

## PRESS RELEASE

### **The CNMC initiates disciplinary proceedings against Repsol for a possible violation of the provisions in the resolutions of 30 July 2009 and 20 December 2013**

**Madrid, 21 September 2020** - The CNMC has initiated disciplinary proceedings against REPSOL Comercial de Productos Petrolifos, S.A. (Repsol) for a possible breach of its obligations pursuant to the resolutions of 30 July 2009 and 20 December 2013 ([VS/0652/07](#)). In them, the oil company was fined, together with CEPSA and BP, for violating Spanish and European anti-trust regulations by indirectly setting the recommended retail price for independent station owners who operate under its flag, thus restricting competition between service stations in their network and among other service stations. These companies were required to, among other things, take the necessary measures to ensure the price for transferring fuel was set using objective criteria, so as not to deter service stations from providing discounts.

This action stems from the enforcement work carried out by the Competition Directorate of the CNMC to ensure compliance with the obligations contained in the aforementioned disciplinary proceedings, and which gave rise to the [Council Resolution of 12 June 2020](#). This enforcement is one of the mechanisms to ensure compliance with the obligations (conditions, remedies and sanctions) that are adopted to preserve competition in the markets. In this [enforcement resolution of 12 June](#), the CNMC analysed the degree of compliance by the three oil operators with the specific obligations established for setting the price for transferring fuel in commission contracts and indexed benchmark resale contracts, in which the distributors are independent operators.

BP's compliance strategy consisted, on the one hand, of no longer reporting the maximum prices to the managers of its service stations and, on the other, of converting all remaining CODO/Commission contracts in its network into take-or-pay contracts, that is, into resale contracts referenced to the Platts index (objective criterion for setting the transfer price) with no price recommendation.

In the case of CEPSA, the proposed compliance action consisted of offering the CODO brokers/dealers the option of amending their contracts to take-or-pay contracts, that is, into resale contracts referenced to the Platts index. In addition, for those dealers that did not accept the amended contracts, CEPSA, from 2015, proposed up to three different formulas with a view to promoting an objective transfer price that would not deter the service station from offering discounts.

REPSOL did not consider adopting a take-or-pay approach in its CODO/Commission contracts as the main execution strategy. Since 2016, REPSOL has implemented a new contracting model (the consignment model), in

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which prices are set directly for the affected service stations, under the presumption that they are acting as pure agents or brokers. The deadline set by Repsol itself to fully switch the service stations to the new model was 31 December 2018. However, after this date, there were still contracts subject to compliance that had not been amended. REPSOL, through 10 July 2019 - once the Competition Directorate's proposal of violation was known - had not proposed any additional measures for those service station managers who were unwilling to adopt the consignment model.

As a result of the foregoing, the CNMC's analysis found, with respect to Repsol, the existence of indications of non-compliance by this operator in relation to the remaining contracts in its network from 1 January 2019 to 22 October 2019, whose commercial conditions did not conform to the provisions of the aforementioned resolutions.

Likewise, it found that the formula proposed by CEPSA in its letter of 1 March 2019, which introduced the "price of the third provincial quartile" variable, satisfied the criteria established by the competition authority in its resolutions, and gave it a period of two months to apply it to the existing contracts in its network. The CNMC eventually declared BP to be in compliance.

Consequently, and having assessed all the compliance issues related to the resolutions as a whole, the CNMC is of the opinion that Repsol was potentially in violation of the provisions in stipulation three of the resolution of 30 July 2009, as well as in stipulation three, Section 1, of the resolution of 20 December 2013, as these pertain to the remaining contracts subject to compliance with the resolution, from 1 January 2019 to 22 October 2019.

The initiation of these proceedings does not prejudice the final result of the investigation. A maximum period of 3 months is now open for the CNMC to investigate and settle the case.

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