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## Annual Report on Competition Policy Developments in Spain

-- 2019 --

10-12 June 2020

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## *Spain*

### Executive Summary

In 2019 the CNMC has made a sustained effort to improve its enforcement and advocacy activities. The CNMC counts on the experience of a skilled and dedicated team, which includes a group of experts in quantitative techniques and forensic IT focused on developing statistical tools and screening techniques to identify collusion patterns. Besides, the CNMC's advocacy toolbox has been used in its full scope.

In 2019, the CNMC significantly increased the number of dawn raids. 13 raids were carried out at 35 company sites, 5 of them focused on the investigation of bid-rigging practices. Besides, the CNMC has also tightened its collaboration with the regional authorities along 2019.

Cartel enforcement continues to represent the core of antitrust work. In 2019, the CNMC Board issued two prohibition decisions with fines for cartel infringements in which some of the companies and managers used the leniency program. In both cases, the infringements were related to bid rigging practices. The fines amounted to €172.6 million and the resolutions stressed the fact that contracting authorities may exclude the infringing companies from public tenders.

In 2019, 7 non-cartel cases concerning horizontal and vertical infringements were sanctioned with fines totalling about €259 million.

Regarding mergers, 86 merger transactions were notified in 2019 compared to 83 in 2018 and 94 in 2017. The CNMC considers very useful the market share threshold included in Spanish competition law, which allowed us to assess several merger cases in the digital sector that would have otherwise escaped our attention. Approximately two thirds of merger transactions were cleared under the fast-track procedure without raising any competition concerns. In 2019 a merger was cleared in second phase with remedies and the second phase was opened for another case that is still under assessment.

#### **1.1. In 2019, the CNMC elaborated a first draft of the Guidelines for Compliance Programmes in relation to competition rules in order to encourage good practices among professionals in all fields of activity.**

Regarding the advocacy activity, the CNMC has been very active in the promotion, dissemination and analysis of sectoral competition and efficient economic regulation. In the past year, the Advocacy department has focused on sectors with a direct effect on consumer welfare, and in those related to digitization of the economy and with an effect in economic competitiveness.

The CNMC has published 17 new reports in 2019. Several reports focused on official professional associations (5), transport (2), agriculture (2), tourism (2), industrial property (2). Besides, 5 reports on non-legislative activities were adopted last year, mainly dealing with public procurement initiatives.

The CNMC published three market studies in 2019, on the liberalization of passenger transport services by rail, the competitive impact of the entry of unmanned petrol stations in the retail fuel market, and an overview of public procurement procedures in Spain.

The CNMC is entitled to challenge in court certain governmental administrative acts and regulations that could restrain to competition. In 2019, the CNMC has brought to the courts five anti-competitive regulations, most of them at the regional and local level.

In the international area, the CNMC was very active at the ECN, ECA, OECD, ICN, and Latin-American Fora and reinforced its bilateral ties with other competition authorities and multilateral organizations. In particular, the CNMC was elected in 2019 as a co-chair in the ICN merger group, together with the UK and Japan's Authorities. Moreover, the CNMC was selected in 2019 for the European twinning project with the Albanian Competition Authority. Finally, the CNMC has been working intensely on proposals for the transposition of the ECN+ Directive that will lead shortly to the amendment of the Spanish Competition Act.

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

1. There were no major changes in the Spanish competition legislation in 2019. Nevertheless, the CNMC has been working intensely on a proposal for the transposition of the ECN+ Directive, which was signed on 11 December 2018 and published in the Official Journal of the European Union on 14 January 2019. As usual, Member States have two years to implement the rules established by the new Directive into their national laws. The transposition of the ECN+ Directive will imply a new reform of the Spanish Competition Act -approved in 2007 and modified in 2013- by the end of 2020.

2. In this respect, the CNMC is considering the possibility of proposing the introduction of a settlement procedure in the Competition Act. Additionally, the CNMC considers positively its 18-month statutory deadline for antitrust investigations, which brings together effectiveness and legal certainty, but it might be necessary to increase this deadline for complex cases to deal with huge amounts of information and effectively ensure the rights of defence when there are many parties in a case. Furthermore, the ECN+ includes a reference to prioritisation, a very useful tool for the very few authorities, such as the Spanish Competition Authority, which are still unable to prioritise their cases in order to make a more efficient use of their scarce resources. Presently, the CNMC has to investigate all complaints before closing each case, even those in which there is no clear evidence of an infringement. The new provision would also make national competition authorities draw clear guidelines on their annual priorities.

## 2. Enforcement of competition laws and policies

### 2.1. Enforcement against anticompetitive practices, including collusive agreements and abuse of dominance

3. In 2019, the CNMC Board decided on 21 disciplinary cases of anti-competitive conduct investigated by the Competition Directorate. 12 of these cases were closed because there were no indications of an infringement of the Spanish Competition Act (Act 15/2007 on Defence of Competition, LDC after the name in Spanish), and the remaining 9 cases were concluded with prohibition decisions with sanctions due to infringements contrary to articles 1, 2 and 3 of the LDC (two of them were cartels).

### 2.1.1. Cartels

4. In 2019 the CNMC Board issued two prohibition decisions with fines for conducts that qualified as cartels according to the Spanish Competition Act. Some of the companies and executives involved in these cartels applied for the leniency program. In both cases, cartels were related to bid rigging practices. The amount of sanctions imposed on the members of these two cartels totalled €172.6 million (€146 million after deducting the exemptions and reductions as a result of the leniency program).

5. The two cartel cases sanctioned in 2019 were the following:

- **ELECTRIFICATION AND ELECTROMECHANICAL APPLIANCES FOR RAILWAYS (Railway sector):** This case began with an application for leniency submitted by the company ALSTOM. Afterwards, dawn raids were carried out at the headquarters of six companies, in which information about the anticompetitive conduct was collected. 15 companies and 14 executives created three cartels to distort competition in tenders for rail infrastructure organised by the Spanish railways administrator (ADIF). The fines imposed on the infringing companies totalled over €119 million.
- It is worth mentioning that the CNMC's decision included for the first time an explicit reference to the possibility of these companies being banned for some time from public contracts by the Public Procurement Advisory Board (Junta Consultiva de Contratación Pública del Estado).
- **MAINTENANCE AND INDUSTRIAL ASSEMBLY (Industrial Sector):** This case began also with an application for leniency submitted by GRUPO NAVEC. After carrying out dawn raids at the headquarters of 4 companies, another company acknowledged its participation in the cartel, provided new evidence and applied for leniency as well. The cartel was created to increase the cost of services provided to companies in the energy and petrochemical sector. The CNMC imposed sanctions of over €53 million to 19 companies and 8 managers in the industrial assembly and maintenance sector.

