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Spanish regulator more flexible on remedies in economic downturn

by Francesca Micheletti in Rome

The Spanish competition authority, Comision Nacional de la Competencia (CNC), has adopted a more relaxed approach to remedies in merger control due to the country's economic situation, said Beatriz De Guindoz Talavera, CNC deputy director general, at a conference in Rome today.

The official was speaking at the conference on economics of merger control organised by Laboratorio di Economia, Antitrust e Regolamentazione (LEAR).

The CNC has not softened its substantive test in merger control. The regulator does not consider that recession justifies a more lenient approach to competition law, Talavera said. However, the authority has become more flexible with respect to procedures and remedy design, taking into account that in times of crisis it is more difficult to find a purchaser for divested assets, she added.

In *Gas Natural/Fenosa* in 2009, for example, the CNC cleared the deal in Phase II with conditions, but allowed some extra flexibility in implementing them, the official said.

The parties -- national gas market leader **Gas Natural** and one of the main players in the electricity market, **Union Fenosa** -- have agreed to divest electricity generation and gas supply assets to encourage the entrance or strengthening of competitors.

The authority was concerned that the transaction would have led to unilateral effects in the supply of gas into Spain, as well as on retail supply to end consumers, with the parties' simultaneous presence in both the electricity and gas markets. The CNC was also concerned about potential coordinated effects in the electricity sector.

When reviewing this transaction, the CNC was not more moderate than usual in agreeing on remedies but offered some flexibility with respect to their implementation, Talavera said. The CNC agreed to extend compliance time periods when talks with potential buyers were advanced. The authority also allowed changes to the to-be-divested assets, taking into account difficulties the parties faced in complying with the commitments.

In another case, *Ebro/SOS*, the authority accepted behavioural undertakings, although the CNC generally prefers structural remedies. The deal, which combined the market leader in rice production **Ebro** and the rice production activities of rival **SOS**, was cleared in Phase I subject to conditions. And in its findings the CNC concluded this deal would have given rise to competition concerns -- both horizontal and vertical -- as well as potential coordinated effects.

The parties agreed to divest four small regional brands as well as the exclusive license of the strong "Nomen" brand for 10 years. The authority's assessment revealed that the characteristics and duration of the behavioural remedy could be as effective as full divestment.

The remedy is expected to strengthen a competitor and enable them to pursue rebranding strategies. In recent years, Spain's competition watchdog has also reviewed transactions in the banking sector with some extra leniency, the official said.

Since 2010, the country has undergone restructuring of the banking sector. The process has entailed the transformation of savings banks into commercial banks and reducing the overall number of banks in the country.

In line with this structural reform the CNC has cleared in Phase I without remedies most savings banks mergers, given the fragmentation of the national market. The only remedies imposed by the CNC concerned structural links between competitors in other markets, as for example, in *Caixa Bank/Banco de Valencia*.

Agencies:

[Spanish Competition Authority – National Competition Commission Comisión Nacional de la Competencia \(CNC\)](#)

Companies:

[Gas Natural Fenosa](#)

[Banco de Valencia, SA](#)

[CaixaBank SA](#)

[Ebro Foods SA](#)

[Deoleo S.A.](#)