

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Spain****-- 2018 --**

This report is submitted by Spain to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Spain

1. Executive summary

1. Overall, the CNMC activity in 2018 kept pace with previous years in both enforcement and advocacy of competition policies, improving and fostering those mechanisms that make it easier to detect anticompetitive cases, expanding the use of fast-track procedures in mergers notifications, and increasing the use of its legal capacity at regional and local level.
2. In the antitrust domain, the CNMC has continuously been especially active in the detection and prosecution of cartels. This result has been achieved thanks to a mix of proactive ex officio work, a well-functioning leniency program and the good results obtained in dawn raids. The CNMC counts on the experience of a skilled and dedicated team of inspectors working in close contact with our IT experts. Indeed, last year, four cartels have been dismantled by the CNMC, with fines totaling €115 million, (which means 54% of total fines in 2018).
3. Besides the CNMC launched in 2018 seven unannounced dawn raids and twenty-three companies from different sectors were inspected with the participation of more than 141 investigators. Finally, among other anticompetitive practices, the CNMC sanctioned four horizontal and vertical infringements, with fines totaling €100M fines. The highest sanction was that of the Decision regarding the financial sector.
4. On the merger side, the CNMC has assessed 83 mergers in 2018, and most of them under the fast-track procedure, with which it takes less than a month to give the transaction the green light.
5. On advocacy, the CNMC has been extremely active in the promotion, dissemination, training and analysis of competition and efficient economic regulation. In this line, 18 reports have been issued in 2018, focused on the transport sector (4), tourism (2), health (1) and dairy goods (1).
6. Besides 13 reports on non-legislative activities were adopted last year, mainly dealing with centralized public sector contracts.
7. The CNMC published three market studies in 2018, on the regulation of tourist housing in Spain, the impact on competition of technological innovation in the financial sector, and on the air traffic services in Spain.
8. The CNMC is entitled to contest certain governmental administrative acts and regulations before and administrative judiciary if they threaten to introduce barriers to entry or limiting a healthy competition in the market place. In 2018, the CNMC has alleged six anti-competitive regulations, most of them at the regional and local level.

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

9. There has been no fundamental changes in the Spanish competition legislation in 2018. After transposition of the Damages Directive into national Law in May 2017 (Royal Decree-Law 9/2017), the Spanish Competition Act (Law 15/2007) has not undergone any subsequent reform.

10. Anyway, the new legal framework for damages, as was expected, has increased the volume of private litigation under national law for infringements of the competition law provisions. Special attention deserves the case related to the trucks cartel sanctioned by the European Commission in July 2016 (Case COMP/39824 – Trucks) that has generated a large number of individual claims in Commercial Courts throughout Spain. Commercial Courts of different Spanish cities issued the first judgments on this case in 2018¹.

11. Apart from that case, Commercial Courts of Madrid and Barcelona have issued several judgments in 2018 on the Paper Envelopes case², dismissing the claims in Madrid³ and upholding them in the cases decided in Barcelona⁴.

12. Finally, the new “ECN+ Directive⁵” was signed on 11 December 2018 and published in the Official Journal of the European Union on 14 January 2019. As usual, Member States will have two years to implement the rules established by the new Directive into their national laws. Although the CNMC already has several of the new tools foreseen in the ECN+ Directive, this transposition will imply a new reform of the Spanish Competition Law that could allow the implementation of other reforms not foreseen in the Directive but necessary for the development of the Spanish Competition policies.

3. Enforcement of competition laws and policies

3.1. Cartels

13. In 2018, **four cartels were sanctioned** with fines totaling € 115 million (€ 111 million after deducting exemptions and reductions applied to leniency applicants):

- S/DC/0578/16 MENSAJERÍA Y PAQUETERÍA EMPRESARIAL (postal sector)
- S/DC/0584/16 AGENCIAS DE MEDIOS (media sector)
- S/DC/0569/15 BATERIAS AUTOMOCIÓN (industrial sector)
- S/DC/0565/15 LICITACIONES APLICACIONES INFORMÁTICAS (IT sector)

14. These Decisions concerned agreements among undertakings to avoid competition by fixing prices, sharing markets and customers, and exchange of commercially sensitive information, among others.

¹ Commercial Court of Murcia, Judgment of 26 September 2018; Judgment of 15 October 2018; Judgment of 16 October 2018; Commercial Court of Zaragoza, Judgment of 13 December 2018.

² Decision of the former National Competition Commission of 25/03/13 (Case S/0316/10, Sobres de Papel).

³ Commercial Court of Madrid nº 3, Judgment of 10 May 2018; and Commercial Court of Madrid nº 11, Judgement of 8 June 2018.

