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COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Spain

-- 2022 --

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Spain

Executive Summary

1. This report covers the competition enforcement and advocacy activities carried out in 2022 by the Spanish National Markets and Competition Commission (“CNMC”).
2. On the enforcement side, in 2022, the CNMC adopted fifteen fining decisions, fourteen non-fining decisions, and one proceeding was finalised under the commitment procedure¹.
3. As for the fining proceedings, eight of them regarded Article 1 of the Spanish Competition Act and/or 101 of the Treaty on the Functioning of the European Union (TFEU) and one of them involved bid rigging in public tenders. Five of the fining decisions concerned Article 2 of the Spanish Competition Act and/or Article 102 TFEU, and the remaining one was an infringement of Article 3² of the Spanish Competition Act.
4. The remaining seven fining decisions dealt with other competition law infringements, mostly procedural ones, such as gun jumping (six cases) and breach of commitments (one case).
5. The fines imposed by the CNMC amounted to € 329.9 million (€323 million for prohibited conduct and €6.9 million for other practices). In particular, 27 companies were fined in total (20 companies for prohibited conducts and 7 because of gun-jumping or breach of commitments).
6. In 2022, the CNMC started 34 investigations and opened five formal proceedings. Specifically, two formal investigations were opened for alleged infringements of Article 1 of the Spanish Competition Act and/or 101 TFEU, and three formal investigations delved alleged infringements of Article 2 of the Spanish Competition Act and/or 102 TFEU.
7. Likewise, some of the proceedings dealt simultaneously with different infringements, amounting for both possible collusion and abuse of dominant position (Articles 1 and 2 of the Spanish Competition Act and/or Articles 101 and 102 TFEU) and for both abuse of dominant position and unfair trade acts restricting competition significantly (Articles 2 of the Spanish Competition Act and/or Article 102 TFEU and article 3 of the Spanish Competition Act).
8. On the merger side, in 2022, a total of 103 deals were notified to the CNMC, the highest number in the history of the Spanish competition authority. Four transactions were analysed and cleared in Phase I (subject to remedies offered by the parties). In three additional cases, the CNMC opened Phase II of the merger control procedure.
9. As regards competition advocacy, the CNMC issued 18 reports on legislative drafts. These reports were addressed to legislative authorities to improve, from the competition perspective, new legislative measures at the drafting stage. Also, another seven reports not related to draft regulations were adopted.

¹ Decisions that end with no fines and no declaration of infringement, following immediate end of the suspected practice and behavioral commitments on the part of the undertakings.

² The Spanish Competition Act (Ley 15/2007, de 3 de julio) also includes the possibility of sanctioning the distortion of free competition by unfair acts.

10. Similarly, in 2022, the CNMC published on its own initiative three sectoral studies and two advocacy reports: (i) a study on the wholesale distribution of medicines through pharmacies; (ii) a study on ATM cash withdrawal services; (iii) a study on intercity bus passenger transport; (iv) the impact report evaluating advocacy and single market initiatives on the legislative and regulatory measures adopted in Spain between 2013 and 2019; and, finally, (v) the quantitative analysis of public aid for the deployment of broadband in Spain.

11. The CNMC has also issued on its own – initiative a report to assess the design of the aid schemes granted through the MOVES III Programme.

12. Finally, it should be noted that some members of the Competition Chamber have changed in 2022.

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

1.1. Summary of new legal provisions of competition law and related legislation

13. In 2022, the Law for the [Creation and Growth of Companies](#) was approved³. This law introduced amendments to the [Market Unity Act](#)⁴, which aims to ensure the integrity of the economic system and facilitate the exploitation of economies of scale and scope through free access, exercise and expansion of economic activities throughout the national territory while ensuring their adequate supervision.

14. Specifically, the amendments introduced were aimed at:

- Deepening cooperation and mutual trust between the different public administrations;
- Strengthening the channels through which companies can complain when they consider that public administrations do not comply with the principles of good economic regulation; and,
- Removing obstacles for companies by extending the catalogue of economic activities exempt from licensing (all those that were considered innocuous by at least one autonomous community government were included in the State catalogue).

15. Regarding the Market Unity Act (Article 27), the CNMC is entitled to challenge any regulation below the status of ordinary law and/or any administrative act contrary to the provisions set out in that act.

16. On the other hand, the [Spanish Public Procurement Act](#)⁵ was amended in December 2022 to develop a new procedure for public contracting bodies to report to the CNMC any alleged infringement of the competition law detected in a public procurement process. The procedure includes the suspension of contracting and the submission of a report by the Competition Directorate assessing if the evidence provided by the contracting body is strong enough to open an investigation.

³ Ley 18/2022, de 28 de septiembre, de creación y crecimiento de empresas.

⁴ Ley 20/2013, de 9 de diciembre, de garantía de la unidad de mercado.

⁵ Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014

17. The Spanish Competition Act was amended in March 2023 to include a provision about whistleblowers reporting breaches of competition law. Although the transposition into Spanish law of the Whistleblower Directive creates a new independent authority to manage the external reporting channel, the CNMC's Competition Directorate will be in charge of the external reporting channel for anti-competitive behaviour.

1.2. Government proposals for new legislation

18. Some amendments to the Spanish Competition Act, including the settlement procedure, the modification of time limits and the increase of fines to individuals, are still under parliamentary process. We expect them to enter into force in 2023.

2. Enforcement of competition laws and policies

2.1. Action against anti-competitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities

19. In 2022, the CNMC opened five formal proceedings: two formal investigations were opened for alleged infringements of Article 1 of the Spanish Competition Act and/or 101 TFEU and three formal investigations were opened for alleged infringements of Article 2 of the Spanish Competition Act and/or 102 TFEU. Some of the proceedings dealt simultaneously with different infringements, amounting for both possible collusion and abuse of dominant position and for both abuse of dominant position and unfair trade acts restricting competition significantly.

