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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SPAIN

--2015--

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Executive Summary

1. The year 2015 has been particularly important for two reasons:

- First, the Competition Authority CNMC, born in 2013 after the merger of the existent Competition Authority with several sectoral regulators (energy, telecoms, railway, airport, postal and audiovisual) worked at full speed. Thus, the merger process has been successful and potential negative effects of a complex process have been avoided. The best proof is the historic result of competition enforcement this year.
- Second, the Spanish Authority had never discovered, processed and sanctioned so many illegal practices, especially cartels. Up to 14 cartels were dismantled with over half a billion euros in fines.

2. Regarding antitrust enforcement, 2015 has marked a milestone. The 26 sanctions for infringements of competition law, as well as the penalties amounting €549 m illustrate this challenge. Moreover, following its strategy priorities, the CNMC has focused on fighting cartels, as the most harmful anti-competitive conducts that hinder the proper functioning of markets. Fighting cartels implies making an intensive and coordinated use of diverse tools: leniency programs, dawn raids, IT forensics, training courses, communication and public relations and so on. Some of these cartels were also engaged in bid ridding, causing a direct negative effect on public procurement and public finances. The results show that the long term Spanish strategy to fight anticompetitive behaviour works, that recent changes in institutional architecture have not modified this strategy -on the contrary, CNMC has strengthen it- and that the institution is drilling new fields of action that adapt to the new needs of society. In 2016, cartel prosecution and public procurement continue to be a priority.

3. As mergers and acquisitions are concerned, the number of notifications has continued in the pace of recovery initiated in 2014, in coherent with a better economic environment and financial situation in Spain. Up to 91 operations were notified and six of them were only cleared after the adoption of remedies, in the form of commitments accepted by the notifying parties. Particularly challenging has been the analysis of the acquisition of DTS (the main pay television company) by Telefónica (the main telecoms company), as it has strategic implications both for the pay television and electronic communications sectors. With this case, synergies with the regulatory and supervisory units inside the institution were exploited and a comprehensive strategy of *ex ante* and *ex post* intervention of the telecoms markets arose. This merger showed that the boundaries of the telecom industry are changing and that Competition Authorities have to adapt and coordinate thoroughly with sectoral regulatory bodies.

4. The Advocacy area in the CNMC continues to build a strong body of analysis that focuses on how regulation should be designed to avoid restricting unfairly and unwisely competition in the markets. The CNMC has continued acting as consultative body on new draft legislation issuing 24 reports that cover legislative proposals in a variety of areas, including public procurement, pharmaceutical, intellectual property, transports or finance. The annual report on public aid should also be underscored, as well as 3 sectorial studies referred to inspection services for gas installations; the wholesale automotive fuel market, and the retail pharmaceutical distribution market. It is also important to highlight the ongoing study report on sharing economy and the measures already launched improve regulation of the new business models.

5. Furthermore, the CNMC has continued contributing to the enhancement of competition by challenging in courts those acts of public administrations that include non-justified restrictions to competition. In fact, three local and regional regulations related to taxi services and tourist rental housing were challenged in 2015.

6. The CNMC has also maintained an intense institutional activity in 2015, particularly in the international sphere. The aim of this activity is to contribute to mutual learning through the exchange of experiences and the identification of best practices, as well as to enhance coherence in the application of competition policies. Although collaboration with European Union member countries' authorities, as well as the European Commission is an overarching goal, reinforcing cooperation with Latin America authorities, as well as in international and global fora, are also high priorities for the CNMC.

1. Changes to competition laws and policies, proposed or adopted

7. In 2015, neither changes on competition laws and policies have been adopted, nor have new proposals been launched.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities: Competition authority (CNMC)

8. In 2015 a record number of sanctions (26) were imposed by the CNMC for infringements of competition regulations, including 14 cartels. Fines totalled €549 million. Cartels continued to be the number one priority, following a long term strategy that is bearing fruits. It is also important to outline the efforts on public procurement cases that constitute a growing priority for the institution.

- Cartels

In 2015, the CNMC issued 14 decisions against companies formally accused of forming a cartel, that is, a secret agreement not to compete. Those agreements involved price-fixing, sharing out markets, exchanging commercially sensitive information and other forms of non-competing.

The CNMC's leniency programme has revealed as the most effective tool to fight cartels. Leniency brings together deterrence, detection and sanction of these practices, and contributes to destabilize cartels. Since its entry in force in 2008, the leniency programme has produced 40 leniency claims that helped to dismantle 22 cartels. In 2015, 3 out of 14 cartel cases were originated by a leniency claim.

The total amount of sanctions handed out for forming cartels was €506 million.

- Other forbidden practices

As well as sanctioning cartel agreements -the most harmful to the proper functioning of markets- the CNMC has sanctioned other practices forbidden under the Spain's Competition Act.

In 2015, the CNMC issued 5 decisions regarding other forbidden practices. These practices include vertical agreements (3 decisions), horizontal agreements (2 decisions, one of them including both vertical and horizontal agreements) and abuse of dominant position (1 decision). The total amount of sanctions for this type of practices was €24.6 million. Two cases were also closed under a settlement agreement with the parties¹

¹ S/0466/13 - SGAE – AUTORES and S/0498/13 - CLUB EXCELENCIA. All the references can be found at www.cnmc.es

- Penalties for non-compliance

In 2015, the CNMC issued seven penalty decisions under the procedural framework of Law 30/1992 of Legal Regime of Public Administrations and Common Administrative Procedure. Sanctions related to these decisions amounted €17.7 million.

Notable among them were three decisions imposing sanctions on the country's three main oil companies (Repsol, Cepsa and BP) for failing to comply with a 2009 penalty decision, amounting to €8.5 million, €2.5 million and €750,000, respectively. The forbidden and uncorrected behaviour involved indirectly fixing the retail price charged by independent traders operating under their brand on a commission basis, thereby restricting competition between service stations of their network and with other service stations. This indirect price-fixing involved putting in place a complex contractual framework between the oil companies and the filling stations of their network, which discouraged the filling stations from changing the maximum/recommended price conveyed by the oil company.

Two decisions were also issued for non-compliance with the conditions imposed in relation to the Tele5/Cuatro and A3/La sexta mergers. The first (Mediaset) was fined €3 million for its non-compliance and the second (Atresmedia) €2.8 million. Two mergers which were carried out but not notified (MASMOVIL and GRIFOLS) were also sanctioned.

Table 1. FINES 2015 (*)

	Sanctions (€)	Art. 1			Art.2
		Cartel	Horizontal	Vertical	Abuse
S/0425/12 DAIRY COMPANIES 2	88,258,813	x	x		
S/0429/12 WASTE	98,201,302	x			
S/0454/12 REFRIGERATED TRANSPORT	15,648,773	x			
S/0469/12 PAPER AND CARDBOARD MANUFACTURERS	57,686,188	x			
S/0471/13 AUDI/SEAT/VW DEALERS	27,338,323	x			
S/0473/13 CONCRETE POSTS	1,873,112	x			
S/0474/13 AUTOMOTIVE FUEL PRICES	32,400,000	x			
S/0481/13 MODULAR CONSTRUCTION	18,700,833	x			
S/0482/13 AUTOMOBILE MANUFACTURES	131,450,494	x			
S/0484/13 BRANDED NETWORKS	22,994,440	x			
S/0486/13 TOYOTA DEALERS	1,675,035	x			
S/0487/13 LAND ROVER	3,255,810	x			
S/0488/13 HYUNDAI DEALERS	2,031,171	x			
S/0489/13 OPEL DEALERS	5,379,064	x			
TOTAL CARTELS	506,893,358				
S/0490/13 TELEFONICA /YOIGO AGREEMENTS	6,300,000		x	x	
S/0436/12 DTS DIGITAL TV DISTRIBUTOR	15,500,000		x		
S/0464/13 PORT OF SANTANDER	90,000		x		
S/0491/13 GUADALAJARA BAR ASSOCIATION	89,983		x		
S/0500/13 AGEDI/AIE RADIO	2,790,420				x
Total others	24,770,403				
Failure to comply	17,600,000				
SNC/0033/13 CEPESA	2,500,000				
SNC/0032/13 REPSOL	8,500,000				

	Art. 1			Art.2	
	Sanctions (€)	Cartel	Horizontal	Vertical	Abuse
SNC/0034/13 BP	750,000				
SNC/0039/15 ATRESMEDIA	2,800,000				
SNC/0036/15 MEDIASET	3,000,000				
Failure to notify	146,000				
SNC/0038/15 MASMOVIL	39,578				
SNC/0037/15 GRIFOLS	106,500				
Total Penalties for non-compliance	17,696,078				
TOTAL	549,359,839	€506 m	€15.5 m	€6.3 m	€2.79 m

(*) Article 1 of Spain's Competition Act (Act 15/2007) applies to cartels and other forbidden agreements; article 2 applies to unilateral conducts, including abuse of dominant position. Failures to notify or to comply are sanctioned under the procedural framework of Law 30/1992 of Legal Regime of Public Administrations and Common Administrative Procedure

- Dawn raids

During 2015, 10 dawn raids were carried out by the Competition Directorate at 35 companies of different sectors. While the number of inspections rose (8 in 2014), the number of companies inspected slightly fell (38 in 2014). The average in 2014 was 4.75 companies per action, while in 2015 the average was 3.5. This ratio is obviously affected by the nature of the sectors raided. The CNMC inspectors also collaborated with the EC DGCOMP in one dawn raid in the framework of EC cases. One authority from an autonomous region was also assisted in one dawn raid.