⁴ Commercial Court nº 3 of Barcelona, Judgement of 6 June 2018; Judgment of 4 September 2018; Judgment of 5 September 2018; and Judgement of 10 September 2018. Commercial Court nº 7 of Barcelona, Judgement of 6 June 2018.

⁵ Directive (EU) 2019/1 to empower the competition authorities of Member States to be enforcers that are more effective and to ensure the proper functioning on the internal market.

15. Individual penalties for executives in cartel cases were applied in 2016 for the first time ever. In 2018, the National Court issued the first judgements in relation to these individual sanctions, and it confirmed most of the cases and defined the main criteria for future cases. Under these new rules, in 2018, the Board decided to fine three executives involved in cartel cases.

3.2. Inspections

16. CNMC kept its record of accomplishment in inspections during 2018: 7 unannounced dawn raids were launched and 23 companies from different sectors were inspected with the participation of 141 investigators. This reflects the CNMC's commitment to fight cartels and ensures a continuous flow of cases in this key area of competition enforcement.

3.3. Fighting bid-rigging in public procurement

17. In 2016, the Competition Directorate of the CNMC adopted as strategic decision to boost its fight against bid-rigging (that is, restrictive agreements between competitors who bid for public contracts). To this end, a working group was created to train civil servants working on public bidding institutions on competition matters and to develop screening techniques and data analysis and statistics to detect collusion and has also driven the ex-officio detection.

18. The working group was very active during 2017 and, as a more decisive step, in 2018 **an economic intelligence unit was created**, attached to the Competition Directorate, with its own personnel and technical resources. The unit is specialized in whistleblowing, bid rigging and ex-officio detection as well as increasing our knowledge on algorithms and artificial intelligence. As it was announced last year, the unit is composed by staff specialized in quantitative techniques and forensic IT and is headed by cartel detection experts.

19. As a result of the efforts against bid rigging, between 2016 and 2018 nine cartel concerning bid-rigging were dismantled and six more investigations are still ongoing.

3.4. Other anticompetitive practices

20. Apart from cartel activity, in 2018 **four horizontal and vertical infringements were sanctioned** with fines totaling €100 million:

- S/DC/0579/16 DERIVADOS FINANCIEROS (financial sector)
- S/DC/0587/16 COSTAS BANKIA (bar association)
- S/DC/0596/16 ESTIBADORES VIGO (port services)
- S/0415/12 ABH-ISMA (waste collection)

21. The Decision regarding the financial sector was relevant at national level, since four of the main Spanish banks (SANTANDER, SABADELL, BBVA y CAIXABANK), were sanctioned for concerting interest rates for financial derivatives in syndicated loans. The total imposed fines amount € 91 million.

22. Additionally, the Council decided to close the investigation in 8 additional cases, regarding cartel, horizontal and vertical infringements, and two cases were closed through commitment decisions.

Case	Decision date	Fines	Exemption or reduction	Net amount
S/DC/0578 /16 MENSAJERÍA Y PAQUETERÍA EMPRESARIAL	08/03/2018	72.365.694 €	3.800.000 €	68.565.694 €
S/DC/0584 /16 AGENCIAS DE MEDIOS	03/05/2018	7.231.890 €		7.231.890 €
S/DC/0569 /15 BATERIAS AUTOMOCIÓN	12/07/2018	5.370.884 €		5.370.884 €
S/DC/0565 /15 LICITACIONES APLICACIONES INFORMÁTICAS	26/07/2018	30.028.391 €		30.028.391 €
S/DC/0579 /16 DERIVADOS FINANCIEROS	13/02/2018	91.000.000 €		91.000.000 €
S/DC/0587 /16 COSTAS BANKIA	08/03/2018	1.455.000 €		1.455.000 €
S/DC/0596 /16 ESTIBADORES VIGO	26/07/2018	3.442.688 €		3.442.688 €
S/0415/12 ABH-ISMA	26/07/2018	3.684.186 €		3.684.186 €
TOTAL		214.578.733 €		210.778.733 €

3.5. Mergers

3.5.1. Notifications

23. In 2018, 83 mergers were notified, a slightly lower number compared to the previous year (94 mergers notified to the CNMC in 2017), and in line with the year figure for 2014.

24. More than 90 per cent of the mergers notified used the pre-notification procedure, showing the usefulness of this instrument for both the notifying companies and the CNMC. Moreover, 58 transactions were notified through the simplified procedure that reduces the workload and the reporting requirements for the notifying parties, speeding the approval of non-problematic mergers.

3.5.2. Decisions

25. Out of 83 operations decided in 2018, 79 were cleared in phase I without additional remedies and 4 with remedies offered by the parties. One of the notified mergers led to a phase II investigation (healthcare sector).