6. The decision was also forwarded to the Public Procurement Advisory Board, opening the possibility of the infringing companies being subject to the prohibition of contracting with the public sector for a time (with the exception of the leniency applicants).

### 2.1.2. Prohibited practices other than cartels

7. In addition to the above mentioned cartels, in 2019 the CNMC Board sanctioned other anticompetitive practices with fines totalling about €259 million. In particular, the CNMC Board decided on the following cases:

- Five cases for practices contrary to article 1 of the LDC (collusive conducts other than cartels):
  - **TOBACCO (Tobacco sector):** The CNMC Board imposed fines totalling €57.7 million on the main tobacco manufacturing companies (PHILIP MORRIS SPAIN, ALTADIS and JT INTERNATIONAL IBERIA) and the main wholesale distributor (LOGISTA) for the exchange of strategic commercial information in the cigarette market.
  - **ANELE (Publishing sector):** The CNMC Board imposed fines totalling €33 million on 34 non-university textbook publishers and the ANELE Association (National Association of Book Editors and Educational Material) for coordinating their commercial policies and conditions.

- DAIRY INDUSTRIES (Dairy sector): The CNMC Board sanctioned 8 companies that operate in the raw cow's milk supply market for exchanging information that allowed them to coordinate commercial strategies to the detriment of livestock farmers, which prevented them from setting their own prices. Fines totalling €80.6 million.
- VAILLANT TECHNICAL ASSISTANCE (Technical assistance for household boilers): The CNMC Board imposed fines totalling €859,763 on the VAILLANT group for restrictions imposed on its network of authorized technical services for the repair of gas boilers.
- ATRESMEDIA / MEDIASET (Media sector): The CNMC Board imposed fines totalling €77 million on both television channels for carrying out commercial policies in the sale of television advertising that had the effect of limiting the ability of the rest of the television channels to compete in capturing advertising revenue. Additionally, the resolution demanded both TV channels to cease their behaviour and adapt their commercial and contractual relationships within a maximum period of three months.
- One case for a conduct contrary to article 2 of the LDC (abuse of dominant position):
  - DAMA vs SGAE (Intellectual property rights): The CNMC Board imposed fines totalling €2.95 million on SGAE (Sociedad General de Autores y Editores - General Society of Authors and Editors-) for abusing its dominant position in the market for collective management and exploitation of the intellectual property rights of authors and publishers of music and videos.
- One case for conduct contrary to article 3 of the LDC (distortion of competition for unfair practices):
  - AGIC (Associació de Gremis d'Instal·ladors de Catalunya) (Energy sector): The CNMC Board imposed fines totalling €5.5 million on ENDESA ENERGÍA XXI for using its regulated trading company to lead domestic consumers towards its unregulated counterpart through a misleading advertising campaign.

### ***2.1.3. Fighting bid rigging in public procurement***

8. In 2018, the CNMC created the Economic Intelligence Unit for cartel detection, especially in the fight against collusion in public procurement. The EIU -attached to the Competition Directorate- is made up of staff specialized in quantitative techniques and forensic IT.

9. This Economic Intelligence Unit did not start from scratch. Since the end of 2014, a working group had already been working on the creation of a database with most of the information included in the public procurement platform from the Spanish Ministry of Finance, which encompasses the majority of public tenders by the national government and some of the regional and local governments. The CNMC has been carrying out training sessions for the procurement bodies and trying to set up clear contact points that could help to detect new bid-rigging cases.

10. The focus has now turned to the development of statistical tools and screening techniques to identify collusion patterns using detailed data from the public procurement databases. The Economic Intelligence Unit is developing software that uses quantitative indicators to identify collusion patterns and signs of bid rigging. This application will be used to 'red flag' potential markets and behaviour that deserve a closer investigation, and

it will complement information from other sources such as the CNMC tool for whistle-blowers and complaints. The Economic Intelligence Unit is reaping its fruits of a more proactive approach towards cartel detection. As a result of the efforts against bid rigging, between 2016 and 2019 11 cartels concerning anticompetitive practices in public procurement were dismantled and more investigations are still in process.

#### ***2.1.4. Dawn raids***

11. In 2019, the Competition Directorate carried out 13 unannounced dawn raids at the headquarters of 35 companies, a figure considerably higher than that of 2018, when 7 dawn raids were carried out involving 23 companies.

12. It was noteworthy that the three of the dawn raids carried out in 2019 were related to possible infringements of abuse of dominant position and one of the dawn raids was carried out while monitoring a previous case, as there was evidence that the prohibited conduct had not ceased. In addition, in one of the dawn raids, carried out at the headquarters of four companies, the practice investigated was related to the possible anticompetitive use of algorithms. On the other hand, five of the dawn raids focused on possible bid rigging practices, showing the continuing interest of the CNMC in this type of anticompetitive conduct.

#### ***2.1.5. A draft of the Guidelines for Compliance Programmes in relation to competition rules***

13. The CNMC has spent four years studying the possibility of developing guidelines for compliance programmes in relation to competition rules. These programmes focus on preventive measures by firms to avoid competition infringements and they are a good complement to the traditional dissuasive tools of competition enforcement. This kind of guidelines try to help firms to implement competition compliance programmes by providing them with a reasonable degree of legal security.

14. At the end of 2019, the CNMC prepared a first draft of the Guidelines for Compliance Programmes in relation to competition rules. The CNMC will launch a public consultation on these Guidelines in 2020. The CNMC's guidelines give a crucial value to the involvement of the company's management and to the training of workers in the rules established by the compliance programme. The draft also requires the firms to set up an anonymous channel for whistle-blowers, a requirement which will be mandatory in Spain for companies with more than 50 workers once the transposition of the Whistleblowing Directive is completed.

#### ***2.1.6. Cooperation with regional competition authorities in Spain***

15. Currently 12 out of the 17 Spanish regional governments have units that enforce competition law: eight of them are competition authorities with both investigative and decision powers (Cataluña, Galicia, País Vasco, Andalucía, Valencia, Aragón, Castilla-León and Extremadura), while the units in the other four regions (Murcia, Canary Islands, Madrid and Navarra) only have investigative powers, so that the CNMC Board has to adopt the final decision on their cases.