20. Likewise, in 2022, the CNMC carried out five dawn raids in four cases. In total, thirteen premises were inspected. One of the dawn raids was conducted in cooperation with the Portuguese competition authority (*Autoridade da Concorrência, AdC*).

21. The Spanish competition authority adopted the following final decisions in 2022:

- A total of fifteen fining decisions, eight of them regarding prohibited conduct (anti-competitive agreements, abuse of a dominant position and distortion of free competition by unfair acts) and the remaining seven regarding other practices (gun-jumping and breach of commitments).
- Also, one case was finalised under the commitment procedure.
- Finally, fourteen non-fining decisions were adopted by the CNMC.

22. As for the fining proceedings regarding prohibited conduct, two of the decisions concerned anti-competitive agreements (Article 1 of the Spanish Competition Act and/or 101 TFEU), one of which involved bid rigging in public tenders. Five of the fining decisions concerned the abuse of a dominant position (Article 2 of the Spanish Competition Act and/or Article 102 TFEU) and the remaining decision concerned the distortion of free competition by unfair acts (Article 3 of the Spanish Competition Act⁶).

23. Please, find further information about the fined cases in the following links:

⁶ The Spanish Competition Act also includes the possibility of sanctioning the distortion of free competition by unfair acts (Article 3 of the Spanish Competition Act).

- [S/0012/19](#) - CHATARRA Y ACERO
- [S/0021/20](#) - OBRA CIVIL 2
- [S/0041/19](#) - CORREOS 3
- [S/0044/19](#) - REAL SOCIEDAD CANINA DE ESPAÑA
- [S/0022/20](#) - ENEL GREEN POWER ESPAÑA
- [S/0026/19](#) - MERCK SHARP DOME S.A
- [S/0028/20](#) - LEADIANT
- [S/0013/20](#) - AUDAX RENOVABLES

24. The total fines imposed by the CNMC amounted to €329,9 million (€323 million for prohibited conduct and €6,9 million for other practices). The total number of companies fined was 27 (20⁷ for prohibited conduct and 7 for other practices).

25. On the other hand, the Competition Directorate started 34 investigations (11 disciplinary proceedings and 23 preliminary proceedings) and formally opened 5 new cases in 2022 regarding prohibited conduct:

- 1 case involves cartels and other anti-competitive agreements.
- 3 cases involve the abuse of a dominant position.
- 1 case involves the distortion of free competition by unfair acts.

2.1.2. Description of significant cases

26. In 2022, two decisions established the existence of collusive practices prohibited by Article 1 of the Spanish Competition Act and 101 of the TFEU. One of them was identified as a cartel and the other one involved bid rigging in public tenders.

27. In the **Chatarra y Acero** case, three steel companies were fined a total of €23.34 million for two cartel infringements, consisting of two anti-competitive exchanges of information in the ferrous scrap market. One of the companies benefited from a 50% reduction in the penalty imposed, due to its collaboration with the Competition Directorate in the framework of the leniency programme.

28. In the **Obra Civil 2** case, the main construction companies in Spain were sanctioned with more than €203.6 million for distorting the competitive process in infrastructure construction tenders for more than 25 years. This constitutes the highest sanction in the history of the CNMC, both in a single case and to a single company.

29. Yet 2022 was characterised by the number of investigations carried out under Article 2 of the LDC and 102 of the TFEU. Notably, there were 5 sanctions for abuse of a dominant position.

30. In February 2022, the CNMC imposed a €32.6 million fine on **Correos** for applying a system of discounts to large customers, which would have potentially excluded or prevented other competitors from entering the market, at least from 2015 to 2019.

⁷ 6 companies in the Obra Civil Case and 3 companies in the Chatarra y Acero Case for conducts concerning collusion; one in each of the 5 cases of abuse of a dominant position and, finally, 6 companies in the Audax Renovables Case regarding an infringement of article 3 of the Spanish Competition Act.

31. In May 2022, the CNMC fined the **Royal Canine Society of Spain** €142,996 for hindering the activity of rival associations and discriminating against canine judges. The abuse resulted in the establishment of restrictions on dog owners of other associations to access the international market and restrictions on their judges to participate in shows of other organisations. In addition to the fine, the resolution also urges the Royal Canine Society of Spain to facilitate access to the export pedigree certificate for breeders registered in the stud books of officially recognised competing national canine associations who request it, without forcing them to register in the stud books of the Royal Canine Society of Spain.

32. In June 2022, the CNMC fined **Enel Green** €4.9 million for abusing its dominant position in two access nodes of the electricity transmission network. It took advantage of its status as Sole Node Interlocutor (IUN) to ensure that its own renewable generation facilities were awarded greater access capacity to the network, to the detriment of its competitors.

33. In October 2022, the CNMC fined the pharmaceutical company **Merck Sharp and Dohme (MSD)** €39 million for abuse of a dominant position in the vaginal contraceptive ring market. In 2017, the company pursued unfair legal action against its competitor Insud Pharma, under the claim of protecting its patent. Via this strategy, it sought to delay the entry of its competitor's product into the affected market.

34. In November 2022, the CNMC imposed a fine of €10.25 million on **Leadiant** for selling its orphan drug for the treatment of a rare disease at an excessive price. Leadiant obtained the exclusive supply of the drug's active ingredient and thus prevented the emergence of alternative products. It imposed on the National Health System a price 14 times higher than that of another drug (which was essentially the same) that Leadiant marketed in 2010 in Spain to treat the same disease. Additionally, the CNMC obliged Leadiant to comply with a series of commitments in order to put an end to its exclusive control of the active ingredient in Spain and to sell it in Spain at the price that was agreed with the Ministry of Health.

