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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Case Prioritisation and Prosecutorial Discretion – Note by Spain**

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## *Spain<sup>1</sup>*

### 1. Introduction

1. Competition authorities operate under resource constraints and must therefore allocate their enforcement efforts strategically in order to maximise their impact on market functioning and consumer welfare. For this reason, many authorities have developed prioritisation mechanisms that allow them to focus investigative activity on cases most likely to result in significant competitive harm.

2. Within the European Union, the importance of prioritisation tools has been recognised in the framework of the European Competition Network (ECN). Directive (EU) 2019/1 (the ECN+ Directive) strengthened the institutional and enforcement powers of national competition authorities and clarified their ability to set enforcement priorities when assessing complaints.

3. In Spain, this prioritisation mechanism was incorporated into the Spanish Competition Act (Law 15/2007) through the introduction of Article 49.4. This provision allows the CNMC to refrain from initiating formal proceedings where the complaint received does not meet the authority's prioritisation criteria.

4. Rather than merely improving administrative efficiency, the mechanism has contributed to a more strategic approach to enforcement. By enabling the CNMC to filter cases at an early stage, Article 49.4 facilitates a reallocation of investigative resources towards conduct with a greater potential impact on competition and consumer welfare.

5. Apart from enforcement powers, authorities may use advocacy tools to address competition issues. Within the advocacy role, the prioritisation of sectors/areas of analysis and the selection of the appropriate tool to deal with them are of utmost importance as well.

6. In the case of market studies, one of the most relevant elements of the advocacy toolkit, the CNMC has methodology which, among other things, develops how to select priority markets and/or areas. The prioritisation of sectors and areas plays a relevant role in other tools too: guides, impact evaluation, legal appeals of anticompetitive measures, reports on draft laws, etc.

7. The contribution is structured as follows. After this first brief introductory section, the second section addresses case prioritisation in competition enforcement. The third section describes priorities choice in the area of competition advocacy and more specifically regarding market studies, where the CNMC has a methodology. The fourth section concludes.

### 2. Case prioritisation in competition enforcement

#### 2.1. National Legal Framework

8. The Spanish Competition Act establishes the legal framework governing the enforcement of competition rules in Spain. The CNMC is responsible for investigating and

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<sup>1</sup> This contribution has been prepared by the staff of the CNMC and shall not be regarded as the official position of the CNMC unless it refers to CNMC approved documents.

sanctioning infringements of Articles 1 and 2 of the Act (which can be applied in parallel to Articles 101 and 102 TFEU), which prohibit anti-competitive agreements and abuse of dominance, as well as Article 3, which addresses acts of unfair competition affecting the public interest.

9. The possibility for the CNMC to prioritize cases when assessing complaints was explicitly incorporated into Spanish law through the introduction of Article 49.4 of the Competition Act, following the transposition of Directive (EU) 2019/1 (the ECN+ Directive)<sup>2</sup>. This reform reflects a broader shift at EU level towards empowering national competition authorities to set enforcement priorities and allocate resources strategically, while ensuring that they are equipped with sufficient independence and resources to do so effectively.<sup>3</sup>

10. In this context, Article 49.4 states that the authority may decide not to initiate an investigation where a complaint is not considered a priority. Article 49.4 does not establish an exhaustive list of circumstances in which a complaint may be deprioritised, it rather provides a flexible framework that allows the authority to assess each case individually. Nevertheless, the provision identifies three circumstances under which a complaint may not be considered a priority: **a)** the complaint provides weak indicia and there is little probability that the Authority will be able to prove the infringement, despite allocating resources; **b)** when the conduct has limited potential impact on consumers or competition; and **c)** when the prevention or eradication of the conduct at issue is feasible through other legal instruments aiming at preserving and promoting competition. As mentioned, these do not constitute an exhaustive list of motives for deprioritisation, as the wording of Article 49.3 explicitly states that these motives are “among others”.

11. The introduction of this mechanism reflects the recognition that competition authorities must allocate their investigative resources efficiently and focus their enforcement activity on cases that are most likely to have a significant impact on competition and consumer welfare. In this context, Article 49.4 provides the CNMC with the possibility to filter complaints at an early stage of the procedure when pursuing the case would not represent an efficient use of enforcement resources.