16. The rest of the regional governments do not have a competition authority (Asturias, the Balearic Islands, Castilla-La Mancha, La Rioja and Cantabria). The CNMC has signed collaboration agreements with these regions on order to improve the application of competition law in their territories through the reciprocal exchange of information.

17. In 2019, a total of 64 cases were allocated between the CNMC and the regional competition authorities, 47 to the regions and the other 17 cases to the CNMC.

18. There are Working Groups formed by the CNMC and the regional competition authorities that meet several times a year. In 2019 these WG analysed the allocation of cases and exchanged information on topics of common interest. Progress was made in the development of a new tool for the exchange of information between competition authorities (Exchange Platform with the Autonomous regions – PICA) to improve the functioning of the Network for Cooperation between Bodies with Competition Powers (“Red de Cooperación de Organos competentes en materia de Defensa de la Competencia”).

19. Collaboration between competition authorities in Spain also took place during dawn raids. In particular, the regional competition authorities helped the CNMC in three dawn raids while the CNMC helped in a regional dawn raid. In 2019, the CNMC organized several training seminars for the regional authorities related to inspections, the leniency programme and the reform of the LDC. As usual, the CNMC actively participated in the events organized by the different regional competition authorities, such as the Annual Conference organized by the Consumer Service, Arbitration, Promotion and Defence of Competition of Navarra, in April.

#### *2.1.7. Courts*

20. In 2019, the National High Court (Audiencia Nacional) and the Supreme Court (Tribunal Supremo) issued 170 judgments (144 by the National High Court and 26 by the Supreme Court) resolving appeals with respect to 21 decisions adopted by the CNMC as competition authority (judgements ordering fine recalculation according to the criteria set forth by the Supreme Court in 2015 have not been taken into account).

21. The National High Court confirmed 5 decisions of the CNMC involving 120 firms (it only ruled in favour of the appeal of 11 firms). However, the National High Court annulled 2 decisions of the competition authority involving 13 firms.

22. Regarding the Supreme Court, in 2019 it confirmed 8 decisions of the CNMC (in judgments related to 11 firms) and annulled 6 decisions related to 15 firms (9 of them regarding the scope of the inspection order related to one case).

#### *2.1.8. International cooperation*

- **European Union.** In 2019, EU competition authorities continued their successful cooperation within the **European Competition Network (ECN)**.

23. The CNMC played an active role in all ECN horizontal groups and sectoral subgroups, where an exchange of practical experience takes place. In 2019, the CNMC carried out its work in the subgroups of Advocacy, Telecoms, Agrofood, Pharma & Health Services, and Banking & Payments. Besides, the CNMC played an active role in those ECN’s groups devoted to Cooperation Issues, Cartels, Vertical, Horizontal and Abuse Issues, Competition Chief Economist, Forensic IT, and Merger Working Group.

24. In January 2019, the Commission's Report to the Council and the European Parliament on the application of competition rules in the pharmaceutical sector was published. It was a collaborative document in which the competition authorities of different Member States (included Spain) analysed cases in which competition in the pharmaceutical sector had been compromised.

25. In the same month, the first meeting of the working group on Artificial Intelligence and Digital Research was convened as well. The CNMC contributed in the first session with the presentation of some projects related to Artificial Intelligence.



26. In 2019, in the framework of cooperation articulated within the ECN, the CNMC received a total of 190 documents from DG COMP regarding cases opened by applying articles 101 and 102 of the TFEU. Likewise, the CNMC notified 8 cases to the ECN.

27. Within the bilateral cooperation activities in the ECN, a total of 114 queries were received and answered from other Competition Authorities of the Member States and from DG COMP on issues related to the application of competition rules.

28. In addition, in November 2019, the Spanish Advocacy Department launched an informal consultation among ECN competition authorities on the status and level of penetration of unmanned service stations.

29. The CNMC has participated in a total of 6 hearings and 24 meetings of the Advisory Committee, acting as a rapporteur in the Advisory Committee on the case COMP/39711 Qualcomm. The CNMC collaborated in the investigations of other National Competition Authorities, mainly by forwarding formal requests for information to companies located in Spain, complying with the active assistance between the Competition Authorities of the ECN prescribed in Regulation 1/2003. The CNMC also intervened in the inspections of companies located in Spanish territory, ordered by DG COMP.

30. As regards mergers, and within the framework of Council Regulation 139/2004 of January 20, the CNMC received a total of 385 notifications of merger transactions from DG COMP, intervening in a total of 18 cases of reallocation (articles 4.4, 4.5, 9 and 22 of Regulation 139/2004).

31. As for the European Competition Authorities (**ECA**), the 2019 Annual Meeting for Directors General took place in The Netherlands. The meeting included three thematic sessions and the CNMC did a presentation in the session on “Buyer cartels and non-poaching restrictions”.

- In 2019, the CNMC actively participated in the activities of the **OECD** Competition Committee and its working groups, with written contributions, interventions and presentations at the OECD Competition Week in both June and December. The CNMC attended the OECD Competition Day in February; the OECD Conference on "Competition and the Digital Economy" in June and the Workshop for competition authorities on "Abuse of dominant position in digital markets" held in Rome in October. The CNMC also participated as a speaker in the training course on “Detecting ex officio competition violations, inspections and investigative measures” organized by the OECD in Korea in November 2019 for different competition authorities in Southeast Asia (ASEAN, China and Pakistan).
- International Competition Network (**ICN**).
  - The CNMC and Spanish Non-Governmental Advisors actively participated in the ICN Annual Conference in May in Cartagena de Indias. The CNMC in coordination with the World Bank and the Superintendency of Industry and Commerce of Colombia coordinated the corresponding session to "Share the Latin-American experience in the application of competition."
  - Within the framework of the ICN, the CNMC maintained a strong participation in the different Working Groups throughout 2019:
    - Regarding the Merger Working Group, the CNMC was named Co-chair, the others two Co-chairs being the competition authorities of the United Kingdom and Japan. The CNMC dealt with queries made by other competition authorities regarding the fast track notification procedure,

notification after executing the merger transaction and merger thresholds, among others.