35. Lastly, regarding the distortion of free competition as a result of unfair acts, in October 2022, the CNMC fined **Audax Group** €9.2 million for winning electricity and gas customers from other electricity and gas companies/competitors through fraudulent acts. Audax traders deceived thousands of domestic customers, including vulnerable consumers. Among others, they pretended to be the users' current company, they fabricated tariff changes, discounts or mandatory changes of distributors.

36. The close collaboration between the Competition Directorate and the Energy Directorate throughout this investigation is noteworthy.

2.1.3. Judicial review

37. In 2022, the Spanish National High Court **confirmed 13 decisions** by the CNMC for 35 firms and **annulled 7 decisions** related to 52 firms.

38. Among the confirming judgments, there are significant cases such as the bid-rigging cartels that altered the results in tenders for public road-maintenance contracts and in the modular building sector.

39. Furthermore, the National High Court upheld decisions regarding cartels in the transport sector, such as Port of Valencia and Balearic passenger transport: the forbidden agreements concerned anti-competitive deals among operators to fix the price of fares. In addition, the National High Court acknowledged the existence of concerted practices in the

courier and parcel sector: the agreement consisted of a non-competition agreement among 19 companies with the Spanish parcel delivery company CORREOS.

40. The National High Court confirmed as well the abuse of a dominant position by ABERTIS, by setting entry barriers in the wireless telecommunications sector.

41. On the other hand, the 7 repealed judgments are mainly related to market-sharing agreements, including 2 cartels in the concrete sector and one case concerning the refusal to supply in the replacement market.

42. To summarise, **65% of the CNMC's decisions** subject to review by the National High Court in 2022 have been confirmed.

43. In 2022, the **Supreme Court upheld 66,7% of the cases** (2 decisions for 4 bar associations). The cases are related to the guiding criteria for attorney's fees and costs used in different autonomous communities. On the contrary, the Supreme Court annulled 1 decision for 2 companies.

44. Although there is still room for improvement, it is unquestionable that the trend is improving.

2.2. Mergers and acquisitions

2.2.1. Statistics on the number, size and type of mergers and/or acquisitions controlled under competition law

45. In 2022, 103 merger transactions were notified to the CNMC, the highest number in the history of the Spanish competition authority.

46. Four mergers were cleared in Phase I of the merger control procedure, subject to remedies offered by the parties, and Phase II was opened for 3 additional cases (still ongoing).

2.2.2. Summary of significant cases

47. In 2022, 4 transactions were cleared with commitments offered by the notifying parties, with a view to preventing a significant impediment to effective competition. Commitments may be submitted in Phase I, as long as the alleged competition restrictions are clearly identified and can be easily solved.

48. This was the case for the 4 transactions that were cleared in 2022 subject to the commitments offered by the parties: **KKR/IVI, HEFAME/COFARCU, WEDDING PLANNER / ZANKYOU VENTURES** and **KARNOV / TR ESPAÑA / WK ESPAÑA**.

49. The transaction between **KKR and IVI** concerns the healthcare sector for assisted reproductive treatments. The analysis carried out by the CNMC identified several competition risks regarding high market shares (that would result in a privileged negotiating position eventually leading to a price increase for consumers) in a few regions in Spain. Therefore, a set of commitments to eliminate the potential anti-competitive effects of the merger were adopted. These included the following: a divestiture of clinics in the affected regions, a commitment not to increase prices (without worsening the quality of the services) and the modification of an exclusivity agreement that the acquired group already had in place.

50. The transaction between **HEFAME and COFARCU** concerns the wholesale distribution of pharmaceutical products. In particular, the parties' activities overlap in the "full-line" market for sales to pharmacies and pharmacists. After an assessment of the potential barriers to competition as a result of the operation (high level of vertical

integration and concentration of the sector in recent years), a set of commitments were proposed and approved by the CNMC. These commitments included: the reduction of the minimum purchase for members from 30% to 25% of the total purchases and the elimination of the minimum five-year membership, as set forth in HEFAME's post-merger bylaws, limiting the period of notice to ninety days in the case of voluntary withdrawal by members.

51. The transaction between **WEDDING PLANNER and ZANKYOU VENTURES** concerns the domestic market for the provision of wedding-related search services and the market for online platforms for wedding planning services in which both parties are present. The assessment of the merger uncovered potential anti-competitive effects (such as the ability and incentive to use formal or *de facto* exclusivity strategies to limit the ability to grow or to exclude third-party competitors from the market, as well as a risk of price increases to suppliers of wedding-related services and products). Thus, the CNMC proposed a set of commitments to help mitigate those risks and maintain effective competition. These commitments include the following: not imposing exclusivity on commercial users to its platforms, not linking commissions paid by commercial users to an exclusivity obligation and not penalising affiliated commercial users for joining third-party platforms. Parties are subjected to a 5-year commitment.

52. The transaction between **KARNOV, TRE ESPAÑA** (Thomson Reuters España) and **WK ESPAÑA** (Wolters Kluwer España) affects several sectors: legal databases, the publication and distribution of professional legal publications, legal management software and legal training in Spain. The CNMC detected several competition concerns (some horizontal overlaps that would increase the ability and incentive to incorporate exclusivity clauses in its agreements, which could lead to market foreclosure and the presence of players with significant market shares who would exert an important competitive constraint and bargaining power). A set of commitments to address these competition risks were consequently adopted. These include the following: not linking a customer's purchase or renewal of a legal database and/or publication to the purchase by that customer of any other product offered by KARVOV and not including exclusivity clauses or incentives to be concluded or renewed with authors who publish with KARNOV. Parties are subjected to a 3-year commitment that can be revived for an additional 2-year period after a reasoned assessment.

53. Additionally, in 2022, the CNMC requested the referral to the European Commission of the **COCHLEAR / OTICON MEDICAL** and **VIASAT / CONNECT TOPCO** cases, which had been notified in Spain.