12. This mechanism marks a relevant procedural shift in the handling of complaints. Prior to this reform, the CNMC did not enjoy discretion to set enforcement priorities and was obliged to investigate any potential infringement that came to its attention. Complaints raising issues of uncertain or limited competition impact were typically subject to preliminary investigative steps (*diligencias previas*) before being formally dismissed (*archivo*). By contrast, the prioritisation mechanism allows the CNMC, when all information points to a limited impact on competition or to a low probability of proving the infringement, to reach a decision at an earlier stage, without the need to carry out a full preliminary investigation, thereby simplifying the administrative process.

13. This distinction is not merely procedural. It reflects a move from a model based on the systematic examination of complaints towards a more selective approach, in which the authority can filter cases *ex ante* on the basis of their expected relevance and the appropriateness of enforcement action.

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<sup>2</sup> Recital 23 from the ECN+: “For this purpose, they should be able to reject complaints on the grounds that they are not a priority, with the exception of complaints lodged by public authorities which share competence with a national administrative competition authority for enforcing Articles 101 and 102 TFEU and national competition law, where applicable”

<sup>3</sup>2014 Communication: 10 years of Antitrust Enforcement under Reg 1/2003

14. By enabling the authority to filter cases *ex ante*, the mechanism contributes not only to procedural efficiency, but also to a more selective and strategically oriented enforcement approach.

15. In particular, prioritisation has facilitated the allocation of additional human and technical resources to other functions such as the Detection Unit and the Economic Intelligence Unit (EIU). By reducing the resources devoted to complaints with limited evidentiary or economic relevance, the CNMC has been able to free up resources that can be redirected towards intelligence-led work, allowing the EIU to strengthen its role in the *ex-officio* detection and analysis of potential infringements. This evolution points to a shift towards a more proactive and data-driven enforcement model, where economic intelligence plays an increasingly central role.

16. Although the CNMC has deprioritised a growing number of cases since this mechanism was introduced in 2022, experience is still limited. Furthermore, while decisions not to initiate proceedings may be subject to appeal before the administrative courts, there has not been any judicial review yet. Therefore, there is no established case law assessing the scope of the CNMC's discretion when applying the prioritisation mechanism under Article 49.4.

17. In any case prioritisation should not be understood as an unfettered power. Rather, Article 49.4 establishes a structured framework for the exercise of discretion, based on objective criteria such as the evidentiary basis of the complaint, its potential impact on competition, and the availability of alternative legal or regulatory mechanisms. In this sense, prioritisation operates as a form of guided discretion, ensuring that decisions not to pursue a case are grounded in transparent and reviewable considerations, rather than in purely opportunistic or resource-driven choices.

## 2.2. Implementation of Prioritisation by the CNMC

18. In practice, the application of Article 49.4 is integrated into the CNMC's preliminary assessment of complaints. Upon receipt of a complaint, the authority conducts an initial screening of the information provided in order to determine whether the case warrants the opening of formal proceedings under the Spanish Competition Act.

19. This preliminary assessment is carried out by the Directorate of Competition, which evaluates the factual allegations and supporting evidence submitted by the complainant. At this stage, the authority assesses whether the case meets the CNMC's enforcement priorities, taking into account factors such as its potential impact on competition, the availability of evidence, and the existence of alternative regulatory or legal mechanisms better suited to address the conduct at issue. Where relevant, the Directorate may also consider whether the issues raised fall within the strategic priorities identified in the CNMC's Annual Action Plan.

20. Where the Directorate of Competition concludes that the complaint meets the deprioritisation criteria, it may decide not to initiate proceedings under Article 49.4. In terms of procedure, this article establishes that the Directorate of Competition will communicate the draft decision not to prosecute a case to the Council of the CNMC. If the Council does not object to the decision, the Directorate of Competition will notify the decision and the no objection to the complainant. At that point, the case is closed and no additional action is taken with respect to that complaint.

21. This two-step process introduces an internal institutional check on the exercise of discretion, ensuring that decisions not to pursue a case are subject to review at the highest decision-making level within the authority.

22. Decisions not to initiate proceedings are notified to the complainant and reflect the application of the legal criteria set out in Article 49.4. Such decisions may be subject to judicial review before the administrative courts, thereby providing an additional safeguard.

