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Sustainability and Competition – The CNMC and Sustainability

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THE CNMC AND SUSTAINABILITY

THE CNMC, AN INSTITUTION WITH A MODEL COMMITMENT TO SUSTAINABILITY GOALS

By Law 3/2013 creating the National Commission on Markets and Competition, the CNMC originates as a result of the merger of seven pre-existing regulatory and competition bodies (the National Competition Commission (CNC), the Telecommunications Market Commission (CMT), the National Energy Commission (CNE), the National Commission on the Postal Sector (CNSP), the State Council for Audiovisual Media (CEMA), and the Committee for Railway and Airport Regulation (CREA). Thus, the CNMC came into operation on 7 October 2013 integrating the activity and functions of six bodies, becoming a model of integration of regulation and competition which is rare in Europe, comparable only to the case of the Dutch *Authority for Consumers & Markets* (ACM), which also integrates powers in telecommunications, energy, transport, post and competition protection and, in addition, powers in the field of consumer protection.

Although the merger process that initiated six years ago was complex and did not lack criticism and fears about its effectiveness, no one doubts today that the CNMC has the capacity to act and generate a very relevant impact on a wide variety of markets both from the standpoints of competition and of sectoral regulation, having a decisive influence on the functioning of the markets. As the home page of the CNMC website reads, "*the National Commission on Markets and Competition (CNMC) is the body that promotes and preserves the proper functioning of all markets in the interest of consumers and companies*". Such an institution should aim to transform markets in order to ensure their competitive and efficient functioning, using the most effective regulatory and/or competition instruments in each case. Therefore, the true integration and coordinated functioning of the various areas of the institution is crucial to ensure synergies and achieve the common objective of effective action for the efficient functioning of the markets.

So, integrated and coordinated action within the CNMC must also address the achievement of sustainability objectives which have become a fundamental part of the strategic plans in Europe, in Spain, and, of course, in the CNMC itself. The CNMC Strategic Plan, approved in 2014 after its constitution, is the result of the reflection and contributions of CNMC¹ councilors, directorates and departments, as well as of the public consultation held in April 2014. It is a multiannual plan that defines the mission and vision of the institution, aimed at drawing up a strategy the approval of which is supported and subsequently specified by the annual action plans or by specific action plans in the various areas for which the CNMC is responsible.

¹ See <https://www.cnmc.es/sobre-la-cnmc/plan-estrategico>

In its third objective, the CNMC Strategic Plan states that it *"will take advantage of the synergies derived from its integrated structure, providing global solutions to market problems for greater legal certainty"*. In other words, not only does the CNMC carry out its mandated regulatory and competition functions, but it also does so in an integrated and coordinated manner, taking advantage of the absorption of the various bodies that preceded it in order to make better use of the material and human resources available, as well as to achieve a joint action that avoids problems arising from separate actions. This third objective is therefore aimed at providing complete and definitive solutions and at improving the legal certainty of market intervention.

Since then, in line with the objectives of the multi-annual Strategic Plan, six annual action plans² have been adopted, including a revision of the current 2020 Action Plan to adapt it to the new circumstances resulting from the Covid-19 pandemic. The health crisis has innumerable and profound consequences in many areas, including those affecting the CNMC. It has been necessary to adapt to new circumstances by adjusting timetables, introducing teleworking and reacting quickly to new needs, inter alia, in terms of assessment and implementation of emergency regulations, evaluation of cooperation agreements to respond to the problems posed by the health crisis, or the adoption of individual protection and safety measures in the working environment of the CNMC, among others.

As far as specific sustainability objectives are concerned, they are not new to the CNMC and are reflected in some of the strategic actions of past action plans, mainly in the area of regulation of energy markets³. However, the 2020 Action Plan, adapted to the COVID19⁴ crisis, certainly marks a milestone in CNMC's commitment to sustainable development goals. Indeed, the revised 2020 Action Plan shows the additional effort by the CNMC to become aware of the extent to which its actions align with the objectives of the 2030 Agenda, as will be seen below.

CNMC CONTRIBUTION TO THE 2030 AGENDA AND TO SUSTAINABLE DEVELOPMENT GOALS

As a matter of course, Spain has clearly committed to achieving the 2030 Agenda goals by directing its overall action as a State towards these objectives. The CNMC, as a part of the Spanish Public Sector, cannot be alien to this objective and, therefore, the revised 2020 Action Plan expressly includes in the development of its functions the areas of action

² See <https://www.cnmc.es/sobre-la-cnmc/plan-de-actuacion>

³ For example, the 2016 Action Plan included as an energetic objective the modification of Circulars 1/2013 and 5/2012 for the implementation of the new Bio-fuel obligations and for transitional sustainability, and on the Instructions for the Certification Scheme of Bio-fuels and other renewable fuels for the purposes of transport (SICBIOS), in order to continue to implement the certification of bio-fuels. Likewise, the 2019 Action Plan includes the forecast of normative development circulars in application of RDL 1/2019 for the adoption of the new economic sustainability framework of the electric and gas system.