Table 2. Dawn raids 2015

Dawn raids	10
Inspectors	171
Companies inspected	35

2.1.2 Summary of activities: Courts

9. The result of judicial review in recent years reflects a high percentage of confirmation of the decisions of the National Competition Authority (NCA, that is CNC until October 2013 and CNMC onwards). In particular it should be noted that most of the cases where the Courts have nullified or amended NCA's resolutions affect the quantification of fines, which are brought down by the courts.

10. In 2015, the first instance court of appeal (Audiencia Nacional) decided on 62 different appeals (corresponding to 24 different NCA's decisions, due to the fact that the NCA sanctions several companies in the same decision but each company appeal becomes one judicial procedure), of which approximately 6,5% were rejected, 18% accepted and 75% partially accepted. Most of the Audiencia Nacional partially accepted decisions refer to the amount of the fines imposed by the NCA.

11. Over 2015, the Spanish Supreme Court (TS) issued 91 judgments, related to 39 different NCA decisions. The TS annulled the NCA's decisions in 9 out of 91 cases (10%). Two of those 9 annulments were due to the previous annulment of the corresponding dawn rides. 27 appeals submitted to the TS were partially accepted (29,6%), again mainly referring to the amount of the fines.

12. It is worth to mention the Supreme Court's judgment issued on 29 January 2015, and several following judgements that reproduce the same criteria, regarding the interpretation on CNMC's method to

calculate the fines. According to the Supreme Court case law, the legal maximum of 10% in Spain's Competition Act should be interpreted as an upper limit of a range of fines, not a cap or a levelling threshold. Besides, confirming the CNMC's position, the total turnover should be understood as total turnover (and no turnover in the market affected by the infringement, as interpreted by the National Court).

2.1.3 Description of significant cases, including those with international implications.

2.1.3.1 Cartels

- S/0482/13 CAR MANUFACTURERS

The CNMC handed out fines of over €171 million to Spain's main car companies, for their infringement of article 1 of Spain's Competition Act and article 101 of the Treaty on the Functioning of the European Union.

SEAT, S.A. submitted an application for leniency supplying information regarding its involvement in a cartel and providing evidence that enabled raid downs to be carried out at the offices of car manufacturers and a consultancy firm. As a result of the evidence gathered during those inspections, infringement proceedings were initiated in August 2015.

The investigation proved the existence of a secret agreement between the main car brands marketed in Spain, under which they exchanged commercially sensitive, confidential information, both current and future and also highly disaggregated, as part of a preconceived plan. The companies involved in the agreement to exchange information had a combined market share of around 91%, including almost all of the general brands and some of the premium brands.

The information exchanges were organised into three areas or forums:

- One dedicated to exchanging business-management information on vehicle distribution and after-sales - called 'Brand Club' - assisted by the consultancy firm SNAP-ON;
- Another, from 2010 on, dedicated to exchanging after-sales information through the so-called 'Programme for exchanging information on after-sales indicators', assisted by the consultancy firm URBAN SCIENCE; and
- Another dedicated to future commercial policies to be included in the so called “After-Sales Managers' Forum” and to after-sales marketing information in the so-called “Builders' Conferences”.

In application of the leniency programme, the CNMC granted SEAT, S.A. and the other companies of its group, VOLKSWAGEN AUDI ESPAÑA, S.A. and PORSCHE IBÉRICA, S.A. an exemption from the fine (amounting to €39.4 million).

The fines imposed on twenty of the companies under investigation, totalling €171 million, were as follows:

Table 3

COMPANY	FINE
Automóviles Citroën España, S.A.	€14.7 million
B&M Automóviles España, S.A.	€776,012
BMW Ibérica, S.A.U.	€8 million
Chevrolet España, S.A.U.	€138,580

COMPANY	FINE
Chrysler España, S.L.	€265,493
Fiat Group Automobiles Spain, S.A.	€6.9 million
Ford España, S.L.	€20.2 million
General Motors España, S.L.U.	€22.8 million
Honda Motor Europe Limited Sucursal en España, S.L	€609,325
Hyundai Motor España, S.L.U.	€4.4 million
Kia Motor Iberia, S.L.	€2 million
Mazda Automóviles España, S.A	€656,390
Mercedes Benz España, S.A.	€2.3 million
Nissan Iberia, S.A.	€3.1 million
Peugeot España, S.A.	€15.7 million
Renault España Comercial, S.A.	€18.2 million
Snap-on Business Solutions, S.L.	€52,785
Toyota España, S.L.	€8.6 million
Urban Science España, S.L.U	€70,039
Volvo Car España, S.A.	€1.7 million

- S/0429/12 WASTE

The CNMC fined 43 companies and 3 waste management and urban sanitation associations with €98.4 million. The case was investigated by the CNMC between 2012 and 2015 and revealed how the main companies providing these services to local authorities and other companies in Spain entered into an agreement not to compete and to share out the market and clients between them, thereby causing a rise in prices and a lower quality in the provision of these services.

The investigation was opened *ex officio* by the CNMC, leading to inspections at the premises of seven companies and an association in the sector. As a result of the evidence found in those inspections, the CNMC reached the conclusion that 43 companies, assisted by three trade associations, had agreed to share out the above-mentioned markets, thereby infringing article 1 of Spain's Competition Act.

These agreements to share out the market were mainly as follows: respecting the waste-management companies' respective clients; sharing out new clients starting to request services; exchanging commercially sensitive information (on clients, offers presented to them, etc.); sharing out public invitations to tender by submitting joint offers under Temporary Joint Ventures or not competing over part of the invitation to tender in exchange for later participation in it through subcontracts; measures taken by the trade associations in the sector to implement market sharing or coordinate the companies' activities to that end; and collective recommendations issued by these associations to persuade their members to respect the market-sharing agreement.

The ruling identifies three specific areas of activity where the anticompetitive practices of the sanctioned companies and associations took place: management of both hazardous and non-hazardous industrial waste from companies; recovery of paper and cardboard for their subsequent recycling; and urban sanitation, which includes urban solid-waste management, street cleaning and maintenance of green areas.

This infringement of Spain's Competition Act led to fines totalling €98.4 million, which were handed out under a decision issued by the CNMC on January 2015. The breakdown is as follows (only sanctions above €1 m are listed in the table):

Table 4

COMPANY	FINE
BEFESA GESTIÓN DE RESIDUOS INDUSTRIALES, S.L	€3,637,517
HOLMEN PAPER MADRID S.L. and CARTÓN Y PAPEL RECICLADO, S.A.	€4,845,822
CESPA COMPAÑÍA ESPAÑOLA DE SERVICIOS PÚBLICOS AUXILIARES, S.A. and CESPA GESTIÓN DE RESIDUOS, S.A. (Grupo Ferrovial)	€13,616,717
FCC, S.A., FCC ÁMBITO S.A., FCC MEDIO AMBIENTE S.A., (Grupo FCC)	€16,880,054
HERA TRATESA, S.A.	€1,604,880
IRMASOL, S.A.	€1,765,170
RECUPERACIONES RIOJANAS, S.A.	€1,093,074
S. SOLÍS, S.A.	€1,252,740
INDUSTRIASCELULOSA ARAGONESA, SAICA NATUR, S.L, SAICA NATUR NORESTE, S.L. and SAICA NATUR NORTE, S.L. (Grupo SAICA)	€5,370,000
URBASER, S.A. and SERTEGO SERVICIOS MEDIOAMBIENTALES, S.L.U. (Grupo ACS):	€23,289,036
TECNOLOGÍA MEDIO AMBIENTE GRUPO F. SANCHEZ, S.L	€1,451,445
VALORIZA SERVICIOS MEDIOAMBIENTALES, S.A. (Grupo Sacyr)	€15,295,022
VERINSUR, S.A	€1,185,946

- S/0425/12 DAIRY COMPANIES 2

The CNMC, in its decision of 26 February 2015, imposed fines amounting to more than €88 million on nine dairy companies and two regional associations for practices restricting competition, which would have been employed on a regular basis for more than ten years.