26. Below are information in detail of the four transactions that were cleared subject to commitments:

3.5.3. Approval subject to commitments

SERVIRED/ SISTEMA 4B/ EURO 6000 (financial sector)

27. Merger between the companies that manage the domestic card payment system in Spain (Servired, System 4B and Euro 6000) with the creation of a new company jointly controlled by its main shareholders, Spanish banks.

28. The remedies proposed by the parties included the non-discriminatory access to the new system for all the stakeholders during five years.

NAVIERA ARMAS/TRASMEDITERRANEA (maritime transport)

29. Merger between two shipping companies. The remedies offered by the parties included a charter party in order to allow the access of another competitor to some maritime lines during three years.

TALLERES ALEGRIA/DURO FELGUERA RAIL (components in railway sector)

30. Merger between two industrial providers of components for railway tracks. Since the acquirer was the main manufacturer in Spain of one essential input for the production of these components, it was offered as a remedy to continue providing the input to the competitors in market conditions.

BP / PETROCORNER (retail fuel sector)

31. BP intended to acquire a network of 65 petrol stations. Risks for competition were detected in three of the local areas, so BP offered an up-front buyer for one of the stations and the early termination of the exclusive supply contracts in the other two.

3.6. Sectors and Market Monitoring

32. In 2018, the Competition Directorate committed itself to a greater scrutiny of the following sectors:

- **Telecommunications and pay television.** In telecommunications sector, the Competition Directorate has jointly worked with the Directorate for Telecoms with the CNMC for the development of a replicability methodology of Telefónica's retail commercial offers of fixed broadband products, in order to determine the maximum regulated prices of the fixed broadband wholesale services of this operator.
- **Tobacco.** During 2018, the Competition Directorate concluded an investigation against the four main tobacco manufacturers and the main Spanish wholesaler for exchanging commercial information, stating grounds of infringement in its proposal to the Board, who adopted a sanctioning decision in April of 2019.
- **Rail sector.** During 2018, the Competition Directorate ended up an investigation against rail equipment firms for bid-rigging. The Board adopted a sanctioning decision regarding this case at the beginning of 2019.

3.7. Other Activities

3.7.1. Cooperation with regional competition authorities in Spain

33. Currently 12 out of the 17 Comunidades Autónomas (regional governments) that conform the Spanish territorial organization count on with competition bodies: eight of them include prosecution and decision bodies (Cataluña, Galicia, País Vasco, Andalucía, Valencia, Aragón, Castilla y León and Extremadura) and the remaining four only investigate and prosecute (Murcia, Canary Islands, Madrid and Navarra). In the latter, the CNMC's Board adopts the final decision following the proposals of the 4 regional

investigation bodies. In 2018, a total of 84 cases were allocated between the CNMC and those regional competition authorities.

34. The Working Group between the CNMC and the regional competition authorities of Spain met three times during 2018 in order to analyze the allocation of cases and to exchange information on topics of common interest, such as non-regulated collaborations and the future course action of the CNMC regarding case allocation.

35. Collaboration between competition authorities in Spain also took place in the area of inspections. In particular, the CNMC requested collaboration of six inspectors from regional authorities for national inspections and assisted regional competition authorities in regional dawn raids with eight national inspectors. In addition, a session focused on how to conduct inspections was organized by the CNMC for inspectors from different regional Authorities.

3.8. Courts

36. In 2018, the National High Court (Audiencia Nacional, AN) and the Supreme Court (Tribunal Supremo, TS) delivered 160 decisions (113 decisions of the National High Court and 47 of the Supreme Court) resolving appeals with respect to 60 Resolutions adopted by the CNMC as authority of competition.

37. Most of the decisions of both Courts (152) refer to cartel behaviors and to a lesser extent by abuse of dominant position, unfair practices and procedural issues, such as obstruction of an inspection and breach of duty to notify.

38. The other decisions of the Courts (8) refer to matters such as monitoring of conventional termination agreements and mergers, requests for access to files, orders of inspection, denials of conventional termination or requests for confidential treatment of the information.

39. The following judgments of the Spanish Courts have been especially relevant in 2018:

- The Supreme Court decision of March 21th, 2018 (No. 2653/2015), related to case S / 0312/10 CARPA DORADA AND VEGETAL VARIETIES CLUB, which affirms that in case associations, unions of companies were accused of an antitrust infringement, the volume of income of its members must be taken into consideration for the calculation of the penalty.
- The Supreme Court decision of April 10th, 2018 (No. 3568/2015), related to case S/0354/11 ORACLE. The Supreme Court, based on a previous Judgement of the High court, affirms that the Court review of the archive decisions of the Spanish Competition Authority should be limited to reviewing the legality of the archive, without substituting the possible declaration of infringement by the Competition Authority.
- The Supreme Court decision of September 17th, 2018 (No. 2922/2016), which estimates the appeal filed against the Judgement of the High Court of July 21th, 2016 and considers invalid the inspection developed by the Competition Authority in May, 2013, since it was done without the express consent of the company.
- Several Judgments of the Supreme Court of November and December of 2018 related to the case S/0428/12 PALÉS, where the Court affirms that the omission of hearing about a qualification change of the infringement does not cancel the

sanctioning decision when that new qualification was requested by the undertaking affected and does not harm to that company.