- In the Cartel Working Group, in October the CNMC participated in the workshop entitled “The Age of the Data-Based Economy”, held in Foz Do Iguacu (Brazil), with three presentations on the “Current state of international cooperation in cross-border cartels”, "Setting wages, no competition in hiring personnel among competitors and restrictive practices in the labour market" and "Competition restrictions -by object- and cartel investigations: burden of proof".
- In the Unilateral Conduct Working Group, the CNMC participated as a panellist in the plenary session of the workshop on "Remedies and commitments in digital cases" held in Mexico in November.
- At the Advocacy Working Group, the CNMC attended the meeting in Kiev (February 28 and March 1) and participated with two presentations, on the advocacy strategy and on business compliance with competition regulations.
- The CNMC maintains close ties with the **Latin American** competition authorities. The CNMC attended the Latin American and Caribbean Forum held in September in San Pedro Sula (Honduras). Additionally, the CNMC attended the Latin-American Competition Forum and intervened as panellist at the round tables on "Ex officio detection and public tenders" and "Protection of leniency programs from the impulse of damage claims".

32. In addition, the CNMC carried out a dynamic activity with the Latin-American countries on its own initiative. In March 2019, the Argentine competition authority, in collaboration with the World Bank, organized a leniency workshop in Buenos Aires in which the CNMC presented a practical case and made different presentations. The CNMC attended also the XIII Central American Competition Forum held in Guatemala City in August 2019 and participated as panellist in the round table entitled "Competition as an essential factor of economic development: benefits for small economies". Moreover, the CNMC participated as a speaker at the seminar on "Competition Challenges in the Digital Environment" organized by the Federal Institute of Telecommunications of Mexico in November in Mexico City. The CNMC organized a webinar on “Definition of markets in the area of competition defence, with special reference to the impact of digitization”, at the request of the Paraguayan competition authorities. Finally, the CNMC organized in Madrid a new edition of the Latin-American Competition School with 30 participants from Latin American competition authorities and the CNMC.

- Additionally, the CNMC developed various actions aimed at reinforcing bilateral ties with other competition authorities and multilateral organizations:
  - The CNMC and the Competition Council of the Kingdom of Morocco signed a Memorandum of cooperation in matters of competition policy and law at the beginning of the year in Madrid.
  - The CNMC participated in March in the annual meeting of the American Bar Association (ABA), specifically in a “fireside chat” led by the Portuguese authority in which the CNMC discussed its plans, priorities, challenges and issues such as the recent creation of the Economic Intelligence Unit and the challenges raised by the use of algorithms and artificial intelligence, among others.

- A new bilateral meeting was held in Madrid in April between the CNMC and the Portuguese competition authority. This meeting addressed different topics such as enforcement cases in the insurance sector, in public tenders and in railway maintenance, and also dealt with cartel cases in the financial sector, among other topics.
- In May, the CNMC made a presentation on “Competition and Competition Law in the Digital World” at the Third Hungarian Competition Law Forum.
- Also in May the CNMC attended the first w@competitioniberia Conference in Lisbon, a forum for the discussion of competition law and policy among women experts. The CNMC made three presentations on panels related to the financial sector, the digital economy and settlement procedures.
- In June, the third bilateral meeting was held between the CNMC and the French Competition Authority, in which issues regarding enforcement (investigations, dawn raids, transaction procedure, among others) and competition advocacy (ongoing market studies and regulatory reports, online advertising and other digitization work, among others) were discussed.
- Within the framework of UNCTAD, the CNMC attended the 18<sup>th</sup> meeting of the intergovernmental group of experts on Competition Law and Policy in July 2019 in Geneva.
- In September, the president of the CNMC participated in the meeting of Heads of Competition Authorities at Fordham University, New York, where the main topics were competition policy in the digital age and the relationship between competition and consumer protection.
- The CNMC was selected in 2019 for the European twinning project with the Albanian Competition Authority under the title “Further strengthening the competition authority’s capacities to protect the free and effective competition in the market”.
- Finally, it should be noted that the CNMC collaborates with the World Bank in other technical assistance programs. In 2019, the World Bank organized a workshop for the competition authority of Egypt and the CNMC intervened with a presentation on the treatment of information in mergers between digital operators. The CNMC participated also as a speaker in a training program, organized by the World Bank for the Philippine competition authority, focused on inspections.

## 2.2. Mergers and acquisitions

### 2.2.1. Merger statistics

#### *MERGER TRANSACTIONS PROCESSED BY THE COMPETITION DIRECTORATE*

33. This year the downward trend of the last few years in the number of mergers notified has been reversed: 86 merger transactions were notified in 2019 compared to the 83 merger transactions notified in 2018 and 94 in 2017.

34. More than 95% of those mergers have gone through the pre-notification procedure, which streamlines and simplifies the procedure, increasing efficiency and speed. Moreover, nearly two thirds of those transactions did not raise any competition concerns, so they were

cleared under the fast-track procedure, in which it takes less than one month to give the transaction the green light.

35. Regarding the notification thresholds, 53% of merger transactions were notified for exceeding the market share threshold, 40% of merger transactions were notified for exceeding the threshold for turnover and the remaining 7% for exceeding both thresholds.

36. By type of transactions, approximately 80% of merger transactions were aimed at acquiring exclusive control.

37. By sectors of activity, the manufacturing industry continues to be the sector with the highest number of merger transactions analysed, followed by commercial distribution and the information technology industry.

### *EU REFERRAL MECHANISM*

38. The EU Commission in principle only examines larger mergers with an EU dimension, meaning that the merging firms reach certain turnover thresholds. However, there is a referral system that ensures that merger transactions would be dealt with by the authority best placed to analyse their competitive effects.

39. Under this system a referral can be requested by the companies themselves or by competition authorities. In 2019, the CNMC joined a request initiated by Germany for referral of the JOHSON & JOHSON/TACHOSIL case to the European Commission. Additionally, the CNMC requested the European Commission to refer the TELEFONICA/PROSEGUR/PROSECUR ALARMS case to Spain.

40. In relation to referrals requested by companies, the Spanish authority agreed to the referral of the SAREB/VARDE case to Spain. Moreover, the Spanish authority was involved in 6 requests for referral to the European Commission.

### *CNMC BOARD DECISIONS ON MERGERS*

41. In 2019, the CNMC Board ruled on a total of 88 mergers. Of these, 83 transactions were authorized in phase one without commitments, 4 were authorized in phase one with remedies proposed by the parties, and another transaction -the QUIRON/CLINICA SANTA CRISTINA merger- was cleared in phase two with commitments. The CNMC Board agreed to move also the CIMSA/CEMEX case to the second phase.

