

The CNMC approves the criteria that shall govern the prohibition for companies that distort competition to enter into contracts with the public sector.

- Since 2015, companies sanctioned for serious competition infringements have been banned from contracting with the public sector.
- Until now, it had been left to the Ministry of Finance to determine the duration and scope of these bans.
- From now on, the CNMC will do so according to the nature of the infringement and the potential impact of the ban on the markets.
- The measure aims to increase legal certainty and enhance compliance programmes and competition culture in companies.

Madrid, 23 June 2023.- The CNMC has approved [Notice 1/2023, of 13 June 2023](#), which allows interested parties to know the general criteria that the CNMC will take into account to determine, in each case, to which markets and for what duration each ban on contracting with the public sector will apply.

Public procurement plays an essential role in the current economic context as well as in the functions of the CNMC. In November 2022, the CNMC submitted the document to a public hearing to ensure maximum participation of public bodies, business organisations and associations specialising in competition advocacy.

Ban on contracting

In 2015, the Public Procurement Act included a prohibition on contracting for companies and individuals sanctioned for having committed serious anti-competitive infringements. In addition, it established that the duration and scope of this prohibition could be determined either by the Minister of Finance or the CNMC in the resolution of its disciplinary proceedings.

Best positioned authority

The CNMC, because of its sanctioning practice since the ban has existed, considers that it is the best-placed authority to set the bans taking into account the nature of the infringement committed and the competitive situation of the market in which they would apply.

The CNMC will include the duration and scope of the bans in the resolution of disciplinary proceedings initiated after the entry into force of Notice 1/2023.

Legal certainty and compliance programmes

Decisions prior to this Notice state that a breach of competition law leads to a prohibition to contract with the administration. However, companies and contracting authorities, both national and international, are not aware of the exact content of such a prohibition. The uncertainty is prolonged by legal challenges to decisions during the period in which precautionary suspension is in place.

The new system will allow the geographical and product scope of a ban and its duration to be set from the outset, even if its effectiveness is later legally suspended.

It will also enhance compliance programmes and competition culture. Companies will be able to activate measures to avoid or revoke the effectiveness of these bans from the outset, and the CNMC will be able to validate them.