- The 39 Judgments of the High Court during 2018 confirming the new calculation method of sanctions applied by the Spanish Competition Authority since January 2015 and its adjustment to the sanctions graduation criteria provided for the Spanish Competition Law.

3.9. International cooperation

40. European Union. In 2018, the CNMC and every competition authority of the EU continued their successful cooperation within the European Competition Network. This cooperation has been useful for information Exchange and assistance on investigations within the ECN.

41. The CNMC plays an active role in all ECN horizontal groups and sectoral subgroups, where an exchange of practical experience takes place. In 2018, the CNMC carried out its work in the subgroups of Telecoms, Transport, Agrofood, Sport, and Insurance, Pharma & Health Services, and Banking & Payments. Besides, the CNMC played an active role in those ECN's groups devoted to Cooperation Issues, Cartels, Vertical Issues, Horizontals and Abuse, Competition Chief Economist, Forensic IT, and Merger Working Group).

42. As for the bilateral cooperation activities, the CNMC has received and answered 186 consultations from other European Competition Authorities and from the DGCOMP on enforcement issues.

43. Besides, the CNMC participate regularly and actively in the Advisory Committee on Competition law proceedings and merger control cases of the European Commission in Brussels. Specifically, the CNMC took part as speaker in the case M8788 – Apple/Shazan. In addition, the CNMC assisted the DGCOMP on its dawn raid on Spanish territory.

44. European Competition Authorities (ECA.) This year, the Annual Directors General Meeting of the ECA forum took place in Denmark. In that meeting, with three main issues discussed, the CNMC participated as panelist in the one related to competence and new models of digital markets.

45. International Competition Network (ICN). The CNMC continued with its participation at this network, playing an active role in all ICN Working Groups. More specifically, the CNMC took part in the Workshops on Mergers (Tokyo 2018), in the Unilateral Conducts Workshops (Stellenbosch 2018), and in the Cartel Workshops (Tel Aviv 2018). In the Annual Conference, the CNMC representatives also participated as speakers in two sessions advocated to cartels and market studies, respectively.

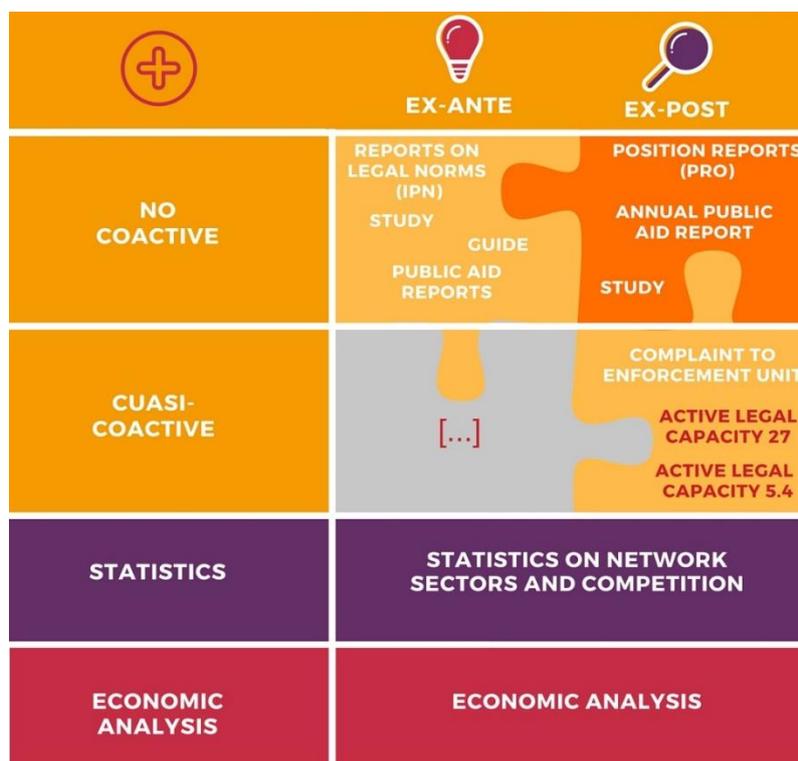
46. As for the bilateral cooperation activities, the CNMC has received and answered consultations from other ICN Competition Authorities on 8 procedural and enforcement issues and has requested once.

47. Pursuant to the OECD 2014 Recommendation of the Council concerning International Co-operation on Competition Investigations and Proceedings [C(2014)108] we received 3 notifications regarding requests for information, addressed to Spanish Companies, for mergers analysis in 2018.

