

Newsletter

State of affairs on merger control in Spain - 2024

Competition Law

February 2025

INTRODUCTION

When we talk about merger control in Spain, the starting point need be pointing out that **the Spanish competition authority - the CNMC¹ - has not prohibited any deal since the current *Ley 15/2007, de 3 de julio, de Defensa de la Competencia* was passed.**

Nevertheless, we have recently seen that **the analysis of notified concentrations appears to be increasingly demanding**, with a boost to the number of transactions whose authorisation is subject to remedies or conditions. In 2024 there was even a Phase II withdrawal, although it appears that the parties walked away from the deal due to the impossibility of addressing competition concerns identified by the CNMC.

The following is a brief analysis of the most important deals and news of 2024.

BEST OF 2024

A WITHDRAWAL THAT SMACKS OF A BAN

In May 2023 JCDecaux España announced its intention to acquire - in its entirety - a competitor, Clear Channel España,² a transaction that would have resulted in the merger of the two main players

¹ *Comisión Nacional de los Mercados y la Competencia.*

² [JCDecaux / Clear Channel \(C/1426/23\).](#)

in the outdoor advertising market in Spain. The deal was formally notified on 27 November 2023. On 21 February 2024, the CNMC announced the opening of a Phase II investigation as it considered that the transaction could hinder the maintenance of effective competition, as the resulting company would increase its market share to approximately 40 to 50% in the outdoor advertising market – and even higher (*quasi-monopoly*) in some segments or sub-markets.

After several months of negotiations with the CNMC, on 28 October 2024 **JCDecaux and Clear Channel announced their decision to withdraw from the operation** due to "*the commitments required by the CNMC*".³

REMEDIES

Several concentrations were cleared with commitments in 2024, almost all of them in Phase I. Among them, in our view, [CEPSA / Ballenoi \(C/1463/24\)](#) **stands out**. The CNMC conditioned **the acquisition of sole control over Ballenoi, S.A. by Compañía Española de Petróleos, S.A. ("CEPSA")** to the fulfilment of structural (the divestment of several petrol stations in the regions of Cádiz and Málaga) and behavioral remedies (for example, the obligation for CEPSA not to re-acquire the petrol stations within the next 10 years) in order to protect competition in the market for retail distribution of automotive fuels in Spain.⁴

It should be noted that the commitments also affect the purchaser of the divested petrol stations - Petronet España, S.A.U. ("Autonetoil") - which undertakes not to sell these stations or enter into exclusive flagging or supply contracts with any wholesale operator that has been regarded by the CNMC as a *main operator* in the Spanish fuel sector.⁵ The obligation will apply for five years.⁶

FIRST-EVER FINE FOR PROVIDING MISLEADING INFORMATION

Thirdly, it is worth mentioning **the sanctioning proceedings closed against Rheinmetall AG ([Rheinmetall \(SNC/DC/081/23\)](#))**, which **stems from its acquisition of Expal Systems, S.A.U. in February 2023**.⁷ The CNMC unconditionally cleared the concentration (in just six days from the date of formal notification, although pre-notification started back in November 2022) as it found that it

³ The parties' press release is available at [Clear Channel Spain sale termination | Clear Channel](#).

For its part, JCDecaux has stated that the economic and strategic interest in the operation, and the completion of the transaction itself, "*are called into question by the indications provided by the Spanish authority [CNMC] on the nature, timing and execution of the commitments necessary for its approval*"; available at [JCDecaux renounces the purchase of ClearChannel's Spanish business due to the CNMC's demands | Empresas | Cinco Días](#).

⁴ One of eight concentrations that were subject to remedies during 2024.

⁵ The CNMC annually publishes the list of *main* and *dominant operators* in various sectors, in accordance with article 7.21 of *Ley 3/2013 de creación de la CNMC*. Repsol, S. A., Compañía Española de Petróleos, S. A., BP España, S. A. U., Petronieves, S. L. and Península Petroleum, S. L. were regarded as main operators in the Spanish fuel sector in 2024: [The CNMC approves the resolutions of the main and dominant operators in the energy sector](#).

