

Competition law in Spain: What to expect in the current economic recovery phase

29 May 2020

The COVID-19 pandemic has manifested itself with particular virulence in Spain. Its direct effects, as well as those resulting from the extreme lockdown measures adopted to contain its spread, have caused businesses to an unprecedented level of uncertainty – including in relation to the application of European and national competition law.

Much has already been written recalling that antitrust rules have not been quarantined. Now Spain's National Commission for Markets and Competition (the "**CNMC**") has confirmed that they will continue rigorously to enforce antitrust and competition rules while the state of emergency is in force¹ and also once it is lifted. However, due to the exceptional nature of the current situation, the authorities recognize the need to adapt their interpretation to the current economic and legal context.

In view of the gradual resumption of the economic activity in Spain, we analyze the following: (i) the extent to which companies can cooperate with each other and/or with the government in their new day-to-day activity and what precautions they should take in this respect (see Section 1 below); (ii) the possible adverse economic impact of excessive government intervention in the market (see Section 2 below); (iii) the possibilities offered by the merger control procedure to speed up the implementation of acquisitions of companies in distress (see Section 3 below), as well as (iv) the main issues to be taken into account in relation to public aid schemes available to companies (see Section 4 below).

1. Greater flexibility in analyzing business cooperation

1.1. Competition law has not been repealed by the crisis, and has continued to be enforced by a particularly vigilant CNMC...

Crisis situations can lead companies to consider various forms of cooperation, including with competitors, to meet challenges such as continuity of supply, increased costs, logistical and distribution complexities or unpredictability of demand.

Articles 1.1 of Law 15/2007 of 3 July, on the Defence of Competition (the "**LDC**") and 101(1) of the Treaty on the Functioning of the European Union (the "**TFEU**") form the basic framework of competition analysis. They prohibit those agreements or concerted practices between companies

¹ Royal Decree 463/2020, of 14 March, declaring the state of alarm for the management of the health crisis situation caused by COVID-19.

or groups of companies that have the "*object or effect*" of restricting competition in the market. However, paragraph 3 of both Articles (1 LDC and 101 TFEU) exempts from the prohibition agreements or concerted practices whose [actual or potential] restrictive effects on competition are outweighed by the "*economic efficiencies*" generated. Efficiencies are deemed to be generated by agreements that: (i) contribute to improving the production, marketing and/or distribution of goods and services, or to promoting technical or economic progress; (ii) allow consumers a fair share of the benefits, provided that; (iii) they do not contain restrictions which are not indispensable to the attainment of these benefits; and (iv) do not afford the parties the possibility of fully eliminating competition. It is up to the economic operators themselves to carry out a self-assessment exercise to determine whether or not their agreements/concerted practices fall within the prohibition set out in Articles 1(1) LDC and 101(1) TFEU and, if so, whether they would be exempted from that prohibition on account of meeting the aforementioned exemption requirements (ex Articles 1(3) LDC and 101(3) TFEU).

Traditionally, European and national competition authorities have viewed horizontal (i.e. between competing companies) cooperation agreements with some suspicion, even when these were motivated by an exceptional crisis situation. This is because competition law requires competitors to operate on the market autonomously, allowing cooperation between them only in very specific cases, provided that any possible restrictions are offset by economic efficiencies ultimately to the benefit of consumers.

Both the (now defunct) National Competition Commission (the "**CNC**") and the current CNMC have reiterated that the existence of an economic crisis does not, in itself, justify collusive behavior between competitors (in particular cartels²) nor, indeed, a relaxation of the strict framework for assessing (and justifying) such behavior. Thus, during the 2008 financial crisis, the CNC systematically refused in its sanctioning files to accept as an exemption, or as a mere mitigating factor, that the offending companies had suffered economic difficulties. Equally, the European Commission has repeatedly spoken out against so-called "crisis cartels".³

Similarly, the CNMC's initial reaction to the spread of the COVID-19 pandemic was captured in a [press release issued on 12 March 2020](#) reaffirming its traditional position of zero tolerance for possible anti-competitive behavior. In particular, the CNMC warned in that statement that it would remain operational during the state of emergency - with the logical organizational adjustments that such a situation requires - and that it would strengthen its market surveillance to identify and pursue conduct that could "*hinder the supply or cause the increase in price of products necessary for the protection of the health of the population*" - with a particular emphasis on "*agreements between operators*".

