

# SPANISH COMPETITION *Highlights...*

***Weekly follow-up: 16 – 21 Oct.***

## **The ACREA sets case S/09/2023, COMERCIO CÓRDOBA by conventional termination**

On 29 November 2022, the Andalusian Competition Authority (ACREA) opened a sanctioning procedure against certain business and trade union organisations for an infringement of Article 1 LDC.

The organisations involved were the Provincial Federation of Employers and Self-Employed Trade of Córdoba (COMERCIO CÓRDOBA), the National Association of Textile, Accessories and Leather Trade (ACOTEX), the Federation of Services for Mobility and Consumption of the General Union of Workers (FeSMC-UGT) and the Córdoba Provincial Union of the Federation of Services of the Andalusian Workers' Commissions (Servicios-CCOO).

In this regard, the aforementioned organisations agreed the provincial collective bargaining agreements for commerce in Cordoba for the periods 2018-2020 and 2021-2022. These agreements prevented companies included in their scope from contracting any economic operator to fulfil their obligation to information, training, and advisory services on social policies. Companies were obliged to provide said services by themselves or through the former business and trade unions organisations; otherwise, they would have to pay their employees a salary bonus for these activities.

Those conducts involved a market sharing agreement with the aim of restricting the access to the market for economic operators other than the negotiating parties.

### **The conventional termination agreed**

After the investigation, the case has been set by means of a conventional termination, a figure included in article 52 LDC. As we mentioned in a previous Newsletter, this is an atypical way of closing the sanctioning case, in the sense that commitments voluntarily offered by the alleged infringers are made binding, without the need for an infringement declaration and, consequently, the imposition of a sanction.

In this case, the commitments agreed by the ACREA consists of a new drafting of the collective agreement. In this sense, companies will be able to choose autonomously the provider to fulfil their obligation to carry out information, training, and advisory services on social policies.

### **Collective bargaining and competition law**

Collective bargaining agreements falling within the scope of the article 1 LDC when they go beyond the constitutional right to collective bargaining.

This approach was followed by the Spanish Supreme Court on several occasions. For instance, in its judgment of 19 July 2012 when it upheld the CNC's decision of 24 September 2009.