#### *2.2.2. Summary of significant cases*

##### *Mergers: Phase One*

42. As it was mentioned above, four mergers were cleared with remedies proposed by the parties at Phase One as there was evidence of risks to effective competition in the affected markets. These mergers are described below:

- C/1031/19 - LYNTIA/NEGOCIO IBERDROLA (dark fiber –upstream telecom market): On July 30<sup>th</sup>, 2019, the CNMC Board cleared the transaction consisting of the acquisition, by Lyntia Networks, SAU, of the rights to use the excess capacity of the network of fiber optic over which Iberdrola had an ownership right or an exclusive long-term use. In addition, Lyntia acquired the portfolio of contracts with Iberdrola's fiber optic clients (dark and illuminated). The dark fiber market in Spain is highly concentrated (the two main operators, Reintel and Lyntia, cover more than 90% of the market) and there are significant entry barriers to it. Thus, the transaction was authorized subject to compliance of a

series of remedies aimed at maintaining the contractual conditions of the clients and offering access to the entire dark fiber network of Lyntia in Spain on reasonable terms over a period of 5 years.

- C/1054/19-COFARES/COFARTA (pharma distribution): On November 21<sup>st</sup>, 2019, the CNMC Board cleared the merger consisting of the acquisition of exclusive control by Cofares over Cofarta pharmaceutical distribution business. This merger transaction was cleared at phase one subject to the compliance with a series of remedies, aimed at modifying the Cofares Statutes, as risks of reduced competition were identified in the pharmaceutical wholesale distribution market. These risks were linked, on the one hand, to the purchasing obligations and minimum permanence of the resulting entity and, on the other, to Cofares' position in certain provincial markets.
  - C/1072/19-MIH FOOD DELIVERY HOLDINGS/JUST EAT (food delivery and platforms): On December 5<sup>th</sup>, 2019, the CNMC Board cleared the merger consisting of the acquisition of exclusive control by MIH Food Delivery -of the Naspers Group- over JUST EAT, through a hostile takeover bid. The Just Eat buyer had an indirect minority stake in its main competitor in Spain, Glovo, which could raise competitive concerns by allowing access to information regarding Glovo's strategic trade policy and creating an incentive in MIH to prevent the expansion of this competitor's business. This merger transaction was cleared at phase one subject to the fulfilment of certain remedies. The aim of these remedies was to ensure that Naspers/MIH group neither gained access to strategic information nor participated in decision-making that affects Glovo's strategy, due to the risk of restrictive effects on competition.
  - C/1072/19-CIRSA/GGSO (gambling): On July 30<sup>th</sup>, 2019, the CNMC Board cleared the merger consisting of the acquisition, by Cirsa Gaming Corporation (CIRSA), of the exclusive control of Giga Game System Operations (GGSO). Upon detecting risks to competition due to the high market share that CIRSA would have reached once the transaction was completed, CIRSA undertook to eliminate the exclusivity clauses of all Horeca channel contracts in Catalonia and reduce the duration of five-year contracts both in hospitality facilities and gaming rooms.
43. Additionally, the CNMC Board imposed fines totalling more than €1.5 million related to the following two merger transactions:
- SNC/DC/102/19 TELEFÓNICA/CMG due to a breach of the remedies imposed in the TELEFONICA/DTS merger (€1.5 million)
  - SNC/DC/093/19 GRUPO NUFRI due to gun jumping in the NUFRI/INDULLEIDA merger (€21.300 , €12.800 after reduction for recognition of liability and early payment)

#### *Mergers: Phase Two*

- In 2019, only one merger was cleared in second phase, in the health sector (C/0966/18 QUIRÓN/CLÍNICA SANTA CRISTINA). The informal contacts initiated in April 2018. The merger was formally notified in July 2018 and it was cleared with remedies in July 2019. The merger transaction consisted of the acquisition of the healthcare business of the "Santa Cristina Clinic" in the province of Albacete by the Quirón Group.

44. As a result of this transaction, the only private competitor of the Quirón Group in the province of Albacete disappeared. Thus, Quirón Group acquired a monopoly on the private provision of healthcare services with hospitalization. Owing to this, the transaction was cleared subject to the compliance with a package of remedies aimed at improving the quality of private provision of medical services, avoiding the increase in prices and guaranteeing the access of competitors in medical services to the Quirón Group hospital facilities.

- One notified merger in the sector of cement production (C/1052/19 ÇİMSA/ACTIVOS CEMEX) led to an in-depth review in 2019. The informal contacts began in May 2019, and the merger was formally notified at the beginning of July 2019. The CNMC Board decided to open the second phase at the end of July 2019. The merger is still under revision.

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

45. The CNMC was established in October 2013 as a result of the merger between the CNC (Competition Authority) and a number of sectorial regulators including the CMT (Telecommunications), the CNE (Energy), the CRFA (Railroads and Air Tariffs), the CNSP (Postal services), and the CEMA (audio visual sector).

46. The rationale that underpins this innovative structural design is the need to ensure consistent approaches between market regulation and competition enforcement and competition advocacy. Both competition and regulatory supervision competences of the CNMC are aimed at increasing consumers' welfare.

47. The CNMC's mission is thus to promote and defend the proper and correct functioning of all markets in the interests of citizens and economic operators. In other words, to promote effective competition and better regulation for more efficient markets and increased welfare.

48. For accomplishing this goal, the CNMC developed the advocacy, antitrust and regulatory toolbox at a fast pace, 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 Advocacy Department is dedicated to ensuring that public policies respect competition and comply with the principles of efficient economic regulation. In the past years, its work has focused specially on digitisation and the way it is affecting "traditional" and new markets. Digital markets are constantly innovating and giving rise to more and more complex relationships between sectors and stakeholders. In this context, Competition Authorities play a key role, especially from the perspective of competition advocacy. We have the opportunity and responsibility to guide not only administrations and regulators, but also companies and consumers, and help them understand the opportunities and challenges that digitisation entails.

50. The advocacy toolbox includes consultative, non-enforcement instruments (such as market studies, economic reports and reports on draft or regulation in force, and reports on administrative acts<sup>1</sup>) and quasi-enforcement mechanisms (such as active legal capacity to challenge regulations and administrative acts before Spanish Courts). In addition, the advocacy department centralizes the publication of statistics on network sectors and competition. Finally, the CNMC uses other instruments, especially in the context of digitisation, like public consultations or the organisation of public events, to engage with all relevant stakeholders and achieve two goals: to obtain a better understanding of the sector of study, and to deliver a stronger and more efficient message to the wide public.