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

48. The CNMC has developed the advocacy, antitrust and regulatory toolbox with an emphasis on transparency, independence and legal certainty. The advocacy toolbox, in particular, helped the authority to reinforce and clarify its role and competences as a competition authority vis-à-vis both the sectorial Ministries in the respective regulated sectors, and the former sectorial regulators, now part of the authority. It also facilitated building up the necessary synergies and safeguards between the regulatory and competition advocacy departments to carry out its mandate in an independent, rigorous and efficient way.

49. The CNMC's advocacy toolbox includes a number of *ex ante* and *ex post* instruments. The toolbox includes consultative, non-enforcement instruments (such as market studies, economic reports and reports on draft or in force regulation, and reports on administrative acts⁶) and, quasi-enforcement mechanisms (such as active legal capacity to challenge regulations and administrative acts before Spanish Courts). In addition, the advocacy department has access to statistics on network sectors and competition.



50. The toolbox instruments can be used jointly in an integrated approach or in isolation. We usually first identify the competition issue and then choose which instrument(s) to use in order to address it. Sometimes, one advocacy tool cannot fully tackle the competition concern identified. In those cases, we use a combination of advocacy instruments in order to maximize the impact of our advocacy intervention. In other cases, we use a combination of tools in a subsequent manner. This is because we review the

⁶ Such as public procurement contracts or tender documents.

efficacy of our advocacy intervention and, if needed, complement it with further advocacy actions.

51. In addition, it is of utmost importance to design a correct communication and media strategy to increase the impact of the advocacy activities and instruments in the markets.

52. The main advocacy instruments are the following:

4.1. Studies and Guides

53. Market studies are one of the main instruments included in the formal advocacy toolbox to address competition issues in the Spanish markets.

54. Market studies entail in-depth economic and regulatory analysis of sectors aiming to identify restrictions that hinder competition. They are conducted primarily in relation to concerns about the functioning of markets arising from market regulation, public sector intervention or market practices. Market studies are conducted at the CNMC's own initiative.

55. The CNMC conducts market studies following its [2016 Methodology on Market Studies](#). The Methodology seeks to increase CNMC's transparency on its internal procedures and to orient operators and the public on how and why we conduct market studies.

56. In addition, the CNMC has Guides, or Guidance Manuals, which deal with the safeguarding and promotion of competition from a more practical angle. These Guides are addressed to public administrations and market operators, and cover a broad spectrum of activities, such as public procurement, business associations, and efficient economic market regulation.

4.2. Reports on Draft Regulation

57. The CNMC issues Reports on Draft Regulation, at the request of the drafting authority, or ex officio (at its own initiative). Such Reports identify potential restrictions in legislative or regulatory pieces at the drafting stage. In these Reports, the CNMC makes proposals to amend restrictive provisions and make them more favorable to competition and consistent with efficient economic regulation. Although public administrations have the legal obligation to refer draft regulations that might affect competition to the CNMC, regulatory reports are non-binding.

58. The *ex-ante* nature of this intervention enables the CNMC to exert a pre-emptive influence on regulatory policy. On the other hand, such reports facilitate the awareness and integration of competition policy and efficient economic regulation principles at all levels of the Spanish public administration.

4.3. Reports on Non-legislative Activities

59. The CNMC also carries out reports on other, non-legislative activities by the public sector (e.g. draft public procurement tenders). Those reports serve as a guide to the issuing entity for achieving activity more consistent with competition and efficient economic regulation principles. Furthermore, because they are publicly available, those recommendations are more readily taken on board by other public entities if such recommendations are applicable to their activities.

60. It should be born in mind that public authorities have a wide range of possibilities to intervene in economic sectors, and sometimes, regulation is not the main one. Not only, but increasingly, these reports have been focused on public procurement cases, specially in the area of framework agreements.

4.4. Active Legal Capacity Instruments

61. The CNMC has an advocacy tool that is additional to those better-known and more traditional ones: the active legal capacity. The CNMC has *locus standi* to challenge uncompetitive administrative acts and regulations from which obstacles to the maintenance of effective competition in the market are derived from before national Courts. This represents an advanced command that not many jurisdictions enjoy but that has nonetheless proved to be highly effective in the fight for a more competitive and efficient economic regulation.

62. The legal provisions under which the active legal capacity is granted can be found in [Article 5.4 of Law 3/2013 of 4 June 2013, of creation of the CNMC](#), and [Article 27 of Law 20/2013 of 9 December 2013 guaranteeing the single market](#). Under these two active legal capacity instruments the CNMC may, of its own motion (5.4 and 27) or at the request of an economic operator (27), challenge administrative acts and rules which:

1. Introduce obstacles to effective competition in the markets (5.4) or
2. Are inconsistent with effective economic regulation and the principles of necessity and proportionality, especially those that fragment the market (27).