After accessing a report by the Castilla y León competition authority titled 'Study on the Raw Milk Sector in Castilla y León' and the complaint made by the agrarian union UPA against milk processing companies, highlighting possible anticompetitive practices, the investigation directorate decided, in July 2012, to carry out inspections at the offices of 3 companies and 2 sectorial associations.

From the information obtained in those inspections and in subsequent investigations, it was established that nine processing companies and some sector associations had participated in exchanges of strategic commercial information regarding prices, volumes and the identity of the dairy farmers, in order to adopt a common strategy and thereby control the market for supplying raw milk. Those exchanges had also, at least on certain occasions, materialised in specific agreements to coordinate the prices at which milk was purchased from the farmers and employ other forbidden practices such as agreements to transfer farmers between companies.

The exchange of information regarding the prices at which milk was purchased from the farmers and the identity of those farmers allowed the dairy companies to stop competing with each other in the milk supply market (purchase of milk from farmers), allowing them to avoid price rises at times of scarcity. It also allowed the companies to avoid negotiating with the dairy farmers, who found it very difficult to change purchasers. On the other hand, the exchange of information regarding surpluses and the proposal to withdraw milk from the market in a concerted manner was intended to raise the final price of the milk.

These practices could have had a considerable effect on the market, bearing in mind that the combined market share of the offending companies in each of the regions where the practices were employed was over 50%. They could also have affected intra-Community trade owing to their nature, characteristics, scale and the companies involved. Raw cow's milk is the raw material which dairy companies transform into dairy products, which are also marketed beyond our borders. Even cow's milk in its liquid state and unprocessed is imported and exported.

Table 5

COMPANY	FINE
ASOCIACIÓN DE EMPRESAS LÁCTEAS DE GALICIA	€100,000
CALIDAD PASCUAL	€8,560,363
CENTRAL LECHERA ASTURIANA, S.A.T.	€698,477
CENTRAL LECHERA DE GALICIA, S.L.	€53,310
CORPORACION ALIMENTARIA PEÑASANTA, S.A.	€21,864,645
DANONE S.A.	€23,201,850
GREMIO DE INDUSTRIAS LÁCTEAS DE CATALUÑA	€200,000
GRUPO LACTALIS IBERIA, S.A.	€11,692,998
NESTLÉ ESPAÑA, S.A.	€10,687,970
PULEVA FOOD, S.L.	€10,269,557
SENOBLE IBÉRICA, S.L.	€929,644

- S/0469/13 PAPER AND CORRUGATED CARDBOARD MANUFACTURERS

The CNMC Council imposed fines worth over 57 million euros on a total of 18 paper and corrugated cardboard manufacturers and AFCO, the sector's association (see table).

After successive reports of large increases in the price of paper, which the cardboard industry partly or wholly passed on in its product prices, the investigation directorate decided to carry out various onsite dawn raids at the headquarters of 8 manufacturers and a sectorial association.

The information obtained from these inspections and subsequent investigations enabled the CNMC to prove that for over 10 years (2002 - 2013), these companies colluded with each other to increase prices, distribute clients and exchange sensitive information, in both the paper and in the corrugated cardboard manufacturing markets.

Information exchanges in the paper sector, the coordination of periodic price rises and the geographical and sectorial distribution of clients accredited in the corrugated cardboard market have led to restricted competition between operators, and made products requiring corrugated cardboard boxes and packaging substantially more expensive. Taking into account that this packaging is present in all production and service sectors, the penalised conduct may ultimately have had an impact on end consumers.

Table 6

COMPANY	FINE
SPANISH ASSOCIATION OF MANUFACTURERS OF CORRUGATED CARDBOARD PACKAGING ("AFCO")	€200,000
CARTONAJES EUROPA, S.A. ("CARTONAJES EUROPA)	€390,227
CARTONAJES INTERNACIONAL S.L. (CARTISA)	€1,917,300
CARTONAJES IZQUIERDO, S.A. (INSOCA)	€803,605
CARTONAJES LA PLANA S.L. (LAPLANA)	€2,673,203
CARTONAJES M PETIT S.A	€1,823,185
CARTONAJES SANTORROMÁN S.A. (SANTORROMÁN)	€635,809
DANIEL AGUILÓ PANISELLO S.A. (DAPSA)	€3,883,929
DISEÑO CONTENEDORES Y EMBALAJES S.A. (DICESA)	€587,249
HISPANO EMBALAJE, S.A. (HISPANO)	€710,408
LANTERO CARTÓN S.L	€1,263,128
MICROLAN S.A	€580,794
PAPELERA DEL EBRO S.A.	€1,062,372
PAPELES Y CARTONES DE EUROPA S.A. (EUROPAC)	€5,380,167
RAFAEL HINOJOSA, S.A. (HINOJOSA)	€2,689,715
INDUSTRIAS CELULOSA ARAGONESA S.A. (SAICA)	€19,156,983
SAICA PACK, S.L	€5,349,742
SMURFIT KAPPA ESPAÑA S.A.	€8,139,030
SUMINISTROS IND. CARTÓN ENVASES S.A. (SICESA)	€439,341

- S/0474/13 AUTOMOTIVE FUEL PRICES

The CNMC imposed fines amounting €32 million to 5 large oil companies.

In the summer of 2013, after successive complaints and reports pointing to insufficient competition in the petrol distribution sector in Spain and retail prices higher than those recorded in neighbouring countries, the investigation directorate carried out various inspections at the offices of 5 large oil companies and the sectorial association.

Using the information obtained in those inspections and the subsequent investigations, the competition directorate prepared the charge against the companies, for coordination relating to prices, customers and commercial terms and exchanging commercially sensitive information in the automotive fuel distribution market, which was subsequently upheld by the CNMC decision of 20 February 2015.

The CNMC board imposed fines of €20 million on REPSOL, €10 million on CEPSA, €1.3 million on DISA, €800,000 on GALP and €300,000 on MEROIL

These operators represent more than 60% of all service stations in Spain, with REPSOL being the leader, with more than 40%, according to the company, followed by CEPSA.

Given that the total number of vehicles in Spain stood at more than 30 million in 2013, while it has only been possible to find evidence of occasional agreements in certain geographical areas, millions of Spanish consumers could have been affected by those agreements, which prevent the proper functioning of the market.

- CAR DEALERS (S/0471/13 AUDI/SEAT/VW Dealers; S/0486/13 TOYOTA Dealers; S/0487/13 LAND ROVER Dealers; S/0488/13 HYUNDAI Dealers; S/0489/13 OPEL Dealers)

Car dealers for different brands received fines amounting to €53 million for agreeing not to compete with each other, using the services of companies which monitored compliance with the banned agreements.

Following an application for leniency submitted by SEAT, S.A., on behalf of its direct and indirect subsidiaries and its group, in April 2013, supplying information regarding and evidence for the possible existence of a cartel, inspections were carried out at the offices of 1 consultancy company 3 car dealers and 2 associations in the sector.

As a result of the inspections, evidence was found showing the existence of possible agreements between car dealers for different brands.

In the case of dealers for the AUDI/VW/SEAT brands, evidence was found that 110 car dealerships for these brands had adopted and implemented agreements on price fixing, maximum discounts and other commercial terms, as well as exchanging sensitive information on the car distribution market, assisted by the associations for the brands concerned. In some areas, these companies also hired the services of two consultancy firms to ensure those agreements were complied with, in some cases even fining dealers that breached the agreed conditions.

On 28 May 2015, the CNMC fined 110 car dealers for the AUDI, SEAT and VOLKSWAGEN (VW) brands a total of €41.13 million; after it was proved that from 2006 to June 2013 they had engaged in practices forbidden under article 1 of Spain's Competition Act. It also fined two

consultancy firms and two associations in the sector for the roles they played as active facilitators of the agreements adopted by the dealers and for being key tool in the exchanges of information.

As a result of the application of the leniency programme, SEAT, S.A. and its eleven dealers involved in the above practices were granted exemptions from the fine imposed for their participation in the cartel (totalling €13,788,413).