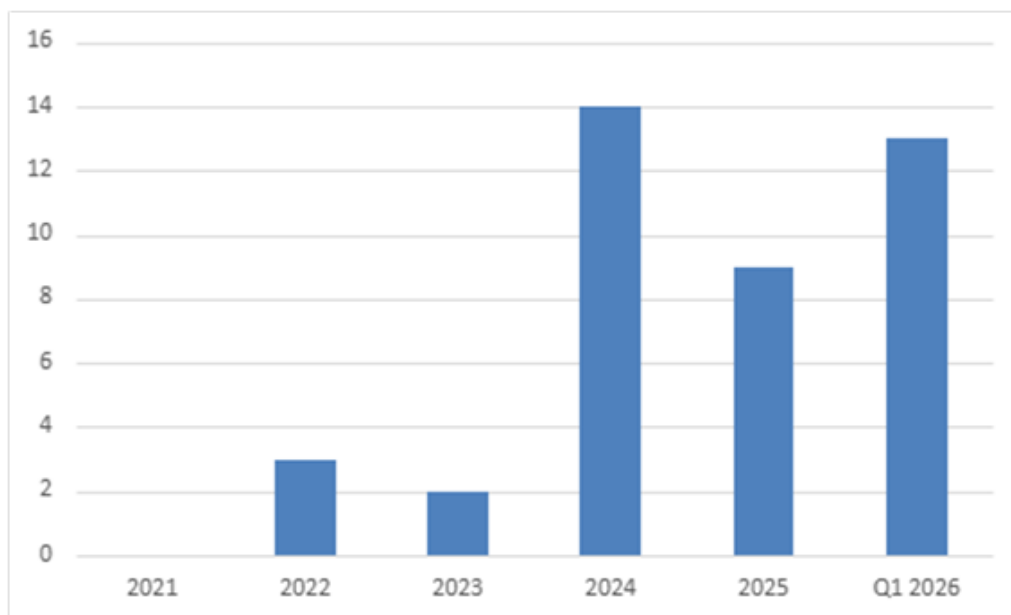
### 2.3. Empirical experience on the use of the prioritisation mechanism

23. Since the introduction of Article 49.4 of the Spanish Competition Act, the CNMC has progressively incorporated the prioritisation mechanism into its assessment of complaints. The experience accumulated so far provides useful insights into the types of cases in which this mechanism is most frequently applied and the reasons that lead the authority to deprioritise certain complaints.

#### 2.3.1. Evolution of prioritisation decisions

24. The use of the prioritisation mechanism has increased in recent years as it has become more integrated into the CNMC's enforcement practice. Figure 1 shows the number of prioritisation decisions adopted by the CNMC since the introduction of Article 49.4 in 2021.

Figure 1. Number of cases non prioritised since the introduction of art 49.4



Source: internal CNMC data

25. The data show a gradual implementation of the prioritisation tool since it was first implemented in 2022.

#### 2.3.2. Sectoral distribution of cases

26. The tool is recent and the number of cases is still limited; thus, any conclusion on its use and on the affected economic sectors must be treated with caution. Deprioritised complaints so far tend to arise primarily in service sectors characterised by a high degree of fragmentation, such as retail trade, recreational and entertainment activities, transport services and certain professional services. In many instances, complaints in these sectors arise from bilateral disputes between market participants, often linked to contractual or

commercial disagreements rather than conducts affecting the competitive structure of the market. In such cases, the alleged practices tend to have a limited geographic or economic scope, reducing their relevance from a competition enforcement perspective.

27. Figure 2 presents the sectoral distribution of prioritisation decisions. The sectors are classified according to the Spanish National Classification of Economic Activities (CNAE).

**Figure 2. Sectoral distribution of prioritisation decisions (CNAE classification)**



Source: internal CNMC data.

28. The observed sectoral pattern seems to reveal the role of prioritisation as a mechanism that allows the CNMC to distinguish between merely private disputes with limited competition impact and cases with broader implications for the competitive process. This suggests that prioritisation indeed plays a key role in excluding cases that fall outside the core competition enforcement mandate.