⁶ The decision requires Autonetoil to contact the CNMC if it intends to sell the divested petrol stations, identifying the identity of the new owner and ensuring that the new owner is subrogated to the remedies accepted by Autonetoil for the remaining part of the five-year period.

⁷ [Rheinmetall / Expal \(C/1368/23\)](#). Both companies are active in the defence sector and are active in the manufacture and marketing of, inter alia, armaments products.

did not give rise to horizontal or vertical overlaps in Spain and, in short, it did not raise competition concerns.

A customer of both Rheinmetall AG and Expal informed the CNMC of the risks posed by the concentration in the market for wet paste – an input used in rocket propellants and other weapons.⁸ Both companies were active in the said market, but there was no mention of it in the notification form. The CNMC opened a preliminary investigation which ultimately led to an **EUR 13 million fine on Rheinmetall AG for omitting and providing incomplete and misleading information, both during the notification of the deal and subsequently during the said preliminary investigation.**⁹ Rheinmetall AG has appealed the fining decision.¹⁰

“THE” DEAL: BBVA'S HOSTILE BID FOR BANCO SABADELL

Fourthly, it is also worth mentioning the **acquisition of Banco Sabadell by BBVA** (notified in May 2024)¹¹ due to the difficulties the parties are currently facing. **The deal entered Phase II five months after it was formally notified**, as the CNMC has identified that it could pose risks to competition in several segments (or sub-markets) of the wider market for the provision of banking services.¹²

We will have a final decision from the CNMC during 2025 – and perhaps ultimately from Council of Ministers¹³ – although **BBVA has already stated that it will improve the offered remedies to obtain CNMC's approval.**¹⁴ The CNMC considers that remedies discussed so far in Phase I do not properly address all competition concerns.

Among several issues of interest related to the deal, some stand out above others. We can point out, on the one hand, the refusal received by dozens of parties that have tried to formally appear in Phase II proceedings (the CNMC has only allowed Banco Sabadell to appear);¹⁵ or the discrepancies between the CNMC and the Catalan competition authority (“ACCO”). The latter issued an assessment report on the concentration back in December 2024, and has recently asked the CNMC to allow it to prepare a second, complementary report, that would be justified – according to the regional authority – by

⁸ The customer also appealed the decision by which the CNMC authorised the concentration before the Spanish Appeal Court (*Audiencia Nacional*) (see paragraph 7 of the decision of 30 April 2024 in Rheinmetall SNC/DC/081/23).

⁹ The CNMC imposes two fines of the same amount - EUR 6.5 million each - for each infringement.

¹⁰ Order of the Spanish Appeal Court (“*Audiencia Nacional*”) of 24 October 2024, decision no. 1234/2024, ES:AN:2024:7432A. The order agrees to suspend payment of the fine as a precautionary measure.

¹¹ [C/1470/24 - BBVA / BANCO SABADELL | CNMC](#).

The operation has also been notified to the European Commission under the EU Foreign Subsidies Regulation, but the Brussels authority raised no objections: [The European Commission completes its review of the BBVA and Banco Sabadell transaction](#).

¹² The CNMC has published a brief note explaining the potential risks of the deal: [Brief note - Case C/1470/24 BBVA/SABADELL](#).

¹³ [The government will have to invoke national security or public health reasons to have a say in BBVA's takeover bid for Sabadell](#).

¹⁴ [BBVA will deepen its commitments to Competition to unblock the takeover bid for Sabadell | Empresas | Cinco Días](#).

¹⁵ [La CNMC solo acepta que se persone Sabadell en el análisis de la opa de BBVA](#).

the new commitments that BBVA could offer to finally obtain authorisation from the CNMC. The CNMC seems to be against this proposal.¹⁶

BEWARE OF GUN JUMPING

Lastly, the CNMC made public a fine of EUR 135,000 imposed on Corporación Alimentaria Peñasanta, S.A. ("Capsa") for *gun jumping* – implementing a notifiable concentration without having previously obtained authorisation from the CNMC. The proceedings derived from the purchase of Lácteas Flor de Burgos S.L., a deal which was formalised in December 2023 ([SNC/DC/045/24 - CAPSA-FLOR BURGOS](#)). This is the fourth fine for *gun jumping* in 2024, following those imposed in [SNC/DC/077/23 - KKR GENERALIFE](#), [SNC/DC/082/23 - GENERALIFE / GINEMED](#) and [SNC/DC/057/24 - MARCIAL CHACÓN E HIJOS](#).