On the other hand, as noted above, the documents gathered during the inspections yielded signs of similar practices by car-dealers for four other brands: TOYOTA, HYUNDAI, LAND ROVER and OPEL. a further four sanctioning administrative proceedings were initiated and the investigations carried out in each case resulting in four sanctioning decisions finding similar practices carried out by dealers for other brands:

Overall, the leniency programme and the investigation and decision proceedings carried out by the CNMC have helped to uncover forbidden agreements affecting sale prices, discounts and other services and terms offered in Spain's car market by a total of six car brands (with a further two currently under investigation), with more than 200 dealers involved throughout Spain and fines of over €53 million.

2.1.3.2 *Vertical and horizontal agreements*

- S/0490/13 TELEFÓNICA-YOIGO AGREEMENTS

The CNMC sanctioned TELEFÓNICA and YOIGO for agreements restricting competition in the telecommunications market. The fine amounted €6.3 million. VODAFONE and ORANGE made an official complaint to the CNMC who, in turn, launched an investigation in order to determine if these agreements could harm competition.

In Spain, there are currently four main mobile communication networks, owned by TELEFÓNICA, VODAFONE, ORANGE and YOIGO. These companies also hold licenses for exclusive spectrum usage in Spain for different frequency bands, allocated to mobile communications.

YOIGO, the most recent network operator to enter the Spanish market, does not have licences for low-frequency bands which are particularly good at covering large areas from a single base station, and its network does not have national coverage. However, given that end customers demand national coverage, YOIGO fills in the gaps in its own network coverage using another operator's network, which provides what are known as national roaming services. These national roaming services were covered by regulatory obligations and were initially provided by VODAFONE, with TELEFÓNICA taking over as provider in 2009.

The 4G technology was introduced in Spain in the summer of 2013, despite the fact that the most suitable frequencies for providing this technology (the 800 MHz band) would only become available at the start of 2015. VODAFONE, ORANGE and YOIGO spearheaded the implementation of 4G technology. In contrast, TELEFÓNICA initially made the strategic decision to delay deployment of 4G technology, so when VODAFONE, ORANGE and YOIGO announced the commercial launch of 4G in the summer of 2013, TELEFÓNICA found itself in a difficult commercial position.

As a solution to this commercial disadvantage, TELEFÓNICA negotiated an agreement with YOIGO, wherein YOIGO provided the company with national roaming services for 4G

technology on its network. This enabled TELEFÓNICA to offer 4G services to its end customers at the same time as YOIGO, and just behind VODAFONE and ORANGE.

Furthermore, on 31 July 2013, TELEFÓNICA and YOIGO signed additional agreements to:

- Review the agreement for the provision of national roaming services by TELEFÓNICA to YOIGO, in order to modify prices, include 4G technology and extend its duration.
- Share fibre installations and connections for some of their base stations.
- Enable YOIGO to act as an agent for the sale of TELEFÓNICA's fixed telephony and fixed broadband services, packaged with YOIGO mobile communication services.

When examining these agreements, the CNMC not only looked at whether they could restrict competition in the affected markets, but also if the agreements led to efficiencies that would benefit end consumers and compensate for any possible restrictions to competition they might cause.

With regard to the national roaming agreement for 4G services provided by YOIGO to TELEFÓNICA, the CNMC reached the conclusion that the agreement was restrictive to competition for the following reasons, among others:

- It enabled TELEFÓNICA to compensate for the strategic error resulting from its initial decision to delay the introduction of 4G technology on its network, which in turn reduced the commercial advantages that could be obtained by operators such as VODAFONE and ORANGE, after they had taken the risk of investing in a rapid deployment of 4G technology. This also minimised the incentives for TELEFÓNICA's competitors to make their networks distinctive in the future, which would reduce competition when it came to introducing future mobile technologies in Spain.
- It gave TELEFÓNICA an unjustified competitive advantage when it came to introducing 4G technology on its own network, to the extent that it would be able to compensate for and optimise this deployment, making use of the coverage provided by YOIGO.

The CNMC also considered that this agreement did not generate any significant efficiencies that would compensate for restrictions to competition, among other reasons, because TELEFÓNICA owned the resources needed to roll out 4G technology on its network without YOIGO's support, and given that TELEFÓNICA customers could immediately access the 4G services by switching operator.

As regards the agreement for the provision of national roaming by TELEFÓNICA to YOIGO, the CNMC considered that this agreement could generate efficiencies that would compensate for restrictions to competition. In particular, the CNMC took into consideration the fact that, given the scale, spectrum and time that YOIGO entered the market, this operator could not aspire to roll out a national-coverage network in an economically viable way and, therefore, the national roaming agreement was essential for preventing its exclusion from the market.

However, the CNMC considered that this national roaming agreement included certain restrictive aspects to competition that went beyond the need to obtain efficiencies. These aspects include TELEFÓNICA's right to an absolute veto over YOIGO's capacity to resell national roaming services. As a consequence of this right to veto, TELEFÓNICA would be able to unjustifiably

exclude YOIGO from the wholesale market for access and origination in mobile communications. It is only by reselling national roaming services (in order to complete the wholesale services it provides with its own network) that YOIGO is able to ensure the national coverage demanded by mobile virtual network operators. In fact, while the case was being processed, TELEFÓNICA exercised its right to veto, resulting in YOIGO losing its client in favour of TELEFÓNICA.

With regard to the agreement to share fibre installations and connections in base stations, the CNMC concluded that the efficiencies generated through this agreement, in terms of optimising networks and reducing costs, compensated for the potentially harmful effects of said agreement. Furthermore, with regard to the agreement enabling YOIGO to act as an agent selling TELEFÓNICA's fixed telephony and fixed broadband services, the CNMC concluded that this agreement generated efficiencies insofar as it enabled YOIGO to offer its end customers a convergent fixed+mobile product, increasingly demanded by customers in Spain, something that would be very difficult for YOIGO to achieve with its own resources.

Anyhow, the CNMC considered that this agency agreement included certain aspects that harmed competition and that went beyond the need to obtain efficiencies. Among other points, the CNMC concluded that the limitations on YOIGO using this convergent product, in order to capture customers who already had TELEFÓNICA fixed telephony and fixed broadband services, unnecessarily restricted competition.

After concluding that these operators had adopted agreements that contained or generated unjustified restrictions on competition, and through its resolution of 16 July 2015, the CNMC declared these agreements null and void and fined TELEFÓNICA €6 million and YOIGO €300,000.

2.1.3.3 *Abuse of dominant position*

- S/0500/13 AGEDI/AIE- RADIO

The intellectual property rights management entities AGEDI and AIE were fined €2.7 million for fixing inequitable rates and for applying more advantageous terms to some operators than to others. This investigation was initiated as a result of a complaint by the Spanish Commercial Radio Broadcasting Association (AERC), the main association for commercial radio stations in Spain, regarding a possible abuse by AGEDI and AIE in their joint management of the concerned rights related to the phonograms used by radio stations in Spain.

Regulation of intellectual property rights in Spain allows for the possibility- and in some cases imposes mandatory - administration of such rights by collecting societies that act as intermediaries between rights holders and those wishing to use those rights. In Spain there are eight collecting societies². These societies enjoy elevated market power by having the monopoly

² Four of them exclusively manage the remuneration rights of the right holders in a particular group: SGAE for creators of dramatic and musical works, filmmakers and editors; CEDRO for writers; VEGAP for sculptors, photographers, illustrators, designers, video artists and architects; and DAMA for directors and scriptwriters of film and audio-visual works.

There are also two for artists, interpreters and performers: AIE for singers and musical performers; and AISGE for stage managers, dubbing actors, actors and dancers. And two more for producers: AGEDI for producers of phonographic works; and EGEDA for audio-visual producers.

on the management of certain rights, with no competition among them (except between SGAE and DAMA concerning audio-visual authors' rights).

The Intellectual Property Act establishes that collecting societies are under a statutory duty to enter into a general contract with any representative user association seeking to make such contract. As long as there is no collective or individual agreement, users may use the repertoire managed by each society by paying the price set in the general rates. These general rates are set up by collecting societies.

On this basis, AGEDI and AIE, which jointly manage the remuneration rights of producers and performers for the public communication of phonograms from their repertoire, have signed agreements with broadcasting associations such as AERC. Indeed, disagreements over the conclusion of a new collective agreement between the two parties led to AERC's complaint to the CNMC, since, while AERC hoped to achieve a reduction in the rates applied to its members, AGEDI and AIE believed they should be increased. Their divergent positions brought negotiations to a standstill for several years.

After receiving the complaint, the CNMC carried out an analysis of the potential unfair, disproportionate and discriminatory nature of the different rates applied by AGEDI and AIE to the different radio operators in Spain for use of phonograms in their broadcasts.

Certain principles established by precedent and upheld by the courts, which must be observed for the assessment of the compatibility with competition regulations of the rates applied by collecting societies with a dominant position in any relevant market, have been fully taken into account by the CNMC when conducting this analysis.

