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**Latin American and Caribbean Competition Forum**

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session III: Remedies in  
Digital Markets**

**- Contribution from Spain -**

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This attached document from Spain is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session II at its forthcoming meeting to be held on 7-8 October 2025 in Asunción, Paraguay.

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## *Session III: Remedies in digital mergers*

### *– Contribution from Spain –*

1. This contribution focuses on the remedies introduced by the Comisión Nacional de los Mercados y la Competencia (the Spanish National Markets and Competition Commission, CNMC) to solve different competition issues presented by certain mergers that have taken place in recent years in the Spanish digital markets.

2. The contribution is structured as follows: the first section provides an introduction; the second section describes the main merger transactions, the theories of harm they presented and the remedies adopted in each case; the third section presents the main conclusions.<sup>1</sup>

#### **1. Introduction: mergers of digital companies in Spain**

3. The growing digitisation of the economy means that more and more economic activities are centred on digital markets, and an increasing number of operations and transactions traditionally carried out in other channels have also moved to this sector.

4. Digital developments enable certain companies to grow faster due to their intrinsic characteristics, such as economies of scale and network externalities, and this growth is further supported in the context of globalisation.

5. However, the growth of certain companies, especially inorganic growth, can at times threaten the contestability of the markets in which it occurs, giving rise to competition issues.

6. In recent years, the CNMC has had the opportunity to analyse a number of transactions in digital markets, for the most part involving various issues relating to competition law, which could have threatened free competition in the Spanish markets in question.

7. However, in all cases, the CNMC found sufficient and proportionate remedies to address the competition issues that arose, preserving the contestability of the affected markets and allowing the mergers to take place.

8. The existence of a market share notification criterion<sup>2</sup> has been key to the ability to analyse mergers in digital markets. More than 30 digital mergers have been notified in the last six years, 75% of which were notified due to their meeting the share threshold. If this share threshold had not existed, these transactions would not have been notified. Among the transactions notified as a result of the market share threshold were those likely to have

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<sup>1</sup> This contribution was prepared by CNMC staff and should not be considered an official CNMC position, except in relation to the official documents mentioned throughout the text.

<sup>2</sup> In Spain, as well as a notification threshold based on turnover (common to most jurisdictions), there is a notification threshold based on market share. Notification is required where a share equal to or greater than 30% of the relevant product or service market is acquired at the national level or in a defined geographic market within the country (this threshold rises to 50% when the acquired company has a turnover of less than 10 million euros in Spain).

the greatest impact on competition, including mergers which required remedies. These transactions are analysed below.

## 2. Mergers and remedies applied

### 2.1. Mergers and remedies in the food delivery sector

#### 2.1.1. *Just Eat/La Nevera Roja*<sup>3</sup>

9. The merger between Just Eat and La Nevera Roja took place in 2016 within the online food delivery platform management sector, in which these platforms act as intermediaries between the restaurants that prepare the food and end consumers. In this case, market leader Just Eat acquired the second strongest market competitor, with a potential post-merger market share of 70-80 per cent.

10. In its analysis, the CNMC concluded that, with respect to the product market, the business models developed by each of the companies were in fact responding to two independent demands, and that in effect it was a two-sided market, since the two platforms have different client groups. On one side are the restaurants and, on the other, the end consumers, although indirect network effects mean that each of these groups' demands are interdependent, since – as is often the case in these markets – one side feeds off the other. In this particular case, the higher the number of restaurants on the platform, the more attractive the platform becomes to end customers. However, the network externality is bidirectional, since a platform with more end customers will be more attractive to a restaurant, since this will increase the restaurant's chances of receiving more orders.

11. In its assessment of the merger, the CNMC concluded that, although the market was at a relatively early stage of development, there were already barriers to entry and expansion. These stemmed mainly from the significant investments in advertising and marketing required to attract new customers (on both sides of the market) and the strong market leadership position of both companies (especially Just Eat). The parties' leadership position prior to the merger meant their existing economies of scale and network would be strengthened by it, thus increasing the market power of the resulting entity and potentially creating incentives to demand exclusivity from restaurants, either formally or de facto. If widely applied, this practice could exclude third party platforms from the market.