Despite expressly acknowledging its responsibility when formally notifying the transaction (the notification took place on 8 April 2024),¹⁷ Capsa argued that it could not notify the deal in time due to certain circumstances (existence of a situation of conflict within the target's Board of Directors, as well as the absence of one of the members of the Board). These arguments were rejected by the CNMC which, nevertheless, took into account Capsa's actions – voluntarily acknowledging its responsibility – as an attenuating circumstance (*actions that put an end to the infringement*) when setting the amount of the fine.

MERGER CONTROL IN NUMBERS

CNMC'S INTERVENTION

According to the information published by the CNMC, 85 mergers have been formally notified during 2024, of which 81 were Phase I authorisations (95%), 7 of them subject to remedies.

Out of all Phase I authorisations, one deal was authorized with **structural** remedies, four deals with **behavioral** remedies and two concentrations were cleared with remedies of both types.

The CNMC has cleared only one deal in Phase II, and it has done so with both structural and behavioral remedies.¹⁸

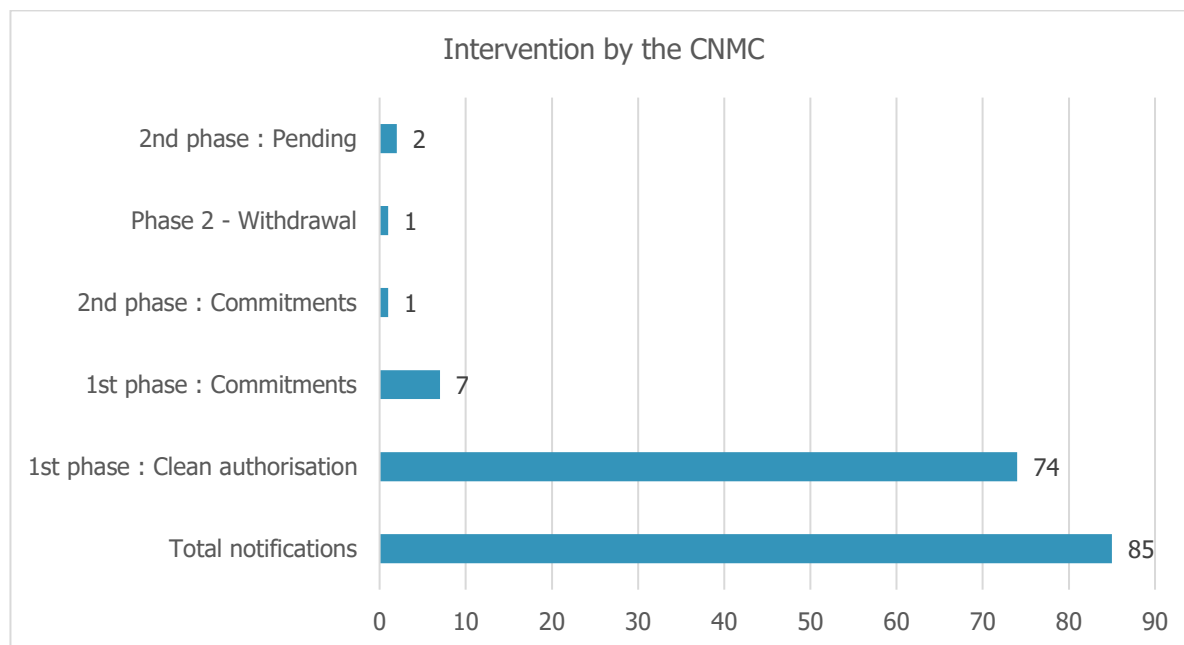
Two other cases have entered Phase II and are expected to be resolved by 2025: the takeover bid for Banco Sabadell by BBVA and the purchase of Ercros by Bondalti Chemicals.

Lastly, it is worth mentioning the length of proceedings in the JCDecaux/Clear Channel deal, which was already a Phase II investigation.

