to claim exclusively to consumer and user associations regarded as representative and the attorney general. Furthermore, individuals can joint collective action proceedings as a party with their own legal representation and have the right to the resolution of their own claim.</p> <p>In terms of requirements to establish a class action, the first requirement is to evidence that a class of individuals has been affected by the same harmful event. In the case of collective interest actions, claimants or representatives will need to prove further that all members of the class are determinable or may be easily determinable. In the case of diffuse interest actions, claimants or representatives will need to prove that the class of individuals affected by the conduct is difficult, or impossible, to determine.</p> <p>Besides, in the case of collective interest actions, claimants will need to have communicated to each of the individuals affected by the conduct their intention to file a claim. In the case of diffuse interest actions, the court will suspend the proceedings for a period of time (not exceeding two months) to inform all potentially affected individuals so that they have the opportunity to join the proceedings.</p> <p>Furthermore, there is no specific procedure to settle collective actions under the Spanish Civil Procedure Act. As such, the general procedure states that parties must file the settlement agreement with the court so that it can be properly certified. The collective action settlement would have the same effect as a collective action judgment and hence, individuals who can qualify as beneficiaries of the settlement may file an application for execution before the competent court to seek their compensation in accordance with the terms of the settlement agreement.</p>
<p><b>J. Role of your competition agency in private enforcement actions (if at all)</b></p>	<p>Article 15 bis of Civil Procedure Act enables the intervention of the European Commission and the Spanish Competition agencies (CNMC and regional authorities) in antitrust proceedings as amicus curiae. On their own initiative or at the request of the judicial body they can provide information or submit written observations to the court on matters relating to the application of Articles 101 and 102 TFEU or Articles 1 and 2 of Competition Act in civil proceedings. And with the permission of the court concerned, they may also submit oral observations on the same issues.</p> <p>Competition agencies do not intervene in civil proceedings as a party, but in the capacity of amicus curiae assisting the court by providing objective information on the interpretation of competition law.</p>
<p><b>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</b></p>	<p>Plaintiffs must prove that the damage is certain and can be demonstrated. The Supreme Court has stated (Sugar cartel case) that the basic requirement for a claimant is to provide a reasonable and technically founded hypothesis based on contrasted and reliable data.</p>

<ul style="list-style-type: none"> <li>• <b>Role of your competition agency in the damage calculation (if at all)</b></li> </ul>	<p>Where there is an administrative decision that has established that an infringement caused harm, the Supreme Court has held that it is not sufficient for the defendant's expert merely to criticise the plaintiff's quantification.</p> <p>Nevertheless, Article 76.3 Competition Act (included by Royal Decree-law 9/2017) provides for a presumption that cartel infringements cause harm.</p> <p>It has also empowered courts to estimate the amount of harm if it is established that a claimant suffered harm, but it proves to be practically impossible or excessively difficult to precisely quantify the harm suffered.</p> <p>Spanish courts may request Spanish competition agencies (the CNMC or a regional Competition authority) to report on the criteria that should be considered for the quantification of the damages (new Article 76.4 Competition Act). A draft of guidelines to codify those criteria offering support to the courts is currently under study in the CNMC and it could be passed before the end of 2022. From September to 20 October 2022 the CNMC has invited to present comments to the second draft of this guidelines (<a href="https://www.cnmc.es/consultas-publicas/promocion-de-competencia/cuantificacion-danos-v2">https://www.cnmc.es/consultas-publicas/promocion-de-competencia/cuantificacion-danos-v2</a>).</p> <p>Damages are calculated according to the following rules. Typically, each party will produce an expert report containing an estimation of the damages and the court decides based on its evaluation of those reports and the experts' defence of the same at trial.</p> <p>Experts tend to use the methods included in the "Practical Guide on the Quantification of Harm in Actions for Damages Based on Breaches of Articles 101 or 102 TFEU". The Supreme Court has confirmed that the "but for" analysis, such as a comparator-based before-and-after model, is appropriate to assess the quantum.</p>
