

SPANISH COMPETITION

Highlights...

Weekly follow-up: 06 - 10 Nov.

The Supreme Court admits an appeal in cassation on the qualification of the single and repeated infringement and its consequences on the statute of limitations

Productos Eléctricos Industriales, S.A. brought an administrative appeal before the National High Court ("AN") against the Comisión Nacional de los Mercados y la Competencia Decision of 21 November 2017, in case S/DC/0562/15, Cables BT/MT, which declared the company responsible for a single and repeated antitrust infringement constituting a cartel, and imposed a fine of EUR 987,661.

The judgment of the AN and the annulment of the Decision

The AN ruled a judgment on 19 May 2023 upholding the appeal and annulling the Decision. In this regard, although the existence of a common plan was considered proven, the time lapses between the conducts led it to conclude that the infringement is not single and repeated. This is because, during periods of apparent inactivity, there is no evidence to substantiate participation in them.

This implies that the limitation period is not interrupted and, therefore, that certain anti-competitive conducts are time-barred.

The admissibility of the appeal and the interest of the appeal court

The State Attorney has appealed in cassation, arguing that, despite the fact that the cartel's activity was interrupted, the existence of a common plan implies that there is a single and repeated infringement. In this regard, the time lapses between the conducts do not alter the classification of a repeated infringement and, therefore, the statute of limitations does not apply to some of those conducts.

Having brought the appeal in cassation, the Supreme Court considers that it has an objective interest for the formation of case law, aimed at determining whether, once a common plan has been confirmed, the time lapses between the proven infringing conducts do not affect the classification of the infringement as repeated, and the consequences that may arise in terms of the statute of limitations.

At this point it should be noted that the difference between a continuous and a repeated infringement is of particular relevance for the calculation of the fine. According to Community and national case law, in the case of a single and repeated infringement, the periods of inactivity are not taken into consideration for the calculation of the fine, unlike what occurs in the case of a continuous infringement.