There was also an express call for citizen collaboration with the CNMC, recalling that its website offers the possibility of formally denouncing (or simply communicating anonymously) potential anti-competitive behavior. To this end, in order to centralize complaints and consultations related to the application of competition law in the context of the COVID-19 outbreak, the CNMC [announced on 31 March 2020](#) the creation of an electronic mailbox (covid.competencia@cnmc.es) (the "**Mailbox**").

² According to the definition given by the LDC, "*a cartel is an agreement or concerted practice between two or more competitors whose objective is to coordinate their competitive behavior on the market or to influence the parameters of competition through practices such as, inter alia, setting or coordinating purchase or sales prices or other trading conditions, including in relation to property rights production or sales quotas; the allocation of markets and customers, including collusion in tenders, restrictions on imports or exports or measures against other competitors contrary to competition*" (Additional Provision 4.2).

³ See for this purpose the contribution of the European Union (the "**EU**") to the OECD Global Forum on Competition, Crisis Cartels, 27 January 2011.

Subsequently, through another [press release published on 24 April 2020](#), the CNMC reported that, since the launch of the Mailbox, nearly 300 queries and complaints had been received from individuals and companies, largely related to alleged anti-competitive behavior mainly in the financial and marketing of basic goods and services sectors. As a result of these complaints, the CNMC has announced the opening of preliminary investigations in the financial⁴, health⁵ and funeral services⁶ sectors which are currently on-going.

In addition to the above, we should also add the close monitoring that, in their respective territorial areas - and in particular, in relation to the most sensitive sectors in the current health crisis - is being carried out in parallel by the regional competition authorities (for example, the Catalan authority with respect to the financial sector).

In short, not only has competition law not been repealed - or its application suspended - in Spain during the state of emergency, the CNMC has been actively vigilant in the face of possible collusive behavior prohibited by Articles 1 LDC and 101 TFEU - especially in strategic sectors and/or those particularly affected by the crisis.

1.2. ...While the CNMC has announced that it will modulate its assessment of certain business cooperation schemes which, under normal circumstances, could infringe competition law.

Regardless of the full application of competition law, the CNMC is aware of the dimension of the economic crisis generated by the pandemic and, like other authorities in our environment, has been receptive to applying these rules with greater flexibility, provided that this is justified by the circumstances.

The first official recognition of the need to accommodate competition law enforcement to the complicated economic and social situation emerged from the European Competition Network (the "ECN"), composed of the European Commission and the national competition authorities of the EU member states (including the CNMC). In a brief and unusual [joint statement of 23 March 2020](#), the ECN noted that in the current "extraordinary situation" the authorities will not "actively intervene" when companies have to temporarily cooperate "to ensure the supply and distribution of scarce products to all consumers".⁷ Such "necessary and temporary" measures would not, in principle, be considered contrary to Article 101 TFEU and the authorities making up the ECN offered to give informal guidance to companies that decided to engage in such cooperation (the "ECN Declaration").

In Spain, the CNMC qualified to a certain extent its strict traditional position and, in its aforementioned press release of 31 March, also assumed the principles of the ECN Declaration, announcing an eminently constructive approach by committing itself to analyze "taking into

⁴ In the words of the CNMC: "the demand by some financial institutions for an additional guarantee (in particular life insurance) for the granting of loans guaranteed with the approval of the State (ICO credit lines) and other financial aid derived from the extraordinary regulations dictated for the management of the situation of the health crisis caused by the COVID-19. Specifically, the question is whether such a requirement could constitute unfair conduct which, by distorting free competition, would affect the public interest in a context of crisis arising from COVID-19".

⁵ As the CNMC has pointed out: "the increase in the overall demand for certain health protection products such as hydro-alcoholic gels is causing substantial price increases for these products and the raw materials used in their manufacture (ethanol), as well as situations of shortage in the market". Hence, according to the CNMC, "the evolution of these markets in Spain is being analyzed in a detailed way in order to identify and, if necessary, sanction the existence of anti-competitive behavior resulting from such price increases".

⁶ The CNMC has warned that "an investigation is under way to determine whether the prices charged by various funeral establishments during the health crisis could be due to anti-competitive agreements between competitors or due to aggressive, unfair conduct, objectively contrary to the requirements of good faith and liable to have significantly reduced the freedom of choice of the recipients (relatives of the deceased)".

