

## SUMMARY OF THE CASE S/0076/08 CONVENIO CONTACT CENTER

### I.- BACKGROUND

The Spanish Official State Gazette (*Boletín Oficial del Estado — BOE*) of 20 February 2008 published the resolution issued on 7 February 2008 by the Directorate General for Labour, registering and publishing the national collective bargaining agreement (CBA) for the Contact Center sector.

As provided in its final repealing provision, the CBA substituted and derogated all of the 3rd Collective Bargaining Agreement for the Telemarketing that had been published in the *BOE* on 5 May 2005. The CBA has the following scope of application. First, it applies throughout all of Spain (article 1). Second, it is mandatory for all companies and for all of their employees whose activity involves providing contact center services to third parties (article 2), subject to certain exceptions contained in article 3 as regards the persons subject to these obligations. Third, the CBA went into effect on its signing, on 5 December 2007, with its economic effects backdated to 1 January 2007. It was to expire on 31 December 2009 with the possibility of tacit annual extensions (articles 5 and 6).

The CBA was signed by the employer organisations ACE (Asociación de Contact Center Española) and the service federations of the two main trade union confederations, COMFIA-CCOO (the administrative and financial services federation of Comisiones Obreras) and FES-UGT (the services federations of Unión General de Trabajadores).

Chapter XI of the CBA for the Contact Center sector regulated the content and structure of economic compensation. Of interest for purposes of the enforcement proceedings in this chapter was article 55, titled “*Agreement on Price Repercussion and Unfair Competition*”. That article stipulated that:

*“Both parties expressly place on record here that the economic conditions covenanted in this Agreement will have repercussions on the prices of the services.*

*Commercial offers made in Spain by companies below the costs of this Agreement will be considered unfair competition, with the consequences provided under the prevailing laws. For these purposes, all economic items contemplated in this Agreement will be considered minimum costs that can be passed on to customers.”*

Those economic and salary elements are determined in chapter XI, articles 42 *et seq.* They include the base salary, salary supplements and non-salary supplements. With respect to the base salary, the CBA stipulated salary increments based on the projected inflation for the term of the Agreement. The type and amount of the salary supplements were agreed; the surcharges for ordinary holidays, special holidays and Sundays are set out in the tables attached to the CBA. The non-salary supplements included the transportation stipend and automotive costs and per diems.

On 29 May 2008 the Investigations Division of the CNC opened formal proceedings against the signatory parties to the national CBA, given the existence of credible evidence of a violation of article 1.1.a) of the LDC, namely, in article 55 of the CBA that directly or indirectly fixed prices with effects for the entire national market.

The Investigations Division decided on 6 November 2008 to initiate actions aimed at reaching a negotiated settlement of the enforcement proceeding at the request of the parties to the CBA.

## II. - THE PARTIES

The **Asociación de Contact Center Española** is the main employers' association for that sector in Spain. It is part of the Federación de Comercio Electrónico y Marketing Directo (FECEMD).

Contact center services include telemarketing and the management of contacts between businesses and third parties, an industry that has grown very quickly in Spain in recent years. As described in article 2 of the CBA, these activities involve contacting or being contacted by third parties by telephone, Internet, digital technology or other electronic means in order to provide a large variety of services; basically, technological support, consultancy in matters of human resources, integrated customer attention services and other more specific services such as setting up call centers or contact centers, database qualification, telemarketing and telesale services, telephone audits, customer satisfaction surveys, management of collections and payment, market research, etc.

As for the unions party to the Agreement, **COMFIA-CCOO** is the administrative and financial services federation of Comisiones Obreras. It represents works throughout the country by means of regional and local organisations.

**FES-UGT** is the services federation of the Unión General de Trabajadores (General Workers Union). It is a federal trade union composed of a Federal Executive Committee and regional federations and spans various industries (savings banks, universal banks, graphic arts, social communication, culture, sports, cleaning services, security and insurance, amongst others).

## III.- COMMITMENTS

The CBA, as was already established by the former Spanish Competition Court (Tribunal de Defensa de la Competencia — TDC) in its decision on case 607/06 (*Ayuda a domicilio*), cannot regulate all matters and its scope is confined to work conditions and to the relations between the workers and employers. That resolution analysed an article with a similar content to the one examined in this case and ruled that setting mandatory minimum prices of services and commercial offers to be offered by companies to their customers is contrary to article 1 of the LDC. In other words, the purpose of the article was not to regulate the workers' wages, but to fix the prices that companies in the sector must apply to their customers, something that goes beyond the bounds of

collective bargaining and the powers that, according to the Employees' Statute, rest with employers' organisations and unions.

In the proceedings at hand here we may infer the same conclusions as the TDC, because article 55 regulated the pricing of business contact center services by obliging the companies to pass on certain wage costs that are established in chapter XI of the CBA. Although its content was less precise than the clause sanctioned in resolution 607/06, as no minimum sums were set that had to be charged to the customers, the parties to the CBA had reached an agreement intended to determine the market prices for the various contact center services, regulating the business profit and causing a distortion of price competition.

The commitments offered by the parties to resolve these problems were:

1. Elimination of article 55 of the CBA. All of the parties undertook to sign a new agreement amending the CBA to derogate article 55 and comply with the pertinent legal formalities.

This commitment was considered adequate because eliminating the anti-competitive clause from the CBA would resolve any negative effects on competition, and thus provide a sufficient safeguard of the public interest.

2. The parties undertook to refrain from signing future collective bargaining agreements with clauses of the same or equivalent content as article 55 of the CBA.

This commitment was likewise considered adequate in that it avoided any repetition of the conduct in future agreements.

#### **IV.- RESOLUTION**

The Investigations Division proposed to the CNC Council (which accepted on 16 March 2009) to reach a negotiated settlement of the proceeding, initiated ex officio in response to a price fixing agreement (article 1 LDC) between ACE, COMFIA-CCOO and FES-UGT, in the belief that the commitments offered by the parties resolved the competition problems generated by clause 55 of the CBA.

The commitment is binding on all signatory parties to the CBA, both as regards repeal of article 55 of the agreement in force at that time and in relation to future agreements. The parties are considered liable for the economic consequences that would arise from application of those provisions.

To ensure proper fulfilment of the commitments, the parties have the following obligations:

1. To communicate the content of the settlement resolution adopted by the CNC Council to their members.
2. As part of the Ministry of Labour and Immigration's work of monitoring the lawfulness of collective bargaining agreements (or the competent labour authorities at the regional Autonomous Community governments) envisaged in article 90.5 of the Employees' Statute, when the CBAs are submitted for registration and publication, the parties will

state before the competent labour authorities that the agreements contain no provisions contrary to the LDC.

3. For purposes of monitoring compliance with the commitments, the parties must submit to the CNC Investigations Division a copy of the repeal of article 55 of the CBA in force at that time, of the request for its registration and publication in the *BOE*, as well as of the future agreements that replace it. That repeal must be done within 15 days after notification of the settlement decision adopted by the CNC Council.