54. Likewise, the case **ALCAMPO / DIA ASSETS** was referred to Spain by the European Commission.

3. The role of competition authorities in the formulation and implementation of other policies

55. The Advocacy Department plays a fundamental role in promoting competition culture. The department uses several tools for that purpose: (i) market studies, guides, and *ex officio* reports; (ii) reports on draft regulation; (iii) reports on non-legislative activities; (iv) active legal capacity to challenge regulations and administrative acts before Spanish Courts; (v) and economic impact reports for Court challenges.

3.1. Market studies, guides and *ex officio* reports

56. The CNMC's studies and reports seek to identify the operating problems of a given sector and propose changes in regulation. Occasionally, the studies take the form of guides with an educational function. In 2022, the CNMC issued 3 studies, 2 *ex post* evaluation reports and 1 *ex officio* report.

3.1.1. Market Studies

- [E/CNMC/002/17](#): The study on the wholesale distribution market for medicines identifies barriers to competition in this sector and recommends changes in the regulation of prescription and dispensing to promote competition between original and generic medicines, reinforce the analysis of and attention to the evidence on the interchangeability of biosimilars with biological medicines and improve the remuneration of wholesalers and pharmacies, among others.
- [E/CNMC/003/21](#): The study on ATM cash withdrawal services confirms the reduction in the number of ATMs in Spain in recent years, the lower use of cash and the absence of ATMs in many small municipalities in Spain and in sparsely populated areas. It recommends facilitating cash withdrawal in shops with a card as an alternative to ATMs and resorting to instruments such as tenders and public aid to promote competition while avoiding the expulsion of private initiatives.
- [E/CNMC/006/19](#): The study on intercity bus passenger transport concludes that the current Spanish concession system has room for improvement for consumers. For this reason, it proposes to liberalise the transport of passengers by bus for distances greater than 100 km and to establish an independent regulatory body to supervise the liberalisation process and resolve possible conflicts.

3.1.2. *Ex post* evaluation reports

- [EI/01/2021](#): The report on the impact of competition advocacy and market unity reforms in Spain between 2013 and 2019 identifies a total of 2,568 recommendations in 514 actions to promote competition and market unity by the CNMC in this period and analyses the degree of follow-up by their recipients, concluding that 61% of the CNMC recommendations were adopted. In addition, the economic impact of the recommendations made by the CNMC is estimated in 12 specific actions. These actions had a direct monetary impact estimated at between €2,000 and €3,000 million and other potential positive effects such as increased employment, reduced waiting times and entry of new operators.
- [EI/01/2022](#): The quantitative analysis of public aid for the deployment of broadband in Spain carried out an econometric analysis of the public aid granted between 2013 and 2020 for the development of broadband in Spain and concluded that this aid has served to promote connectivity and competition in the sector, providing an additional boost to the effort made by private operators.

3.1.3. *Ex officio* reports

- [PRO/CNMC/003/21](#): This own-initiative report was drawn up with the aim of assessing the design of the aid granted through the MOVES III Programme (aid programme to incentivise the purchase of electric, plug-in hybrid and fuel cell vehicles) in terms of incentives for the purchase of electric vehicles and from the

perspective of their impact on competition and compliance with the principles of good regulation.

3.2. Reports on draft regulations

57. In 2022, the CNMC issued 18 reports⁸ on regulatory rules in progress. The number of reports in this category is slightly lower compared to previous years.

58. By industry, the reports on draft regulations have most frequently analysed legislation in the agri-food sector, followed by legislation relating to professional services, intellectual and industrial property rights and the transport sector.

3.3. Reports on non-legislative activities

59. The CNMC acts as an advisory body on competition and efficient economic regulation, providing advice to public administrations on actions that are not linked to regulatory projects.

60. The Public Procurement Act is not applicable to contracts between two public companies of the same group. Therefore, the CNMC must prepare a report analysing the contracts to be signed. Six of the seven reports produced in 2022 are in this category. The seventh concerned the qualification required for the provision of professional services at the Archaeological Museum of Ibiza and Formentera.

3.4. Active legal capacity instruments

61. The CNMC may challenge administrative acts and regulations that introduce obstacles to the maintenance of effective competition in the markets.

62. In 2022, the CNMC filed an appeal against the Agreement modifying the Mobility Ordinance of the Valencia City Council ([LA/01/2022](#)), considering that this regulation restricts effective competition in taxi and ride-sharing urban mobility services.

63. In addition, an appeal was dismissed in 2022 ([LA/10/2019](#)).

3.5. Economic reports to support court challenges

64. The aim of these reports is to carry out an economic and quantitative analysis of the restrictions on competition in regulations that have been appealed by the CNMC before the courts. Over the course of 2022, the CNMC prepared two economic reports regarding regulatory standards in the ridesharing sector in the Region of Murcia ([LA/04/2021](#)) and in the municipality of Valencia ([LA/01/2022](#)).

3.6. Reports on public aid

65. In 2022, the Council of the CNMC approved the Annual State Aid Report (which focuses on public aid granted in 2020). The report shows public aid doubled in the year of the pandemic. Thus, in 2020, State aid reached 1.46% of GDP compared to 0.65% in 2019. One third of the aid was allocated to alleviate the effects of the health crisis caused by Covid-19. Spain ranked 20th in the European Union in terms of aid per GDP.

⁸ Please, find further information about the reports on the [CNMC's website](#).

66. The quantitative analysis of public aid for the deployment of broadband in Spain previously mentioned was approved with the Annual State Aid Report.

3.7. Public consultations and advocacy events

3.7.1. Public consultations

67. In 2022 the CNMC opened three public consultations regarding waste management, the regulation of several services provided in ports and the guide for damage quantification⁹. The number of contributions received was 49, 37 and 16, respectively.