⁷ In a similar vein, see the subsequent ICN Steering Group Statement of 9 April 2020: Competition during and after the COVID-19 Pandemic, available at the following link: <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/04/SG-Covid19Statement-April2020.pdf>.

account the situation" those forms of transitory business cooperation that were intended to *"facilitate the supply of essential products"*.

In this way, the CNMC shows its willingness to permit exceptionally and on a transitional basis, certain cooperation agreements between competitors which, under normal conditions, could a priori be problematic from the perspective of Articles 1 LDC and/or 101 TFEU. The key to this is that such cooperation agreements are effectively aimed at solving production and/or distribution problems, thus ensuring supply in the public interest.

Furthermore, although the legal responsibility for self-assessing the compatibility of cooperation agreements with competition law remains with the participating companies, the CNMC has opened a dialogue channel to resolve informally - through both verbal and written guidance via e-mail - queries received in the Mailbox on the legality of cooperation agreements and issues arising from COVID-19. Declarations of inapplicability of competition law to specific agreements, which are provided for in Article 6 of the LDC have not been applied in practice by the CNMC in recent years.

According to the press release issued by the CNMC on 24 April 2020, this informal advice is intended to ensure that the response to pandemic emergencies, which may require some degree of cooperation between operators to maximize efficiencies, is compatible with Articles 1 LDC and 101 TFEU. This is nevertheless subject to the caveat that, *"the exceptional challenges faced by companies due to COVID-19 and their fundamental role in overcoming the effects of this crisis"*.

In practice, the CNMC is acting with commendable speed in guiding operators on: (i) the limits imposed by competition law on such agreements; and (ii) that these transitional measures have their *raison d'être* in the present situation of exceptionality and should be terminated when the capacity for self-organization and entrepreneurial freedom is restored in the sectors concerned.

To accompany its guidance, the CNMC is largely following the criteria set out in the [Communication on the Temporary Framework for assessing antitrust issues related to business cooperation in response to the emergency situations caused by the current outbreak of COVID-19](#) (the "**Temporary Framework**"), published by the European Commission on 8 April 2020.

This Temporary Framework provides very practical guidelines for companies wishing to cooperate and coordinate their activities temporarily in order to increase production efficiently or optimize distribution and, as such, to cope with the economic consequences of COVID-19. Exceptionally, coordination and exchange of commercially sensitive information between competitors is allowed, provided that it is strictly necessary and proportionate to ensure the production or distribution of urgently needed products.

However, any cooperation will always be subject to certain precautions and limitations, including the following:

- a) that it is objectively necessary to increase efficiency in production or to avoid shortages in the supply of essential products or services (such as those used for the treatment of patients with COVID-19) (*principle of necessity*);
- b) that it does not go beyond what is strictly necessary to achieve the above objectives (solving or preventing supply shortages) (*principle of proportionality*);
- c) that it is of a temporary nature - i.e. that cooperation is only maintained as long as there is a risk of shortage or, in any case, during the COVID-19 outbreak; and

- d) that any exchange of information between the companies is formally documented so that it can be reviewed and evaluated by the competition authorities if required.

In our experience, the CNMC could also be expected to consider and propose in practice additional safeguards when assessing such cooperation agreements, such as:

- e) that they do not allow the parties to agree or coordinate prices or other commercial conditions that are not necessary to improve the distribution of the goods or services in question;
- f) that the exchange of information is limited to the persons involved and to the strictly necessary technical aspects;
- g) that the existence of the agreement is made public (without prejudice to the fact that both the name of the companies and its specific content may be considered confidential) so as to allow third parties to join the cooperation scheme; and
- h) That the information and documents exchanged in connection with the implementation of the cooperation agreement will be kept confidential by the parties for a long period of time.

With the above precautions, the CNMC intends to avoid that any (informal) authorization of a cooperation scheme implies that the participating companies may restrict essential parameters of competition or obtain a competitive advantage over those who have not participated in the scheme.

Although the Temporary Framework focuses mainly on the health sector (including pharmaceutical companies, manufacturers of medical equipment and their distributors), the European Commission has confirmed that it also applies to agreements between companies in other sectors - that is, without being directly aimed at the production or distribution of basic health care goods, they help to alleviate the serious difficulties experienced by European (and Spanish) economies. For its part, the CNMC has also stated that the Mailbox is available for consultations on "*possible cooperation agreements with other operators to deal with the effects of the crisis*" in general, especially those related to "*the most crucial services or needs*". In fact, the CNMC has confirmed that it has received in its Mailbox various consultations on cooperation agreements in the insurance sector, hospital sector, banking sector and health products sector (masks, respirators and hydro alcoholic gels).