51. The CNMC uses the toolbox instruments jointly in an integrated approach or in isolation, depending on the issue that it wants to address. Frequently, one advocacy tool cannot fully tackle the competition concern identified, so we need to 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 efficacy of our advocacy intervention and, if needed, complement it with further advocacy actions.

52. 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. This is especially relevant when addressing digitisation, since although competition messages can sometimes be difficult to explain in a simpler manner, this may even be more troublesome with digital markets, which are constantly innovating and giving rise to more and more complex relationships between sectors and stakeholders. For this reason, the CNMC uses profusely media and social networks, publishes podcasts and videos, and runs a blog with the aim of explaining complex issues in plain terms.

53. The main advocacy instruments are the following:

### 3.1. Studies and Guides

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

55. 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 can be conducted at the CNMC's own initiative or at the request of public authorities.

56. 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.

57. 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.

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<sup>1</sup> Such as public procurement contracts or tender documents.

58. During 2019, the Advocacy Department has focused on studies and guides in sectors with a direct effect on consumer welfare, in sectors related to digitisation of the economy, and in sectors with an effect in economic competitiveness (see section 5.3.).

### 3.2. Reports on Draft Regulation

59. Another tool used by the CNMC to develop its advocacy activity are Reports on Draft Regulation. They can be issued 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 recommendations to amend restrictive provisions and make them more favourable to competition and consistent with efficient economic regulation. Public Administrations should refer those draft regulations that might affect competition to the CNMC and, consequently follow its recommendations. However, it must be pointed out that CNMC regulatory reports are non-legally binding instruments.

60. The ex-ante nature of this intervention makes reports on draft regulation a useful way of exerting 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.

### 3.3. Reports on Non-legislative Activities

61. 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.

### 3.4. Active Legal Capacity Instruments

62. The CNMC has an advocacy tool that is additional to those better-known and more traditional ones: the active legal capacity. The CNMC has the power to challenge before national Courts uncompetitive administrative acts and regulations from which obstacles to the maintenance of effective competition in the market are derived. 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.

63. The legal provisions that grant the active legal capacity are 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, on 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).

### 3.5. Economic Reports to Courts

64. The economic Reports to Courts 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.



65. 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 society as a whole.

### 3.6. Public Aid Reports

66. Beyond its impact on the implementation of the EU internal market, public aid granting, whatever the form thereof, constitutes a form of intervention in the economy that can disrupt the well-functioning of the markets. In some instances, state aid, far from benefiting public interest, can be significantly harmful to markets, by damaging effective competition, hindering economic efficiency and reducing social welfare. Law 15/2007, of 3 July, on the Defence 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 provides a global picture from the latest statistical information available and highlights the most important activities at EU and national level in this field. These annual State aid reports shall be submitted to the Spanish Parliament. Finally, the CNMC also offers information about national state aid measures that has been published in official journals.

## 4. Resources of competition authorities

### 4.1. Resources overall (current numbers and change over previous year)

67. It should be underscored that the CNMC is an independent authority that integrates competition enforcement and advocacy together with sectorial regulatory supervision in telecommunications and media, energy, transport and postal services. Within the CNMC there are four directorates, each one responsible, respectively, for competition, telecommunication and media, energy and postal and transport services.

#### 4.1.1. Annual budget (in your currency and USD)

68. Spain's national budget for 2018 was extended to 2019; therefore, the overall approved budget of the CNMC for 2019 was that of the previous year, 59.9 million euros (US\$65.2 million).

69. The part of the budget related to competition policy activities amounts to 15.0 million euros (US\$16.3 million, the same as in the previous year).

#### 4.1.2. Number of employees (person-years)

70. In 2019 the CNMC employed 515 people including administrative and non-administrative staff of the competition and regulatory areas.

## 4.2. Human resources (person-years) applied to competition enforcement and advocacy

71. A staff of 192 people worked in matters related to competition, 140 of which were non-administrative staff, with an average career of 5 years at the CNMC.

72. The profile of the 140 non-administrative employees who work in competition issues is as follows:

- 44 economists
- 52 lawyers
- 44 other professionals (IT experts, engineers, pharmacists, physicists, mathematicians and others)

73. The CNMC's Advocacy Department employs 45 non-administrative staff while 95 non-administrative staff work for the Competition Directorate.

## 4.3. Period covered by the above information

74. The information regarding the human resources of the Spanish Authority refers to 31 December 2019.

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

### 5.1. Draft Regulation Reports

75. In 2019, the CNMC approved 17 reports on draft regulation. The number of reports has been in line with past years (13 in 2016, 15 in 2017 and 18 in 2018). Due to the recent political context in Spain and its impact on law making process, the CNMC reports mainly refer to draft regulation acts (pieces of regulation under law).

Report	Draft regulation	Date of approval
<a href="#">IPN/CNMC/033/18</a>	Decree on Maritime Transport, Balearic Islands	17/01/2019
<a href="#">IPN/CNMC/035/18</a>	Draft Royal Decree approving the general bylaws of the official association of aeronautical engineers	17/01/2019
<a href="#">IPN/CNMC/002/19</a>	Draft Decree on the regulation of touristic housing in the region of Murcia	07/02/2019
<a href="#">IPN/CNMC/004/19</a>	Draft Royal Decree approving the general bylaws of the official association of industrial property agents	14/03/2019
<a href="#">IPN/CNMC/009/19</a>	Draft Royal Decree modifying the implementing regulation of the Law 17/2001, regarding trademarks	21/03/2019
<a href="#">IPN/CNMC/010/19</a>	Draft Ministerial Order establishing times of resolution in proceedings regulated under Law 17/2001, regarding trademarks	26/03/2019
<a href="#">IPN/CNMC/007/19</a>	Draft Royal Decree approving the development regulation of the Law 22/2015, regarding audits	02/04/2019
<a href="#">IPN/CNMC/011/19</a>	Draft Royal Decree on the bylaws of the official association of aeronautical technical engineers	30/04/2019
<a href="#">IPN/CNMC/015/19</a>	Draft Ministerial Order regulating the Electronic Platform for the Disposal of Waste Materials originating from Electric and Electronic devices, and the Office for the Allocation of Pickups	09/05/2019
<a href="#">IPN/CNMC/016/19</a>	Draft Royal Decree regulating the recognition of producer's organizations and their associations in certain agricultural sectors	23/05/2019
<a href="#">IPN/CNMC/018/19</a>	Draft Royal Decree approving the general bylaws of the Spanish lawyers	20/06/2019
<a href="#">IPN/CNMC/019/19</a>	Draft regulation 1/2019 of the local government of Formentera on tourist rentals	27/06/2019

