



STATEMENT ON THE INVESTIGATION CARRIED OUT REGARDING THE MODIFICATIONS OF THE BOARD OF DIRECTORS OF INDRA AND THE EVENTUAL AGREEMENTS BETWEEN ITS SHAREHOLDERS

23 December 2022

On 23 June 2022, the shareholders' meeting of Indra Sistemas, S.A. (Indra) agreed on the removal of 4 independent board members at the proposal, off the agenda, of Amber Capital. The meeting rejected the re-election of an independent board member and approved the appointment of a proprietary board member at the proposal, as an addition to the agenda, of another shareholder, Sapa Placencia, S.L. (SAPA).

In the aforementioned agreements, three significant shareholders of the company, Sociedad Estatal de Participaciones Industriales (SEPI), SAPA and Amber Capital, voted the same way, thus attaining the necessary majority for these to be passed.

Another independent board member resigned on 25 June and on 28 June the resignation of another independent board member was announced, this having effect no later than 30 October 2022 (resignation formalised on 27 October 2022).

As a result of all the above, the board of directors of Indra was reduced from 13 to 8 directors, the minimum amount foreseen in its articles of association, drastically reducing the number of independent board members from 8 to only 2 directors.

In light of these facts, the Chairman of the CNMV instructed the technical services to commence from that very same day, 23 June 2022, an in-depth investigation of the events including multiple actions, such as sending fourteen requests for information, a thorough review of over 4,000 pages of different corporate documentation and taking the statements of seventeen persons, these amounting to a total of approximately thirty hours.

The investigation focused on analysing whether the decisions adopted at the shareholders' meeting indicated: 1) a situation of concerted action to take control of the management involving a mandatory takeover bid; or 2) failure to comply with the recommendations of the Good Governance Code of listed companies (CBG) or the best corporate governance practices.

Also, from that moment, the CNMV has been monitoring the actions carried out by Indra and the agreement adopted by its board of directors and shareholders' meeting, mainly in reference to the rebuilding of its board of directors and its committees, which concluded towards the end of October.

Given the significance and singularity of the facts, in an exceptional manner, the CNMV considers it necessary to disclose the conclusions of the investigation carried out, as described below.

The conclusions reached by the CNMV regarding the possible acquisition of control are the following:

- It has been proven that the shareholders of SEPI, SAPA and Amber cooperated to perform the removals, with the active participation of the chairman of Indra, with whom several of the directors removed disagreed persistently regarding governance since his appointment.
- Even if such cooperation did exist, at present there is insufficient evidence to allow such agreement to be considered a concerted action to take control of Indra, in accordance with the provisions of Article 4.1.a) of the Spanish Royal Decree on takeover bids (RD on takeover bids) and, in fact, several elements come together in the opposite sense, two of which stand out in particular. The first element is the absence of any controversy or block regarding the strategy or management of the company within the Board of Directors of Indra before the removals, which would have justified, had there been any, any change in the strategy or management of the company that the shareholders agreeing on these may have wished to encourage. The second and more important element is the fact that, towards the end of October, the company concluded a process designating new independent board members meaning, from the data currently available, that their weighting in the board and the profiles and characteristics of these independent board members, other than the renewal of the specific persons holding said posts, remain substantially the same.
- In addition, there is no evidence of a change in the Board majorities, independently from the designation of proprietary board members resulting from later acquisitions by two of the three shareholders, leading the independents to lose their majority and to return to making up 50% of the board (the percentage recommended by the Good Governance Code). The powers of the non-executive chairperson previously proposed by SEPI have not been modified (in fact, these have been reduced by eliminating the casting vote in the Board), nor has there been a substantial modification of the management teams (there having been a partial one, although previous to the meeting in June), or any approval of strategic or management changes that may have been blocked by the removed directors. What is clear is the renewed emphasis on the defence line of business (agreed on by all three shareholders that agreed on the removals), although the composition of the previous board did not seem to be a blocking factor in this sense, only regarding corporate governance matters, particularly with regard to the functions of the chairman, which appeared as a central issue from his appointment up until the meeting in June.
- Neither does the analysis performed reach the conclusion that any of the three shareholders has a controlling interest via the designation of directors at Indra under the terms laid down in Article 4.1.b) of the RD on takeover bids. It could not be proven that any of these, SEPI in particular, designated a number of directors at Indra, either before or after holding the meeting on 23 June 2022, that would represent, with those already designated, the majority of members at its board of directors. This would still be the conclusion even if, hypothetically, the chairman of the company was considered a proprietary director designated by SEPI.
- This investigation has included the use of ESMA's White List (ESMA31-65-682 updated on 8/02/2019). The result of this analysis is that, although there is certain evidence of concerted action which would be applicable (for example, the fact that the cooperation did affect a larger number of directors), there was other evidence which would not (for example, the fact that the cooperation only occurred once, for the removals, and did not affect the appointment of the new directors). Therefore, it cannot be concluded that these elements clearly point towards a situation of shareholder cooperation for taking control.

- However, a concerted action must always be analysed considering the evidence and the facts. Inasmuch as the previously mentioned issues may be subject to modification, the CNMV will need to monitor the situation in case future events show solid evidence of concerted action and, consequently, a modification of the conclusions reached becomes necessary.

Regarding the possible breach of the corporate governance regulations contained within the Spanish Corporate Enterprises Act (LSC) or failure to comply with the recommendations of the CBG, no contravention of specific precepts has been identified. However, the cessation of such a large number of independent board members at a meeting, at the proposal of shareholders without any presence in the board, acknowledged by the chairman and without being included in the meeting's agenda or in its additions, is undoubtedly a transcendent event as it affects the perception regarding the quality and integrity of the corporate governance of a top tier listed company.

Although it does not breach the regulations on the powers of the shareholders' meeting on the removal of directors, this case is very far from the standards expected from a listed company. The disagreements regarding governance of its collegiate bodies should be resolved without cutting short the continuity of independent board members, whose mission is to serve the interests of all shareholders, especially those of minority shareholders, as clearly stated in recommendation 21 of the CBG (only applicable to proposals of the Board)

In this sense, the CNMV will propose legislative measures and address modifications of the corporate governance recommendations to avoid the occurrence of similar cases that may hinder the strength of the corporate governance of Spanish listed companies.

At its ordinary meeting on 22 December 2022, the Board of the CNMV unanimously agreed to close the inquiry on the events occurring at the meeting of Indra on 23 June 2022, without prejudice to their eventual reopening in light of possible new facts resulting from future changes in the shareholding, in governance and decision making at Indra.

Given the singular nature of the case and the state ownership of one of the shareholders, the Chairman of the CNMV will inform the Economic Affairs and Digital Transformation Commission of the Spanish Parliament on his willingness to come before said Commission, should it deem this appropriate, to explain the circumstances and the basis of the decision taken by the CNMV.