Therefore, nothing would prevent a party benefiting from the above conceptual analysis framework and raising questions regarding cooperation schemes between competitors in various sectors which, having a similar objective (i.e. to increase production or optimize the distribution of goods or services), are justified by the market conditions generated by the COVID-19 crisis (and which ultimately benefit consumers). Obviously, such agreements should also be subject to prior self-assessment from a competition law perspective in the light of the caveats set out above and, where appropriate, after consultation with the CNMC.

Other forms of cooperation between companies to try to mitigate the impact of the crisis, such as: (i) lobbying by companies or partnerships with government bodies for the adoption of effective public measures in support of entrepreneurship; or (ii) setting technical standards on an industrial scale, particularly if they entail efficiency gains, could also remain fully legitimate and permissible under competition law.

However, it should be noted that the approach officially expressed by the CNMC in its various press releases issued on the occasion of the COVID-19 crisis would not apply to other forms of cooperation or exchanges of information affecting prices or other trade parameters. This is

particularly true with regard to the so-called "crisis cartels" - i.e. agreements aimed at coordinating prices or other trading conditions or reducing supply in the face of a drastic fall in demand and/or allocating production quotas to avoid price fluctuations. Although the assessment of this type of agreement will have to be made on a case-by-case basis, competition authorities have not so far been inclined - quite the contrary - to relax, in certain specific circumstances, their traditional consideration of crisis cartels as unjustifiable restrictions of competition.

Regarding the expected extension of the measures adopted under the Temporary Framework and the informal guidance provided by the CNMC, although steps are already being taken towards the revival of economic activity, uncertainty about how the recovery will look is still high. The authors understand that the circumstances that led to the new framework for competition authorities' action continue to exist today and in the foreseeable future. Indeed, although the concerns about shortages of medical equipment during the worst phase of the pandemic seem to be fading, the sudden economic downturn and the strains on the markets will unfortunately continue for some time. In such circumstances, it is reasonable to expect that competition authorities will continue for some time, and until the situation stabilizes, to take a constructive approach to the application of competition law to business cooperation agreements and to maintain their offer to provide guidance in this regard, necessarily taking into account the relevant economic and legal context.

In view of the above, it is advisable for companies considering the possibility of participating in cooperation schemes with competitors (in particular, in sectors such as wholesale or retail distribution, logistics, transport, leisure or the health sector) to assess the situation and its foreseeable evaluation by competition authorities.

In order to neutralize any possible risk arising from this cooperation, it is highly advisable to seek prior legal advice in competition law, given that - as explained - the COVID-19 crisis has modulated (albeit possibly only temporarily) the framework for analyzing these issues, and it is necessary to analyze in detail the specific economic and legal context and its consideration by the competition authorities.⁸

1.3. The risk of cooperation agreements promoted by the Administration

The situation may arise that the Administration defined term requires some companies to cooperate with one another in the effort to fight the pandemic, collaborating with objectives of general interest (for example, by assisting in the management of the supply of emergency medical material or ensuring the supply of essential goods).

However, unless the cooperation agreements between private operators promoted by the public administrations have been established in express application of a rule with legal status, these will only be - in general - admissible when they fully respect Articles 1 LDC and 101 TFEU. The companies involved will thus continue to be subject to the obligation to self-assess whether the cooperative schemes envisaged are compatible with competition law. While the public promotion of such cooperation will be taken into account by the competition authorities in their assessment

⁸ For those cooperation agreements whose scope is European because it exceeds the national territory, the possibility of obtaining "comfort letters" from the European Commission could also be assessed. In this respect, through a press release published on 4 April 2020, the European Commission has expressed its intention to exceptionally provide companies with written security (comfort letters) with regard to specific cooperation projects that need to be implemented quickly to effectively address the coronavirus outbreak, especially when there is still uncertainty about the compatibility of such initiatives with EU competition law (available at the following link: https://ec.europa.eu/commission/presscorner/detail/es/IP_20_618).

of the schemes,⁹ this does not imply a kind of general regulatory safeguard. Where public intervention leaves room - even if minimal - for competition, the competition authorities will expect undertakings to compete with each other.¹⁰

For this reason, it is recommended that business cooperation schemes that are sponsored (and even directly promoted) by the public authorities be carefully assessed in order to take into account the necessary precautions and, where appropriate, reflect the specific terms and conditions of such cooperation in an agreement expressly signed with the Administration.

