

Contribución Magistrado

The draft CNMC Guidelines are clearly a very impressive piece of work, and if they were translated into English I am sure will be of value to judges well beyond Spain. I cannot pretend to have read them thoroughly but here are 2 comments that struck me:

Para 84: I fully agree that reliance on average percentages of past cartels or economic literature is not desirable or appropriate. As stated, each case is different. I only wonder whether the reference to “damages estimates from previous judgments in similar cases” might not need some qualification. I agree if this means other cartels or infringements of a similar type. But what if the previous case concerns the same cartel? E.g. in Trucks I believe there are hundreds of cases around Spain. If a court finds after careful analysis of the expert and other evidence that this cartel caused the price of medium trucks in Spain to go up by 12%, I would have thought it is entirely reasonable for another court to rely on that and tell the parties that they will have to have a good reason to present a lot of different evidence in the hope of achieving a higher or lower percentage. Perhaps you might say: “cases of a similar nature concerning a different cartel or infringement”. If the courts cannot rely on the early judgments in Trucks to resolve the later cases, we will all be ground down for years with trucks trials.....

Section 5: Bibliography. It may be that you are here referring only to works cited in the Guidelines. But it might usefully be a source for further information. In that case, you might consider adding:

- Bishop S and Walker M, “The Economics of EC Competition Law” (3rd edn 2010/2012).
- Niels G, Jenkins H and Kavanagh J, “Economics for Competition Lawyers” (2nd edn 2016) [and 3rd edn in preparation to be published in 2023].