

## GCR 100 - 18th Edition

# Spain

10 January 2018

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The good times appear to be back for Spain's competition bar, following a rise in enforcement activity

## Elite

The National Authority for Markets and Competition (CNMC) prides itself on its constant grind through cartel cases both big and small. **CUATRECASAS** prides itself on having a hand in practically all of the big cases, ranging from international removals, cement, railway bearings, paper and cartonboard, to paper collection, pallets and refrigerated transport. Practice head Cani Fernández is joined by partner Andrew Ward, and the firm has a rare asset in the form of antitrust damages specialist Paul Hitchings. While based in Madrid, Hitchings has litigated across several European jurisdictions, including for Deutsche Bahn in the UK carbon and graphite products follow-on case, and against Mastercard in UK interchange fee litigation. Two Madrid associates dedicate themselves to competition litigation; the practice has six more competition associates in Madrid and a further three in Barcelona. Counsel Carolina Fernández – formerly in-house at Telefónica and Coca-Cola – and Irene Moreno-Tapia, who are based in Madrid and Barcelona respectively, round out the team.

Fernández and Moreno-Tapia scored a notable coup by filing leniency applications in the automotive manufacturing sector on behalf of Seat/Volkswagen; the company received full immunity for both investigations in which it was involved, and its whistleblowing kicked off probes that led to the imposition of more than €200 million in fines. They continue to act for the company during other cartelists' appeals against the CNMC's decision in that case. The firm also represents several companies on issues

linked to DG Comp's e-commerce sector inquiry, including Mango in an investigation that the enforcer shut down after the company reviewed its practices.

A busy roster of merger control matters across several sectors includes hotels, telecoms, aviation and banking. Ward represented a third party during the Orange/Jazztel deal, and Prisa during the CNMC's review of Telefónica/DTS. The firm also represented TeliaSonera while it sold its Spanish mobile business Yoigo to Masmovil, bagging unconditional Phase I clearance from the Spanish enforcer.

**FRESHFIELDS BRUCKHAUS DERINGER** partners Cantos Francisco and Álvaro Iza between them boast a roster of large and complex cases that remains the one to beat in Spain. While it has the lowest senior headcount of any elite firm's competition practice, it punches far above its weight and is an important part of Freshfields's overall Spanish presence. The firm consistently has a role in the majority of Spain's biggest cases. Rivals say Freshfields deservedly has an excellent reputation in merger control, but many overlook that it also has a market-leading behavioural practice.

Tough tie-ups make up a significant proportion of the firm's Spanish competition law work. A recent highlight involved Fresenius and subsidiary Helios Kliniken as they bought Quirónsalud – Spain's largest private hospital network – for €5.76 billion, which involved CNMC assessment of complex horizontal and vertical issues. Ultimately, the Spanish enforcer unconditionally cleared the acquisition in Phase I.

Recent behavioural work handled by Freshfields has been stellar. The team represents LafargeHolcim in three cartel investigations: in a pair of appeals against the CNMC's decision to fine Lafarge Cementos and Holcim (España) for their roles in a Spanish cement cartel; and a third appeal after the enforcer fined Lafarge Áridos y Hormigones €1.8 million in a decision accusing it of participating in a cartel in the Asturias region's ready-mix market. The team is also gearing up to defend Volvo in truck cartel follow-on claims; and acts for JT International Iberia in a Spanish investigation on the tobacco market, and UPS in the CNMC's logistics cartel probe.

Rivals are quick to praise the formidable skills of the **GARRIGUES** competition practice, which over the past few years has frequently found itself in the driver's seat of major EU competition law cases. The firm's practice, led by Madrid-based Marcos Araujo, is widely seen as the best state aid practice in Spain.

Partner Luis Ortiz and associate Alfonso Lamadrid act for Abengoa in DG Comp's ongoing Platts bioethanol benchmark investigation. In merger control, partner Susana Cabrera and German-trained of counsel Konstantin Jörgens act for Telefónica in its multi-jurisdictional €1.28 billion sale of a 40% stake in submarine cable and towers subsidiary Telxius to private equity shop KKR.