3.7.2. Advocacy events

68. Under this heading, the initiative ‘Municipalities and Competition’ is worth mentioning. This initiative began in 2021 and consists of recommendations, public consultations and seminars on the most common barriers to free competition in the actions of municipalities.

69. The project is carried out with the collaboration of the regional competition authorities and developed through ‘*stories*’, which focus the analysis on the sectors of activity or areas of local public intervention that are most problematic from the perspective of barriers to competition. For each *story*, a discussion document is prepared and submitted for public consultation and a seminar is organised with representatives of municipalities, businesses, consumers and academia to gather all opinions on the matter, and recommendations are drawn up. In 2022, three new *stories* were carried out:

- The extension of concessions, in collaboration with the Galician Competition Commission, which included the organisation of a discussion day in Santiago de Compostela on the 8th of June.
- Funeral services, in collaboration with the Andalusian Agency for Competition and Economic Regulation, which included the organisation of a discussion day in Seville on the 17th of October.
- Minor contracts, in collaboration with the Basque Competition Authority, which included a discussion day in Bilbao on the 3rd of November.

70. In 2022, the Advocacy Department also organised an event to present a study on intercity bus passenger transport.

71. Finally, the CNMC organised the ICN Advocacy Workshop in February 2022.

4. International Cooperation

4.1. European Competition Network

72. In 2022, the CNMC continued its cooperation with the European Competition Network (ECN). In particular, the CNMC participated in the following work and discussions:

- Works and discussions for the transposition of Directive 2019/1, known as the ECN+ Directive.

⁹ In 2021, there was a first public consultation on the guide for damage quantification.

- Advising national decision-makers on the European Union’s Digital Markets Act (DMA), finally published on 12 October 2022.
- Participation in the review proceedings of the Vertical Block Exemption Regulation and its implementation guidelines, which culminated in its publication in May 2022.
- Participation in the review proceedings of the Horizontal Block Exemption Regulation and its interpretation guidelines, and of Regulation 1/2003 implementing Articles 101/102 of the TFEU started in September 2022, as well as on Regulation 139/2004 for the simplification of procedures in the control of corporate mergers.
- Discussions and analysis on the legal definition of “relevant market”, the EU Regulation on foreign investments and the guidelines on Collective Bargaining for self-employed. These regulations were finally published in September and December 2022, respectively.
- Participation in the high-level conference on competition policy and environmental sustainability targets with respect to the Green Deal.
- Participation in the European Competition Day, which is celebrated within the framework of the rotating presidencies of the EU.
- Participation in the ECN working groups, especially the contributions made in the following groups: Agri-Food, Pharmaceuticals, Cooperation, Cartels, Digital, Artificial Intelligence and Digital Research, Vertical Agreements and Horizontal Agreements, Financial Sector, Telecommunications, Environment, Promotion, Chief Competition Economists, and Concentrations.

73. Finally, the CNMC plays an active role in the ECN working groups, where an exchange of practical experience takes place. In 2022, these groups met 15 times. In 2022, the CNMC carried out its work in the subgroups of Agrofood, Pharma, Cooperation Issues, Digital, Artificial Intelligence, Vertical and Horizontal Agreements, Financial Services, Competition Chief Economist and Mergers.

74. In the framework of cooperation for the implementation of Articles 101 and 102 TFEU within the ECN, the CNMC received documentation from the DG COMP regarding 40 cases that the European authority opened in 2022. The CNMC notified the ECN of the initiation of 3 proceedings under Articles 101 and 102 TFEU.

75. As for bilateral cooperation activities, the CNMC received and answered 84 consultations from other European competition authorities and the DG COMP.

76. Besides, in the area of mergers, the CNMC received 365 notifications from the DG COMP. In this regard, the CNMC engaged in 31 cases.

77. In 2022, the Advocacy Department led a workshop in the ECN called *What we mean when we talk about advocacy*.

4.2. European Competition Authorities (ECA)

78. The ECA is a forum for discussion of competition directors from European countries, both EU and non-EU, and for cooperation in merger control.

79. Pursuant to the Agreement of the ECA meeting held on 20 April 2001, the CNMC has received 231 notifications and has notified 12 multi-jurisdictional concentrations.

4.3. Organisation for Economic Co-operation and Development (OECD)

80. The OECD Competition Committee aims to protect and promote competition as the backbone of all modern economies and brings together the competition authorities of the 38 OECD member countries, in addition to the EC.

81. The President of the CNMC is a member of the management body or Bureau of the OECD Competition Committee. This body provides the Secretariat with detailed indications for the design and execution of the working programme. The Bureau is currently composed of thirteen countries and meets twice a year during the competition week in Paris. The CNMC contributed to the different roundtables and sessions organised for this week, in June 2022.

82. In 2022, the CNMC continued to be actively involved in the different activities organised by the OECD. As an example, the CNMC decided to team up with the US and the UK to launch the OECD Global Forum on Technology. The Global Forum on Technology will follow the standards and development of all OECD global forums. This deployment aims to draw up a common roadmap that explores the economic and social opportunities of the digital transition, while also analysing its impact on a large scale and making decisions accordingly.

83. The CNMC also participates in specific working groups promoted by the OECD, such as the Intellectual Property Rights and Competition project.

4.4. International Network of Competition Authorities (ICN)

84. The CNMC continues to participate in the conferences, working groups and meetings of this important international network of competition authorities. The main objective of the ICN is to promote convergence between competition laws and policies and cooperation between competition authorities to improve the effectiveness of competition regulation at the international level.

85. As in previous years, the CNMC and the Spanish non-governmental advisors actively participated in the ICN Annual Conference held in Berlin (Germany) in May 2022, where the CNMC was also designated to host the 2023 Annual Conference, thus becoming a member of the ICN Steering Group. In addition, the CNMC participated in several working groups and co-chaired the mergers group until May 2022. Since then and for three years, the CNMC co-chaired the unilateral conduct working group, obtaining high visibility at the international level and providing an important influence in this area. In particular, the CNMC contributed to the Steering Group Statement: The Role of Competition & Competition Policy in Times of Economic Crisis.

