

**COMPETITION ADVOCACY DURING AND IN THE AFTERMATH OF THE  
COVID-19 CRISIS**

July 9<sup>th</sup> 2021, 10:30-13:00

Palais des Nations and online (Interprefy).

---

**A. Strategic actions in the past, present and future**

- Thank you to UNCTAD and in particular to Ms. Teresa Moreira for the kind invitation to participate in this session. Good morning, good afternoon and good evening to my fellow colleagues from Colombia, Egypt and India. It is a pleasure to be here with all of you and share the Spanish authority's insight on this topic.
- In Spain and elsewhere, the pandemic and its effects have significantly affected growth, employment, and inequality.
- To face the outbreak of the coronavirus EU Member States have adopted exceptional measures. For instance, Governments have granted **large amounts of state aid** to struggling undertakings or **expedited their public procurement processes** to acquire essential supplies. Due to the economic crisis, some undertakings are **merging with or acquiring** others, namely exploiting **the failing firm defense**.
- In spite or even due to the adverse effects of the pandemic, the CNMC has reinforced its commitment in favor of the **protection of consumer welfare**, to reduce social inequality and economic barriers in the market. Our **new Strategic Plan 2021-2026** and our Action Plan for 2021-2022, underline our **commitment with the Sustainable Development Goals and the Agenda 2030** and, in particular with SDG 10 (**reduction of inequality**), by focusing some of our activities into sectors with a particular impact on **vulnerable consumers**.

- As you may know the Spanish authority (the CNMC) has a twofold mandate: that of a **competition authority and of a regulatory agency**. **We are not however a** consumer agency, although we indirectly attain similar objectives **through our regulatory action over** many essential sectors of the economy (telecoms, audiovisual, transport, energy, postal services) and through the pursue of consumer welfare as a competition authority.
- As far as the whole institution is concerned, we believe in the **redistributive nature of competition policy**, namely through the **redistribution of wealth**. If a fair and effective competition in the market is ensured, companies will be prone to producing **higher quality products** and **services at a lower price**. That will yield better market outcomes for all consumers, but especially for those who are more vulnerable.
- Research conducted by Veld, Varga and Roeger in 2008<sup>1</sup> showed that GDP can increase in Spain up to 7% in a decade insofar a fair and effective competition is ensured. This is therefore, the role to play for competition authorities on behalf of social and economic welfare.
- In this same vein the CNMC estimated in 2020 that its regulatory, enforcement and advocacy policy in the last decade has **entailed approximately a saving of around 10.700 million euro** for consumers in Spain, since the estimated saving for each year is that of 1.700 million euro.
- In the fulfilment of our goals, **advocacy instruments** are **essential**. The **CNMC monitors regulation** across all markets and economic sectors to prevent and **eliminate unjustified restrictions to competition** which diminish welfare.
- Our advocacy activity is deployed through several means of action that allow us to provide our competition-oriented perspective even when confronted to the challenges posed by the pandemic.

---

<sup>1</sup> [https://ec.europa.eu/economy\\_finance/publications/pages/publication13531\\_en.pdf](https://ec.europa.eu/economy_finance/publications/pages/publication13531_en.pdf)

- First, the CNMC can be **formally consulted regarding legislative proposals** or administrative decisions (e.g., **on public procurement tender documents**) that the Spanish Government -or any other public administration at regional or local level- may be **developing to face the economic crisis** and **accelerate the economic recovery**. On our own initiative, we are preparing some guidance in the fields of “public procurement”, “state aid” and “efficient regulation” with a pedagogic approach directed to help administrations at all levels to include the competition perspective in their actions. These reports and guidance are neither prescriptive nor binding, but they will be public.
- During the critical months of the pandemic, formal consultation has not been the rule but it has taken place, on a **more informal way**, without leading to the publication of official reports. This has happened because of the **widespread use of legislative instruments more suitable to an emergency**, temporarily derogating the **traditional process** for law approval.
- For example, during the lockdown the CNMC **provided informal guidance on the compatibility with competition rules of certain cooperation agreements**. We assessed agreements regarding the following: (i) **health insurance compensation schemes in private hospitals**, (ii) **medical devices and health products**, (iii) the **implementation of the EBA guidelines in the financial sector**; and (iv) **retailers at the airports**. The main purpose of the guidance was to highlight the limits to each proposed cooperation agreement following the Commission’s Temporary Framework and the ECN Joint Statement principles.
- The CNMC also advised the **government** about some of the **market-related emergency measures** and, in general, provided advice about how to **achieve public health objectives without affecting competition levels more than strictly necessary**, such as price caps on facemasks and hydro-alcoholic gels.