<a href="#">IPN/CNMC/020/19</a>	Draft Ordinance of the City Hall of Madrid on the regulation of private hire vehicles	04/07/2019
<a href="#">IPN/CNMC/022/19</a>	Draft Royal Decree establishing the requirements and proceeding for the recognition of farm auction centres as reference auction centres, and of their associations	02/10/2019
<a href="#">IPN/CNMC/031/19</a>	Draft Royal Decree approving the general bylaws of official associations of chemists and its General Council	24/10/2019
<a href="#">IPN/CNMC/034/19</a>	Draft Royal Decree regulating waste disposal in landfills	07/11/2019
<a href="#">IPN/CNMC/032/19</a>	Draft Royal Decree modifying the general regulation of drivers	12/11/2019

Source: CNMC

76. The regulatory reports adopted in 2019 refer to a variety of aspects of the regulatory activity of the public sector, and to different sectors of the economy. There are, however, some economic activities that can be highlighted: 1. Official Associations: we approved five reports in 2019. 2. Tourism: in 2019, we adopted two reports on tourist regulation at regional level regarding tourist housing. 3. Agriculture: we offered recommendations in two royal decrees regulating agricultural associations and auction centres. 4. Waste disposal and the protection of the environment: In 2019, we approved two reports on the matter. 5. Industrial Property: we issued two reports in 2019, both regarding trademarks. 6. Transport: we adopted two reports, one of them regarding public services obligations applied to maritime transport services in the Balearic Islands, and the other regarding private hire vehicles in Madrid.

77. In addition to the reports on draft regulation, the CNMC can issue reports giving its opinion about regulations already in order, when the Authority considers they are relevant from the point of view of competition and efficient economic regulation. In 2019, the CNMC issued one of these reports, regarding a royal decree modifying the regulation on private hired vehicles ([PRO/CNMC/003/18](#)). In that report, the CNMC made recommendations to Spanish public authorities in order to develop a regulatory framework aligned to free competition and economic efficiency principles, i.e. without unfair discrimination between the taxi sector and the private hire sector.

## 5.2. Reports on Non-legislative Activities

78. These reports cover a wide variety of sectors. Two of them are related to public procurement initiatives. In that sense, the report regarding the IMSERSO program (specific tourist program for elderly people which is subsidised by the Spanish government and is provided by private tour operators awarded through public procurement procedures) has significant importance since the Competition Authority had already sanctioned the main Spanish tour operators for illegal joint bidding agreements in this IMSERSO program contracts. Therefore, in the advocacy report the CNMC provides advice on how to design the tender in order to foster genuine competition for the contract and to minimize the risk of bid rigging. The other competition advocacy report on public procurement was requested by the Ombudsman about a framework agreement for the supply of textbooks for public schools in the region of Madrid. The CNMC analysed the tender documents and issue several recommendations in order to improve the competition conditions in the procedure.

79. The other advocacy initiatives are related to the transport sector, national health system and auditor services. In those reports, the CNMC gives advice to public administrations in order to avoid unjustified restrictions on competition in their activities.

80. In 2019, the CNMC adopted the following 5 reports:

Report	Regulation	Date of Approval
<a href="#">INF/CNMC/173/18</a>	Report on fees setting in the Audit sector	07/03/2019
<a href="#">INF/CNMC/033/19</a>	Report on public procurement in the IMSERSO touristic program for elderly people and the maintenance of employment in touristic areas	10/04/2019
<a href="#">INF/CNMC/038/19</a>	Report on the Frame Agreement on the procurement of textbooks by the Community of Madrid	10/04/2019
<a href="#">INF/CNMC/052/19</a>	Report on an enquiry made by the Ministry of Development about the costs of services of road transport of goods	14/05/2019
<a href="#">INF/CNMC/059/19</a>	Report on the action plan to promote the use of market regulator drugs in the Health National System – biosimilar and generic drugs	27/06/2019

Source: CNMC

81. In addition, the CNMC issued the annual report ([IAP/CNMC/001/19](#)) on State Aid granted in Spain. Its main goal is to provide a general overview of the statistics concerning notified public aid for the last year where data is available (2017, in the case of the 2019 report) and of the last legal updates on Spanish and European level during the previous year.

### 5.3. Market Studies and Guides

82. In 2019, the CNMC has concluded 3 market studies.

83. In February 2019, it published an Overview of Public Procurement Procedures in Spain ([E/CNMC/004/18](#)). Public procurement is very important in Spain. Depending on the estimates and the year, it accounts for 10% to 20% of Spanish GDP. This study evaluates the impact of implementing more competitive procurement procedures on economic efficiency. Specifically, the aim is to isolate and quantitatively determine the effect of the specific procurement procedure chosen on the cost of the contract for the government. Focusing on general government procurement data, the results of the econometric analysis performed show that the choice of the procurement procedure is not neutral in terms of the efficiency of public procurement. Specifically, the government expenditure is, on average, 9.9% less in contracts for which an open procedure is used rather than a non-open procedure (negotiated, restricted and competitive dialogue). To illustrate the importance of this result: if it had been possible to use open procedures in all tendering, the cost of public procurement would have been – as a minimum and using very conservative criteria – some 1.7 billion euros less for the 2012–2016 period.

84. In July 2019, the CNMC released a Market Study on the Liberalisation of Passenger Transport Services by Rail ([E/CNMC/004/19](#)). It reviews the main challenges and obstacles that the liberalisation of this sector faces in Spain. The railway system in Spain shows certain features that favour the entry of competitors in the market, such as low use of the existing infrastructures or the scarce overlap between the commercial and public services; however, there are also some challenges, like the inherited advantages that the traditional monopolist (Renfe) enjoys, and that may prevent new competitors from entering in the market. For this reason, the study offers some recommendations for the success of liberalisation, like guaranteeing total independence between the infrastructure operator (ADIF) and the service operator (Renfe) or guaranteeing the access of all operators to infrastructures and rolling material, among others.