4.5. Latin American and Caribbean Forum, Ibero-American Competition Forum and other activities with Ibero-America

86. The Latin American and Caribbean Competition Forum (FLACC) is a project of the OECD and the Inter-American Development Bank (IDB) to promote the effective implementation of competition policy in Latin America.

87. In September 2022, the CNMC attended the 19th Edition of the FLACC in Rio de Janeiro. The CNMC participated in the session on strengthening the incentives for leniency policy, as well as in the session on media mergers, and presented written contributions on both topics. Next, the CNMC, together with the Portuguese competition authority—AdC—

organised the 2022 Ibero-American Competition Forum and moderated the table on “Preventing collusion and improving competition in public tenders”.

88. Likewise, in 2022, the CNMC organised the 17th Edition of the Ibero-American School of Competition, a space for learning, collaboration and mutual cooperation between the Ibero-American authorities and the CNMC.

4.6. UNCTAD

89. UNCTAD (United Nations Conference on Trade and Development) is the main body of the United Nations General Assembly for discussing issues and promoting initiatives related to trade, investment, and development. One of its fundamental objectives is to “assist developing countries to integrate into the world economy”.

90. In the field of antitrust, UNCTAD has specific working groups such as the working group on cross-border cartels, in whose meetings the CNMC has participated. The CNMC also participated in the 20th meeting of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, held in Geneva in July 2022.

4.7. CNMC’s bilateral relations

91. In 2022, the CNMC continued to strengthen bilateral ties with other competition authorities and international organisations.

92. In particular, a CNMC delegation headed by its president travelled to Warsaw for an institutional meeting on 4 and 5 July 2022 with the Polish competition authority, *Urzędu Ochrony Konkurencji i Konsumentów (UOKiK)*. In October, the CNMC received a delegation from the Portuguese competition authority (*AdC*) at its Madrid headquarters. The bilateral meeting between the two delegations, led by their respective presidents, served once again to strengthen the strategic collaboration in competition matters between the two institutions.

93. Also in 2022, the CNMC held a meeting with representatives of the Competition and Markets Authority (CMA) of the United Kingdom. The meeting addressed various issues of interest to both authorities.

94. On the other hand, a delegation of the CNMC, headed by its president, attended the American Bar Association 2022 Antitrust Law Spring Meeting in Washington DC and a series of bilateral meetings were held at the highest level.

95. Specifically, there were several bilateral meetings with representatives of the European Commission: on the one hand, a meeting was held with the Vice-President of the European Commission, Margrethe Vestager; and on the other hand, with the Director General for Competition, Olivier Guersent.

96. Likewise, bilateral meetings were held with the Antitrust Attorney General, Jonathan Kanter, and other members of the US Department of Justice (US DoJ, Antitrust Division).

97. The CNMC met with the *Superintendencia de Control del Poder de Mercado* (Ecuador).

98. Finally, the CNMC provided various training sessions on competition advocacy to other competition authorities that had requested it. The CNMC also participated in the European Commission’s Technical Assistance Facility to support the development of the African Continental Free Trade Area.

5. Resources of the Spanish Competition Authority

5.1. Overall resources

99. It is important to highlight some particularities of the CNMC before looking at its resources. The CNMC is an integrated authority covering antitrust enforcement and competition advocacy functions, together with the supervision of regulated sectors. Therefore, its overall personnel and budget data cannot be compared to those of other European competition authorities. Likewise, some adjustments must be made to include within the competition policy figures the allotted part of the overall budget and personnel of the cross-cutting services such as legal services, economic analysis, IT services, cabinet, media services, human resources, etc., that are shared by all the divisions (both competition and regulatory divisions).

100. This year, in order to adopt a common criterion to all international and national existing surveys, we have updated the methodology to include people directly engaged in competition, regardless of the unit or directorate where they belong in order to provide more accurate information and differentiate clearly between administrative and non-administrative staff members, economic or legal background, gender, etc.

101. According to this, a total of 106 non-administrative staff work directly on competition enforcement: 69 in the Competition Directorate, 22 in the Advocacy Department, 6 in the Legal Unit, 4 in the IT Unit (IT experts for inspections) and 5 in the Economics Unit.

102. To these 106 workers, we must add a proportional share of the staff working in the cross-cutting units (cabinet, legal service, general secretariat, etc.) that are not exclusively devoted to competition issues. This means an additional 44 people, who cannot be further differentiated according to gender, professional or academic qualification, etc. as they represent solely an estimate.

103. On the other hand, there was a structural change in the competition authority that impacts the total human resources of the competition area: in 2021, the Statistics and Documentary Resources Unit was included within the Advocacy Department structure. In 2022, this unit was transferred to the General Secretariat. Thus, previously, all the people working in this unit (a total of 12) were completely allotted to the competition area, while in 2022, they were only allocated proportionally.

104. In 2022, the total number of people working at the CNMC was 517, not including the Council of the CNMC.

5.1.1. Annual budget

105. The total annual budget available to the CNMC for the year 2022 in terms of competition policy was €15.74 million.

106. As previously pointed out, this amount is slightly lower than the previous year because the Statistics and Documentary Resources Unit was transferred to the General Secretariat. Until 2021, this unit was part of the Advocacy Department structure.

107. On the contrary, the CNMC's total budget in 2022 (€60.85 million) increased compared to 2021(€60.04 million).

5.1.2. Number of employees

108. As we described above, a total of 106 non-administrative staff work directly on competition activities: 69 in the Competition Directorate, 22 in the Advocacy Department, 6 in the Legal Unit, 4 in the IT Unit (IT experts for inspections) and 5 in the Economics Unit. Of those 106 non-administrative staff, 52 are lawyers; 50 are economists; and 4 are data scientists.