Unsurprisingly, Garrigues is a major force in national matters too. Araujo counselled Mapfre in appealing the CNMC's building insurance decision to Spain's Supreme Court. The firm represented three companies in the CNMC's car sales investigation: Jörgens acted for BMW, and Blanco and Araujo advised Peugeot Citroën and KIA, respectively. Araujo and Cabrera represent Prosegur in its appeal against the CNMC's cash transport cartel case.

EU and antitrust work takes up around 90% of **MARTÍNEZ LAGE ALLENDESALAZAR & BROKELMANN**'s time, says partner Rafael Allendesalazar, of which roughly 80% is behavioural. The boutique was formerly a branch of antitrust heavyweight Howrey from 2008 until its dissolution in 2011 – a testament to the firm's top reputation in competition matters in Spain and the EU more generally. Observers say managing partner Santiago Martínez Lage, who founded the firm in 1985, has become less visible in recent years, but Allendesalazar and partner Helmut Brokelmann are widely reckoned to be some of the best practitioners on the Spanish market. Telecoms appears to be a particular strength.

Brokelmann and senior associate Paloma Martínez-Lage secured a victory for Printeos in 2016, successfully persuading the General Court to overturn the DG Comp fines the company received for its role in the envelopes cartel. The EU court ruled that the enforcer had failed to properly explain why Printeos received a less favourable fine reduction than the other settling cartelists; DG Comp reissued the Printeos fine in 2017, claiming to have fixed the procedural error. In July 2017, the CNMC's board rejected its investigators' claims that the firm's client Praxair had entered an illegal market-sharing agreement in the medical gases market.

In mergers, Brokelmann and Martínez represented IBA Molecular before the CNMC as the nuclear medicine company bought rival ITP. The enforcer cleared the deal unconditionally in Phase I despite the merged company's having a market share of more than 80% in radiopharmaceuticals. And in court work, Brokelmann and senior associate Mariarosaria Ganin represented Renfe during its appeal against the CNMC's railway cartel decision; the firm also acts for several clients in Spanish follow-on claims.

**URÍA MENÉNDEZ** has the largest competition practice in Spain, headed by veteran Jaime Folguera in Madrid. He is joined there by partners Patricia Vidal and Alfonso Gutiérrez, as well as Antonio Guerra – a rare successful mover from enforcement to private practice, after he joined the firm from Spain's Competition Tribunal in 2013. Vidal, previously a counsel, became a partner in 2015. In Barcelona, partner Juan Antonio Pérez Rivarés and counsel Victor Ferreres Comella also assist on competition matters, and the team is rounded out by Brussels-based Edurne Navarro Varona. As one might expect, these lawyers get through an impressive amount of top-level work. They identify EU merger control as a particular growth area, and regularly pair competition specialists with the firm's formidable commercial litigation department to create a top-notch follow-on damages practice.

Folguera, Vidal and Navarro represented Gamesa in its complex, multi-jurisdictional merger with Siemens Wind Power. Guerra also represented several companies in a Spanish notification of their planned integration of Spain's three domestic payment card schemes into an entity owned by the main Spanish banks, which involved review of horizontal and potential coordinated effects. Gutiérrez and Folguera also represented Cemex in its planned sale of Cemex Croatia to Heidelberg Cement/Schwenk joint venture Duna-Drava, but DG Comp ultimately blocked the deal.

The CNMC's appetite for pursuing cartels has generated heaps of work for the Uría Menéndez team, both in investigations and appeals. In a recent highlight, Vidal acted for Munich Re in an unusual Supreme Court case linked to Spanish building insurance cartel proceedings – which prompted DG Comp's first-ever ex officio intervention in a

Spanish appeal. Navarro, Folguera and Vidal helped Roca and its French and Austrian subsidiaries in fighting DG Comp's bathroom fittings cartel decision; the ECJ slashed €10 million from the company's fine.

