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Competition and Consumer Policy in Digital Markets – Note by Spain

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1. Introduction

1. Digital markets have become a central feature of modern economies. According to some [estimates](#), digital advertising revenues reached approximately €6.2 billion in Spain in 2025, representing around 69% of all measured advertising investment, and the digital economy continues to expand rapidly across all sectors. The growth of online platforms, algorithmic pricing, data-driven business models and artificial intelligence may generate substantial consumer benefits, but has also created new and complex challenges for both competition policy and consumer protection.

2. The Spanish National Markets and Competition Commission (CNMC) addresses these challenges through a combination of enforcement and advocacy tools. The CNMC's institutional model integrates the competition authority with sectoral regulators, providing it with a cross-sector perspective that may be particularly valuable in digital markets, where competition concerns often span multiple sectors simultaneously. The CNMC does not have, however, any specific mandate related to consumer protection policy, which mainly lies within the Ministry of Social Rights, Consumer Affairs and 2030 Agenda.

3. This contribution is structured as follows. Section 2 examines institutional aspects that may be relevant in. Section 3 deals with the interaction between competition and consumer protection in digital markets. Section 4 discusses how consumer considerations have informed the CNMC's competition assessment. Section 5 concludes.

2. Institutional cooperation

2.1. The CNMC's institutional framework

4. The CNMC was established by Law 3/2013 as a convergent authority that integrates the national competition authority with a set of sectoral regulatory bodies, covering telecommunications, energy, transport, postal services, audiovisual content and rail. This institutional design is distinctive by international standards.

5. The Spanish Competition Act (Law 15/2007) establishes the legal framework governing the enforcement of competition rules in Spain. The CNMC is responsible for investigating and 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. In addition, the CNMC exercises a broad competition advocacy mandate, which encompasses market studies, advisory reports on draft legislation and public policies, opinions on state aid, legal challenges to anticompetitive regulations before courts, and the publication of guides and recommendations directed at public administrations and market participants.

6. Both the enforcement and advocacy pillars of the CNMC's mandate are directly relevant to supervision of competition in digital markets. On the enforcement side, the

¹ 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.

CNMC has the tools to investigate and, where appropriate, sanction dominant platforms that engage in exclusionary or exploitative conduct harmful to competition and to consumers (which, for instance, may consist in self-preferencing, tying, discriminatory access conditions and algorithmic collusion). On the advocacy side, the CNMC can use market studies and advisory reports to analyse emerging competition problems in digital markets before they solidify into enforcement cases, and to propose regulatory or policy responses that address structural issues beyond the reach of Article 102 enforcement.

7. Within the Directorate of Competition there is a specific unit dedicated to conducting competition enforcement activities relating to information society, including digital markets. For its part, the CNMC's advocacy mandate is supported by a dedicated Competition Advocacy Department, which reports directly to the President of the institution and comprises around 35 staff. The department is responsible for market studies, guides, impact evaluations and advisory reports.

8. [Institutional priorities](#) are set out by the CNMC's pluriannual Strategic Plan (currently covering 2021–2026) and annual Action Plans. Digitisation, as well as the protection of vulnerable consumers, have been identified as one of the top priorities in both the current Strategic Plan and the 2026 Action Plan, reflecting the growing economic significance of digital markets and the complexity of the competition and consumer protection challenges they raise.

2.2. Domestic cooperation

9. In Spain, the institutional framework for competition and consumer protection is characterised by a degree of separation between the CNMC, which is responsible for competition enforcement and advocacy, and consumer protection authorities, which are primarily the responsibility of the Ministry of Social Rights, Consumer Affairs and 2030 Agenda. But cooperation can take place on an *ad hoc* basis.

10. In its recently published study on behavioural economics, the CNMC has proposed closer cooperation between supervisory authorities to the application of behavioural insights in market supervision.

2.3. International cooperation

11. International cooperation can be very valuable to exchange knowledge and best practices in promoting competition in digital markets, to the benefit of consumers.

12. The CNMC participates actively in European and international competition fora, like the European Competition Network (ECN), including the OECD Competition Committee and its Working Parties the Latin American and Caribbean Competition Forum or the International Competition Network (ICN).

3. Interaction between competition and consumer protection in digital markets

13. Digital platforms are simultaneously sites of competition between firms and sites of consumer interaction. The design of a platform's interface and its functioning can simultaneously affect the competitive dynamics among firms operating on or through the platform and the decision-making capacity of consumers. A practice that harms consumers (such as the use of dark patterns to induce lock-in or deter switching) often also reduces competitive discipline and entrenches incumbent market power.

14. The relevance of digital markets has been recognised at the European level through the adoption of different digital market regulations in recent years, including the Digital Services Act (DSA), the Digital Markets Act (DMA), and the Data Act.