### ***2.3.3. Legal provisions breached according to the complaints which are deprioritised***

29. Complaints that are ultimately deprioritized refer to both anticompetitive agreements (56% of deprioritisation decisions) and abuses of dominance (41%). This relatively larger presence of complaints related to anticompetitive agreements might reflect the fact that complainants sometimes interpret similar commercial behaviour as possible collusion, even though the information available does not provide sufficient indicia of coordination among competitors. Notably, only a limited share of decisions (13%) also refer to the corresponding provisions of the Treaty on the Functioning of the European Union. Finally, a smaller share of complaints which are deprioritized refer to acts of unfair competition affecting the public interest (34%). In around 20% of prioritisation decisions complainants allege infringements of more than one competition law provision

### 2.3.4. *Invoked reasons for prioritisation*

30. The stated reasons in the prioritisation decisions correspond closely to the three reasons that are explicitly foreseen in Article 49.4 (insufficient indicia, limited impact on competition and availability of other legal means), despite not being an exhaustive list. Typically, one or two of these reasons will be mentioned (only in very few cases were the three reasons simultaneously invoked). Lack of sufficient indicia is the most often stated reason, as it is stated in 70% of prioritisation decisions. Limited impact on competition is stated in 56% of decisions, and availability of other regulatory or legal mechanisms is stated in 48% of decisions.

31. In nearly half of the cases the CNMC has concluded that the issues raised in the complaint could be more appropriately addressed through other legal mechanisms. These situations often involve disputes between individual market participants that primarily concern contractual or commercial disagreements rather than conduct with a broader impact on market competition. In such cases, commercial courts may constitute a more appropriate forum to resolve the dispute, allowing the authority to focus its enforcement activity on cases that are more likely to affect the competitive process in the market. This illustrates how the prioritisation mechanism enables the CNMC to distinguish between private disputes between market operators and conduct that may warrant the intervention of the competition authority.

32. While prioritisation decisions are primarily based on the three motives explicitly mentioned in Article 49.4, in a limited number of instances additional motives have been invoked. In around 16% of cases, the CNMC explicitly referred to the sector falling outside the strategic priorities set out in its annual action plans. This illustrates how deprioritisation may also contribute to the reorientation of activities in line with strategic priorities. During the 2021–2026 period, the CNMC’s strategic and annual action plans have identified priority areas for enforcement, focusing in particular on sectors undergoing structural transformation—such as energy and digital markets—which also exhibit important spillover effects across the broader economy, as well as on conduct with a significant impact on consumer welfare.

## 3. Choosing priorities in competition advocacy

### 3.1. Introduction to the advocacy toolkit of the CNMC

33. The advocacy powers of the Spain’s CNMC include several instruments.

- Market studies are an essential element of this toolkit. They can be defined as an in-depth analysis of the dynamics of competition in a given sector/area, with the aim of identifying existing restrictions to efficiency and competition in order to provide recommendations to mitigate or eliminate such restrictions.

A narrow definition of a market study would limit its scope to the analysis of a sector or an economic activity. But a market study can also cover a specific area with a horizontal effect on all sectors and, in addition, Spanish law mandates the CNMC to elaborate not only market studies on specific sectors, but also studies and research on competition matters.

For instance, the CNMC has recently published a “Study on behavioural economics for efficient regulation and supervision<sup>4</sup>”. This is not a traditional market study to the extent that it does not analyse a specific sector. But it shares features with a traditional market study to the extent that it analyses competition restraints and proposes recommendations to address them (specifically, by increasing the use of behavioural economics in regulation and market supervision in order to promote more competitive and efficient markets).

The CNMC has also recently published a market study on the barriers that affect SMEs in their creation, growth and participation in public procurement<sup>5</sup>. This study is not a sectoral analysis (apart from this focus on public procurement), since SMEs are present in all sectors throughout the economy.

- Guides are an additional element of the advocacy toolkit on which the CNMC is increasingly relying. Recent guides by the CNMC include the topics of public procurement and competition<sup>6</sup>, inflation and competition<sup>7</sup>, or a guide to improve public policy intervention in regulation, public procurement and state aid<sup>8</sup>. The CNMC is also elaborating a Guide to improve state aid, a preliminary version of which has been launched for public consultation<sup>9</sup>.
- Impact evaluation of different forms of public intervention, especially state aid<sup>10</sup>, is also increasingly relevant in the CNMC advocacy toolkit. And the CNMC is also carrying out ex post evaluation of its own advocacy work, namely for bus transportation (where the analysis found that the CNMC’s recommendation had not been followed yet<sup>11</sup>) and for wholesale distribution of medicines (ongoing<sup>12</sup>).
- Other elements of the CNMC’s advocacy toolkit are reports on draft laws and other advisory reports (e.g. on public procurement, state aid or measures other than laws)