2. Considerations on possible adverse effects of public intervention on the market

The declaration of the state of emergency has significantly increased the intensity of government intervention in the national economy.

In addition to calling for the cooperation of companies with the Administration in certain cases, the COVID-19 crisis has led to increasing direct intervention by public authorities in the economy, with the declared intention of alleviating deficiencies in the supply of products, especially certain basic health material, both from a logistical point of view (e.g. centralizing the management and purchase of health material) and directly in terms of prices and other marketing conditions (e.g. format and quantity).¹¹

While a certain degree of public intervention may be justified given the current exceptional situation, it is important to limit such intervention to what is strictly necessary. Price controls in competitive and open markets often generate distortions that may adversely affect the functioning of such markets. Indeed, prices are essential to achieving an optimal allocation of resources in competitive markets and any measure that affects them artificially will generate distortions and prevent proper functioning. This will reduce the efficiency of the system, eventually leading to possible shortages especially in a situation like the present one where international demand for certain products is very high and manufacturers can opt for markets that offer better conditions and returns.

Precisely to avoid these situations, the CNMC works with the Ministry of Health in the design and assessment of measures aimed at ensuring the availability in optimal conditions of the products necessary for the protection of health. The aim is, as the CNMC stated in its press release of 12 March 2020, *"to help ensure that the measures adopted are proportionate to the objectives sought, effective in achieving them and generate the least possible distortion of competition in the markets"*.

In its subsequent press release of 24 April 2020, the CNMC reiterated that, in the exercise of its consultative functions, it is at the disposal of all public administrations, *"[particularly those on which the preparation of the extraordinary regulations approved within the framework of the*

⁹ The Temporary Framework states in this regard that *"the fact that cooperation is encouraged or coordinated by a public authority (or carried out within a framework established by the latter) is also a relevant factor to be taken into account in concluding that such cooperation would not be problematic under EU competition law"*.

¹⁰ Article 4 of the LDC ("conduct exempted by law") provides in this respect: *"1. the possible application of Community antitrust provisions, the prohibitions of this chapter shall not apply to conduct resulting from the application of a law. 2. The prohibitions of this Chapter shall apply to situations of restriction of competition arising from the exercise of other administrative powers or are caused by the actions of public authorities or public undertakings without such legal protection"*.

¹¹ By way of illustration, the Government has set the price of masks, disinfectant gels and gloves, in accordance with Order SND/354/2020 of 19 April, which establishes exceptional measures to guarantee the population's access to products recommended for use as hygienic measures to prevent infection by COVID-19.

COVID-19 falls, so that they can consult the CNMC on the adaptation of said regulations to the principles of efficient economic regulation".

Such measures have so far been one-off and, in principle, temporary in nature. However, it is by no means ruled out that further measures of this kind will be taken in the future if the upturn in the economy leads to distortions in the supply and/or demand for goods and services or that they have been extended beyond what is strictly necessary.

Companies that are affected by these possible intervention measures must properly assess their scope and impact on business. This includes identifying the risks and distortions in the functioning of the markets that may result from such intervention from the point of view of competition law or the fundamental freedoms such as free movement of goods or provision of services enshrined in EU primary law and, in Spain, in Law 20/2013 of 9 December on Market Unity Guarantees.

If necessary and when this analysis yields a negative result, it is advisable to assess the opening of communication channels with the Administration responsible for the measure, and, in particular with the CNMC, in order to show these counterproductive effects and, if appropriate, to propose alternatives that will allow similar results to be achieved through less harmful measures.

3. Streamlining of concentration control procedures

With the approval of Royal Decree 463/2020 of 14 March declaring the state of emergency for the management of the health crisis situation caused by COVID-19, the calculation of the maximum periods to resolve all the procedures and administrative periods during the validity of the state of emergency was suspended.

Notwithstanding the above, the CNMC confirmed from the outset that it would continue to operate - albeit in line with the recommendations of the health authorities - and that its electronic headquarters would be fully operational (see its press release of 12 March 2020).¹²

Thus, the CNMC is accepting the submission of draft concentration notifications and analyzing them at the pre-notification stage. After formal notification, the notifying party may request that the CNMC, in order to avoid serious prejudice to his rights and legitimate interests, not suspend the relevant merger control procedure (especially in less complex cases). In fact, the CNMC authorized five concentrations in March and another four in April despite the fact that the state of emergency was in force.

