

PRESS RELEASE

The CNMC sanctions the amendment of the 4th framework agreement on stowage, for restricting competition

- The entities (a business association and six unions) established, as part of the Negotiating Commission of the 4th Framework Agreement on Stowage, the forced transfer - under non-objective, transparent or equitable conditions - of stevedoring personnel to companies that opted to withdraw from the companies that manage port workers (SAGEPs in Spanish).
- The offence is considered very serious; however, in view of the circumstances surrounding the negotiation of the 5th framework agreement, a symbolic fine is imposed.
- The CNMC will continue to ensure the competitiveness of the economy and the well-being of citizens by enforcing workers' rights in successive agreements in the stevedoring sector.

Madrid, 19 September 2020 - The CNMC has fined Asociación Nacional de Empresas Estibadoras y Consignatarias de Buques (ANESCO), Coordinadora Estatal de Trabajadores del Mar (CETM), Unión General de Trabajadores (UGT), Comisiones Obreras (CC.OO.), Confederación Intersindical Galega (CIG), Langile Abertzaleen Batzordeak (LAB) and Eusko Langileen Alkartasuna (ELA) for anti-trust practices in the market for providing port cargo handling services ([S/DC/0619/17](#)).

The outcome of the conduct analysed was to stifle effective competition in the affected market by imposing an unjustified limitation on the freedom of organisation of any stevedoring companies that opted to leave the SAGEP. It did so through mandatory conditions for transferring SAGEP workers under conditions that do not comply with the requirements for transparency, objectivity and equality, and which ultimately created a disincentive for all other SAGEP member companies.

The conduct is a consequence of the amendment to the 4th Framework Agreement signed between the stevedoring companies and the unions, after the regulatory amendment that sought to liberalise the service and which lays out the obligation of SAGEP member entities that want to exercise the right to withdrawal to transfer workers in a specific way and in compliance with an established procedure, which involves the Joint National Sector Commission and representatives from the

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companies that compete against the one that intends to withdraw.

Specifically, these practices are included in the agreement reached on 6 July 2017 to amend the 4th Agreement on the regulation of labour relations in the stevedoring sector, due to the entry into force of Royal Decree-Law 8/2017, adopted to comply with the ruling by the Court of Justice of the European Union that declared that Spain had violated the freedoms of establishment and to provide services in the single market, rights that treaties recognise as fundamental. In order to remove unjustified obstacles to competition in the stevedoring sector in Spain, Royal Decree-Law 8/2017 establishes the freedom to hire stevedores and allows SAGEPs to be reconverted into a category of temporary work company called port employment centres, providing for this purpose a transitional period that ended on 14 May 2020.

However, the unions and the business association agreed to impose severe conditions on those companies that opted to exercise their right to withdraw from the SAGEP, which undermined the liberalising purpose established in Royal Decree-Law 8/2017.

Under no circumstances does the CNMC question that the scope of collective bargaining lies outside the purview of the anti-trust law, subject to European and national case law. However, in this case, the behaviours analysed are not included under the issues that were considered by the case law inherent to collective bargaining. In particular, the conditions under which the transfer is allowed (mandatory, with the involvement of competitors and selecting certain workers over others), as well as the accredited practices in the case of the only withdrawal proposed, exceed the intrinsic scope of collective bargaining.

Consequently, the CNMC finds evidence of a **very serious** violation of Article 1 of Law 15/2007, the Anti-Trust Law, and Article 101 of the Treaty on the Functioning of the European Union, by all of the entities that adopted the aforementioned agreement.

However, in view of the status of the negotiations of the 5th Framework Agreement, and the fact that during its negotiation, successive draft agreements have been issued that have been submitted for review to the CNMC, which was able to confirm how said drafts have evolved, the CNMC has decided to take into consideration the clear desire of the parties to reach an agreement that complies with the legitimate goal of protecting workers, respects the regulatory requirements to liberalise the

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sector and maintains effective competition. Thus, the purpose required by European Union law would be satisfied, which is welcomed from the perspective of protecting the general interest.

As a result, the CNMC is of the opinion that sufficient deterrence can be achieved by imposing symbolic fines.

Offending entities	Fine (€)
ANESCO	€66,000
CCOO	€2,000
CETM	€4,000
CIG	€1,000
ELA	€1,000
LAB	€1,000
UGT (FSMC)	€2,000

In any case, the CNMC notes that it will continue to oversee not only the drafting process, but also the implementation of the final agreement.

The CNMC also offers a **Whistleblowing Mailbox** where operators or individuals can provide information to the competition authority on this type of very serious infraction.

The CNMC notes that this Resolution cannot be appealed through administrative channels, though an application may be brought before the National Court within two months after the day the Resolution is filed.

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