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<sup>4</sup> <https://www.cnmc.es/sites/default/files/6130092.pdf>; <https://www.cnmc.es/expedientes/ecnmc00223>

<sup>5</sup> <https://www.cnmc.es/sites/default/files/6379841.pdf>  
<https://www.cnmc.es/expedientes/ecnmc00423>

<sup>6</sup> <https://www.cnmc.es/guias-comunicacion/contratacion-publica-y-competencia>

<sup>7</sup> <https://www.cnmc.es/guia-competencia-frente-a-la-inflacion>

<sup>8</sup> <https://www.cnmc.es/guias-comunicacion/recomendaciones-los-poderes-publicos-para-fomentar-la-competencia-como-motor-de>

<sup>9</sup> See <https://www.cnmc.es/consultas-publicas/promocion-de-competencia/correcta-utilizacion-guia-ayudas-publicas>

<sup>10</sup> See the analysis for aid to broadband deployment, to the purchase of electric vehicles and to photovoltaic self-consumption. [www.cnmc.es/sites/default/files/4813108\\_0.pdf](http://www.cnmc.es/sites/default/files/4813108_0.pdf); [www.cnmc.es/sites/default/files/5203391.pdf](http://www.cnmc.es/sites/default/files/5203391.pdf); [www.cnmc.es/sites/default/files/6271920.pdf](http://www.cnmc.es/sites/default/files/6271920.pdf)

<sup>11</sup> <https://www.cnmc.es/documento-evaluacion-de-impacto/estudio-de-transporte-interurbano-de-viajeros-en-autobus>

<sup>12</sup> <https://www.cnmc.es/prensa/evaluacion-medicamentos-20250904>

- Finally, a very specific tool of the Spanish authority is the ability to challenge anticompetitive regulations before courts<sup>13</sup>.

34. The room for sector/topic prioritisation in these instruments is varied.

35. Market Studies are a tool in which the Advocacy Department of the CNMC has some room of discretion and flexibility to choose the sectors/area in which to initiate a market study, following a methodology which is explained below. But, within this discretion, consistency is sought with the general priorities that are set by the CNMC's Board in a pluriannual Strategic Plan<sup>14</sup> and in annual Action Plans. And the Board, apart from setting priorities, could actually request the Competition Advocacy Department to elaborate specific market studies<sup>15</sup>. Finally, market studies can be commissioned by public institutions as well.

36. In guidelines and impact evaluation exercises, the Advocacy Department of the CNMC can be proactive too, seeking this consistency with the institution's legal mandate and priorities.

37. In appeals of anticompetitive regulations before courts, case prioritisation will depend on several factors (given that this is not a frequently used tool but rather a last resort tool once other formal and informal channels have been exhausted): seriousness of the restrictions, impact, legal assessment and likelihood of a successful judicial outcome, etc.

38. Finally, in preparing reports on draft laws and other advisory reports (e.g. on public procurement, state aid or measures other than laws), the CNMC is typically more reactive: it issues the report once it is consulted. However, in some cases (again depending on the relevance of the issues at stake) it has issued reports *ex officio*.

### 3.2. Selection of sectors/areas to study

39. Market studies are one of the tools in the hands of the CNMC to promote competition and better regulation. In 2016 the Advocacy Department of the CNMC approved a methodology on how to conduct market studies<sup>16</sup>.

40. The decision to carry out this methodology was prompted by the CNMC's call for transparency on its internal procedures and the aim to give guidance to operators and the general public on how we conduct our market studies and why they can be of value. While establishing a predictable framework, the methodology also allows to be modified for flexibility to adapt to case-by-case circumstances.

41. The methodology sets out the current CNMC's practice and focuses on 4 main aspects: a) how the CNMC identifies and selects the markets to study; b) the procedures to gather information and engage with stakeholders; c) the general structure of a market study;

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<sup>13</sup> See Article 5.4. of the Law 3/2013 in <https://www.boe.es/buscar/act.php?id=BOE-A-2013-5940&p=20250123&tn=1#a5>

<sup>14</sup> <https://www.cnmc.es/somos-cnmc/sobre-nosotros/plan-estrategico-y-de-actuacion>

<sup>15</sup> See Article 8.2.h of the CNMC's Statute <https://www.boe.es/buscar/act.php?id=BOE-A-2013-9212&p=20130831&tn=1#a8>

<sup>16</sup> <https://www.cnmc.es/sites/default/files/6175211.pdf>;  
<https://www.cnmc.es/expedientes/metdp00116>

and d) dissemination, monitoring and ex-post analysis. This contribution focus on the first part<sup>17</sup>: how the CNMC identifies and selects the markets to study.