Once the state of emergency is over and the economy is gradually revived, a significant increase in the number of concentrations targeting insolvent companies is to be expected and, in addition, circumstances may encourage various atypical acquisitions of control (e.g. as a result of "debt for equity" agreements or the willingness of creditors to take over veto rights over the management of companies whose shares have been pledged). This is expected to lead to a certain process of business consolidation in the medium term, especially in those sectors most affected by the economic crisis.

Since concentration operations that reach the notification thresholds provided for by the LDC or Community legislation¹³ cannot be implemented until authorization is obtained from the CNMC or the European Commission, the obligation to wait several weeks or months to obtain such

¹² In similar terms, for the European Commission, see here its note (<https://ec.europa.eu/competition/mergers/news.html>)

¹³ In particular, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between companies.

authorization may sometimes prove vital for the viability of the operation (and even of the target company).

In the face of urgent situations, Spanish antitrust legislation offers the possibility of requesting derogation of the mandatory suspension of the execution of the concentration (the 'stand-still obligation') before the CNMC based on, among other factors, the damage that the suspension of the execution would cause to the participating companies. Such a derogation of the stand-still obligation may be subject to conditions and obligations which guarantee the effectiveness of the decision ultimately adopted.

While the CNMC has traditionally been very reluctant to consider such requests for derogation of the stand-still obligation,¹⁴ it cannot be excluded that the current situation could alter its strict approach, making this procedural option an interesting way of solving the timing problems caused by the processing of merger control cases.

Companies should carefully consider whether it is appropriate to request the derogation of the stand-still obligation or, if possible, consider other alternatives which may be even more effective in practice for accelerating the implementation of the operation. In particular, in the case of simple competitive transactions, parties might consider notifying them to the CNMC without requesting the derogation of the stand-still obligation. They can then proceed to have the transaction processed through the shortened procedure provided for by the LDC in order to obtain the necessary authorization in a relatively short period of time.

For a detailed analysis of the above issue in some of the principal jurisdictions, we refer to the [note](#) prepared by our global Antitrust, Competition and Economic Regulation (ACER) team.

For the purposes of designing transactional agreements and timing of future acquisitions, it should also be borne in mind that the Spanish government has recently introduced a mechanism to review certain foreign direct investment (FDI) made by non-EU and European Free Trade Association (EFTA) residents on grounds of public policy, public security and public health.

If both FDI and merger control approval must be requested from the CNMC, it is highly recommended that both procedures be evaluated and managed in parallel in order to accommodate the transactional timetable.

4. Public aid to the economy: what to look out for

Ever since it became clear that the COVID-19 pandemic would cause an unprecedented economic crisis, the various European governments - and Spain has been no exception - have been preparing to approve successive (and ambitious) public aid plans to help sustain businesses. As is well known, the EU law provides a strict framework for prior authorization of economic aid granted by the various public authorities of the EU member states.

The European Commission has reiterated its intention to keep the system of prior review and authorization of State aid in force, despite the exceptional nature of the current circumstances and the requests for greater flexibility (or even repeal of the system) that have been voiced by some EU member states (the most relevant and recent being the Austrian government).

¹⁴ It has only been agreed in two recent precedents to lift (and only partially) this suspension, namely in cases *C/0493/13 Cope/Vocento/Punto Radio (2013)* and *C/0802/16 Daimler/Hailo/Mytaxi/Negocio Hailo (2016)*.

However, it is obvious that in practice there has been a certain relaxation in the analysis of these packages of measures by the European Commission (at least until 31 December 2020)¹⁵ which has rushed to approve the different public aid schemes notified by the Member States (as it seems difficult that any another approach would have sufficed given the grave situation facing national economies).

Although, a majority of these schemes have been notified to and authorised by the European Commission (which has thus validated their compliance with EU regulations in this area), it is also advisable for companies contemplating the possibility of applying for any state aid to verify whether their approval has, indeed, taken place and whether any risk might arise in the future where such approval has not been received.