Those principles include: the degree of effective repertoire use in the user's activity; the intensity and relevance of the use of the repertoire in the overall user's activity; the breadth of the collecting society's repertoire; the income obtained by the user from commercial exploitation of the repertoire; the financial value of the service provided by the collecting society in order to implement the rates; the rates established by the collecting society to other users for the same type of use; and the rates established by equivalent collecting societies in other European Union member states for the same type of use.

In this particular case, the CNMC focused its analysis on three rate regimes applied in parallel by AGEDI/AIE: the regime applied through general rates for commercial radio stations not belonging to AERC; the regime applied to AERC members; and the regime applied to members of FORTA (public radio broadcasters in several regions, whose incomes derive from both advertising revenues and certain subsidies). By comparing the effective rates charged, as well as the configuration of the different elements of each rate regime, the CNMC concluded that the different rates established by AGEDI and AIE were unfair and discriminatory.

The CNMC concluded that the rate system designed by AGEDI/AIE penalizes private radio operators in comparison with public operators (members of FORTA) and, among the former, it is most detrimental to those not members of AERC, that is, those billed according to general rates. Since all radio broadcasters compete in the same market, the differences in rates described above mean that access to phonograms, an essential input for the development of their activity, was more expensive for them than for other operators, thereby affecting their ability to compete in the radio market.

In view of the foregoing, the CNMC considered that AGEDI and AIE were responsible for abusing their dominant position by setting unfair and discriminatory rates in relation to phonogram's radio broadcasting in Spain. Therefore, in its decision of 26 November 2015, the CNMC sanctioned AGEDI and AIE with fines of €1,211,400 and €1,579,020 respectively. The amount of the fines took into account, among other aspects, the aggravating factor that both entities had previously been sanctioned for abusing their dominant position in the management of intellectual rights attributed to them.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

13. In 2015, 91 mergers filings were notified, with an 11% rise compared to 2014. This figure confirms the recovery trend initiated in 2014, after two years of sharp decline, and is coherent with the amelioration of general economic conditions in Spain.

14. Out of total 91 merger filings notified, 85 were approved in first phase without commitments, 2 were approved in first phase with commitments (TAMINCO/CEPSA QUIMICA and DIA/ EROSKI) and only 1 was authorised in second phase with commitments ((TELEFÓNICA/DTS), 3 cases were filed. Cases are solved in first phase when they do not pose significant risk for competition or proposed remedies address sufficiently any possible concern. Only more complex cases pass to a second phase for an in depth analysis.

15. Most notifications (90%) have benefited of the procedure of pre-notification and almost half of them (47%) have used the short form. These options allow for a streamlined, rapid, and efficient procedure that reduces administrative burden and delays, both for the companies concerned and for the CNMC. Obligation to notify was, in most cases (54%), based on the quota market threshold, reflecting the importance of this criterion that is also a proxy indicator of market power.

Table 7. Notified Mergers

		2011	2012	2013	2014	2015
Notified	With pre-notification	82	57	55	75	83
	Without pre-notification	13	13	4	7	8
Procedure	Normal form	52	43	39	37	45
	Short form	43	27	20	45	46
Multi-notification	Also in other countries	27	20	18	28	19
	Only in Spain	68	51	41	54	72
Notification thresholds	(a) Market quota	56	43	34	52	54
	(b) Turnover	28	24	20	22	25
	(a)/(b) Both Thresholds	11	10	5	8	12
Type of merger	Exclusive control	61	49	47	56	69
	Joint control	13	10	4	5	9
	Assets Acquisition	13	6	6	14	11
	Branch of business acquisition	4	1	1	2	2
	Joint venture	3	1	0	2	0
	Fusion	1	2	1	1	0
TOTAL		95	70	59	82	91

16. Regarding sectorial distribution the higher number of merger notifications as in previous years affect manufacturing industry.

Table 8. Notified Mergers by branch of activity

	2011	2012	2013	2014	2015
Agriculture, livestock and forestry	1	1	1	2	1
Energy	10	6	0	4	9
Mining	0	2	3	0	0
Manufacturing industry (repair and installation)	32	19	15	19	27
Chemistry and pharmacy	13	7	12	14	9
Building	2	1	0	3	6
Transport and storage	5	2	1	6	6
Information Society	9	7	6	14	11
Commercial distribution	11	6	3	11	9
Recycling, Waste and Water Treatment	1	2	0	1	1
Financial Intermediation and Insurance	9	15	14	8	9
Public Administrations	2	0	0	0	0
Activities of associations, professional bodies and trade unions	0	0	0	0	0
Health and social assistance	3	4	0	1	6
Others	7	7	4	7	5

2.2.2 Summary of significant cases

2.2.2.1 Mergers approved in first phase, with commitments

- C/0643/15 TAMINCO/CEPSA QUIMICA (Assets)

EASTMAN CHEMICAL CORPORATION, through its subsidiary, TAMINCO BVBA (TAMINCO), acquired methylamines and methylamine derivatives business in Spain from CEPSA Química (BUSINESS). Horizontal effects on competition, due to overlapping activities, had mainly EU dimension, as TAMINCO presence in Spanish markets was negligible.

However, certain vertical anti-competitive effects were detected. In particular, one of the three forms of methylamines (TMA) included in the BUSINESS is used as raw material for the production of choline chloride (CC). The main suppliers of CC in Spain were, TAMINCO itself and Algry (which, unlike other competitors in the market, was not vertically integrated and purchased TMA from CEPSA). Thus, after the operation, TAMINCO was going to be the TMA supplier for Algry, its main competitor in Spain in the CC market, with the risk of market closure.

The acquiring party TAMINCO offered as a commitment to solve the competition problem to maintain CEPSA contracts with Algry in the same terms and conditions for a period of 4 years. According to the CNMC's Council, this proposal was adequate as it offered Algry margin of manoeuvre enough to accommodate to the disappearance of CEPSA as TMA supplier.

- C/0634/15 DIA/ EROSKI (Assets)

DISTRIBUIDORA INTERNACIONAL DE ALIMENTACIÓN, S.A. (DIA) acquired exclusive control of assets linked to 160 retail outlets of daily consumer goods of Eroski Group (ASSETS), in the regions of Madrid (108) Andalucía (24), Castilla León (20), Extremadura (6) and Castilla La Mancha (2). This operation had been referred to the CNMC by the European Commission under the provisions of Article 4.4 of EC Regulation 139/2004, Council.

As a result of the acquisition, DIA's position in the market of retail distribution of daily consumer goods in self-service format at national and regional level would be reinforced, especially in Extremadura and Castilla Leon. At local level, there were overlaps in 49 locations, whereas in 18 of them the resulting market quota was above 30%.

The impact of the operation was particularly significant in three areas defined by isochronous (15 minutes travel by car) around the towns of Trujillo, Nava de la Asuncion and Villanueva de Cordoba. In these areas the combined market share exceeded 50%, and the added market share resulting from the acquisition was substantial (over [20-30] percentage points).

DIA submitted commitments to overcome these competition problems, consisting in the divestiture of three retail establishments located within the above mentioned critical areas. These commitments were deemed sufficient to solve the concerns raised by the operation.

2.2.2.2 *Mergers approved in second phase, with commitments*

- C/0612/14 TELEFÓNICA/DTS

The CNMC approved the acquisition of DTS by Telefónica (C/0612/14 TELEFÓNICA/DTS) after a process lasting nearly six months, on the grounds that the remedies offered by the notifying party ensured that the problems posed by the merger in the pay television market and others (electronic communications) would be adequately addressed.

The remedies offered are divided into three main areas: pay television market; markets for the wholesale commercialization of content and channels; and terms of access to Telefónica's Internet network. The operator must make 100% of its premium channels available to its competitors, with each competitor being entitled to transmit 50% of them, on terms which ensure that Telefónica's retail offerings including those channels are replicable. The remedies offered will be in force for five years, a term which may be extended for a further three years and will be subject to monitoring by the CNMC.

The remedies offered by Telefónica are divided into three main areas:

- Remedies related to the pay television market in Spain: Telefónica undertakes not to restrict the mobility of its current and future pay television customers, establishing limitations on its customer retention and minimum term policies. Specifically, it will process requests from its customers to end their subscription within a limited period of time (a maximum of 15 days for customers with unbundled services, for example); it will waive the requirement for and application of minimum term clauses under certain circumstances; and it will not attempt to win back certain types of former customers for a limited period of time (two months) from the day when they request to end their service.