¹⁶ [La autoridad de competencia catalana y la española chocan por la opa al Sabadell.](#)

¹⁷ [C/1459/24 - CAPSA/FLOR DE BURGOS | CNMC.](#)

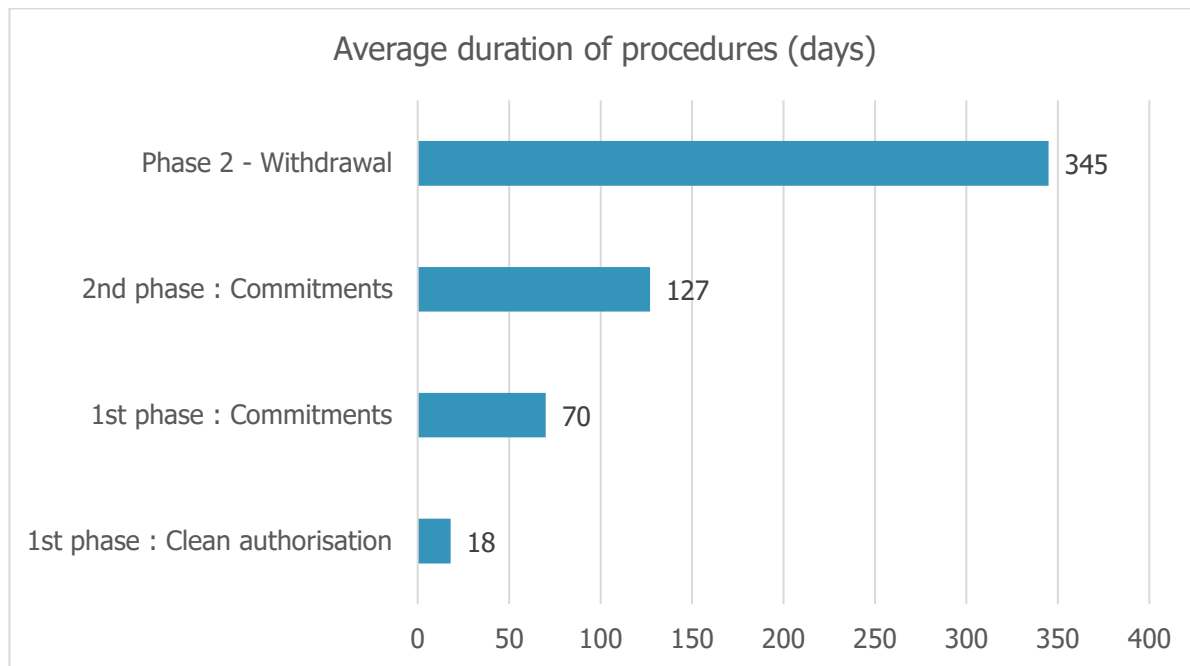
¹⁸ [C/1424/23 - SMURFIT BULGARIA / ARTEMIS BIB | CNMC.](#)



LENGTH OF PROCEEDINGS

- ◉ **The CNMC takes an average of 23 days to clear a transaction from the date of formal notification**, with significant differences between **Phase I without or with remedies - 18 or 70 days, respectively** - and **Phase II proceedings - 127 days** for the only such transaction in 2024.
- ◉ The analysis of **the failed acquisition of Clear Channel lasted almost a year (345 days)** from its notification to the closing of proceedings a few days after JCDecaux publicly announced its decision not to finalize the deal.
- ◉ Two deals are already in Phase II. Apart from the **takeover of Banco Sabadell by BBVA** (as of 31 December, 214 days had passed since its formal notification on 31 May), the acquisition of Ecros, S.A. by Bondalti Chemicals, S.A. has already reached the 175-days mark since its notification on 9 July 2024.¹⁹

¹⁹ [C/1480/24 - BONDALTI CHEMICALS / ERCROS | CNMC](#). On 18 December the CNMC agreed to open the second phase.



THE MERGER CONTROL RULES APPLICABLE IN SPAIN

In Spain, merger control is regulated by *Ley 15/2007 de Defensa de la Competencia* and *Real Decreto 261/2008, de 22 de febrero, por el que se aprueba el Reglamento de Defensa de la Competencia* ("LDC" and "RDC" respectively).