3.1. Dark patterns and their competitive effects

15. One of the most important areas of overlap between competition and consumer policy in digital markets is the phenomenon of dark patterns (design practices that exploit cognitive biases to induce consumers to make decisions against their own interests). The CNMC's [Study on Behavioural Economics for Efficient Regulation and Supervision](#), published in September 2025, provides a comprehensive analysis of these practices and their implications for market supervision.

16. Dark patterns encompass a wide range of practices, including pre-selected options (defaults), drip pricing, confirm shaming, obscured cancellation procedures, and misleading urgency or scarcity cues. According to available evidence, dark patterns are widespread on the most popular websites and apps in the EU, and empirical research suggests that some practices (particularly default options) can shift consumer choices significantly.

17. From a competition perspective, dark patterns matter because they systematically reduce consumers' ability to make well-informed decisions, compare alternatives, or exercise effective demand-side discipline over suppliers. As the CNMC's behavioural economics study documents, consumers' bounded rationality, combined with status quo bias and the hassle factors deliberately introduced by firms, can sustain market power even in markets where there are no significant technical barriers to switching. This is particularly concerning in markets characterised by high concentration, such as many digital markets.

3.2. Data, personalisation and consumer vulnerability

18. The collection and use of personal data is another area where competition and consumer policy increasingly converge in digital markets. Digital platforms generate and accumulate vast quantities of behavioural data from their users, which they use for targeted advertising, personalised pricing, product recommendation and a range of other purposes. This data advantage can simultaneously constitute a significant barrier to entry for rival firms and create risks of consumer harm through discriminatory treatment or personalised manipulation.

19. As documented in the CNMC's behavioural economics study, the digital environment presents particular risks for consumer decision-making. Research indicates that consumers pay less attention and process information less effectively when interacting online than offline, and that they may ignore the degree of manipulation to which they are exposed. The increasing use of artificial intelligence and machine learning by platforms to optimise choice architecture in a highly personalised manner (what some researchers have termed "hypernudging") intensifies these risks. These techniques can be deployed to identify and systematically exploit individual cognitive vulnerabilities, effectively personalising manipulative practices at scale.

20. The CNMC's study echoes current debates as to whether consumer vulnerability in the digital age should be limited to traditionally defined vulnerable groups such as the elderly or those with low digital literacy. Rather, all consumers could be potentially vulnerable in the face of sophisticated behavioural manipulation, and the degree of vulnerability varies contextually depending among other things, on the nature of the

product, the decision environment and the individual's current cognitive and emotional state.

4. Consumer considerations in competition assessment

4.1. Behavioural economics and competition enforcement

21. The assessment of dominance in digital markets must take account of factors that are absent or less significant in traditional markets. In addition to conventional indicators such as market shares, entry barriers and buyer power, digital market dominance may be reinforced by network effects, switching costs, data advantages and, as the CNMC's [Study on Behavioural Economics for Efficient Regulation and Supervision](#) emphasises, the systematic exploitation of consumer cognitive limitations.

22. A platform with a substantial installed base of users can leverage consumer inertia and the default-option effect to maintain its position even in the face of superior competing products. The endowment effect and the status quo bias mean that consumers attribute disproportionate value to existing products and relationships, making them resistant to switching even when objective assessments might favour an alternative. This creates a form of "behavioural lock-in" that operates independently of, and in addition to, contractual or technical switching costs.

23. Behavioural economics insights have been increasingly applied in abuse-of-dominance cases, particularly in the context of digital markets. In the CNMC's own [case against Booking](#), the authority analysed the role of search result positioning and its effects on consumer behaviour and hotel reservations, drawing on evidence of what Booking's own engineers had described as a "position bias" in its platform.

24. From a remedy design perspective, behavioural economics offers important insights for ensuring that remedies are effective. Simply removing a contractual restriction or imposing an information obligation may be insufficient if consumers are unlikely to actively process and act upon the disclosed information. For example, active choice mechanisms, simplifying and standardising information presentation, or default settings that reflect consumer interests rather than platform interests can, in some cases, improve both consumer choice and effective competition, particularly in digital markets.

4.2. Consumer protection and digital markets in the CNMC's advocacy agenda

25. Consumer protection considerations feature both as a substantive focus and as a prioritisation criterion in the CNMC's advocacy work. The CNMC's current Strategic Plan (2021–2026) and its successive annual Action Plans identify two dimensions of consumer relevance: first, the protection of "vulnerable consumers" as a cross-cutting strategic priority, spanning sectors such as financial services, health, transport and housing; and second, the promotion of effective competition in digital markets, where, as described above, competition harm and consumer harm are frequently two sides of the same coin.

26. The table below maps the CNMC's market studies published and ongoing since 2021 against these priority areas. Of the studies published since 2021, more than half have a consumer-vulnerability dimension, and four have a digital-market dimension.

