

**SUMMARY OF RESOLUTION S/0179/09 HORMIGÓN Y PRODUCTOS
RELACIONADOS (CONCRETE AND RELATED PRODUCTS)**

In August 2009 the CNC received a complaint against CEMENTOS PORTLAND VALDERRIVAS (CPV), CANTERAS DE ECHAURI Y TIEBAS, S.A. (CETYA) and HORMIGONES BERIAIN (BERIAIN) for an alleged agreement between competitors involving: i) an arrangement to fix supply prices for cement, concrete, fines and mortar in Historic Charter Community of Navarre (Comunidad Foral de Navarra) and neighbouring provinces; ii) market-sharing by means of allocating supply of concrete, mortar and fines to different works projects and iii) possible anti-competitive practices in the cement market.

During the investigation inspections were conducted in the offices of the accused companies, as well as in HOLCIM and CEMEX.

In December 2009 an infringement proceeding was brought against CETYA, CANTERAS y HORMIGONES VRE S.A. (VRESA), CPV, CEMEX and BERIAIN.

In its resolution of 12 January 2012 the Council ruled the evidence showed that there was an infringement of article 1 of the Spanish Competition Act 15/2007 of 3 July 2007 (LDC), consisting in price fixing for supply of concrete, mortar and fines and market sharing in the allocation of works in the areas defined by the cartel in the Historic Charter Community of Navarre and adjoining zones.

According to the Council, the parties liable for the infringement are:

- CANTERAS DE ECHAURI y TIEBAS SA (CETYA GROUP), CEMENTOS PORTLAND VALDERRIVAS SA (CPV) HORMIGONES BERIAIN SA (BERIAIN) for price fixing in the supply of concrete, mortar and fines, and for engaging in market sharing in the Historic Charter Community of Navarre and adjoining zones, from June 2008 to at least 22 September 2009.
- CEMEX ESPAÑA SA for price fixing in the supply of concrete and engaging in market sharing in respect of concrete, in the Historic Charter Community of Navarre and adjoining zones, from June 2008 to at least 22 September 2009.
- CANTERAS y HORMIGONES VRE SA (VRESA) for engaging in concrete market-sharing in the Historic Charter Community of Navarre and adjoining zones, from September 2008 to at least 22 September 2009.

The following fines were levied:

1,425,299 euros on CANTERAS DE ECHAURI y TIEBAS SA

5,726,431 euros on CEMENTOS PORTLAND VALDERRIVAS SA

2,508,758 euros on HORMIGONES BERIAIN SA

502,283 euros on CEMEX ESPAÑA SA

959,277 euros on CANTERAS y HORMIGONES VRE SA

Faced with decreases in the prices of fines, mortar and concrete in 2008 the accused companies chose to concert their efforts and implement a common strategy to fix the price of those materials and share the market on a quota basis (allocation of works). These concerted actions took the form of meetings and telephone calls.

In relation to VRESA's argument that it cannot be accused of participating in an overall infringement (single and continuing) because it does not market all of the products involved in the infringement or that it did not participate therein during the entire period charged, the CNC Council finds that this company replaced CEMEX in the cartel at the time it acquired certain concrete plants from the latter pursuant to the market-sharing arrangement that formed part of the cartel.

All of the companies have furthermore pleaded that the documents which the Investigations Division believes evidence fulfilment of the agreement are no more than internal estimates of the inspected enterprises, and that the submissions made by the companies show that many of the works were eventually not executed by the company alleged by the Investigations Division on the basis of the documentation obtained. The CNC Council holds that, indeed, the documents obtained in the inspection evidence the agreements and their fulfilment, regardless of the fact that the cartel is an infringement by object and that there were instances of non-fulfilment that do not diminish the liability of the cartel participants.

In relation to the geographical scope, the companies argue that, according to all precedents analysed in relation to the investigated products, the geographical market is smaller than the province of Navarre, although the CNC Council responds by differentiating between the "relevant geographical market" and the "affected geographical market". The former establishes the territory in which the conditions of competition are relatively homogeneous in order to analyse the impact of the possible anti-competitive conducts, whereas the latter constitutes the geographical area in which the infringement investigated generated or was capable of generating effects on the conditions of effective competition. The CNC Council also adds that it was the accused companies themselves that defined the affected geographical market by their agreements dividing the territory into at least six geographical areas and assigning quotas in each of them. The fact that some of the companies do not operate in all of the areas or do not make all of the products does not weaken the conclusion that all of them are guilty of a single infringement of article 1 of the LDC.