109. In addition, as we have explained before, to these 106 people, we must add a proportional share of the staff working in the cross-cutting units (cabinet, legal service, general secretariat, etc.) that are not exclusively devoted to competition issues. This means an additional 44 people, who cannot be further differentiated according to gender, professional or academic qualification, etc., as they represent solely an estimate.

110. On the other hand, 24 people work as administrative staff.

111. All staff combined, in 2022, there were 174 people working on competition policy at the CNMC.

5.2. Human resources applied to enforcement, mergers and advocacy efforts

112. It should be noted that the Competition Directorate has a sectorial organisation (energy and industry, information society and services), so all units work both in anti-competitive practices and merger control enforcement, except for the Cartels and Leniency Unit (10 people) and the Surveillance Unit (8 people). Both only carry out enforcement work and not merger analysis.

113. The Surveillance Unit is devoted to monitoring the final execution of the CNMC decisions (judicial challenges, effective payment of fines, fulfilment of commitments and conditions, etc.).

114. The Advocacy Department does not carry out enforcement nor merger analysis activities (22 people).

115. Therefore:

- Enforcement against anti-competitive practices: 84 people (including the people working at the Cartels and Leniency Unit and the Surveillance Unit).
- Merger control: 66 people (the previous 84 minus the people working at the Cartels and Leniency Unit and the Surveillance Unit).
- Advocacy efforts: 22 people.

6. Summaries of or References to New Reports and Studies on Competition Policy Issues

6.1. Market Studies, guides and *ex officio* reports

116. As we mentioned above, the CNMC approved two market studies and one guide. The references of the 3 studies and 2 *ex post* evaluation reports are as follows:

6.1.1. Market Studies

Table 1.

REFERENCE	DESCRIPTION	DATE OF APPROVAL
E/CNMC/002/17	STUDY ON THE WHOLESALE DISTRIBUTION MARKET FOR MEDICINES	24/05/2022
E/CNMC/003/21	STUDY ON ATM CASH WITHDRAWAL SERVICES	14/06/2022
E/CNMC/006/19	STUDY ON INTERCITY BUS PASSENGER TRANSPORT	29/06/2022

6.1.2. Ex post evaluation reports

Table 2.

REFERENCE	DESCRIPTION	DATE OF APPROVAL
EI/01/2021	REFORM/SC2020/062: IMPACT OF COMPETITION ADVOCACY AND MARKET UNITY REFORMS IN SPAIN	09/03/2022
EI/01/2022	QUANTITATIVE ANALYSIS OF PUBLIC AID FOR THE DEPLOYMENT OF BROADBAND NETWORKS IN SPAIN	20/12/2022

6.1.3. Ex officio reports

Table 3.

REFERENCE	DESCRIPTION	DATE OF APPROVAL
PRO/CNMC/003/21	REPORT ON AID GRANTED THROUGH THE MOVES III PROGRAMME	21/04/2022

6.2. Reports on draft regulations

Table 4.

REFERENCE	DESCRIPTION	DATE OF APPROVAL
IPN/CNMC/049/21	DRAFT BILL ON DIGITAL EFFICIENCY MEASURES FOR THE PUBLIC JUSTICE SERVICE, TRANSPOSING INTO SPANISH LAW DIRECTIVE (EU) 2019/1151 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 JUNE 2019 AMENDING DIRECTIVE (EU) 2017/1132 AS REGARDS THE USE OF DIGITAL TOOLS AND PROCESSES IN COMPANY LAW	18/01/2022
IPN/CNMC/003/22	DRAFT BILL ON THE RULES FOR THE IMPLEMENTATION OF THE COMMON AGRICULTURAL POLICY MANAGEMENT SYSTEM IN SPAIN	08/02/2022
IPN/CNMC/005/22	DRAFT ROYAL DECREE AMENDING ROYAL DECREE 95/2019, OF 1 MARCH 2019, ESTABLISHING THE CONTRACTING CONDITIONS IN THE DAIRY SECTOR AND REGULATING THE RECOGNITION OF PRODUCER ORGANISATIONS AND INTERPROFESSIONAL ORGANISATIONS IN THE SECTOR, AND AMENDING SEVERAL ROYAL DECREES APPLICABLE TO THE DAIRY SECTOR AND ROYAL DECREE 319/2015, OF 24 APRIL 2015, ON MANDATORY DECLARATIONS TO BE MADE BY FIRST PURCHASERS AND PRODUCERS OF COW, SHEEP AND GOAT MILK AND DAIRY PRODUCTS.	01/03/2022
IPN/CNMC/007/22	DRAFT BILL ON ANIMAL PROTECTION, RIGHTS AND WELFARE	26/04/2022