42. From an institutional perspective, general priorities are set by the CNMC’s Board in a pluriannual Strategic Plan<sup>18</sup> and in annual Action Plans. The current Action Plan<sup>19</sup> lays out several priority areas in terms of focusing efforts on digitization, environmental sustainability, vulnerable consumers and productivity and competitiveness (the next subsection below refers to recent and ongoing advocacy activity in the area of market studies and how it adapts to these priorities).

43. With these priorities in mind the Advocacy Department has some room of discretion and flexibility to choose the sectors/area in which to initiate a market study. This selection is going to depend on several factors, which (for simplicity) could be basically grouped in two categories:

- Impact: the quantitative/qualitative relevance of a sector/area in the economy (e.g. among which the relation with the abovementioned priorities can be factored in), the opportunity/timeliness of a market study because regulation and/or technology may be changing in a given sector, the comparative advantage of a market study to address the issues a stake (*vis-à-vis* other instruments like, for instance, competition policy enforcement), etc.
- Tractability: the ability to understand the economic and legal framework, the availability of the data, the existence of internal knowledge within the institution<sup>20</sup>, etc.

44. The interplay of these two categories of factors can be summarized in the table below.

**Table 1. Impact and Tractability**

	Low tractability	High tractability
Low impact	Low priority	Medium priority (Low hanging fruit)
High impact	Medium priority (Investment worth the effort)	Top priority

45. The CNMC aims at carrying out studies of high impact. But at the time, it has to be cognizant of the existence of limited resources and opportunity costs. Therefore, sectors/areas with high impact and high tractability will be prioritized. In many cases, trade-offs will appear and the authority will have to choose between sectors/areas with high impact and lower tractability (high complexity) and sectors/areas with high tractability and lower impact.

46. For choosing priorities, it is of utmost importance for the Competition Advocacy Department’s staff to stay up-to-date with markets’ economic, regulatory and technological developments. In this regard, the domestic/European/international regulatory agenda is

<sup>17</sup> Please refer to a recent Contribution to the OECD to see the other aspects of the methodology described in detail. [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2025\)47/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2025)47/en/pdf)

<sup>18</sup> <https://www.cnmc.es/somos-cnmc/sobre-nosotros/plan-estrategico-y-de-actuacion>

<sup>19</sup> [https://www.cnmc.es/sites/default/files/editor\\_contenidos/Plan\\_Act\\_2025%20\\_web\\_.pdf](https://www.cnmc.es/sites/default/files/editor_contenidos/Plan_Act_2025%20_web_.pdf)

<sup>20</sup> Like the Competition enforcement Unit or other units like sectoral regulators (as in the case of CNMC, whose institutional model integrates the competition agency with sectoral regulators).

followed: not only the initiatives set by the national policy makers<sup>21</sup> but also recommendations by international organizations (like the European Commission, the OECD and the International Monetary Fund), be it in general documents or in specific documents for Spain. Analysis from other sources is also taken into account: independent institutions in Spain (such as the Bank of Spain or the Fiscal Responsibility Agency), academics and experts, research institutions, think-tanks, associations, etc.

47. The Competition Advocacy Department also has an active engagement with stakeholders to make sure it is up-to-date with market developments. In other words, the engagement with stakeholders does not take place where there is a specific market study being elaborated (as described below) but it is also a continuous exercise to know about the sectors/areas with higher impact while reducing the information asymmetry of the CNMC in order to optimally choose priorities for future market studies. Interactions can take several forms at this stage: attendance to seminars and events (to engage with academics, experts and other stakeholders), informal meetings (with firms, associations, public administrations...), etc.

### 3.3. Recent activity in terms of market studies

48. The general priorities of the CNMC are set by its Board in its pluriannual Strategic Plan<sup>22</sup>, with the current one covering the period 2021-2026, and in annual Action Plans. The current Action Plan<sup>23</sup> lays out several priority areas in terms of focusing efforts on digitization, productivity and competitiveness, environmental sustainability and vulnerable consumers.