Table 1: CNMC market studies: priorities and scope

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 transport study	2025				✓
Behavioural economics	2025	✓	✓		✓
Port services	2025		✓		
Aid to photovoltaic self-consumption	2025			✓	
SMEs	2026		✓		
Charging infrastructure for electric vehicles	Ongoing		✓	✓	
Health insurance	Ongoing				✓
Public service obligations in railways	Ongoing			✓	✓
Use of land for housing	Ongoing		✓		✓
Cloud services	Ongoing	✓			

4.3. Examples of advocacy initiatives

27. The [Fintech market study](#), published in 2018 (not shown in the table) was an early example of the CNMC applying a competition advocacy lens to a rapidly digitising sector, identifying the potential for new technologies both to improve consumer outcomes and to create new risks. It represents an early example of the CNMC addressing the convergence of competition and consumer protection concerns in a rapidly digitising market. The study analysed Fintech innovations (defined as the disruptive application of information and communications technologies to the financial system) across a broad range of activities, including neo-banks, distributed ledger technologies, innovative payment systems, automated asset management and insurance technology. It documented how the sector exhibits multiple concurrent market failures: imperfect information, scale and network economies generating concentration, externalities from imprudent conduct, and public-good characteristics of financial stability. The study found that Fintech innovations had significant potential to address many of these market failures and to improve both competition and efficiency in financial services.

28. From a consumer standpoint, the Fintech study highlighted the potential for digital financial innovations to improve consumer outcomes (for example, by reducing switching costs, expanding access to financial products for underserved consumers, and enhancing transparency through digital tools). At the same time, it acknowledged that new digital

financial services could give rise to new consumer risks, including through the exploitation of data asymmetries and cognitive biases. These concerns have materialised in subsequent CNMC work: the CNMC's 2025 [report on deposit remuneration](#) found that deposit rates in Spain were significantly below the euro area average and identified consumer inertia, switching costs and limited financial literacy as key factors constraining competitive discipline in the retail banking market.

29. One of the Fintech study's most concrete recommendations was the creation of a regulatory sandbox for financial services, which would allow innovative business models to develop and be tested in a controlled environment without being immediately subject to the full burden of entry regulation. This recommendation was followed when the Spanish Parliament approved the relevant legislation in 2020. In 2025, the CNMC issued an [advisory report on a proposed reform of the sandbox regime](#), endorsing the main aspects of the reform (which were broadly aligned with the original Fintech study recommendations) while adding specific recommendations to ensure continuous access to the sandbox and to guarantee that participation does not prejudice compliance with competition policy. This example shows how the CNMC has continued to monitor developments in financial technology and to engage with regulatory reform processes as they evolve.

30. The 2021 [online advertising market study](#) addressed both competition and consumer dimensions of the digital advertising ecosystem, identifying the lack of transparency in programmatic advertising chains. The CNMC's online advertising market study identified data asymmetry and opacity as key structural features shaping market power in advertising intermediation. Advertisers and publishers have limited ability to audit the performance of auction systems (being Google's proprietary systems the most relevant), compare them with alternatives, or verify whether they are receiving a fair return on their advertising investment. This information asymmetry limits the effectiveness of demand-side discipline and reinforces market power.

31. The ongoing [cloud services market study](#) is also bound to analyse competition concerns that may affect business customers (e.g. to what extent concentration in cloud infrastructure markets and potential barriers to switching may generate lock-in effects that may harm both business customers and, indirectly, end consumers of cloud-intensive services).

32. The CNMC is also conducting market studies on health insurance and charging infrastructure for electric vehicles, both of which involve significant digital dimensions and consumer protection considerations.

5. Conclusions

33. Digital markets present complex and interrelated challenges for both competition policy and consumer protection. The CNMC's experience highlights several key conclusions.

34. First, some issues may affect both competition and consumer protection, and this may be the case, especially (and increasingly) in digital markets. Dark patterns, cognitive biases and data asymmetries simultaneously harm consumers and distort competitive dynamics by reducing demand-side discipline and entrenching incumbent market power.

35. Second, behavioural economics provides important analytical tools for understanding digital market dynamics and designing effective policy responses. The CNMC's 2025 Study on Behavioural Economics for Efficient Regulation and Supervision

offers a comprehensive framework for integrating behavioural insights into competition analysis, remedy design and market supervision.

36. Third, institutional cooperation is essential, both domestically and internationally.

37. Fourth, the CNMC recognises the importance of continuous monitoring and updating of its advocacy work in digital markets. The rapid pace of technological change (including the increasing use of artificial intelligence in platform algorithms, content moderation and consumer profiling) means that the competition and consumer protection challenges of digital markets will continue to evolve. The CNMC is committed to adapting its analytical and enforcement toolkit accordingly.