85. Finally, in July 2019 the CNMC published an Analysis of the Competitive Impact of the Entry of Unmanned Petrol Stations in the Retail Fuel Market ([E/CNMC/005/19](#)). The study focuses on the development of the unmanned format in the region of Madrid during a five year period, from mid-2011 to mid-2016, and concludes that unmanned stations are an important element driving competition in the market. In fact, these kind of

stations tend to be less expensive than traditional petrol stations and lead to lower prices at other petrol stations, benefiting consumers and companies. The study estimates that the resulting pro-competitive impact saved consumers in the region of Madrid between 15 and 24 million euros from 2012 to 2016. Moreover, the study reviews the regulatory situation compared to 2016, when the CNMC published a report on the regulation of the distribution of automotive fuels through unmanned service stations ([PRO/CNMC/002/16](#)). Although some of the most direct restrictions on the opening of automatic service stations identified by the CNMC in 2016 have disappeared, new ones have appeared and continue to make them more difficult to open. It therefore recommends state and local authorities to review, and eliminate, existing restrictions, so that consumers can fully benefit from competition in the market.

Market Study	Economic sector	Date of Approval
<a href="#">E/CNMC/004/18</a>	Overview of Public Procurement Procedures in Spain	07/02/2019
<a href="#">E/CNMC/004/19</a>	Market Study on the Liberalisation of Passenger Transport Services by Rail	01/07/2019
<a href="#">E/CNMC/005/19</a>	Analysis of the Competitive Impact of the Entry of Unmanned Petrol Stations in the Retail Fuel Market	11/07/2019

86. Moreover, in 2019 the CNMC started to revise its 2011 Guide on Public Procurement and Competition to reflect recent developments and the change of regulatory framework derived from the transposition of the 2014 EU Public Procurement Directives. The CNMC has initiated this updating process by focusing on procurement planning phase. In that sense, it has issued a preliminary working paper called *public procurement planning an essential tool to foster competition and economic efficiency in public purchasing*.

87. In addition, during 2019 the CNMC launched three public enquiries, aiming at collecting the views of the main stakeholders in different sectors, as part of the preparation of market studies and guides currently under way:

- [Public consultation on online advertising](#): In the spring of 2019, the CNMC launched a market study on online advertising. The first stage was a public consultation, which was open from April 25th to May 24th 2019. The CNMC received 65 submissions from advertising agencies, advertisers, consumers, experts, media and content creators, public institutions and regulators, platforms and others.
- [Public consultation on public procurement](#): Under the frame of the Guide on Public Procurement revision, the CNMC opened a public enquiry to gather useful information from experts about this topic, to which around 60 agents contributed. It was open from 20 November to 20 December 2019.
- [Public consultation on intercity passenger transport services by coach](#): The CNMC announced the preparation of a market study on intercity transport by coach by launching a public consultation, which was open from 16 December 2019 to 7 February 2020. 234 submissions were received from consumers (163 submissions), intercity coach operators (39 submissions), other transport operators (6 submissions), independent experts or academics (20 submissions), other firms (1 submission), public authorities (1 submission) and other (4 submissions).

88. Finally, the CNMC organized 4 public events related to market studies and guides, as part of its effort to create competition culture:

- [Conference on Fintech](#): The CNMC hosted an event in January 2019 to present the [Study on the impact on competition of technological innovation in the financial sector \(Fintech\)](#) (launched in 2018) and debated about key issues with sectoral regulators and market players.
- [Workshop on Passenger Transport Services by Rail](#): the CNMC organized an event in October 2019 about the liberalisation of passenger transport services by rail and presented the market study published earlier this year. Key stakeholders and regulators were invited to the discussion aiming to debate about the current situation in Spain.
- [Workshop on Fintech](#): In December 2019, the CNMC organized another event jointly with ASUFIN (Financial Services Users Association) aiming to discuss the main challenges and opportunities of Fintech services for consumers.
- [Conference on public procurement](#): The CNMC organized in December 2019 a conference called “*Planning as an essential requirement to promote competition and efficiency in public procurement*” that served as a forum for debate among experts, academia and market players.

#### 5.4. Active Legal Capacity

89. In 2019, the CNMC filed 5 appeals on the basis of the aforementioned article 5.4:
- In May 2019, the CNMC challenged the Decree 50/2018, 20 December, which regulates protected indications of quality in the Region of Castilla y León ([LA/01/2019](#)) which restricts to the Regulation Board of each Protected Denomination of Origin (PDO) or Protected Geographical Indications (PGI) the control of characteristics and quality requirements to products.
  - In July 2010, the CNMC challenged a local regulation that sets operating conditions to licenses for Private Hire Vehicles (PHV) in the metropolitan area of Barcelona. It includes a minimum pre-hiring period of 60min and the prohibition of vehicle geolocation, among other unjustified restrictions ([LA/3/2019](#)).
  - In October 2019, the CNMC challenged a local regulation in the city of Madrid that sets requirements for the establishment of tourist housing and tourist apartments in Madrid.
  - In October 2019, the CNMC challenged the Decree 29/2019 that modifies the Decree 79/2014, 10 July which regulates tourist accommodation in the Region of Madrid.
90. In addition, there have been some developments in court challenges initiated in previous years. In particular:
- Case [LA/05/2018](#): in relation to an appeal against a local regulation in the city of Bilbao that sets requirements for the establishment of tourist housing in the city, limiting its location to the ground and first floors of residential dwellings. 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/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 was appealed by the CNMC before the Supreme Court and it was partially accepted. Currently, the Supreme Court is

considering the claims of the parts about the possibility of submitting an exception of unconstitutionality or a preliminary ruling.

- 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 Decree was appealed before the regional high court and the challenge was accepted in part. This ruling was appealed by the CNMC before the Supreme Court, which has dismissed the CNMC's challenge.

## 5.5. Economic Reports

91. In 2019, the Advocacy Department produced 2 economic reports to support the judiciary lawsuits of the CNMC. One proceeding was related to article 5.4 of Law 3/2013, on the Creation of the CNMC and the other was related to article 27 of Law 20/2013 on Public Road Transport of goods:

- A report on the welfare impact of local regulation that sets operating conditions to licenses for PHV in the metropolitan area of Barcelona.
- A report evaluating the economic impact of the Decree 70/2019 requiring a maximum age of vehicles in order to obtain new licenses