## Highly Recommended

**CLIFFORD CHANCE** handles complex deals worldwide, and the Spanish team, headed by Madrid partner Miguel Odriozola, is no exception. It represented Telefónica during its controversial acquisition of pay-TV operator DTS, bagging CNMC conditional clearance – and saw that Phase II approval challenged in Spain's High Court, where proceedings are ongoing. More straightforwardly, the Clifford Chance team represented Coca-Cola and Coca-Cola FEMSA in buying South American soy-based beverage producer AdeS from Unilever.

No matter how impressive its work on merger control is, though, there's more to the firm's Madrid team. It again acted for Telefónica in an appeal against its €47 million share of an abuse of dominance fine; and advised Nokia against another €1.8 million unilateral conduct penalty.

**CMS ALBIÑANA & SUÁREZ DE LEZO** was a new entrant to our survey in 2013 – the same year that current practice head Patricia Liñán became a partner – and has had a busy time since. Former leader Diego Crespo left the practice in June 2016, but Liñán was assisted by a senior associate and an associate, with another associate set to join in 2017. For a team that's relatively small by the standards of Spain's competition bar, it picks up substantial work. Rivals say Liñán and her team become especially prominent in private damages, and appeals and private litigation remain a clear strength, but it has expertise across the board. Shortly before this issue of GCR 100 went to press, Liñán left the firm to join Bird & Bird.

The firm acts for Lactalis in an appeal against the €11.6 million fine imposed by the CNMC's dairy cartel decision. In a further interesting appeal, Liñán acts for Adveo in judicial proceedings tied to the envelopes, notebooks and filing products cartels. Adveo was a successful immunity applicant in all three – but was fined in a fourth matter linked to envelopes exports. Elsewhere, the firm is involved in several private damages matters that are confidential. The firm regularly advises Medtronic and car and industrial importer Berge. In deals, CMS has represented the likes of Datamars, Trigano and Hartmann.

The Spanish branch of **DLA PIPER** used to be a family affair, with Juan Jiménez-Laiglesia and his brother Jose María overseeing the practice. Juan and of counsel Alfonso Ois left to join EY in 2016, but Jose María insists this has not had a major effect on the DLA practice. Indeed, the team, albeit smaller than it used to be, remains engaged in some particularly interesting matters – telecoms is a standout area for the practice – and Jose María and his team are well regarded by rivals.

As a testament to its reputation, DLA continues to be instructed by top-notch clients such as Repsol and Télécom. The team has recently advised Repsol on a slew of Spanish infringement proceedings linked to its conduct in gas stations. While the company has been fined several times, an appeal court recently overturned a €22 million penalty. DTS also tapped the team for its acquisition by Telefónica. Perhaps the most

groundbreaking DLA Piper engagement is for Fenin, Hartmann and four individuals in the CNMC's controversial decision to impose individual fines in the adult diaper cartel – the first such fines since 2007. The team is steering appeals against that decision in Spain's National Court.

Football fans should keep an eye on **LINKLATERS**, as it represented Real Madrid in a pair of state aid investigations linked to real estate deals with Madrid's city council, and the different Spanish tax regimes for football clubs. It's a testament to the firm's strength in many areas of law that it has been able to field expertise in competition, real estate, planning, tax and general corporate law in working for the football club. In another prominent case, Linklaters Spanish competition head Jaime Perez Bustamante and counsel Fredrik Löwhagen acted for B&M Automóviles in the CNMC's car sales investigation; the company ultimately received a €776,000 fine.

The team represented online takeaway delivery company Just Eat in the Spanish part of its streak of acquisitions around Europe, as it bought La Nevera Roja. The CNMC issued a conditional Phase I clearance decision. In cartels, Linklaters represented companies in CNMC raids in the infrastructure and construction sectors, and more clients in raids linked to an alleged cartel in the supply of electronic systems for the railway industry.

Oriol Armengol oversees the competition practice at **PÉREZ-LLORCA**, which he estimates spends around 40% of its time on behavioural work, the same on mergers, and 20% on compliance and advisory matters. Armengol's team frequently handles both Spanish and European matters; Spain's government often turns to the firm to handle cases in the European courts in Luxembourg.