⁴https://www.cnmc.es/sites/default/files/editor_contenidos/CNMC/202005_Plan_Actuaci%C3%B3n_2020_revisadoCOVID19.pdf

that contribute to the achievement of the Sustainable Development Goals (SDGs). From its functional independence, but committed to public service, the CNMC wants to contribute actively to the achievement of objectives that will mark the future. It is a full and sincere commitment, which seeks to link each of the actions of the CNMC as an institution with one of the 17 SDGs, and thereby assess its contribution to this 2030 Agenda.

Thus, the 2020 Action Plan incorporates, along with other periodic or previously initiated actions, a new strategy to promote the achievement of the SDGs, as well as new initiatives to be launched or promoted from the different units that make up the CNMC in order to increase the effectiveness of its mandated functions and to adapt its work to the changing context.

This is, to some extent, a new strategic action that seeks to define how the CNMC faces the challenge of the 2030 Agenda with a dual perspective: internal and external. From an internal perspective, the objective is a management aimed at achieving the SDGs within the institution itself, that is, managing the CNMC in a sustainable way. In this sense, actions aimed at promoting the consumption of local and ecological products in the CNMC, and at ensuring internal training that allows access to other jobs within the institution, or actions to improve institutional quality in terms of transparency and accountability, are, without a doubt, clear examples that it is going in the right direction. As for the external perspective of the new strategic action, it reflects the potential of the CNMC to give content and compliance to the 2030 Agenda through its action in the different regulated and supervised sectors.

Given the breadth of the CNMC portfolio of competences, it has an immense capacity to contribute significantly to this ambitious agenda. For several years, the CNMC has been carrying out a whole range of actions with direct or indirect impact on some SDGs that undoubtedly contribute to their achievement. Among others, the management of the renewable source guarantee system that promotes generation through clean sources that reduce CO₂ emissions, or the advertising computation exemptions for television broadcasts enjoyed by non-profit organisations that promote campaigns to tackle hunger or poverty and that are authorised by the CNMC.

However, the revised 2020 Action Plan represents a qualitative leap in the CNMC's commitment to the SDGs, specifying in its actions 4.10 to 4.13 all the actions expressly related to the identification, monitoring and publicity of the CNMC activity that contribute to achieving the SDGs of the 2030 Agenda.

Revised 2020 Action Plan

Strategic Action 4. Promotion of corporate social responsibility, enhancement of merit and capacity in staff selection, improvement of training, and creation of multidisciplinary teams.

4.10. Identifying how the actions of the CNMC contribute to the SDGs of the 2030 Agenda.

4.11. Developing a digital tool to identify, monitor and report compliance by the CNMC with SDG-related actions at least once a year.

4.12. Creating a specific mailbox for internal and external communication on the CNMC contribution to compliance with the SDGs.

4.13. Developing a communication strategy regarding the CNMC contribution to the SDGs.

In effect, the new plan specifies some particular actions that aim, firstly, to identify how the functions of the CNMC interact with the different SDGs (action 4.10) and, secondly, to develop a digital tool that will allow monitoring and reporting of compliance by the CNMC with the actions linked to SDGs at least once a year (action 4.11).

In order to comply with the above, some considerations about responsibility and accountability that have a greater impact on the Department of Internal Control (JIU) and the Department of Communication are added to the Plan. This way, the JIU is designated as the natural interlocutor with the different units and as the mediator and verifier for each strategic action. This department will develop a digital tool to identify, monitor and report compliance.

Accordingly, and without prejudice to regulating the management of conflicts of interest that may occur within the Control Department itself, the CNMC Council stipulates the obligation of JIU to audit the compliance and operation of this action once a year. The results of this audit are made public on the CNMC website and are reported to the Economic Commission of the Congress of Deputies and the High Commissioner for the 2030 Agenda.

Additionally, so as to invigorate action, a specific mailbox is created (ods@cnmc.es) whereby the different units can make questions or suggest new actions that, in one way or another, may contribute to sustainable development but have not been identified in this first plan (Action 4.12).

Finally, it is planned that the Communication Department will design a new strategic communication action for this purpose, implying the modification of the CNMC website in this regard if necessary, and the inclusion of the 2030 Agenda logo in press releases and other digital media (action 4.13).

MAIN MEASURES AND ACTIONS OF THE CNMC THAT CONTRIBUTE TO THE SDGs

Following the approval of the 2030 Agenda Action Plan of 18 July 2018, included in the 2019 National Reform Programme, the Ministry of Economy and Business informed the CNMC at the end of last year about the implementation of the work to be carried out in budgetary matters and about the "Alignment of General Budgets with the Sustainable Development Goals (SDGs) of the 2030 Agenda" by the State Secretariat for Budgets and Expenditures and the Directorate-General for Budgets. With this, the various ministerial departments and institutions that make up the General Administration of the State, including the CNMC, were requested to submit complete documentation on their contribution to each of the 17 SDGs.

As a result, the CNMC has carried out in recent months a detailed scrutiny to identify each CNMC action linked to one of the SDGs and its specific contribution to it. More than a dozen actions related to different SDGs have been identified in their different fields of action.