4.5. Economic Reports to Court

63. The economic Reports to Court are elaborated to quantify the economic impact of the restrictions to competition existing in the markets, or to support the judiciary lawsuits presented by the CNMC within the framework of the active legal capacity mechanisms that the CNMC has as its disposal.

64. The Economic Reports elaborated up to date cover different sectors, such as road freight transport, urban passenger transport, retail distribution, or tourism. The objective of the economic reports is twofold. On one hand, and as mentioned, to support the judiciary lawsuits, and on the other, to conduct an in-depth economic and quantitative analysis on the restrictions to competition present in the Spanish markets. If possible, they include a quantification of their cost in terms of loss of welfare to consumers, and to the society as a whole.

4.6. Public Aid Reports

65. Beyond its impact on the implementation of the Community internal market, public aid granting, whatever the form thereof, constitutes a form of intervention in the economy that can disrupt the functioning of the markets. In some instances, state aid, far from benefiting public interest, can be significantly harmful to markets, by damaging effective competition and reducing social welfare.

66. Law 15/2007, of 3 July, on the Defense of Competition, consolidated and deepened the functions of the Spanish competition authority as regards of state aid, by allowing the CNMC to issue reports with respect to state aid schemes, including recommendations to the public authorities to preserve effective competition in the markets. Likewise, the

CNMC issues an annual report on public aid granted in Spain, which is of a public nature. Finally, the CNMC also offers information about some types of national state aid that has been published in official journals.

5. Resources of competition authorities

5.1. Annual Budget

67. 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 telecommunication, energy and post and transport. CNMC is the agency responsible for the public enforcement of competition law.

68. The overall approved budget of the CNMC for 2018 was over 59,9M€, compared to 58,4M€ in 2017; the budget related to competition policy enforcement activities is 15M€ (13,3M€ in 2017).

5.2. Number of employees

69. In 2018 the CNMC employed 512 people, of which 186 worked in competition matters, 134 of which are non-administrative staff.

6. Summaries of or references to new reports and studies on competition policy issues

6.1. Draft Regulation Reports

70. In 2018, the CNMC approved 18 reports on draft regulation. The number of reports has been in line with last years (18 in 2015, 13 in 2016, and 15 in 2017).

Report	Draft Regulation	Date of Approval
IPN/CNMC/020/17	Draft decree of the government of Aragon amending the travel agencies' regulation	10/01/2018
IPN/CNMC/047/17	Draft royal decree on commercial communications regarding gambling and responsible gambling activities	24/01/2018
IPN/CNMC/005/18	Business secrets draft law	15/03/2018
IPN/CNMC/001/18	Draft of Castilla La Mancha Consumers' Law	22/03/18
IPN/CNMC/003/18	Sectorial Framework Plan of Commercial Equipment in Mallorca	22/03/18
IPN/CNMC/004/18	Proposed draft law on the reform to access and exercise the attorney and attorney-at-courts profession-	22/03/2018
IPN/CNMC/009/18	Draft royal decree on the indication of the origin of milk used as an ingredient in the labelling of milk and dairy products	03/05/2018
IPN/CNMC/007/18	Draft royal decree which establishes the contracting conditions in the milk sector and modifies the RD 319/2015 of 24 April	22/05/2018
IPN/CNMC/010/18	Draft of regulatory law of certain aspects of confidential electronic services	05/06/2018
IPN/CNMC/015/18	Draft royal decree approving the general bylaws of the official associations of real estate agents and their general council	21/06/2018

IPN/CNMC/020/18	Draft ministerial orders determining the aid system which compensates the maritime and air transport of goods with origin or destination in the Canary islands during the year 2017	30/08/2018
IPN/CNMC/021/18	Project of Ministerial Order determining for 2017 the applicable regulated eligible costs in the RD 170/2009, 13 February, on the compensation for sea and air transport of goods.	30/08/2018
IPN/CNMC/026/18	Draft decree of Castilla la Mancha on the rights of consumers in supply facilities to vehicles that use fuel, liquid, gaseous fuels or any other type of energy.	13/09/2018
IPN/CNMC/023/18	Draft decree of the government of Aragon approving the regulation on the management and regulation of rural houses in Aragon	13/09/2018
IPN/CNMC/022/18	Draft law for the partial modification of the law 17/2001 of 7 of December on brands.	27/09/2018
IPN/CNMC/028/18	Project of ministerial order amending annexes of the RD 1030/2006 of 15 September that establishes the portfolio of common services of the national health system and the procedure for its practice.	18/10/2018
IPN/CNMC/025/18	Draft royal decree regulating the financing procedure of the national health system (NHS) and the price fixing of sanitary products to be included in the pharmaceutical provision for non-hospitalized patients	25/10/2018
IPN/CNMC/030/18	Regulation of the transfer of waste inside the state territory	14/11/2018