12. In light of this, and of the risks the transaction posed to maintaining effective competition in the markets, remedies were considered necessary. The notifying company submitted commitments in relation to its present and future conduct, which were adopted as a remedy. As shown below, these commitments are in line with other remedies implemented in digital markets of various types that also have multi-sided platform features.

13. The behavioural remedies adopted prohibit the imposition on restaurants of any kind of exclusivity relationships with Just Eat's platforms, as well as any conduct that could either emulate or encourage informal exclusivity contracts or relationships with restaurants.

14. The notifying company therefore undertook, firstly, not to impose exclusivity (total, partial, formal or de facto) on restaurants affiliated with the Just Eat platform (current and future). In addition, this restriction on exclusivity was reinforced by the notifying company's commitment not to link the commissions paid by restaurants (current and future)

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<sup>3</sup> CNMC (2016), C/0730/16 - Just Eat/La Nevera Roja, <https://www.cnmc.es/expedientes/c073016>.

to exclusivity arrangements with restaurants, and not to penalise restaurants that decided to work with several platforms at once.

15. This behavioural remedy sought to prevent any imposed exclusivity arrangements from impeding the entry or expansion of third-party platforms in the market in question, given that extensive exclusivity could act as an effective barrier to entry, growth and therefore competition for third-party platforms.

16. The CNMC considered this behavioural remedy sufficient to maintain market contestability. A subsequent investigation (S/0026/20)<sup>4</sup> into potentially anti-competitive behaviour found that: (i) Just Eat's share had declined (meaning that the remedies had been useful to maintain contestability) and (ii) the scope of exclusivity clauses had reduced.

### **2.1.2. MIH FOOD DELIVERY HOLDINGS/Just Eat<sup>5</sup>**

17. In this case, MIH Food Delivery Holdings was set to acquire sole control of Just Eat in 2019, through a hostile takeover bid.

18. This issue was of a different nature, with MIH holding a minority stake in Delivery Hero, which in turn had a minority stake in Glovo. Thus, the merger could have led to interdependent conduct between Just Eat and Glovo.<sup>6</sup>

19. In addition, there was quite a high market concentration, and the existence of indirect network effects had been demonstrated. The CNMC thus deemed it necessary that certain conditions be met before authorising the transaction, with a view to ensuring free competition and contestability in the market. Moreover, the above issues could also have led to a number of coordinated effects between the parties, since a structural link was being created between the two main competitors in the food delivery platform market (with a combined share of 70 per cent).

20. Given the CNMC's concerns, the company undertook to adopt measures ensuring that MIH would not access sensitive business information on either Delivery Hero or its subsidiary Glovo, and preventing MIH from using this channel to influence Glovo's strategy in markets in which it competes or may compete with Just Eat in Spain.

21. Delivery Hero (and Glovo) would also be unable to access information held by Just Eat considered sensitive from the perspective of competition law.

22. MIH also undertook to limit its influence on governance bodies, stating that it would not be able to appoint, nominate or propose joint members of Delivery Hero's supervisory or management board or of the board of directors or other governance bodies of Just Eat or its subsidiaries.

23. The CNMC deemed the commitments – which would last a period of three years – adequate and proportionate to address the issues at hand.<sup>7</sup>

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<sup>4</sup> CNMC (2020), S/0026/20 - Redes Paralelas Exclusividades Plataformas, <https://www.cnmc.es/expedientes/s002620>.

<sup>5</sup> CNMC (2019), C/1072/19 - MIH Food Delivery Holdings/Just Eat, <https://www.cnmc.es/expedientes/c107219>.

<sup>6</sup> MIH had one director on the supervisory board of DELIVERY HERO, while DELIVERY HERO had one director on Glovo's board of directors. Both boards discussed strategic issues.

<sup>7</sup> This transaction was not completed (<https://www.cnmc.es/expedientes/vc107219>) because the hostile takeover bid was unsuccessful.

## 2.2. Digital mergers and remedies in the wedding planning industry (Wedding Planner/Zankyou)<sup>8</sup>

24. This merger, whereby Wedding planner would acquire sole control of Zankyou, was notified in 2022. Both parties were active in the wedding planning digital platform sector and in the provision of online search services related to weddings in Spain.