<p><b>L. Discovery / disclosure issues:</b></p> <ul style="list-style-type: none"> <li>• <b>can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations?</b></li> <li>• <b>is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)?</b></li> <li>• <b>summary of the rules regulating the disclosure of confidential information by the competition agency to the court</b></li> <li>• <b>summary of the rules regulating the disclosure</b></li> </ul>	<p>Pursuant to Article 283 bis a) and k) of the Spanish Civil Procedure Law, which provides for a new disclosure regime targeted specifically to antitrust damages claims, a litigant may seek disclosure of evidence from the other party or a third party. Disclosure requests may be made before a claim has been filed or at any moment during the proceedings.</p> <p>The court may order the disclosure of specific evidence or relevant categories of evidence, subject to the requirement that the party seeking disclosure submits a reasoned justification for the request for documents and defined the requested document or category of documents as precisely and as narrowly as possible based on reasonably available facts. Disclosure can also cover evidence files by the relevant competition authority, subject to certain restrictions.</p> <p>In follow-on damages claim, claimants can ask the court to request a copy of the administrative file from the CNMC, subject to several exceptions. Article 283 bis i) 5 of Spanish Civil Procedure Act (introduced by Royal Decree-law 9/2017) provides that the following information can be disclosed only after the CNMC has closed its administrative proceedings:</p> <p>a) Information specifically prepared by natural or legal persons in the context of proceedings before the CNMC.</p> <p>b) Information prepared by the CNMC that has been sent to the parties during the proceedings.</p>

<p><b>of leniency-based information by the competition agency to the court</b></p>	<p>c) Settlement submissions that have been withdrawn.</p> <p>Leniency statements and settlement submissions that have not been withdrawn can never be disclosed (Article 283 bis i) 6).</p> <p>If a claimant has been recognised as an interested party in the CNMC's administrative proceedings (and in subsequent appeals to the judicial review courts if the decision is appealed) may then gain access to several documents of the CNMC's file, including leniency statements or settlement submissions.</p> <p>Article 283 bis j) of Civil Procedure Act prohibited the inclusion of those documents in the civil proceedings and late the inclusion of information specifically prepared by natural or legal persons in the context of proceedings before the CNMC or information prepared by the CNMC during the course of the proceedings (statement of objections and similar documents) until the closing of the administrative proceedings by the CNMC.</p> <p>When making an order of disclosure, the court will seek to limit to what is proportionate, considering the legitimate interests of the parties concerned and of any third parties. The party requesting disclosure is liable to cover the costs (and any damages) occasioned by that disclosure and may be required to make a deposit in advance.</p> <p>Besides the rules mentioned above (Spanish Civil Procedure Act, Articles 283 bis a) - 283 bis k)], rules regulating the disclosure of leniency-based information by the competition agency or the court are contained in the Competition Act (Articles 71-81). Disclosure requests can also rely on other general provisions of the Spanish Civil Procedure Act such as Article 328 (which refers to disclosure of documents among the parties to the proceedings) and Article 330 (which refers to the disclosure of documents from third parties).</p>
<p><b>M. Passing-on issues:</b></p> <ul style="list-style-type: none"> <li>• <b>how is passing-on regulated / treated in your jurisdiction?</b></li> <li>• <b>is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims?</b></li> </ul>	<p>Passing-on issues are now regulated in Articles 78 to 80 Competition Act following the transposition of the Damages Directive by Royal Decree 9/2017, although the Supreme Court already accepted the possibility of raising this defence in <i>Nestlé &amp; Ors v Ebro Foods</i> (judgment of 7 November 2013, appeal 2478/2011).</p> <p>The right to compensation only refers to the extra cost actually borne by the alleged injured party, which has not been passed one and has generated damages.</p> <p>Defendants have the burden of proving the passing on of overcharges, while indirect purchasers can allege the existence of passing-on when they prove that the defendant has infringed Competition Law, the infringement resulted in overcharges to the direct purchaser and it acquired the goods subject to those overcharges.</p>