For example, in the field of telecommunications, CNMC assembles the universal electronic communications service that ensures access to electronic communications as a basic service for people with limited financial resources, in conjunction with SDG1 (*End of poverty*). It also works in broadband markets that contribute to strengthening the Global Partnership for Sustainable Development in connection with SDG 17 (*Partnerships to achieve the goals*). As to the competence of the CNMC in the audiovisual sector, the CNMC is responsible for monitoring the public service obligations of the RTVE Corporation and for ensuring compliance with the regulations of the audiovisual sector, promoting the rule of law, fundamental freedoms and access to information, through actions of surveillance, monitoring, and control of the sector, thereby contributing to the achievement of SDG 16 (*Peace, justice and strong institutions*).

Regarding CNMC's powers in the gas and electricity markets, CNMC carries out various actions to promote the use of renewable energy: developing fair remuneration methodologies for renewable energy production activities, promoting electricity self-consumption, managing the policy for the use of renewable fuels in transport, and regulating the system that guarantees that electricity originates from renewable energies and high-efficiency cogeneration. Certainly, all these actions are closely linked to the achievement of SDG 13 (*Climate action*). In addition, the functions of the CNMC in the areas of supervision, control and management of liquidations at the electricity and gas markets, as well as the regulatory proposals, reports and circulars on the gas and electricity markets, aim to ensure that consumers have access to quality energy at the lowest price possible, promoting in turn the production and use of clean - green - renewable energy, contributing to the achievement of SDG 7 (*Affordable and clean energy*). Finally, the CNMC monitors and promotes the regulations on the electric and thermal social voucher, a bill discount mechanism established by the Government in order

to protect certain economically or socially vulnerable consumer groups, all in line with SDG 1 (*End of poverty*).

In the fields of transport and post, the functions of supervision of the rail sector and airport charges, as well as the revision of prices and the control over the conditions for the provision of the universal postal service entrusted to the CNMC, contribute to public transport and postal services being affordable, accessible and sustainable, and to promote the inclusion of rural areas in the economic fabric of Spain, in line with SDG 11 (*Sustainable cities and communities*).

This should be added to the active participation of the CNMC in various international forums on each of these areas (telecommunications, energy, transport and post) to improve regulation and promote technical training and good practices in member states, in connection with SDGs 10 (*Reducing inequalities*) and 16 (*Peace, justice and strong institutions*).

Finally, in the area of promotion and defence of competition, its plural approach to all sectors of activity enables actions to be carried out in connection with multiple SDGs. Overall, by ensuring effective competition in all markets and productive sectors, and their proper functioning for the benefit of consumers and users, the CNMC makes a fundamental contribution to SDG 8 (*Decent work and economic growth*), in line with empirical evidence about the benefits of competition for economic growth and employment.

But more specific actions that contribute to other SDGs can also be cited. For example, improved recruitment procedures and the prevention and prosecution of restrictive competitive behaviour in the areas of public recruitment (optimising the use of public funds) and private hiring (favouring competition) contribute to SDG 12 (*Responsible production and consumption*).

For its part, concentration surveillance ensures effective competition in markets, promoting efficient consolidation processes in certain markets and protecting incentives to innovation without undermining consumer welfare, in line with SDG 9 (*Industry, innovation and infrastructure*).

Other clear examples are the studies and recommendations developed within the framework of competition promotion functions in multiple sectors; such as the pharmaceutical sector, seeking to improve universal coverage and access to medicines⁵ (SDG 3, *Health and welfare*), the water supply sector⁶ (SDG 6, *Clean water and sanitation*), or the collaborative economy⁷ and new business models such as fintech⁸ development (SDG 9, *Industry, innovation and infrastructure*).

Lastly, we must refer to certain penalty procedures in which the sanctioned conduct was particularly harmful to the most vulnerable groups in society, in connection with SDG 10 (*Reducing inequalities*). For instance, the penalty procedure that dismantled the cartel of

⁵ See E/CNMC/007/19 URBAN WATER STUDY <https://www.cnmc.es/expedientes/ecnmc00719>

⁶ See E/CNMC/007/19 URBAN WATER STUDY <https://www.cnmc.es/expedientes/ecnmc00719>

⁷ See public consultation launched by CNMC <https://www.cnmc.es/la-cnmc-lanza-una-consulta-publica-sobre-la-economia-colaborativa-364683> and E/CNMC/003/18 ESTUDIO SOBRE VIVIENDAS DE USO TURÍSTICO <https://www.cnmc.es/expedientes/ecnmc00318>

⁸ See E/CNMC/001/18 ESTUDIO FINTECH <https://www.cnmc.es/expedientes/ecnmc00118>

absorbent products for severe urinary incontinence in adults (AIO)⁹, which entailed much higher prices for AIO dispensed through the pharmacy channel. There is also a considerable number of penalty procedures relating to waste management systems, namely glass, used tyres and sanitary waste, in which the former CNC sanctioned abuses of dominant position and market sharing agreements by operators responsible for their management. Such behaviours, far from contributing to environmental objectives (SDG 13, *Climate action*), were detrimental to the competitive functioning of the market and to the access of new producers to management systems.

⁹ See File S/DC/0504/14 AIO <https://www.cnmc.es/expedientes/sdc050414>