25. Based on a market test and by applying similar precedents, the CNMC considered it appropriate to define a relevant market for online wedding planning service platforms. Such platforms provide information, products, services, features and tools to couples organising their weddings (end users) and provide advertisers (business users) with a website and application to advertise their products and/or services to couples. The CNMC also confirmed that the relevant geographic market was a national one.

26. A market analysis revealed a significant horizontal overlap (with shares of around 50 or 80-90% depending on the metric) that could hinder free competition, since Wedding Planner's leadership would be reinforced in a context where economies of scale and network externalities exist. This could create or strengthen entry barriers, reducing market contestability.

27. However, the analysis also led to other conclusions, which showed that the barriers to competition and entry identified could be lowered to some extent. Factors affecting this included current and potential competitive pressures from outside the market (general search engines, social media and even individuals through social networks or their own websites), the relative dynamism of the market and its capacity for further growth, along with the ease of multi-homing on both sides of the market and a less significant influence of fixed costs than previously assumed, since companies had also entered and exited the market within short periods of time. Nor was there much technical complexity at play.

28. In light of this, the CNMC decided to address the potentially negative consequences of the merger through remedies that would prevent any formal or de facto exclusivity arrangements from being imposed, even though these were not a regular occurrence.

29. Although no exclusivity arrangements had been implemented as of the date of its analysis, the CNMC considered it likely that the merger would create incentives for Wedding Planner to start imposing such arrangements on business users, which would create barriers to entry and expansion for its competitors.

30. The notifying company undertook to:

- not impose exclusivity on business users, present or future, of the services offered by the parties relating to user-oriented online tools specialising in weddings
- not link the prices of services offered to business users with exclusivity obligations
- not penalise business users for multi-homing
- inform business users of these commitments, as well as any relevant changes to contracts
- uphold these commitments for a duration of three years from the date of the CNMC resolution authorising the merger.

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<sup>8</sup> CNMC (2022), C/1318/22 - Wedding Planner/Zankyou Ventures, <https://www.cnmc.es/expedientes/c131822>.

31. The CNMC deemed these commitments, all of which relate to behaviour, adequate and sufficient to address the competition issues presented by the transaction and maintain market contestability.

### 2.3. Digital mergers in classified advertising platform markets (Schibsted/Milanuncios, 2014)<sup>9</sup>

32. This case, from 2014, was one of the first in which a merger of digital platforms was analysed in depth, serving as a precedent for subsequent mergers of this type of multi-sided platform.

33. With this transaction, SCHIBSTED ESPAÑA S.L.U. – the owner of several online classified advertising platforms of different types in Spain, such as segundamano, Infojobs, Fotocasa and Coches.net – acquired sole control of the online classified advertising business Milanuncios S.L.U., owner of the milanuncios.com website (excluding the activity of online classified advertising for personal relationships). These companies were the two largest in terms of market share in the Spanish classified ad market, so their merger consolidated and strengthened the resulting company's market power. Given this situation, the CNMC approved the transaction subject to commitments in the second phase, following further analysis of both the markets and the theories of harm underlying the transaction.

34. To approve the transaction, the CNMC carried out an in-depth analysis involving market tests of different players in the sector and the study of various precedents,<sup>10</sup> evaluating several types of market in which the transaction could have harmful effects on competition. It studied the following markets:

- markets of online classified ad platforms that are free to access and use by anyone interested in the ads
- markets of online classified ad platforms that are free to access and use by anyone interested in motor vehicle ads, including all websites that offer space for advertising the purchase and sale of motor vehicles, as well as their spare parts
- markets of online classified ad platforms that are free to access and use by anyone interested in property ads, including all websites that offer space for advertising the purchase, sale and rental of housing and offices
- markets of online classified ad platforms that are free to access and use by anyone interested in job and training ads, including all websites that offer spaces for job offers and requests and training courses

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<sup>9</sup> CNMC (2014), C/0573/14 - Schibsted/Milanuncios, <http://cnmc.es/expedientes/c057314>.