Telefónica also undertakes to ensure that current DTS contracts with other electronic communications operators, to distribute its television offering by satellite, will be maintained and complied with in full, until the current contracts expire. Once each contract expires, the service must be extended for a period of six months and Telefónica must also refrain from making active sales to customers who acquired this service through third operators.

- Remedies related to the markets for the wholesale commercialization of specific audiovisual contents and television channels in Spain: Telefónica will allow third pay television operators access to a wholesale offer of premium channels (those showing previously unseen, exclusive content from the major film and television producers or live sporting events including first division football (Liga de Primera División), Spanish championship football (Copa de Su Majestad el Rey), the Champions League, the Europa League, the World Cup, the Basketball World Cup, Formula 1, Moto GP and the Olympic Games).

Each third pay television operator will be able to access a maximum of 50% of the channels included in the wholesale offer and will be free to choose any combination of channels within this wholesale offer.

The prices of the wholesale offer must ensure that Telefónica's retail offers are replicable and must prevent situations of margin squeeze.

Moreover, exclusive exploitation of contents acquired by Telefónica is limited to two years and to certain types of transmission windows, while in relation to other windows (such as video on demand for films and series) the merged entity will not be able to acquire exclusive contents. Also, as a general rule, Telefónica will not be able to acquire exclusive transmission rights which it is not going to use. And the merged entity must limit the duration of its content acquisition contracts to three years and must waive any rights of first refusal relating to content. These remedies will not apply to content produced by the merged entity itself.

In addition, Telefónica undertakes to transmit channels edited by third-party operators, under certain conditions, over its pay television platform. Moreover the merged entity will not be able to acquire exclusive transmission rights for those channels edited by third parties.

- Remedies related to access to Telefónica's Internet network in Spain: In the case of access to its network, Telefónica has the ability and the incentives (it can block or restrict access to its network and to its customers) to substantially reduce competition from third-party Internet-based pay television operators.

In that regard, the remedies approved allow those Internet-based pay television providers to access Telefónica's broadband customers on terms which allow them to compete effectively.

Telefónica undertakes to provide a service giving access to its Internet network in Spain with sufficient capacity and quality assurances for third party operators. Telefónica will ensure there are at least three routes of access to its Internet network where congestion must not exceed 80%.

Moreover, Telefónica undertakes not to employ network and traffic management techniques in Spain which could, in a discriminatory manner, degrade the flow of third-party video or similar data over its Internet network.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

17. The CNMC counts on very powerful tools to act against anti competitive legislation compared to other Competition authorities. It also has gained a lot of experience during the last decade on advocacy issues thanks to a specific department. Furthermore, the fact that the institution also supervises and regulates several core sectors such as energy, telecoms, postal or transport makes the institution particularly privileged to go beyond pure enforcement.

18. Through its advocacy role, the CNMC promotes and encourages a competitive environment in the Spanish economy. To achieve this goal, the CNMC employs several tools: dissemination of competition benefits, promotion, training and analysis, as well as recommendations to improve the regulation and a more pro-competitive behaviour of Public Administrations. Among the instruments used for these advocacy functions it is worth highlighting reports on draft legislation; capacity to challenge in courts Public Administrations' anti-competitive decisions; reports and studies of economic sectors, as well as guides and recommendations. The communication strategy also plays an important role to achieve the institution's objectives.

3.1 Reports on Draft Legislation (IPN)

19. According to article 5.2 a) of Law 3/2013, of 4 June, establishing the National Commission for Markets and Competition Commission, the CNMC acts as a consultative body with the capacity to make proposals and recommendations to the different Public Administrations regarding draft legislation.

20. Through these reports, the Advocacy Department analyses any possible restriction to competition included in the draft legislation under the necessity and proportionality criteria, and recommends less restrictive alternatives to achieve policy objectives. The ultimate goal for the CNMC is to improve the impact on effective competition of new regulation and to build, therefore, a more pro-competitive and economically efficient regulatory framework.

21. These reports on draft legislation or "IPN" are approved by the CNMC council in response to the request of the body proposing the draft legislation, and are published on the CNMC website. In 2015, up to 24 IPNs were issued. These reports have focused on *inter alia* the following areas:

- Public procurement.

Two draft laws that introduced the 4th generation of public procurement directives were analyzed following previous in-depth reports around this issue. CNMC continued to defend principles that should inspire this legislation: favor efficiency, foster ex-ante and ex post evaluation of measures or strengthen links between contracting bodies and competition authorities.

- Pharmaceuticals and sanitary products

Four reports on pharmaceutical and sanitary products were issued in 2015 and complemented with a full study report (*vid infra*) on retail pharmaceutical distribution. CNMC defends a better design and use of auctions and centralized orders in the process of financing and buying pharma and sanitary products through public procurement. It also pays attention to regulated prices and margins and restrictions in discount commercial policies and recommends more flexible and consumer oriented regulation with regard to sanitary goods. CNMC also considers that cost effectiveness tools should be introduced in the decision making process and decisions should be more transparently made.

- Intellectual property

The Spanish Competition authority has a long tradition regarding intellectual property and in 2015 launched two new reports that defend efficient and non discriminatory rates and alerts about the risks of different regulation for public broadcasters and of a one stop digital shop that is not properly designed. The reports suggest the limits to the design of this one-stop shop to avoid enforcement cases.

- Transports

Two reports were made in this area in 2015 regarding urban transport services with driver (the so called vtc) and subsidized transport costs for merchandises sent to the Canary Islands. The first is related to the ongoing sharing economy study report and recommends avoiding restrictions that block new entrants without a proper justification. These restrictions were especially discouraging for new digital platforms that are quickly transforming the urban transport business around the globe.

- Financial and insurance sectors

Two reports covered a new legal framework for financial failures of banks and another report covered a new regulation for insurance companies.

Table 9. 2015 Reports on Draft Legislation (IPN)

The names of the reports refer to the Spanish title of the draft regulation analyzed.

IPN/CNMC/024/15	Intellectual property IPN ESTATUTOS DE LA ASOCIACIÓN VENTANILLA ÚNICA DIGITAL Pharmaceuticals and sanitary products
IPN/CNMC/023/15	IPN PROYECTO DE R.D. QUE REGULA LA FINANCIACIÓN Y FIJACIÓN DE PRECIOS DE MEDICAMENTOS Y PRODUCTOS SANITARIOS Y SU INCLUSIÓN EN LA PRESTACIÓN FARMACEUTICA DEL SISTEMA NACIONAL DE SALUD. Pharmaceuticals and sanitary products
IPN/CNMC/021/15	IPN PROYECTO DE ORDEN POR LA QUE SE MODIFICA EL ANEXO VI DEL REAL DECRETO 1030/2006 DE 15 DE SEPTIEMBRE POR LA QUE SE ESTABLECE LA CARTERA DE SERVICIOS COMUNES DEL SISTEMA NACIONAL DE SALUD Y EL PROCEDIMIENTO PARA SU ACTUALIZACIÓN SE REGULA EL PROCEDIMIENTO DE OFERTA DE PRODUCTOS ORTOPROTÉSICOS Others: tobacco
IPN/CNMC/019/15	IPN PROYECTO DE R.D. POR EL QUE SE REGULAN LA FABRICACIÓN PRESENTACIÓN Y VENTA DE LOS PRODUCTOS DEL TABACO Y LOS PRODUCTOS RELACIONADOS Intellectual property
IPN/CNMC/020/15	IPN PROYECTO DE ORDEN POR LA QUE SE APRUEBA LA METODOLOGÍA PARA LA DETERMINACIÓN DE LAS TARIFAS GENERALES EN RELACIÓN CON LA REMUNERACIÓN EXIGIBLE POR LA UTILIZACIÓN DEL REPERTORIO DE LAS ENTIDADES DE GESTIÓN DE DERECHOS DE PROPIEDAD INTELECTUAL Others: professional services
IPN/CNMC/022/15	IPN PROYECTO DE ESTATUTOS DE LOS COLEGIOS DE ARQUITECTOS Y SU CONSEJO SUPERIOR. Financial and insurance sectors
IPN/CNMC/018/15	IPN PROYECTO DE REAL DECRETO POR EL QUE SE APRUEBA EL REGLAMENTO DE ORDENACIÓN SUPERVISIÓN Y SOLVENCIA DE LAS ENTIDADES ASEGURADORAS Y REASEGURADORAS. Financial and insurance sectors
IPN/CNMC/017/15	IPN PROYECTO DE REAL DECRETO POR EL QUE SE DESARROLLA LA LEY 11/2015 DE 18 DE JUNIO DE RECUPERACIÓN Y RESOLUCIÓN DE ENTIDADES DE CRÉDITO Y EMPRESAS DE SERVICIOS DE INVERSIÓN.