Domestically, the team is acting for German rail company Deutsche Bahn and Spanish subsidiaries in a CNMC investigation of alleged collusion with Spanish incumbent rail operator Renfe. Nexans Iberia also turned to the firm as it faced a CNMC investigation in the market for the production and distribution of low- and mid-voltage electrical cases. Armengol and his team recently acted for Sociedad General de Aguas de Barcelona – part of the Suez Group – as it acquired joint control over the Sociedad Concesionaria del Canal de Navarra, which required a European notification.

## Recommended

**ALLEN & OVERY**'s Madrid team defends Google in DG Comp's investigation of the Android smartphone operating system, with practice leader Antonio Martínez assisted by senior associate Jaime Rodríguez – the second-most senior lawyer in the team – and working alongside colleagues in other jurisdictions and Cleary Gottlieb Steen & Hamilton. Advising Telefónica in its General Court appeal against a DG Comp €66.8 million fine over an allegedly restrictive non-compete agreement with Portugal Telecom, with lawyers from Uría Menéndez and CMS also on board, has been another high-profile mandate. The General Court upheld the decision, but ordered DG Comp to recalculate the fine it imposed on Telefónica. Allen & Overy also acts for Heidelberg Cement's Spanish subsidiary Hanson in a pair of cement infringement proceedings, which has seen it lodge appeals against fines that totalled just over €2 million. In deals, the team advised Gamesa during its tie-up with Siemens Wind Power.

**ASHURST**'s advice to Hewlett-Packard has been a highlight recently, as the technology company appeals against the CNMC's decision to reject its abuse of dominance complaint against Oracle – after Freshfields filed the original complaint. The appeal marked the first time a Spanish court has fully reviewed an abuse of dominance case; the court found Oracle liable and said it should continue developing new versions of certain databases. The team has several similarly interesting high-tech confidential matters on its docket, all overseen by competition team leader Rafael Baena. The firm represents NH Hotels in the pan-European online hotel booking investigation, and Seville Football Club in an Andalusian Competition Authority abuse of dominance investigation linked to ticket and travel arrangements to attend a Warsaw match.

The four-partner, three-associate team at **BAKER MCKENZIE** is especially successful in conduct work and appeals. Recently, practice head Alberto Escudero has represented Atos, Fedex/TNT and Asefa in separate CNMC cartel investigations. The latter involved a successful Supreme Court appeal that saw the court order the CNMC to recalculate the insurer's €27 million fine, which the Spanish enforcer ultimately slashed to only €6 million. Partner Valeria Enrich represented Vithas Sanidad as the hospital operator bought the Grupo Nisa hospitals group in southern Spain, while a group of shareholders tried to block the deal. Enrich also represented Daimler and subsidiary Intelligent Apps during the CNMC merger review of mytaxi and Hailo.

The **GÓMEZ-ACEBO & POMBO** senior competition team is split among three cities. Practice head Iñigo Igartua is based in Barcelona; partner Miguel Troncoso Ferrer works from Brussels; and counsel Eduardo Gómez de la Cruz and Ricardo Alonso Soto reside in Madrid. Igartua led Smurfit Kappa's appeal against the CNMC's paper and corrugated cardboard cartel decision; he convinced the enforcer to exclude the company from several aspects of its investigation, but it still received an €8 million fine.

**HOGAN LOVELLS** prides itself on its expertise in the automotive and insurance spheres: the firm represented Scor in the Supreme Court building insurance appeal, and acts for both Ford's Spanish operation and Fiat Chrysler in an appeal against the CNMC's auto manufacturers decision. Casto González-Páramo heads the practice, and is assisted by two associates. González-Páramo acts for Caixabank as the CNMC looks into an allegedly anticompetitive agreement with other banks that saw them coordinate conditions offered on syndicated loan derivatives. He also defends Antalis in envelope cartel litigation.