<sup>10</sup> Among the merger precedents analysed, the European Commission in its Decision on Case No. COMP/M.5727 MICROSOFT/YAHOO! SEARCH BUSINESS distinguishes three types of online advertisements according to the end user selection mechanism. These are: search advertisements, non-search advertisements and classified advertisements. Classified advertisements are defined in the Commission Decision as follows: "A separate third category of ads (according to the selection mechanism) are classified ads. These ads are grouped within specific web pages under headings classifying the products or services being offered (for example houses for sale in particular suburbs, plumbers active in a specific town). These ads are different from both search and non-search ads because they are neither targeted to the content of the web page nor to any characteristic of the user. Instead they themselves constitute the main content of the page on which they are shown and they are shown to each visitor of that page alike."

- markets of online classified ad platforms that are free to access and use by anyone interested in the ads, aimed at professional advertisers
- markets of online classified ad platforms that are free to access and use by anyone interested in the ads, aimed at private advertisers.

35. Finally, the analysis also concluded that the relevant market was national for linguistic reasons, and because the commercial strategies of the various operators were national in scope.

36. Therefore, to assess the impact of the merger on competition, the CNMC initially examined the horizontal overlaps the merger was likely to produce resulting in market shares – either measured in terms of volume of visits or number of advertisements published – of over 60% in all the markets analysed, except in the property segment, where this threshold was lower. In the motor vehicle sector, combined market shares exceeded 80 per cent. At the same time, it proved difficult to accurately calculate the market share for online classified ad platforms that are free to access and use by anyone interested in the ads and aimed at private advertisers. However, it was possible to determine the importance of both websites for professional advertisers targeting individuals, which indicated that both websites were also in direct competition as regards this activity.

37. Based on this analysis, the CMNC considered it likely that these overlaps would generate significant barriers to competition, especially given the market's characteristics, with network externalities. There were particularly significant concerns about the transaction's impact on free competition in the motor vehicle market, where the resulting combined shares were higher.

38. The notifying party submitted a proposal to grant an independent third-party operator an exclusive licence for the online classified advertisements published by professional advertisers in the motor vehicle section of the milanuncios.com website, which would give the licensee the following powers for these advertisements:

- The exclusive right to automatically export ads from professional advertisers to the motor vehicle section of the milanuncios.com website, preventing other operators (including Schibsted itself) from being able to do the same. However, certain limitations on the licensee's ad exports were established. Specifically, the ads were to be limited to the Spanish territory, were not to impact the quality of the milanuncios.com website and were to be published on the licensee's website. In addition, the licence guaranteed the positioning and visibility of the ads published by the licensee through various ad renewal options and Schibsted's maintenance of the publication algorithm in place at the time of the signing of the contract with the licensee.
- The exclusive right to access the contact details of professional advertisers who advertise in the motor vehicle section of the milanuncios.com website.
- The exclusive right to receive the income derived from the classified ads published by professional advertisers in the motor section of the milanuncios.com website.
- Rights that would allow the licensee to leverage its brand, as well as its own platform traffic. This was incentivised through provisions that allowed users to be instantly redirected to the licensee's website when accessing details of motor vehicle ads published on the milanuncios.com website, as well as adding watermarks or licensee logos on all ads that included provisions permitting the licensee to boost its image and incentivise traffic to its own platform, informing professional advertisers of the value of publishing ads on the licensee's website and

making references to the licensee's brand in emails and contact forms for follow-ups of the published ads. All of this sought to mitigate the market power in the motor sector of the company resulting from the merger, allowing the licensee to consolidate its competitive position.

- The licence also included other rights that permitted the licensee to exercise some control over Schibsted's activity, thereby preserving its ability to offset the market power resulting from the transaction. These included the right to ask for any ads identical to those published by the licensee to be removed, to be notified of changes in conditions for private advertisers and other ancillary rights.

39. The CNMC deemed these commitments sufficient to counteract the market power of the resulting entity, since the licensee could take advantage of the large number of Milanuncios users to generate its own network externalities. These would, in theory, be sufficient to allow it to grow and become a significant operator in the market, competing directly with the resulting entity and thus avoiding the entry barriers that would otherwise have been more difficult to overcome.

