

FNMT-RCM Competition Policy

1. Purpose

The purpose of this Competition Policy is to ensure proper compliance with the regulations by the FNMT-RCM, its employees, management staff, members of its Executive Committee and Board of Directors and, in general, anyone acting on behalf of the FNMT-RCM, to avoid distortion or unfairness in the performance of activities under free competition and preserve a free and dynamic market whose purpose is to contribute to the general economic welfare.

2. Scope of application

In accordance with Article 32.6.a) of Law 9/2017, of 8 November, on Public Sector Contracts, the FNMT-RCM is a public undertaking, an instrument and technical service of the General State Administration, and of the bodies and entities of the state public sector, whether of a public or private legal nature, related to or attached to it. Article 132.3 of the Public Sector Contracts Law provides that contracting authorities shall ensure that free competition is safeguarded in procurement procedures.

However, the FNMT- RCM, in accordance with the regulations governing it, is also able to operate in the private sector under free competition, provided this does not exceed 20% of its revenues. It is in these cases, and taking into consideration the market share to which the FNMT-RCM has access, that special attention should be paid to those activities that could pose a high risk in relation to free competition.

3. Applicable regulations

The following rules apply to the subject matter of this Competition Policy:

- ◆ Articles 101 to 109 of the Treaty on the Functioning of the European Union (TFEU).
- ◆ Articles 37, 106 and 345 of the TFEU for public undertakings and Articles 14, 59, 93, 106, 107, 108 and 114 of the TFEU for public utilities, services of general interest and services of general economic interest.
- ◆ Protocol (No 27) on the internal market and competition, which clarifies that the objectives of the internal market as defined in Article 3(3) of the Treaty on European Union (TEU) include undistorted competition.
- ◆ EC Merger Regulation No 139/2004 on the control of concentrations between undertakings. Protocol (No 26) on services of general interest.
- ◆ Article 36 of the Charter of Fundamental Rights of the European Union. Antitrust Law 15/2017, of 3 July.
- ◆ Royal Decree 261/2008, of 22 February, approving the Antitrust Regulation.
- ◆ Royal Decree 2295/2004, of 10 December, on the transposition of EC competition rules into Spanish law. Guidelines of the National Commission on Markets and Competition.

4. Prohibited conduct

4.1 Collusive behaviour

Any collective agreement, decision or recommendation, or concerted or consciously parallel practice, which aims to, has or may have the effect of preventing, restricting or distorting competition in all or part of the national market is prohibited, and in particular those which consist of:

- ◆ Fixing, directly or indirectly, prices or other commercial or service conditions. Limiting or controlling production, distribution, technical development or investment.
- ◆ Market sharing or sharing of supply sources.
- ◆ The application, in commercial or service relations, of dissimilar conditions for equivalent services that place some competitors at a disadvantage compared to others.
- ◆ The subordination of the conclusion of contracts to the acceptance of supplementary services, which, by their nature or according to trade practices, have no connection with the subject matter of such contracts.

The prohibition set out in this paragraph shall not apply to agreements, decisions, recommendations and practices which contribute to improving the production or marketing and distribution of goods and services or to promoting technical or economic progress in so far as they allow consumers or users to share equally in their benefits, do not impose restrictions on the undertakings concerned which are not indispensable to the attainment of those objectives and do not afford the participating undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question. Furthermore, the prohibition does not apply in the case of collective agreements, decisions or recommendations, or concerted or consciously parallel practices that comply with the provisions laid down in Community Regulations on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions of associations of undertakings and concerted practices, even where the conduct in question is not capable of affecting trade between EU Member States.

4.2 Abuse of Dominant Position

Abuse of a dominant position, as described below, by one or more undertakings in all or part of the national market is prohibited:

- ◆ Imposing, directly or indirectly, unfair prices or other unfair trading or service conditions.
- ◆ Limiting production, distribution or technical development to the unfair detriment of undertakings or consumers. Unjustified refusal to meet demand for the purchase of goods or the provision of services.
- ◆ The application, in commercial or service relations, of dissimilar conditions for equivalent services that place some competitors at a disadvantage compared to others.
- ◆ The subordination of the conclusion of contracts to the acceptance of supplementary services, which, by their nature or according to trade practices, have no connection with the subject matter of such contracts.

The prohibition set out in this paragraph shall apply in cases where the dominant market position of one or more undertakings has been established by law.

4.3 Distortion of free competition by unfair acts

Acts of unfair competition that distort free competition and affect the public interest are prohibited.

4.4 Prohibition of State aid

All advantages granted directly by Member States from public funds are prohibited. Non-repayable grants, soft loans, tax and duty exemptions, loan guarantees and even government participation in companies are also prohibited when they favour certain undertakings or sectors that distort or threaten to distort competition and affect trade between EU Member States.

The prohibitions set out in the previous paragraphs shall not apply to conduct which, because of its minor nature, is not capable of significantly affecting competition.

5. Relationship and management with companies in which the FNMT-RCM has a stake and joint ventures

The FNMT-RCM complies with the guidelines described in this procedure with each of the companies with which it interacts, maintaining independence of action at all times. The FNMT-RCM has controls in place for the management of investee companies and joint ventures in order to guarantee independence, both physical and organisational, and to avoid conflicts of interest and risks related to monopolistic practices.

In the event that FNMT-RCM has a seat on its Board of Directors, the representative(s) of FNMT-RCM shall absent themselves from Board meetings when dealing with issues that may represent a conflict of interest with FNMT-RCM and any other risk that may alter free competition and such absence will be recorded in the minutes of the Board meeting.