➤ Notification thresholds

A concentration must be notified to the CNMC (Art. 8 LDC):

- ◉ If the combined **turnover** of the companies involved exceeds EUR 240 million worldwide and the turnover of at least two of them exceeds EUR 60 million in Spain in the last business year; and/or
- ◉ If, through the deal, a **market share** of 30% or more is acquired in the relevant market affected by the concentration, or 50% if the turnover in Spain of the target company or of the acquired assets does not exceed EUR 10 million in the last business year.

➤ Proceedings before the CNMC

There are two different procedures - ordinary and abbreviated/simplified - depending on the form type used to notify a concentration. The **abbreviated** form is used in specific cases (Articles 56 LDC and 57 RDC) and **involves providing a significantly smaller amount of information and a reduced deadline - 15 days - for the final decision to be adopted** (Article 36.2.c LDC).

The procedure is divided into two phases:

- ◉ **Phase I**, with a **maximum duration of one month** (art. 36.2.a LDC).
- ◉ **Phase II**, with a **maximum duration of three months** (art. 36.2.b LDC).

Time limits may be extended if remedies are proposed, both in Phase I - 10 days - and Phase II - 15 days (Art. 59 LDC). In practice, these deadlines are often extended.²⁰

In both phases, the CNMC may clear the transaction, make it subject to remedies proposed by the notifier(s) or to conditions (the latter only if the deal is already in Phase II) or decide to close proceedings in certain specific cases. In addition, in Phase I, the CNMC may also refer the case to the European Commission by applying Article 22 of the EC Merger Regulation²¹ or may choose to open Phase II for a more detailed analysis of the transaction; and, in Phase II, the CNMC may prohibit the concentration.²²

➤ **The price of notifying**

Annex 2.4 to Ley 3/2013 lays down the fees to be paid by the notifying parties to a concentration: EUR 1,576.51 for concentrations notified through the abbreviated form and, for the remaining concentrations, an amount that varies depending on the turnover of the parties in Spain, ranging from EUR 5,502.15 when the combined turnover of the parties does not exceed EUR 240 million, to a maximum of EUR 109,806 when it does exceed EUR 15 billion.

➤ **Consequences for failing to notify a concentration**

Failure to notify a concentration that exceeds the applicable thresholds or implementing a deal without an express or tacit decision authorising the concentration – provided that the lifting of the suspension has not been agreed (Art. 62.3.b LDC) – constitute a **serious infringement of the LDC**. In these cases, the law foresees fines of up to 5% of the total worldwide turnover of the infringing company (Art. 63.1.b LDC).

The law also provides for fines of up to 10% of the total worldwide turnover in the event of non-compliance with the terms laid down in CNMC's merger control decision (art. 63.4.c LDC).

➤ **Exceptional intervention of the Spanish Council of Ministers**

The law provides for the exceptional intervention of the Council of Ministers, which will decide, as last instance, on Phase II prohibitions and authorisations subject to remedies or conditions (Art. 60.1 LDC).

Intervention will be exceptional, solely in those cases where the Minister of Economy and Finance decides to submit a file for assessment by the Council of Ministers. The latter may confirm the decision or clear the transaction with or without remedies (art. 60.3 LDC) on grounds of general interest other than the defence of competition (art. 10.4 LDC).

²⁰ The law provides for the possibility of deadlines being extended or suspended in certain circumstances (articles 37 LDC and 12 RDC).

²¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

²² These issues are regulated in Articles 57.2 (Phase I) and 58.4 (Phase II) LDC.

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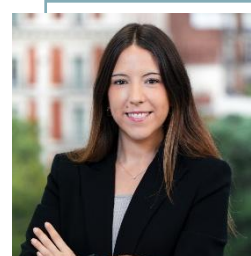
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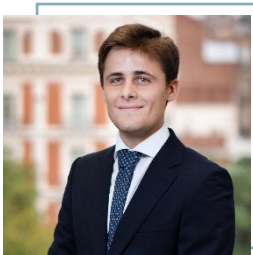
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