

# **SPANISH COMPETITION** *Highlights ...*

***Weekly follow-up: 15 – 19 Jan.***

## **The CNMC initiates a sanctioning proceeding against KKR Genesis for gun jumping**

In January 2022, KKR Genesis implemented the acquisition of the fertility group GeneralLife without the necessary authorisation from the CNMC. KKR Genesis was required to notify the transaction because it exceeded the market share threshold set out in the Spanish Competition Law (“LDC”).

In this regard, gun jumping involves the implementation of a transaction in breach of the obligation to suspend it until the authorisation has been granted, when the transaction fulfils the requirements for notification.

Therefore, in July 2023, the CNMC requested KKR Genesis to notify the transaction, which was authorised in phase I of the merger control procedure without commitments.

### **Obligation to notify to the CNMC and period of limitations**

A transaction must be notified to the CNMC prior to its implementation if any of the following thresholds is met:

- Turnover threshold: at least two of the parties achieved an individual turnover in Spain above 60 million euros, and a combined turnover in Spain of the Parties above 240 million euros.
- Market share threshold: a market share equal or above 30% in a certain relevant market within the Spanish territory is acquired or increased due to the transaction. Nevertheless, in case the turnover of the target in Spain is below 10 million euros, the market share threshold would increase from 30% to 50%.

The obligation to notify a merger which exceeds one of the above thresholds is not time-barred.

However, implementing a transaction subject to notification without prior authorisation from the CNMC is considered a serious infringement under Article 62.3 of the LDC. This infringement is sanctionable by a fine of up to 5% of the total annual turnover of the infringing company in the financial year immediately preceding the year in which the fine is imposed. The statute of limitations period for this infringement is two years.

### **Other gun jumping sanctioning proceedings**

In the last two years, the CNMC has ruled on 9 gun jumping resolutions with fines from 12,000 to 1,500,000 euros. These include SNC/DC/144/22: XFERA and SNC/DC/088/22: FUNESPAÑA / SAN VICENTE, among others.