Regarding Spain more specifically, the following schemes of State aid for companies, duly notified by the Spanish Government and approved by the European Commission, can be identified so far:

4.1. First State Aid Package (authorized on 24 March 2020 - SA.56803)¹⁶

This comprises two public guarantee systems for self-employed workers and small and medium-sized enterprises (SMEs) on the one hand, and large companies on the other, all affected by the coronavirus outbreak, with a total budget of approximately 20,000 million euros.¹⁷

4.2. Second State Aid Package (approved on 2 April 2020 - SA.56851)¹⁸

This is a new framework scheme which allows the authorities (at the various administrative and territorial levels) to grant additional aid to the enterprises and self-employed persons concerned, in the form of: direct subsidies, repayable advances, tax benefits and payment facilities, public guarantees for loans¹⁹ and subsidized interest rates for loans.²⁰

Although the Spanish government has not provided an overall budget for this framework scheme, it has specified that the aid consisting of loan guarantees, reimbursable advances and tax benefits will amount to 3,650 million euros.

¹⁵ Specifically, on 19 March 2020, the European Commission issued a Communication announcing the Temporary Framework applicable to this type of aid, introducing the most flexible rules to date regarding State aid. It was subsequently amended on 3 April 2020 to allow Member States can accelerate research, testing and production of coronavirus-related products, in order to protect jobs and continue to support the economy during this outbreak. This Temporary Framework, with its consequent. The amendment is expected to be in force until 31 December 2020 (although the Commission will evaluate before that date its possible extension). A consolidated version of the Timeframe can be found (after the modification) in Spanish at the following link:

https://ec.europa.eu/competition/state_aid/what_is_new/TF_consolidated_version_as_amended_3_april_2020_es.pdf

¹⁶ You can find the press release, in its Spanish version: https://ec.europa.eu/spain/sites/spain/files/20200324_state_aid-commission-approves-20billion-euros-spanish-guarantee-schemes-for-companies-selfemployed-affected-by-coronavirus-utbreak_es.pdf

¹⁷ These plans were approved in Spain by Royal Decree-Law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19, and are part of the 100 billion, for coverage by the State (managed by the *Instituto Oficial de Crédito (ICO)* through the financial institutions) of new loans and renewals of existing operations, in order to facilitate access to credit and liquidity for companies and the self-employed. In this respect, and following authorization from the European Commission, on 24 March 2020, the Council of Ministers approved the conditions and requirements for the first guarantee tranche of 20 billion euros (of which 50% will be reserved to secure loans to SMEs and the self-employed).

¹⁸ You can find the press release, in its Spanish version: https://ec.europa.eu/spain/sites/spain/files/20200402_covid19-state-aid-commission-approves-spanish-framework-regime-to-support-economy-against-coronavirus-outbreak_es.pdf.

¹⁹ State guarantees for loans granted by banks to companies are included in the above mentioned line of guarantees for financing, which the Spanish government approved with a total endowment of up to 100 billion, to guarantee new loans and renewals granted by financial services institutions to companies and self-employed workers. In this sense, in addition to the Council of Ministers' Agreement of March 24th, approving the first tranche of application of this measure with an allocation of 20,000 billion euros, on April 10th 2020, the Council of Ministers also approved the conditions and requirements for a second tranche of guarantee of 20,000 million euros limited this time to SMEs and self-employed workers as they are considered to be the agents of economic activity that require the most support.

²⁰ It should be noted that aid in the form of loan guarantees and interest rate subsidies cannot be combined in respect of the same loan. On the other hand, aid in the form of direct grants, repayable advances or tax benefits can alternatively be combined with public guarantees or interest rate subsidies.

4.3. Third State Aid Package (authorized on 24 April 2020 - SA.57019)²¹

This develops a second framework scheme that allows the authorities (at different administrative and territorial levels) to provide support to different sectors concerned, including R&D support schemes (for testing and production of COVID-19 related products), as well as wage subsidies and deferrals of tax and social security contributions aimed at supporting the maintenance of employment.

The aid modalities that can be granted under the first framework scheme approved by the European Commission (on 2 April 2020) are also extended, allowing support in the form of guarantees, interest rate subsidies, as well as capital for a nominal amount of up to 800,000 euros to be granted to a company active in any sector (except in the primary agricultural sector in which case the quantitative limit will be 100,000 euros; or in the fishing or aquaculture sector in which case it will be 120,000 euros).

²¹ The press release can be found in its Spanish version at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_742

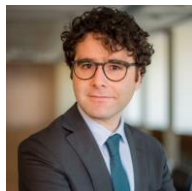
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