- Moreover, stemming from the restrictions detected by the CNMC within public procurement, the Spanish national competition authority has **prioritized public procurement as a key area in the revision of its 2020 Annual Plan** and the 2021-22 Action Plan and as of now, as I mentioned, we are preparing **guidelines** on the issue, to help public sector officials to design **high-quality public procurement strategies**. According to research conducted by Domberger and Jensen<sup>2</sup>, an improvement of competition in public procurement can amount to price reduction of tenders of up to 20% without hindering produce quality. In fact, in 2019, the CNMC estimated that Public Administrations could have saved a **minimum of 1700 million euros** between 2012 and 2016 due to the **promotion of efficient and competitive public procurement procedures**.
- Our **2020 Annual Plan** also underlined the importance of **coordination** between CNMC, **policymakers and other agents**, such as consumer associations, to preserve competitive markets. Finally, it points out to the need of **strengthening efforts** to curb anticompetitive conducts in some **sensitive sectors**, as sanitary products, financial sector and funerary services.
- Second, the CNMC can, on some occasions, exercise some of its attributions ex officio, through the **publication of a study or report** as well as through **the legal challenge of any regulation** ranking below the level of law (including administrative decisions), that may introduce **restrictions** to competition in the markets.
- We are now preparing market studies on sectors that especially benefit consumers, with a particular interest on **vulnerable groups**, such as intercity coach services, distribution of medicines, insurance or housing markets. This activity is complemented by our regulatory functions in essential sector of the economy, where we pay special attention to

---

<sup>2</sup> [https://econpapers.repec.org/article/oupoxford/v\\_3a13\\_3ay\\_3a1997\\_3ai\\_3a4\\_3ap\\_3a67-78.htm](https://econpapers.repec.org/article/oupoxford/v_3a13_3ay_3a1997_3ai_3a4_3ap_3a67-78.htm)

vulnerable consumers, such as energy, where we inform vulnerable consumers of their rights to access specific aids and we monitor the fulfilment of such rights by energy suppliers.

- Third, the CNMC can, ex officio or by demand of Public Administrations, **analyse the criteria for the concession of state aid** in relation with its possible effects on competition.
- Regarding this matter, we have **publicly voiced out concern** about the **possible fracture of the Single Market** as a result of the **sheer volume of state aid** compromised by some Member States. The Spanish authority has stressed that state aid, in this context, should have been used to address problems **caused by the Covid-19 crisis** and **not pre-existing** difficulties.
- Last, but certainly not least, the CNMC put in place a **specific tool** to detect competition problems or distortions during the pandemic. It was a **Covid-19 mailbox**, set up on 2020. Specifically, the mailbox objective was to channel **all complaints** and queries related to the enforcement of competition rules **in the context of the COVID-19 outbreak** and, thus, **defend consumers** and firms affected by anticompetitive conducts during the crisis.
- It has been a **successful tool**, which received **over 700 complaints**. As a result, the CNMC identified different problems and started several investigations, mostly related to especially sensitive sectors during the pandemic, as financial services, pharma and health or the funeral services sector. Thus, the 700+ complaints we received proved to be **very effective to identify specific sectors and concrete problems related with the pandemic** and they helped align CNMC's efforts towards the most urgent and important issues.
- For instance, we received certain information through the mailbox concerning possible anti-competitive practices in the marketing of ICO COVID credit lines. In fact, three weeks ago the CNMC opened a

sanctioning proceeding and is currently investigating the linkage to different products that banks have allegedly required as a condition for customers to access ICO loans. The authority is also looking into the use of the loans as a mechanism to restructure pre-existing financial debts.