FIRM	HEAD(S) OF COMPETITION	SIZE	WHO'S WHO LEGAL NOMINEES	CLIENTS
Elite				
Cuatrecasas	Cani Fernández	3 partners 2 counsel 11 associates	Cani Fernández Andrew Ward	Seat/Volkswagen, British American Tobacco, ACEK, Coca-Cola Iberian Partners, Cepsa, Mediaset, GALP, Banco Popular, Saica
Freshfields Bruckhaus Deringer	Francisco Cantos	2 partners 10 associates 10 senior associates	Francisco Cantos Álvaro Iza	Airbus, Boehringer Ingelheim, LafargeHolcim, Mediapro, Novartis, Sony Pictures, Visa Europe, Repsol, General Motors, thyssenkrupp
Garrigues	Marcos Araujo Boyd	6 partners 1 of counsel 1 principal associate 9 associates	Marcos Araujo Boyd Konstantin J Jörgens	Santander, Bank of Spain, Cisco, eBay, European Commission's Directorate-General for Competition, Lego, Rolex, Google, Amadeus, Prosegur, Telefónica
Martínez Lage Allendesalazar & Brokelmann	Santiago Martínez Lage	3 partners 1 of counsel 6 associates	Rafael Allendesalazar Helmut Brokelmann Santiago Martínez Lage	Inditex, Praxair, Orange Spain, ING Bank, Renfe, Procter & Gamble, Coca-Cola European Partners, Uber, Bayer, Cemex
Uría Menéndez	Jaime Folguera Antonio Guerra	5 partners 3 consultants 3 of counsel 13 associates	Tomás Arranz Jaime Folguera Antonio Guerra Alfonso Gutiérrez Daniel Sarmiento Ramírez-Escudero Patricia Vidal	Santander, Pfizer, Cemex, Danone, JCDcaux, Motorola, Faurecia, Johnson & Johnson, Amazon
Highly recommended				
Clifford Chance	Miguel Odriozola	2 partners 8 associates	Miguel Odriozola	Santander, Carrefour, IAG, LATAM Airlines, International Paper, Nokia, Oracle, Saint-Gobain, Samsung, Telefónica

CMS Albiñana & Suárez de Lezo	N/A	3 associates 3 senior associates	None	Lactalis, Medtronic, Heineken
DLA Piper	José María Jiménez-Laiglesia	1 partner 1 legal director 5 associates	José María Jiménez-Laiglesia	Vodafone, Repsol, Renault, Orange, Mastercard, KKR, CVC, Pfizer, Oaktree
Linklaters	Jaime Pérez-Bustamante	1 partner 1 consultant 1 counsel 1 managing associate 9 associates	None	Correos, Just Eat, Johnson & Johnson, Loomis/Securitas, Hertz, Beiersdorf
Pérez-Llorca	Oriol Armengol i Gasull	1 partner 1 senior associate 3 associates	Oriol Armengol i Gasull	Deutsche Bahn, Nexans, Trilantic Capital Partners
Recommended				
Allen & Overy	Antonio Martínez	1 partner 1 senior associate 2 associates	Antonio Martínez	Altadis, Cepsa, China Resources, Gamesa, Mallinckrodt, AMP Capital Investors
Ashurst	Rafael Baena	1 partner 2 associates	None	Hewlett-Packard Enterprise, Hyundai, NH Hotels, Grupo IFA, HIG Capital, Albertis, Petit Forestier
Baker McKenzie	Carles Prat	4 partners 3 associates	None	Atos, Bouygues, Fedex, Honda, Knorr-Bremse, Hutchison
Gómez-Acebo & Pombo	Iñigo Igartua Arregui	2 partners 2 counsel 5 associates	Iñigo Igartua Arregui	Continental, Domino's Pizza, European Securities and Markets Authority, Nike, Panasonic, SCHindler, Smurfit Kappa
Hogan Lovells	Casto González-Páramo	1 partner 3 associates	None	Fiat Chrysler, Schweppes, Ford, Caixabank, BBVA, Iveco, Alstom, Douglas