Source: CNMC

71. The regulatory reports adopted in 2018 refer to a variety of aspects of the regulatory activity of the public sector, and to different sectors of the economy. There are, however, four economic activities that can be highlighted:

1. **Transport:** We approved four reports in 2018. Two of them referred to air and sea transport at national and regional levels (one regarding the compensation scheme for air and sea transport of goods, and a second one on the special regulation applied to the Canary Islands as regards sea and air transport). A third report referred to consumer rights in petrol stations in Castilla La Mancha.
2. **Tourism:** In 2018, we adopted two reports on tourist regulation at regional level regarding rural houses and travel agencies.
3. **Health:** In 2018, we adopted a report on the Draft Royal Decree regarding the financial procedure of the NHS and its price fixing policy, and another on the NHS services.
4. **Dairy goods:** In 2018, we approved one report related to the labelling conditions of dairy products and a second one on the contracting conditions of the milk sector.

6.2. Reports on Non-legislative Activities

72. Among the reports that are not linked to draft regulation, the reports on centralized public sector contracts stand out for their importance. These reports focus on proposing certain improvements that would result in greater competition, such as the replacement of the Framework Agreements system with dynamic acquisition systems, the adequacy of the solvency requirements, the justification of the requirements in terms of quality certificates and the appropriate weighting of the price variable.

73. In 2018, we adopted the following 13 reports:

Report	Regulation	Date of Approval
INF/CNMC/215/17	Framework agreement for the supply of heavy industrial vehicles.	10/01/2018
INF/CNMC/001/18	Framework agreement for the supply of motorcycles and atv / quads	08/02/2018
INF/CNMC/003/18	Sale and telematic resale of tickets for cultural shows	05/04/2018
INF/CNMC/039/18	Project of the ethical and deontological code of the infrastructure engineers association	19/04/2018
INF/CNMC/015/18	Bus concession tariffs of La Coruña town hall	24/04/2018
INF/CNMC/084/18	Framework agreement for the supply of printers, multifunctional equipment and scanners -am 05/2018	17/05/2018
INF/CNMC/188/17	Adaptation of integrated management systems -sigs- to the expanded responsibility systems of the producer of electrical and electronic devices to rd 110/2015	17/05/2018
INF/CNMC/133/18	framework agreement for the supply of servers storage systems and infrastructure software -am 13 / 2018-	13/09/2018
INF/CNMC/134/18	Bid specifications for the collective restoration services of the military establishment San Hermenegildo -Sevilla-	27/09/2018
INF/CNMC/136/18	Contract of consolidated telecommunications services of the state central administration and other public entities phase ii -exp. no. 11 / 18	04/10/2018
INF/CNMC/085/18	Report on article 150 of law 9/2017, of 8 November, on public sector contracts	22/11/2018
INF/CNMC/160/18	Flag reservation port services vessels	04/12/2018
INF/CNMC/153/18	Industrial benefit applicable to the contract of public service management of urban transport of Cádiz townhall	19/12/2018

Source: CNMC

74. In addition, a Position Report on the Public service obligations for the passengers and vehicles' maritime transport on the Ceuta-Algeciras line ([PRO/CNMC/002/18](#)) was published in November 2018.

6.3. Market Studies and Guides

75. In 2018, the CNMC has finalized 3 market studies.

- The Study on the regulation of tourist housing in Spain ([E / CNMC / 003/18](#)), published in August 2018, reviewed regional and local regulations, the interventions of the CNMC and the Regional Competition Authorities in this market, and the regulation of the main European cities as regards tourist housing. The Study concluded that, in Spain, there is a great regulatory disparity in terms of tourist housing due to the proliferation of heterogeneous regional and local regulations. In addition, it was underlined that some regional and local regulations are highly restrictive with the activity of tourist housing and they do not fulfil the principles of necessity and proportionality, so regulations should be changed in order to respect those principles.
- In September 2018, the CNMC published a Study on the impact on competition of technological innovation in the financial sector (Fintech) ([E/CNMC/001/18](#)). The CNMC analyzed the financial regulation in the face of technological innovation and the emergence of new operators, services and business models (fostered by the

Fintech phenomenon), which demand new regulatory approaches. The study concluded that (i) the necessity and proportionality of the different regulatory requirements for entering and exercising financial activities must be re-evaluated, taking into account that some Fintech innovations address some market failures (like information asymmetries) which were used as a justification for restrictive regulations, (ii) the regulation should focus on activities -not entities- and avoid activity reserves as much as possible, and (iii) the regulation must allow consumers and firms to make the most out of the digitization of the financial sector, so sandboxes could be used in order to ensure that Fintech reaches its full potential.