#### **2.4. Mergers in the markets for legal databases and legal publications (Karnov/WK Spain/WK France/TR Spain)<sup>11</sup>**

40. In 2022, Karnov, a Swedish business group dedicated to the provision of legal, tax, accounting, environmental, and health and safety information, acquired sole control of TR Spain (TR Group offers legal information and consulting solutions, software and training for clients and public administrations, and productivity-enhancing legal software or legal technology solutions, also known as legaltech solutions), Wolters Kluwer Spain (in Spain, WK Group's activities comprise the design, development and marketing of integrated software solutions, legal and regulated research and knowledge, training, and compliance and services in the legal, tax, financial, accounting/commercial, labour and human resources, education, public sector and healthcare fields) and Wolters Kluwer France.

41. In this case, there were two acquired companies, with horizontal overlaps between them.<sup>12</sup> The companies affected by the notified transaction are active in the legal information and consulting services sector, in the legal software products sector and in the legal training sector, with overlaps in the activities of the companies acquired in Spain in all of these sectors. The acquiring company, however, did not operate in these sectors in Spain.

42. The existence of European Union precedents<sup>13</sup> advocating for a narrower definition of markets and case-by-case analysis was taken into account when defining relevant markets. In other words, the case was made for considering each of the segments in which these companies operated as part of a single market. The results of the market tests also supported a narrow definition.

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<sup>11</sup> CNMC (2022), C/1295/22 - Karnov/TR España/WK España, <https://www.cnmc.es/expedientes/c129522>.

<sup>12</sup> The acquiring company was not present in these markets in Spain.

<sup>13</sup> See European Commission Decisions: COMP/M.7476 - Holtzbrinck Publishing Group/Springer Science+Business Media Gp Acquisition SCA/JV; COMP/M.3197 - Candover/Cinven/Bertelsmann-Springer; M.1275 - Havas/ Bertelsmann/Doyma; and COMP/M.6237, Computer Sciences corporation/iSoft Group. CNMC (2015), C/0747/15 GLINTT/ACTIVOS ALLIANCE.

43. Some of these markets were, once again, two-sided platforms or markets, with both the suppliers of information and products (i.e. authors in the legal publications market) and those seeking such publications (lawyers, students, legal professionals in general, etc.).

44. The CNMC therefore concluded that there were several relevant product markets, all of which were national in geographical scope, except for legal training, which was considered in principle to be national in scope but the final definition of which was left open.

45. The legal databases market was identified as the main market in which the transaction could have the most pronounced restrictive effects. In this market, the combined share exceeded 40%, although some pressure from competitors was observed (as well as some pressure from free providers outside the market). The second most affected market was the publishing and distribution of professional legal publications, in which the combined share exceeded 30 per cent. In this market, there were risks inherent in exclusivity agreements with prestigious authors. Third was the legal training market. However, no competition problems were observed in this market, given the greater number of possibilities existing in the field. Finally, overlaps were observed in the legal software market, though these were less significant.

46. Further to its analysis of the transaction, the CNMC's overall conclusion was that it could lead to increased market power for the parties in the legal database and publishing markets, which could encourage the company to increase prices, implement exclusivity clauses with authors and offer forced product tie-ins.

47. To address the issues arising, the notifying company made a series of behavioural commitments aimed at preserving the contestability of the affected markets.

48. First, it undertook not to tie the purchase or renewal of one product to the purchase of another (for example, databases and legal publications). This commitment sought to ensure that all products could be purchased individually and under market conditions.

49. In addition, the notifying company explicitly undertook not to enter into exclusive contracts with authors in the legal publications market, so as not to close the market to its competitors.

50. Following an evaluation of these commitments, the CNMC considered them sufficient. It also concluded that the commitments should be valid for three years, extendable for two more years.

51. This proposal enabled the approval of the transaction in the first phase.

### 3. Conclusion

52. The transactions analysed, as well as the remedies implemented, support the conclusion that behavioural remedies may be appropriate in addressing issues arising in digital markets, particularly those with multi-sided platform characteristics. This should not prevent structural remedies from being contemplated if they are appropriate in tackling competition problems.