

## **The CNMC approves the conditions for creating a joint venture between Boyacá and SGEL**

- The transaction affects the wholesale distribution and transport in Spain of periodical publications.
- The venturers must comply with certain conditions imposed by the CNMC, most of which they had offered previously.
- Both must maintain conditions with publishers, distributors, and traditional points of sale for daily newspapers, magazines, and collectibles.

**Madrid, 5 January 2022.-** The CNMC has authorised, with conditions, the creation of a joint venture between Boyacá (65%) and SGEL (35%). The new company will take over the venturers' businesses involving the distribution of periodical publications and Boyacá's periodicals transport business.

The conditions imposed by the CNMC for authorising the concentration included the vast majority of the commitments offered by the notifying undertakings in December. However, they also included issues on certain points in the proposal that were insufficient because of the threats to competition (horizontal and vertical effects).

The CNMC's assessment considered the current situation of the sector, which is shaped by a gradual concentration process and steady decline caused by the growth of online publications. The transaction helps to secure the medium-term sustainability of the business and the survival of the periodical publications distribution network, especially in areas where they are deficient. The CNMC has pinpointed several sectors affected by the transaction and the related risks to competition:

### **Wholesale distribution of periodical publications**

It noted the distribution of **daily newspapers and of magazines** at national level and in regions where at least one of the venturers operates as regional distributor. In this respect, the Commission highlighted risks due to the disappearance of competition between two of Spain's three nationwide distributors in a market with strong barriers to entry.

In **magazine distribution** there are horizontal overlaps, with significant increases in market share, while in the **distribution of daily newspapers** it does not result in any increases in share. Nevertheless, competition will be affected because the competitive pressure SGEL exerted over Boyacá in this area will disappear.

Moreover, the new company will have stronger bargaining power vis-à-vis publishers, points of sales and other distributors, and stronger incentives to impose more onerous trading conditions. There will also be fewer incentives to improve service and invest in innovation.

Horizontal effects could be heightened by "portfolio effects", e.g. the new company could jointly offer periodicals other publishing and non-publishing products, and the SGEL and Boyacá publisher lists.

### **National transport of periodical publications**

In this market the Commission does **not consider any threats to competition** in terms of worsening conditions because on the supply side the transport of periodicals can be replaced by the road transport other goods.

In any event Boyacá's strength in this segment, the new company's stronger bargaining power in distribution and the complementary nature of the two services pose **risks to the distribution-transport link**. All this could undermine the competitive pressure of third-party operators.

### **Commitments offered by the parties**

During the assessment of the transactions, the parties offered several versions of commitments that maintain the conditions in the wholesale distribution of magazines and were considered sufficient and proportionate, with certain minor exceptions. However, the CNMC rejected these proposals, mostly because they failed to address competition problems related to the distribution of daily newspapers.

### **CNMC terms and conditions**

Based on the above, the CNMC imposed the following terms and conditions for the next three years:

- **Extend the proposed commitments** offered by the parties **to the distribution of daily newspapers** as a means of offsetting the risks to competition in the daily newspaper distribution market and, specifically, the impact of the transaction of newspaper publishers, on other daily distributions, and on points of sale.

The parties had already proposed maintaining the terms and conditions in magazine distribution, so they simply expanded the scope of the proposal to include periodical publications (daily newspapers, magazines and collectibles).

- **Stipulate that the new company cannot worsen conditions with traditional points of sales.** The parties had already offered this commitment, but included an exception for reasons of efficiency. The CNMC has removed this exception to prevent the resulting entity from leveraging its market power and worsening conditions for points of sales.

These conditions **apply as of the date of notification of the CNMC decision** to the two notifying undertakings and their controlled distributors, and to the joint venture. The notifying undertakings have removed the exceptions regarding ongoing negotiations with publishers. The CNMC excludes those exceptions, so that the notifying undertakings, their controlled distributors or the joint venture cannot leverage their market power to worsen trading conditions.

The **remaining conditions** imposed are aligned with the commitments offered by the parties, including:

- The conditions shall remain in effect for three years as of the date of the decision.
- The joint venture may renegotiate trading and economic conditions with publishers if sales fall by more than 15%.
- The national transport and wholesale distribution of periodical publications businesses must be separate and there may be no link to Boyacá and SGEL's publisher lists.
- Local transport structure sharing agreements must be under objective, transparent and non-discriminatory market conditions.
- A guarantee shall be given whereby, if Boyacá and SGEL and the joint venture offer the point of sale the possibility of selling alternative products (publishing and non-publishing), that point of sale will not be obliged to expand its offering if it does not deem it appropriate to do so.

**(Click here for further details on the CNMC's assessment of mergers)**.