IPN/CNMC/016/15	Others: metrology IPN BORRADOR DE REAL DECRETO POR EL QUE SE DESARROLLA LA LEY 32/2014 DE 22 DE DICIEMBRE DE METROLOGIA.
IPN/CNMC/010/15	Public procurement IPN ANTEPROYECTO DE LEY DE CONTRATOS DEL SECTOR PÚBLICO
IPN/CNMC/011/15	Public procurement IPN ANTEPROYECTO DE LEY SOBRE PROCEDIMIENTOS DE CONTRATACIÓN EN LOS SECTORES DEL AGUA LA ENERGÍA LOS TRANSPORTES Y LOS SERVICIOS POSTALES
IPN/CNMC/015/15	Others: public prices IPN PROYECTO DE REAL DECRETO DE DESINDEXACIÓN DE LA ECONOMIA ESPAÑOLA
IPN/CNMC/013/15	Transports IPN PROYECTO DE ORDEN POR EL QUE SE MODIFICA LA ORDEN FOM/36/2008 DE 9 DE ENERO POR LA QUE SE DESARROLLA LA SECCIÓN SEGUNDA DEL CAPÍTULO IV DEL TÍTULO V EN MATERIA DE ARRENDAMIENTO DE VEHÍCULOS CON CONDUCTOR DEL REGLAMENTO DE LA LEY DE ORDENACIÓN DE LOS TRANSPORTES TERRESTRES APROBADO POR R.D.
IPN/CNMC/012/15	Transports IPN PROYECTO DE REAL DECRETO POR EL QUE SE MODIFICA EL REGLAMENTO DE LA LEY DE ORDENACIÓN DE LOS TRANSPORTES TERRESTRES PARA ADAPTARLO A LA LEY 9/2013 DE 4 DE JULIO POR LA QUE SE MODIFICA LA LEY 16/1987 DE 30 DE JULIO DE ORDENACIÓN DE LOS TRANSPORTES TERRESTRES Y LA LEY 21/2013 DE 7 DE JULIO DE SEG
IPN/CNMC/014/15	Transports PROYECTO DE OM POR LAS QUE SE DETERMINAN PARA EL AÑO 2014 LOS COSTES TIPO APLICABLES A LOS COSTES SUBVENCIONABLES TRANSPORTE MARÍTIMO Y AÉREO CANARIAS.
IPN/CNMC/008/15	Others: gambling PROYECTO DE RD SOBRE COMUNICACIONES COMERCIALES JUEGO Y JUEGO RESPONSABLE.
IPN/CNMC/009/15	Others: consumer conflicto resolution IPN ANTEPROYECTO DE LEY DE RESOLUCIÓN ALTERNATIVA DE CONFLICTOS DE CONSUMO
IPN/CNMC/007/15	Others: accommodation IPN PROYECTO DE DECRETO POR EL QUE SE APRUEBA EL REGLAMENTO DE LAS VIVIENDAS DE USO TURÍSTICO EN ARAGÓN
IPN/CNMC/006/15	Others: waste management IPN PROYECTO DE REAL DECRETO POR EL QUE SE MODIFICA EL REAL DECRETO 106/2008 DE 1 DE FEBRERO SOBRE PILAS Y ACUMULADORES Y LA GESTIÓN AMBIENTAL DE SUS RESIDUOS.
IPN/CNMC/005/15	Pharmaceuticals and sanitary products IPN PROYECTO DE REAL DECRETO LEGISLATIVO POR EL QUE SE APRUEBA EL TEXTO REFUNDIDO DE LA LEY DE GARANTÍAS Y USO RACIONAL DE LOS MEDICAMENTOS Y PRODUCTOS SANITARIOS
IPN/CNMC/004/15	Others: public sector information IPN ANTEPROYECTO DE LEY POR EL QUE SE MODIFICA LA LEY 37/2007 DE 16 DE NOVIEMBRE SOBRE REUTILIZACIÓN DE LA INFORMACIÓN DEL SECTOR PÚBLICO
IPN/CNMC/002/15	Pharmaceuticals and sanitary products IPN PROYECTO DE ORDEN POR EL QUE SE REGULA LA PRESTACIÓN ORTOPROTÉSICA
IPN/CNMC/003/15	Financial and insurance sectors IPN ANTEPROYECTO DE LEY DE RECUPERACIÓN Y RESOLUCIÓN DE ENTIDADES DE CRÉDITO Y EMPRESAS DE SERVICIOS DE INVERSIÓN.
IPN/CNMC/001/15	Financial and insurance sectors IPN ANTEPROYECTO DE LEY POR EL QUE SE APRUEBA LA LEY DE AUDITORÍA DE CUENTAS

3.2 *Other reports (INF)*

22. Also within the scope of article 5.2 of Law 3/2013, the CNMC is entitled to play an advisory role regarding non regulatory acts of Public Administrations. To perform this function, the Advocacy Department applies the above mentioned pro-competition and efficient economic regulation principles. In 2015, the CNMC Council approved 4 reports (INF) in application of this function. These reports deal with football federation's practices, good practice codes on the food industry, and centralised procurement for the development of e-government.

3.3 *Reports on Public Aid*

23. In May 2015, the CNMC published the *Seventh Annual Report on Public Aid*. These annual reports, as part of the advocacy and monitoring functions of the CNMC, aim at providing a general overview of the quantitative evolution of public aid in Spain as well as of the main legislative and decision-making new developments at EU level. It is worth noting that, regarding the data, there is always a one-year lag. Therefore, the main figures included in the report (regarding the volume of assistance granted) refer to year 2013.

24. Besides this general annual report the CNMC has approved in 2015 other specific reports including public aid aspects. Namely, the Report PRO/CNMC/002/2015 on taxation on nitrogen oxides in El Prat Airport, as well as several IPNs that include public aid aspects. Last but not least, as the national telecoms regulatory authority, the CNMC has approved 3 reports on regional aid to the deployment of new generation networks to which the Advocacy Department has also contributed.

3.4 *Sectorial Studies*

25. Article 5.1.h) of Law 3/2013 empowers the CNMC to conduct sectorial studies and reports. Once they have been approved by the Council, these sectorial studies, reports, or guides, prepared by the Advocacy Department, are published in the CNMC web site.

26. The objective of these studies is identifying competition problems on a specific sector and to make recommendations on regulatory or behavioural issues. In particular, guides are aimed at promoting more pro-competitive behaviour of sector agents. To fulfil this function, guides include specific examples that can be easily understood by economic agents and applied to similar real situations.

27. In 2015, the CNMC approved 3 studies referred to the market of inspection services for installations receiving gas; wholesale automotive fuel market; and retail pharmaceutical distribution market:

- Market of inspection services for gas installations

This study was approved by the CNMC in March 2015. Regulation establishes compulsory inspection of these installations every 5 years. These inspections are to be performed by distributors. The study analyses this regulation and concludes that there is ample room for improvement of the current regulated prices and that the introduction of effective competition would bring advantages in pricing and customer service.

Therefore, the study includes recommendations to the competent authorities such as: allowing facility owners to hire any authorised installer for inspection services and liberalise prices, so that consumers may benefit from competitive forces arising from the participation of these agents (that are currently being subcontracted by distributors to inspect installations), granting installers access to distributor's information on reception facilities, so that they can compete in levelled

conditions; establishing common and transparent criteria for Regional Authorities to regulate prices, and reviewing the legal criteria for interruption of supply in cases of absence of the owner or lack of authorization to access the facilities, while maintaining full guarantees for the users.

- Wholesale automotive fuel market

This study was approved by the CNMC in June 2015. It concludes that competition in the market is not satisfactory. According to the study, the presence of the traditional operators (Repsol, Cepsa and BP) throughout all the value chain is one of the main reasons that hinder the emergence and expansion of new oil operators. This situation leads to concentration and vertical market integration, resulting in significant market power. In addition, the influence of traditional operators, as shareholders and members of the boards in CORES (the company in charge of managing the strategic oil reserves) and in CLH (the owner of the fuel pipeline network) hinders further competition.

The study includes, *inter alia*, the following recommendations to enhance competition and efficiency: limiting to 4,99% the direct or indirect participation in CLH capital, for any person engaged in the refining market in Spain; forbidding the presence of operators with refining capacity in Spain in the decision-making bodies of CLH; limiting the obligation of maintaining minimum security fuel stocks to operators with refining capacity and importers, releasing other wholesale operators; establishing an entity to manage these minimum stocks, independent from oil operators or, alternatively, establishing limits on these operators capacity to participate on CORES decisions; and imposing management separation of wholesale fuel operations from other activities, as well as developing an effective incompatibility system for directive staff linked to the wholesale activity.