49. The next table shows the market studies published during the last 6 years<sup>24</sup> (the period covered by the current Strategic Plan) and the market studies which are ongoing, showing how they fit into the abovementioned priorities.

**Table 2. Published Market Studies**

Study	Published	Digital	Productivity and competitiveness	Environment	Vulnerable consumers
Online advertising	2021	✓			
Medicine wholesale distribution	2021		✓		✓
Automatic Teller Machines	2022				✓
Bus transport	2022				✓
Aid to broadband deployment	2022	✓	✓		
Effect of the VAT on agri-food goods	2023				✓
Aid to electric cars	2023		✓	✓	
Packaging waste	2024		✓	✓	
Driver training	2024				✓
Impact evaluation on bus	2025				✓

<sup>21</sup> For instance, in stability or convergence programmes and national reform programmes in the case of Spain as a European Union member.

<sup>22</sup> <https://www.cnmc.es/somos-cnmc/sobre-nosotros/plan-estrategico-y-de-actuacion>

<sup>23</sup> [https://www.cnmc.es/sites/default/files/editor\\_contenidos/Plan\\_Act\\_2025%20\\_web\\_.pdf](https://www.cnmc.es/sites/default/files/editor_contenidos/Plan_Act_2025%20_web_.pdf)

<sup>24</sup> See <https://www.cnmc.es/impulsamos-la-competencia/estudios-y-evaluacion-expost>

transport study					
Behavioural economics	2025		✓		✓
Port services	2025		✓		
Aid to photovoltaic self-consumption	2025			✓	
SMEs <sup>25</sup>	2026		✓		
Charging infrastructure for electric vehicles <sup>26</sup>	Ongoing		✓	✓	
Health insurance <sup>27</sup>	Ongoing				✓
Public service obligations in railways <sup>28</sup>	Ongoing			✓	✓
Use of land for housing <sup>29</sup>	Ongoing		✓		✓
Cloud services <sup>30</sup>	Ongoing	✓			

#### 4. Conclusions

50. The experience of the CNMC following the establishment of prioritisation in 2021 is that this tool is consolidating its role in the enforcement framework. The mechanism should enable a shift from a predominantly reactive approach—based on the systematic examination of complaints—to a more selective and impact-oriented model of case handling. It should also contribute to a more efficient allocation of administrative resources, including towards economic intelligence functions, fostering ex officio enforcement activity.

51. The observed patterns in the types of cases and sectors concerned show that prioritisation is primarily applied to complaints with limited evidentiary support, limited competitive impact, or better suited to alternative legal or regulatory mechanisms. This confirms its role as an effective screening tool within the enforcement process. The application of Article 49.4 also highlights the close link between organisation-level priority setting and individual case decisions. In practice, prioritisation operates as a mechanism through which the CNMC's strategic objectives—reflected in its Action Plans—are translated into day-to-day enforcement activity.

52. While the mechanism has already contributed to improving the efficiency and focus of enforcement, its long-term significance will depend on the continued development of a consistent decisional practice and on the judiciary review.

53. Ultimately, prioritisation should be understood not only as an efficiency tool, but as a core component of modern competition enforcement.

<sup>25</sup> <https://www.cnmc.es/consulta-publica-sobre-la-participacion-de-las-pymes-en-la-contratacion-publica-y-las%20barreras-a-su-actividad-empresarial-0>

<sup>26</sup> <https://www.cnmc.es/consulta-publica-de-la-cnmc-sobre-infraestructuras-de-recarga-para-vehiculos-electricos-0>

<sup>27</sup> <https://www.cnmc.es/consulta-publica-de-la-cnmc-sobre-el-seguro-de-asistencia-sanitaria-0>

<sup>28</sup> <https://www.cnmc.es/consulta-publica-de-la-cnmc-sobre-los-servicios-publicos-de-transporte-de-viajeros-en-ferrocarril>

<sup>29</sup> <https://www.cnmc.es/webform/consulta-publica-de-la-cnmc-sobre-la-transformacion-urbanistica-del-suelo-para-vivienda-en>

<sup>30</sup> <https://www.cnmc.es/consulta-publica-de-la-cnmc-sobre-los-servicios-de-nube-0>

54. From an advocacy perspective, the CNMC also pays heed to prioritisation in the different elements of its advocacy toolkit. In the specific case of market studies, the CNMC has a public methodology which strengthens the consistency, transparency and credibility of its advocacy work, while keeping flexibility.