

Ecoembes will have to implement a system to ensure transparent and competitive auctions for the recycling of packaging waste.

- The CNMC has initiated disciplinary proceedings against Ecoembes because it hindered equal and transparent participation in its auctions of plastic packaging waste.
- The case is concluded by means of a conventional termination, an exceptional formula whereby the alleged infringer offers binding commitments to avoid the sanction.
- Ecoembes will implement electronic procurement procedures that will ensure the traceability and custody of other companies' bids.

Madrid, 21 December, 2023.- The Spanish National Markets and Competition Commission (CNMC in Spanish) has initiated disciplinary proceedings against Ecoembalajes España, S. A. for a possible abuse of a dominant position by means of a conventional termination ([S/0021/21 ECOEMBES AUCTIONS](#)).

This formula, provided for in Article 52 of the Spanish Competition Act (LDC), is an atypical way of finalising disciplinary proceedings. The parties under investigation have offered, on a voluntary basis, binding commitments to solve the competition problem. In this way, they avoid a finding of infringement and the consequent fineⁱ.

Origin of the sanction

PET Compañía para su Reciclado, S. A. U. filed a complaint against Ecoembes with the CNMC. In December 2021, CNMC staff inspected the headquarters of Ecoembes and a recycling company (press release), and made numerous information requests to market operators.

In October 2022, disciplinary proceedings were initiated against Ecoembes for a possible abuse of its dominant position ([press release](#)) in its capacity as the operator of the only Integrated Management System for plastic packaging wasteⁱⁱ.

Award system

The investigation focused on the award procedure that Ecoembes had been using since at least 2004, with no guarantees of transparency and publicity. It also looked at the obstacles to allowing other recyclers to enter the market for the collection, sorting and treatment of this waste.

The abuse of a dominant market position is prohibited conduct under Article 2 of Law 15/2007 of 3 July 2007 of the Spanish Competition Act (LDC) and Article 102 of the Treaty on the Functioning of the European Union (TFEU).

Precautionary measures

In December 2022, the CNMC adopted precautionary measures ([press release](#)) to provisionally alleviate the competition problems detected and to ensure the effective resolution of the disciplinary proceedings.

It was determined that a notary public would participate and limit the amount that could be awarded to a single recycling company in the award procedures for light packaging and municipal solid waste of PET and HDPE materials.

Ecoembes' commitments

In March 2023, Ecoembes requested the termination by agreement of the sanctioning authority with a first commitment proposal, which was rejected as it did not resolve the competition concerns.

In October 2023, it submitted a second commitment proposal which, in the Council's view, did resolve the concerns:

- Ecoembes undertakes to implement a new electronic procurement procedure.
- It will be processed in its entirety by an external and independent provider.
- Processing times will be substantially reduced.
- Companies will be given the possibility to improve the first offer submitted in a second round.
- The maximum number of areas that can be awarded to a single recycler in waste contracts is capped at 40%.
- The estimates of the quantities to be auctioned are improved by including the latest known plant stock in the auction terms and conditions.

- Improvements are foreseen in relation to the excess of quantities finally awarded by setting a threshold of 15% of the tendered quantity, beyond which the recycler has the right to waive the fulfilment of the contract in respect of the excess above that percentage.
- Improvements are foreseen in relation to the acceptance of alternatives to the guarantee to participate in the tender and in relation to the technical and economic criteria necessary to obtain approval.
- Ecoembes undertakes to set up registers of penalties, guarantees and approvals in order to make these issues more transparent.

The guidelines in the [Communication on the conventional termination of penalty proceedings](#) give greater transparency to these types of procedures and guide the CNMC's actions when resolving them.

Related content:

- ([S/0021/21 ECOEMBES AUCTIONS](#))
- [Press release](#) (21/12/2021): The CNMC investigates possible anti-competitive practices in the market for waste treatment and recycling in Spain
- [Press release](#) (5/10/2022): The CNMC initiates disciplinary proceedings against Ecoembes for a possible abuse of its dominant position in the market
- [Press release](#) (29/12/2022): The CNMC adopts interim measures to ensure publicity and transparency for the upcoming auctions of PET and HDPE plastic waste organised by Ecoembes
- [CNMC Blog](#) (10/03/2021): This is how conventional termination works: commitments that avoid fines.
- [Communication](#) on the conventional termination of disciplinary proceedings.

ⁱ Conventional termination quickly restores competition conditions by resolving the problems identified, safeguarding both consumer welfare and the public interest. It upholds the principle of administrative effectiveness by limiting the red tape involved in proceedings and expediting the rulings on administrative proceedings.

ⁱⁱ Product packers and dealers participate in an integrated management system (IMS) for packaging waste, which guarantees the regular collection and management of packaging waste and used packaging. To this end, Ecoembes was set up as an IMS for managing light household packaging waste (plastic, paper and cardboard packaging, cans and cartons). Its main functions are: to initially collect, sort and store the waste in an authorised facility and to deliver, through auction procedures, the waste for treatment to authorised organisations or undertakings.