- Retail pharmaceutical distribution market

The study on the retail pharmaceutical distribution market was approved by the CNMC in October 2015. The study analyses competition restrictions imposed by regulation on access, ownership and exercise on the activity of the retail pharmaceutical distribution. As a result, it has a negative impact on competition and on consumer's welfare, increases the cost for the public sector and reduces overall welfare. The study shows that the model of market access adopted in all the Autonomous Communities (regions), with the exception of Navarra, that sets the maximum number pharmacies according to population modules, as well as minimum distances between pharmacies, is limiting the opening of new pharmacies and preventing the existence of competition in many municipalities. In addition to these restrictions, there are in all Autonomous Communities other barriers to access and exercise the pharmaceutical activity that limit competition.

Consequently, the study includes a number of recommendations in order to achieve a higher degree of competition, such as the elimination of market access restrictions (namely, maximum number of pharmacies according to population modules and minimum distances) and the removal of certain restrictions on the exercise of the activity, including the requirement for pharmacy owners to have a degree in pharmacy. The study also recommends allowing owners to hold more than one pharmacy, eliminating restrictions to vertical integration with laboratories; removing the requirement for owners and pharmacists working in pharmacies to be members of an official pharmaceutical professional body, opening to competition the activities related to invoicing of official prescriptions of the public health system, that are currently reserved to the Colegio Oficial de Farmacéuticos (official professional body), as well those activities related to

monitoring opening schedules, pharmacies publicity or merits assessment for the opening of new pharmacies.

3.5 *Active legitimacy*

28. The CNMC is entitled to challenge before the courts acts of public administrations deemed to be contrary to competition rules, provided that these acts are not normative or that the concerned norms are not laws. In 2015, three acts of public administrations have been challenged in courts by the CNMC. Two of them were related to several aspects of local authorities' regulation concerning Taxi services, and the other one was linked to the regulation of tourist rental housing in the region of Canarias.

29. These actions follow a comprehensive strategy that surrounds an ongoing study on sharing economy that tries to better understand the impact of several technological developments in the economy, mainly in transportation and accommodation services. Recent legislation tried to protect incumbents against new entrants and the CNMC considered that these restrictions were not justified.

30. It is also noteworthy that these actions include in depth economic analysis to demonstrate to the court the consequences of unjustified regulations to consumer welfare. These are the three cases challenged in courts:

- Local regulation of taxi services (LA/01/2015 and LA/02/2015)

After notifying to the local authorities of Córdoba and Málaga that some aspects of Taxi services regulation restricting competition did not fulfil the necessity and proportionality criteria, the CNMC decided to challenge these regulations in courts in November 2015. Restrictions to competition included: limited number of authorisations, fixed prices, non-justified quality requirements, or limits to self-organization capacity of companies.

- Regulation of tourist rental housing (LA/03/2015)

After notifying to the Government of the Autonomous Region of Canarias that several aspects of the regulation of holiday housing renting were restrictive to competition and did not fulfil the necessity and proportionality criteria, the CNMC decided to challenge this regulation in courts in November 2015. Prohibition of locating houses for tourist rental in touristic areas is the most significant restriction to competition included in this regulation.

4. **International activity**

31. As a convergent authority, with regulatory competences in different sectors and as competition authority, the CNMC maintains a varied international activity on multilateral or bilateral stands in different fields. This epigraph, however, refers only to the CNMC's international activity as Spanish competition authority.

32. During 2015 the CNMC maintained a continuous cooperation with other European competition authorities within the ECN framework regarding enforcement of articles 101 and 102 of the TFEU, under EU Regulation 1/2003, and merger control, under EU Regulation 139/2004. In particular, the CNMC has actively participated in ECN working groups, aimed at reaching common approaches, exchanging experiences and identifying best practices in different sectors or topics. These groups met 33 times in 2015. The CNMC also attended the two ECN Board of Directors meetings.

33. The CNMC also contributed to the preliminary works for the revision of EC Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive

oil, beef and veal and arable crops sectors. Besides, the CNMC also participated in the consultative committee for the adaptation of EC procedures to the Directive 2014/104/EU on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. Furthermore, the CNMC has collaborated with DGCOMP in the design of the public consultation: Empowering the National Competition Authorities to be more Effective Enforcers, launched in November 2015.

34. In the ECA framework, the CNMC attended the Annual Board of Directors meeting, held by the Norwegian competition authority, where the Competition Director acted as speaker in the thematic session on settlements.

35. The CNMC also participates in other international multilateral competition organizations, including the OECD Competition Committee, the ICN or the Latin American and Caribbean Forum or the Ibero-American Forum.

36. In 2015 the CNMC participated as speaker in the session on Agency Effectiveness and the round table on Market Studies of the ICN Annual Conference, held in Sidney. The CNMC also participated as speaker or resource person on the annual ICN Workshops on Cartels, Mergers and Unilateral Conducts. CNMC's interventions on these workshops were focused on: IT forensics; investigation powers, information exchanges between competition authorities; settlements, and negative to supply.

37. Regarding the Latin American and Ibero American areas, the CNMC has not only participated in the above mentioned international meetings, with contributions on advocacy policy impact or competition in the food retail sale sector, but is also involved in enhancing training programs. In particular, in 2015 the CNMC has organized (jointly with the CEDDET foundation) the 9th edition of the online course on Antitrust Law, addressed mainly to professionals of competition authorities from Latin America. The CNMC also organized, in cooperation with the UNCTAD and the Spanish cooperation agency (AECID) the second Workshop on Investigation Techniques on Competition and Consumer Protection that was held in July in Cartagena de Indias (Colombia)

38. The CNMC is also engaged in bilateral cooperation. In November the 7th meeting of the Iberian Competition Forum was held in Lisbon, a traditional meeting between the two Iberian competition authorities to strengthen cooperation in priority areas, such as cartels or public policy assessment. In April, the CNMC received a study visit of the Polish competition authority (UOKiK) to exchange experiences in the field of fight against cartels.

39. Other international activities carried out by the CNMC in 2015 to reinforce cooperation and best practices knowledge include:

- Organization of the international conference on Trends in the Institutional Design of Competition and Regulatory Authorities, that was held in February in Madrid, at the CNMC's premises.
- Participation on the 17 Competition Conference organized by the Bundeskartellamt, in March.
- Attendance to the VII UNCTAD, participating as speaker on the role of Competition on Sustainable Development.
- Participation on the workshop on Antitrust and International Cooperation held by the Brazilian competition authority (CADE), with a presentation on cooperation and merger control.

- Co-organization of the conference on Cartel Fight in the Ibero-American Community (jointly with the EU, Portugal, Brazil, Mexico, Argentina, Chile and Colombia).
- Participation on the IV Lisbon Conference on Competition Law and Economics, organized by the Portuguese Competition Authority, with a presentation on bid ridding.

5. Resources of competition authorities

5.1 Resources overall

5.1.1 Annual budget

40. The CNMC is convergent regulator that integrates competition law enforcement functions together with sectorial regulatory functions in telecommunications and media, energy, transport and postal services. Within the CNMC there are four directorates, each one responsible, respectively, for competition, telecommunications, energy and post and transport. CNMC is the agency responsible for the public enforcement of competition law.

41. The overall approved budget of the CNMC for 2015 was 61 Million € (66 M USD³), with a rise of about 4% (in €) compared to 2014.

42. Although it is not easy to differentiate the exact budget allocated for Competition within the multitask agency, the estimation is around 13 Million € (14M USD).

5.1.2 Number of employees

43. In 2015 the CNMC employed 515 people, 163 worked in competition matters. This included lawyers: 39; economists: 3; other: 36; support staff; 33.

5.2 Human resources (person-years) applied to enforcement against anticompetitive practices/ Merger review and enforcement.

44. The division of human resources between these areas is not entirely applicable to the case of CNMC. The Competition Division is organized in economic sectors (three sectorial divisions -Industry and Energy, Information Society and Services- plus two horizontal divisions -Leniency and Monitoring. The staff works both in antitrust and in mergers although there is certain specialization, but the number of full time equivalent people dedicated to each of these tasks varies continuously adapting to needs. Around work 107 people work in competition enforcement and 22 more people work in the Advocacy Department. Main data are summarised in the following table:

Table 10

HUMAN RESSOURCES (FTE)	2014	2015
Total CNMC	506	515
Competition matters	163	163
Staff working on competition enforcement	94	107
Advocacy	20	22
General administrative support	49	34
University graduates		
Lawyers	38	39
Economists	30	31
Other university degrees	36	36

³ Exchange rate €/dólar 2015/12/31, 1€ = 1.0887 S