- Finally, in October 2018, the CNMC published a Study on the air traffic services in Spain ([E / CNMC / 002/18](#)). The Study assessed the partial liberalisation of air traffic services undertaken in Spain in 2010. For that purpose, it analyzed both the provision of air traffic services in airports as well as the training of professionals in the sector. The study recommended 1) deepening the reform initiated in 2010 to achieve greater efficiencies in air traffic services, 2) simplifying the requirements for the provision of air traffic services whenever possible from a safety point of view (technically speaking, to designate airports as AFIS), 3) liberalizing approach control services if possible, and 5) to eliminate the vertical integration between Aena (airport operator) and ENAIRE (public air traffic services provider).

Market study	Economic sector	Date of approval
E/CNMC/003/18	Study on the regulation of tourist housing in Spain	19/07/2018
E/CNMC/001/18	Study on the impact on competition of technological innovation in new technologies in the financial sector or (Fintech)	13/09/2018
E/CNMC/002/18	Study on air traffic services in Spain	30/10/2018

Source: CNMC

6.4. Active Legal Capacity

76. In 2018, the CNMC filed 6 appeals on the basis of the aforementioned article 5.4:
- In May 2018, the CNMC challenged a new suspension of licences for large commercial establishments in Mallorca ([LA/03/2018](#)) which restricted the opening and expansion of large commercial establishments in the Island of Mallorca.
 - In May 2018, the CNMC challenged the Royal Decree 1076/2017, 29 December, Establishing Complementary Rules to the Law of Inland Transportation in relation to the exploitation of Leasing Authorizations for Private Hire Vehicles ([LA/01/2018](#)).
 - In June 2018, the CNMC challenged a local regulation in the city of Bilbao that sets requirements for the establishment of tourist housing in Bilbao, limiting its location to the ground and first floors of residential dwellings ([LA/05/2018](#)).
 - In July 2018, the CNMC challenged an agreement on the suspension of licences for tourist housing in Madrid. The challenge was expanded to a new suspension in August ([LA/04/2018](#)).

- Also in July 2018, the CNMC challenged a local regulation in the city of San Sebastián that sets requirements for the establishment of tourist housing in San Sebastián, limiting its location to the ground and first floors of residential dwellings and setting zoning quotas ([LA/06/2018](#)).
- Also in July 2018, the CNMC challenged a local regulation in the metropolitan area of Barcelona, which required private hire vehicle drivers to have a local licence in addition to the national licence ([LA/08/2018](#)).

77. In addition, there have been some developments in court challenges initiated in previous years. In particular:

- Case [LA/01/2016](#): regarding a suspension of licences for large commercial establishments in the Island of Mallorca. This case has been closed in 2019. The contested suspension was annulled by the court in a parallel case.
- Case [LA/03/2015](#): in relation to an appeal against Decree 113/2015, which regulates tourist accommodation in the Region of the Canary Islands. The regional high court had ruled in favour of the CNMC in 2017. In 2019, the Supreme Court dismissed an appeal by the Government of the Canary Islands against the regional high court ruling, confirming the partial annulment of the contested decree.
- Case [LA/01/2017](#): in relation to an appeal against Decree 12/2017, which regulates tourist accommodation in the Region of Galicia. The regional high court dismissed the CNMC's challenge. This ruling has been appealed by the CNMC before the Supreme Court and is still pending.
- Case [LA/02/2017](#): in relation to an appeal against Decree 3/2017, which regulates tourist accommodation in the Region of Castilla and León. The regional high court ruled partially in favour of the CNMC. This ruling has been appealed by the CNMC before the Supreme Court and is still pending.
- Cases [LA/01/2015](#) and [LA/02/2015](#): regarding the taxi Ordinances of the cities of Córdoba and Málaga. There have been no developments in 2018. Both cases are still pending in court.

6.5. Economic Reports

78. In 2018, the Advocacy Department conducted 8 economic reports to support the judiciary lawsuits of the CNMC. All proceedings were related to article 5.4 of Law 3/2013, on the Creation of the CNMC:

- Two reports evaluating the welfare impact of the successive suspension of licences for large commercial outlets in Mallorca ([LA/01/2016](#) and [LA/03/2018](#)).
- Two reports evaluating the welfare impact of the successive suspension of licences for tourist housing in Madrid ([LA/04/2018](#)).
- Two reports evaluating the welfare impact of local regulations of tourist housing in Bilbao and San Sebastián ([LA/05/2018](#) and [LA/06/2018](#), respectively).
- A report evaluating the welfare impact of local regulation in Barcelona requiring a licence to operate PHV services in the metropolitan area of Barcelona ([LA/08/2018](#)).

- A report evaluating the welfare impact of national regulation of PHV as provided for in Royal Decree 1076/2017 (LA/01/2018).