

SUMMARY OF THE CASE S/0077/08 CONVENIO SEGURIDAD

I.- BACKGROUND

On 10 June 2005 the Spanish Official State Gazette (*Boletín Oficial del Estado — BOE*) published the “Resolution of 18 May 2005 of the Directorate General for Labour, mandating entry in the registry and publication of the national collective bargaining agreement (CBA) for security firms 2005-2008” (folios 1-12), signed on 15 March 2005 by, on the one hand, the security company industry associations APROSER (Asociación Profesional de Compañías Privadas de Servicios de Seguridad de España), FES (Federación Empresarial Española de Seguridad), AMPES (Asociación de Medios, Profesionales y Empresas de Seguridad) and ACAES (Asociación Catalana de Empresas de Seguridad) and, on the other, the trade union organisations Unión General de Trabajadores (UGT) and Unión Sindical Obrera (USO).

The CBA laid down the basis governing labour relations between security and surveillance firms and their employees. According to article 4 of the CBA, it entered into effect on 1 January 2005 and was to remain “*in force until 31 December 2008, with full extensions until being replaced by another Agreement of the same scope and effect*”. It replaced the previous Agreement that had been in force from 2002 to 2004.

On 28 February 2008 the *BOE* published the Resolution of the Directorate General for Labour of 13 February 2008 that registered and published the economic revision of the national CBA for security firms.

Article 74 of the national CBA for security firms 2005-2008, which is included in chapter XVII on pay, under the title “*Agreement on Price Repercussion and Unfair Competition*”, stipulated that:

“Both parties expressly place on record here that the economic conditions covenanted in this Agreement will have repercussions on the prices of the services.

Commercial offers made in Spain by Companies below the costs of this Agreement will be considered unfair competition, with the consequences provided under the prevailing laws. For these purposes, the minimum costs that can be charged are estimated as follows:

	2005	
	Price Unarmed Security Euros	Pr. Armed Security Euros

CBA costs	12.91	14.12
Cost night hour.....	1.24	1.24
Cost weekend or holiday hour...	1.00	1.00
Seniority:		
C/ Trienniums.....	0.29	0.29
C/ Quinquenniums.....	0.36	0.36

These costs, which do not include VAT, will be revised every year by the Joint CBA Monitoring Committee for the years 2006, 2007 and 2008.

It is agreed that within two months after the signing of this Agreement the signatory organisations will set up a Committee to specifically monitor this article”.

On 29 May 2008 the Investigations Division of the CNC opened formal proceedings against the signatory parties to the national CBA for security firms, given the existence of credible evidence of a violation of article 1.1.a) of the LDC, namely, in article 74 of the CBA that directly or indirectly fixed prices with effects for the entire national market (folio 15).

The Investigations Division decided on 3 September 2008 to initiate actions aimed at reaching a negotiated settlement of the case at the request of the parties to the CBA.

II. - THE PARTIES

The organisations representing firms in the security sector are:

APROSER (Asociación Profesional de Compañías Privadas de Servicios de Seguridad de España). It represents nearly all of the major private security companies that provide surveillance, fund transportation, security system and alarm system services. Formed in 1977, its members account for nearly 80% of the total turnover generated by the sector in Spain.

FES is Federación Empresarial Española de Seguridad. Created in 1991, it is the association with the most members by number of companies and spans all activities within the security sector.

AMPES (Asociación de Medios, Profesionales y Empresas de Seguridad) is another national employers association for this industry.

ACAES stands for Asociación Catalana de Empresas de Seguridad. It represents nearly 90% of the sector in Catalonia.

The parties representing workers in the security sector are the trade union federations FES-UGT and FTSP-USO.

FES-UGT is the service federation of the Unión General de Trabajadores (General Workers Union). It is a federal trade union composed of a Federal Executive Committee and regional federations and spans various industries (savings banks, universal banks, graphic arts, social communication, culture, sports, cleaning services, security and insurance, amongst others).

FTSP-USO stands for Federación de Trabajadores de Seguridad Privada, and is the industry federation that forms part of the Unión Sindical Obrera (Workers Trade Union) trade union confederation. Its functional scope covers companies in the private security sector and other related companies. It is organised into nation-wide bodies and different types of regional federations.

III.- COMMITMENTS

The CBA, as was already established by the former Spanish Competition Court (Tribunal de Defensa de la Competencia — TDC) in its decision on case 607/06 (*Ayuda a domicilio*), cannot regulate all matters and its scope is confined to work conditions and to the relations between the workers and employers. That resolution analysed an article with a similar content to the one examined in this case and ruled that setting mandatory minimum prices of services and commercial offers to be offered by companies to their customers is contrary to article 1 of the LDC. In other words, the purpose of the article was not to regulate the workers' wages, but to fix the prices that companies in the sector must apply to their customers, something that goes beyond the bounds of collective bargaining and the powers that, according to the Employees' Statute, rest with employers' organisations and unions.

In the proceedings at hand here we may infer the same conclusions as the former TDC, because article 74 regulates the pricing of security and surveillance services by obliging the companies to pass on certain wage costs that are established as minimum; specifically, the “CBA cost”, “cost night hour”, “cost weekend or holiday hour” and the costs of “seniority” by “trienniums” and “quinquenniums”, to be revised each year by the Joint CBA Monitoring Committee until 2008. As with the 607/06 resolution, the parties to the CBA had made an agreement aimed at determining the market price of security and surveillance services, regulating the company profit and generating a distortion of price competition.

The commitments offered by the parties to resolve the anti-competitive effects of article 74 of the CBA were:

1. As regards the validity of the clause, all of the parties signed an agreement declaring that its terms would not apply until the CBA expired, which was to occur during 2009 when the same parties were to sign the new national CBA for security firms.

This commitment was considered adequate because non-application of the provision would resolve any negative effects on competition, and thus provide a sufficient safeguard of the public interest.

2. Second, all parties have undertaken that future collective bargaining agreements for security and surveillance companies will not have clauses with the same or similar content as article 74 of the CBA in question.

This commitment was likewise considered adequate for averting any repetition of the conduct in future agreements.

IV.- RESOLUTION

The Investigations Division proposed to the CNC Council (which accepted on 17 March 2009) to reach a negotiated settlement of the proceeding, initiated *ex officio* in response to a price fixing agreement (article 1 LDC) between APROSER, FES, AMPES, ACAES, FES-UGT and FTSP-USO, in the belief that the commitments offered by the parties resolved the competition problems generated by clause 74 of the CBA.

The commitment is binding on all signatory parties to the CBA, both as regards non-application of article 74 of the agreement in force at that time and in relation to future agreements. The parties are considered liable for the economic consequences that would arise from application of those provisions.

To ensure proper fulfilment of the commitments, the parties have the following obligations:

1. To communicate the content of the settlement resolution adopted by the CNC Council to their members.
2. As part of the Ministry of Labour and Immigration's work of monitoring the lawfulness of collective bargaining agreements (or the competent labour authorities at the regional Autonomous Community governments) envisaged in article 90.5 of the Employees' Statute, when the CBAs are submitted for registration and publication, the parties will state before the competent labour authorities that the agreements contain no provisions contrary to the LDC.
3. For purposes of monitoring compliance with the commitments, the parties must submit to the CNC Investigations Division a copy of the publication in the *BOE* of the resolution declaring non-application of article 74 of the current CBA and of future agreements that replace it.