**Many thanks!**

**B. The EU has adopted the largest stimulus package ever, directed to its Member States and designed to boost the economic and social recovery of the post-Covid 19 Europe. What advocacy instruments are going to be implemented in Spain in order to avoid additional restrictions of competition, especially in the public sector?**

- As you may all well know, the European Union has agreed to **invest 750 billion euro in the NextGeneration Plan**, to help **repair the immediate economic and social damage** brought by the coronavirus pandemic, in the form of grants and loans addressed to the different Member States.
- According to the agreement between Spain and the EU, our country will receive investment of up to 140.000 million euro between 2021 and 2026, from which **70.000 million euro will be directly transferred to the Government** for expenditure both in the **public and private sector**.
- Alongside the course of action we highlighted previously in relation to state aid, our mandate is somewhat limited. The Spanish authority, different to the European Commission's powers on this same matter, can **only advise public authorities on the anticompetitive effects that concession criteria** could imply due to the approval of subsidies, grants, loans and other forms of state aid.
- At the end of each year we also publish a **report** on all of the financial aid that has been offered by the public authorities to businesses, which we normally **forward** to the **European Commission** as well as to the **Spanish Parliament**, so to give our opinion on the appropriateness of the state aid provided by the Public Administration in all of its forms.
- The CNMC therefore, **cannot investigate nor find** whether a financial contribution granted by the public authorities is **illegal or not**, neither can it order third parties to **retrieve the financial gain** caused by the restriction of competition introduced by the economic aid.
- As a result of our limited mandate, due to the sheer volume of state aid that is going to be adjudicated as a consequence of the NextGeneration

funds, one of our main lines of action in the short run is going to be focused on cooperation “vis a vis” with public authorities in order to ensure that these funds are allocated in a **correct, competitive and non-discriminatory manner**.

- In fact, we know that they are mainly going to be assigned through **public procurement procedures** and through the **collaboration** of public authorities both with the public and private sector (this is a procedure that is specified and detailed within our national law of public procurement, which excludes the need to hold a procedure in the place of collaboration).
- In the face of it, although our competition powers are limited, we are determined to open regulatory dialogue with authorities in **three fundamental lines of work; state aid, public procurement** as well as the protection of an **efficient regulation**. In this sense, we will try to ensure that public authorities are in line with the principles that the Spanish competition authority has outlined in the past to comply with a better and effective regulation, especially in this time of uncertainty and unpredictability.
- Therefore, there are certain goals that public authorities should observe whilst managing the NextGeneration Plan funds.
- First, public authorities shall grant financial on the basis of **non-discriminatory, objective, detailed, transparent and proportionate criteria**.
- In the light of the European Commission’s Covid-19 framework on state aid, we want to ensure that those companies which were **not economically viable in January 2020** – the so-called ‘**zombie**’ firms- do not receive financial aid (we do not want to encounter firms that were bound to exit the market beforehand and regain their economical power due to state aid granted by the public authorities).



- Second, in line with the Guidelines we published in the past to engage in the prosecution of bid-rigging, specially from the perspective of those market structures and tender documents which were predisposed to restrict competition, public authorities, namely **regional and local authorities that usually lack expertise on the topic**, shall ask the CNMC for **additional guidance** on the preparation of **tender documents**, specifications, and forms.
- Our main goal concerning public procurement procedures in this framework is to set out the blueprint for public authorities to be compliant of the **European Union's Public Procurement Directives** as well as with the **rules of competition** at a national level.
- And last, we know that many **barriers to entry and expansion** for the development of economic activity may arise as a consequence of the **economic recovery measures** that are put in place as a result of the NextGeneration funds.
- For instance, public authorities may **multiply the paperwork required** in order to access business activity, insomuch that they consider that additional steps for businesses to access the market will safeguard public proceedings. Nonetheless, these are **unnecessary restrictions** to economical activity which should be removed.
- To that end, public authorities shall have to strive towards granting **uniform access to the market for existing and new companies** which are willing to develop their economic activity in Spain, namely in relation with the urban planning and environmental sector.
- In the next few weeks, we will draft specifications and decalogues addressed directly at the regional public authorities so that they can be compliant with the principles underlined hereby in order to improve our market structure and regulation towards a better, competitive and effective economic and social framework.

**Thanks to all of you.**