IPN/CNMC/009/22	DRAFT ROYAL DECREE APPROVING THE GENERAL STATUTES OF THE OFFICIAL ASSOCIATIONS OF BUILDING ENGINEERS AND TECHNICAL ARCHITECTS AND OF THEIR GENERAL COUNCIL	26/04/2022
IPN/CNMC/010/22	DRAFT ROYAL DECREE AMENDING ROYAL DECREE 1373/2003, OF 7 NOVEMBER 2003, APPROVING THE FEES FOR COURT ATTORNEYS	21/04/2022
IPN/CNMC/013/22	DRAFT ORDER APPROVING THE METHODOLOGY FOR THE DETERMINATION OF THE GENERAL FEES OF INTELLECTUAL PROPERTY RIGHTS COLLECTING SOCIETIES FOR THE USE OF THEIR REPERTOIRE AND THE CONTENT OF THE FINANCIAL REPORT TO ACCOMPANY THE GENERAL FEES	21/06/2022
IPN/CNMC/018/22	DRAFT ROYAL DECREE REGULATING THE BASIC CONDITIONS OF ACCESSIBILITY AND NON-DISCRIMINATION OF PERSONS WITH DISABILITIES FOR ACCESS TO AND USE OF GOODS AND SERVICES AVAILABLE TO THE PUBLIC	21/06/2022
IPN/CNMC/020/22	DRAFT ROYAL DECREE AMENDING ROYAL DECREE 159/2021, OF 16 MARCH 2021, REGULATING ROADSIDE ASSISTANCE SERVICES	13/07/2022
IPN/CNMC/024/22	DRAFT BILL AMENDING LAW 17/2001, OF 7 DECEMBER 2001, ON TRADEMARKS, LAW 20/2003, OF 7 JULY 2003, ON THE LEGAL PROTECTION OF INDUSTRIAL DESIGN, AND LAW 24/2015, OF 24 JULY 2015, ON PATENTS	26/07/2022
IPN/CNMC/026/22	DRAFT ROYAL DECREE IMPLEMENTING THE REGISTER OF FOOD CONTRACTS	26/07/2022
IPN/CNMC/028/22	DRAFT ROYAL DECREE REGULATING THE COMMERCIAL COMMUNICATIONS OF FOOD AND BEVERAGES AIMED AT CHILDREN	20/09/2022
IPN/CNMC/029/22	DRAFT BILL ON THE MARKET FOR TOBACCO AND OTHER RELATED PRODUCTS	20/09/2022
IPN/CNMC/036/22	DRAFT BILL ON SUSTAINABLE MOBILITY	25/10/2022
IPN/CNMC/039/22	DRAFT BILL CREATING THE INDEPENDENT ADMINISTRATIVE AUTHORITY FOR THE PROTECTION OF FINANCIAL CUSTOMERS	04/10/2022
IPN/CNMC/041/22	DRAFT MINISTERIAL ORDER DETERMINING THE STANDARD COSTS APPLICABLE FOR 2021 TO THE ELIGIBLE COSTS REGULATED IN ROYAL DECREE 552/2020, OF 2 JUNE 2020, ON COMPENSATION FOR MARITIME AND AIR TRANSPORT OF GOODS INCLUDED IN ANNEX I OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION, TO OR FROM THE CANARY ISLANDS	18/10/2022
IPN/CNMC/042/22	DRAFT MINISTERIAL ORDER DETERMINING THE STANDARD COSTS APPLICABLE FOR 2021 TO THE ELIGIBLE COSTS REGULATED IN ROYAL DECREE 147/2019, OF 15 MARCH 2019, ON COMPENSATION FOR THE MARITIME AND AIR TRANSPORT OF GOODS NOT INCLUDED IN ANNEX I OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION, TO OR FROM THE CANARY ISLANDS	18/10/2022
IPN/CNMC/043/22	DRAFT MINISTERIAL ORDER APPROVING THE REGULATORY BASES FOR THE GRANTING OF AID FOR EXTRAORDINARY TRAFFIC DISTURBANCES IN RAIL FREIGHT TRANSPORT	29/11/2022

6.3. Reports on non-legislative activities

Table 5.

REFERENCE	DESCRIPTION	DATE OF APPROVAL
IPN/CNMC/049/21	DRAFT BILL ON DIGITAL EFFICIENCY MEASURES FOR THE PUBLIC JUSTICE SERVICE, TRANSPOSING INTO SPANISH LAW DIRECTIVE (EU) 2019/1151 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 JUNE 2019 AMENDING DIRECTIVE (EU) 2017/1132 AS REGARDS THE USE OF DIGITAL TOOLS AND PROCESSES IN COMPANY LAW	18/01/2022
IPN/CNMC/003/22	DRAFT BILL ESTABLISHING THE RULES FOR THE IMPLEMENTATION OF THE COMMON AGRICULTURAL POLICY MANAGEMENT SYSTEM IN SPAIN	08/02/2022
IPN/CNMC/005/22	DRAFT ROYAL DECREE AMENDING ROYAL DECREE 95/2019, OF 1 MARCH 2019, ESTABLISHING THE CONTRACTING CONDITIONS IN THE DAIRY SECTOR AND REGULATING THE RECOGNITION OF PRODUCER ORGANISATIONS AND INTERPROFESSIONAL ORGANISATIONS IN THE SECTOR, AND AMENDING SEVERAL ROYAL DECREES APPLICABLE TO THE DAIRY SECTOR AND ROYAL DECREE 319/2015, OF 24 APRIL 2015, ON MANDATORY DECLARATIONS TO BE MADE BY FIRST PURCHASERS AND PRODUCERS OF COW, SHEEP AND GOAT MILK AND DAIRY PRODUCTS.	01/03/2022
IPN/CNMC/007/22	DRAFT BILL ON ANIMAL PROTECTION, RIGHTS AND WELFARE	26/04/2022
IPN/CNMC/009/22	DRAFT ROYAL DECREE APPROVING THE GENERAL STATUTES OF THE OFFICIAL ASSOCIATIONS OF BUILDING ENGINEERS AND TECHNICAL ARCHITECTS AND OF THEIR GENERAL COUNCIL	26/04/2022
IPN/CNMC/010/22	DRAFT ROYAL DECREE AMENDING ROYAL DECREE 1373/2003, OF 7 NOVEMBER 2203, APPROVING THE FEES OF COURT ATTORNEYS	21/04/2022
IPN/CNMC/013/22	DRAFT ORDER APPROVING THE METHODOLOGY FOR THE DETERMINATION OF THE GENERAL FEES OF INTELLECTUAL PROPERTY RIGHTS COLLECTING SOCIETIES FOR THE USE OF THEIR REPERTOIRE AND THE CONTENT OF THE FINANCIAL REPORT TO ACCOMPANY THE GENERAL FEES	21/06/2022