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Assessing the Impact of Competition Authorities' Activities – Note by Spain

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Federica MAIORANO
Federica.Maiorano@oecd.org

JT03565613

Spain

1. Introduction

1. The Spanish National Commission for Markets and Competition (Comisión Nacional de los Mercados y la Competencia, CNMC) is an integrated national authority empowered to enforce competition policy (overseeing mergers and acquisitions and potentially anticompetitive practices) and to engage in advocacy, as well as to enact sector-specific regulation in telecommunications, media, energy and transport.

2. The investigative and enforcement powers of the CNMC as competition authority (CA) aim to maintain and foster the existence of effective competition for the benefit of consumers. As is the case in all CAs, its enforcement activity focuses on the prosecution of anticompetitive infringements (with cases ending in prohibition decisions with fines or with commitments) and merger control (with the alternatives of unconditional clearance, clearance with remedies or prohibition).

3. The qualitative benefits of competition enforcement for consumers and society as a whole are easily understood, but it is advisable to try and quantify those benefits in order to assess the effectiveness of the CAs' performance over time. While the Council of the CNMC has not officially adopted a methodology, impact estimations have been carried out by the CNMC staff since 2016.

4. Impact assessments are especially useful for advocacy purposes. The results of the estimations could be presented to the parliament to strengthen the authority's accountability and to help build the case for funding requests. They can also be used to show the effectiveness of the CNMC's enforcement and merger control activities towards consumers and civil society. The impact estimates are usually accepted as valid, with only occasional questions about the methodology.

2. The CNMC's experience in the impact assessment of competition enforcement interventions: current practice and use of OECD guidance

5. In order to quantify the consumer savings produced by the CNMC's competition enforcement actions, the methodology used is based on OECD recommendations on impact analysis (OECD, 2014) and is in line with those applied by the European Commission (EC) and national CAs, such as the Authority for Consumers and Markets of the Netherlands (ACM), the Competition and Markets Authority of the United Kingdom (CMA), as well as the Department of Justice (DoJ) and the Federal Trade Commission (FTC) of the US.

6. This methodology assumes that each intervention prevents direct adverse effects on consumers in the form of higher prices resulting from anti-competitive infringements and problematic mergers. Neither the CNMC nor the OECD take into account indirect or deterrence effects. According to OECD terminology, the term "consumers" includes both final consumers and consumers of intermediate products. The impact assessment is based on information contained in the case files.

7. Consumer savings are shown both annually and with 3-year moving averages, the latter to smooth out short-term fluctuations caused by annual variations in the number of cases or the size of the affected markets.

8. Consumer savings can vary significantly from year to year. This can be explained by the difference in the number of cases analysed, the turnover of the relevant market in each case, and also by the price effect and its duration when they can be deduced from the information available in the case file.

2.1. Interventions against anticompetitive infringements

9. To estimate consumer savings the CNMC staff considers all decisions of the CA for infringements of articles 1, 2 and 3 of the Spanish Competition Act, including cases investigated by the regional competition services and decided by the national authority, irrespective of whether the cases ended with a prohibition with fines or with commitments. As for appealed cases, they are included in the estimation unless they happen to be annulled by the Court.

10. Consumer savings produced by an intervention to end an infringement are the result of multiplying the volume of sales in the affected market (as a proxy of the consumers affected) by the price effect (in percentage), and this is computed for each of the years of duration of the price effect, and then the present value of those annual savings is computed at the year of the decision at the social discount rate. Finally, the results for all cases in a year are added to obtain the impact of the decisions of the competition authority that year.

11. To estimate the impact of decisions we take into account three parameters. Table 1 shows a comparison of the values of the parameters selected for the impact analysis of the CNMC's interventions against anti-competitive infringements, together with those recommended by the OECD.

Table 1. Value of parameters used for anticompetitive infringements

<i>Authority</i>	<i>Type of case</i>	<i>Sales in the affected market</i>	<i>Price effect</i>	<i>Duration of price effect (years)</i>	<i>Discount rate</i>
CNMC	Art. 1 LDC, 101 TFEU	Affected market turnover	Value in case file or 10%	3	3,0%
	Art. 2 and 3 LDC, art. 102 TFEU	Affected market turnover	Value in case file or 5%	3	3,0%
OECD	Cartels	Ex ante affected market turnover	Value in case file or 10%	3	-
	Abuse	Ex ante affected market turnover	Value in case file or 5%	3	-

Source for OECD data: OECD (2014).

12. As can be seen in the table above, the values of the parameters used by the CNMC staff are mostly those recommended by the OECD:

1. The dimension of each undertaking's infringement is measured by the size of the affected market. For each infringement the average annual turnover in the relevant market is calculated on the basis of the data available in the case files.
2. The price effect is the price increase prevented by the intervention of the CA. When possible, the case-specific information in the case file is used. Otherwise, an avoided price increase of 10% is assumed for collusive arrangements and a 5% for both Article 2 (abuse of dominance) and Article 3 (unfair competition) infringements.

3. We need a reference value of the future duration of the infringement – and therefore of the price effect – had the competition authority not intervened. For this parameter a default value of 3 years is used, in line with OECD (2014).
4. The only difference with the OECD recommendations is that the CNMC staff considers appropriate to assign to the year in which decisions are published the discounted value of future savings using a discount rate of 3.0%¹.

2.2. Methodology for interventions in merger control

13. To estimate consumer savings the CNMC staff include cases in which the Spanish CA has blocked a merger or in which mergers have been approved with remedies in either first or second phase. Withdrawn mergers in second phase are also included, unless there is evidence that it was for reasons other than the competition concerns of the authority.

14. As with anticompetitive infringements, consumer savings produced by a merger control intervention are the result of multiplying the volume of sales in the relevant market by the price increase avoided (in percentage), and this is computed for each of the years of duration of the price effect, and then the present value of those annual savings is computed at the year of the decision at the social discount rate. The results for all merger decisions in a year are then added to obtain the impact of merger control interventions that year.

15. Table 2 shows the values of the parameters selected for the impact analysis of CNMC's interventions in merger control, together with those recommended by the OECD.

Table 2. Value of parameters used for merger control cases

	<i>Sales in the relevant market</i>	<i>Price effect</i>	<i>Duration (years)</i>	<i>Discount rate</i>
<i>CNMC</i>	Turnover in the relevant market	3%	Duration of remedies; if no data available, 2	3,0%
<i>OECD</i>	Turnover of all undertakings in the affected markets	3%	2	-

Source for OECD data, OECD (2014).

16. Again, the values of the parameters used by the CNMC staff coincide mostly with those recommended by the OECD:

1. The size of the relevant market is the turnover in the relevant market affected by the merger. It is assumed that, without intervention by the competition authority, both the prices of the products of the companies involved in the operation and those produced by their rivals could increase due to the umbrella effect of the merger.
2. A default price effect of 3% is used, assuming that the intervention has prevented a price increase of that magnitude in the market where the merger takes place.

¹ European Commission (2015): Annex III, 2.3.1, n. 4.

3. The duration of the price effect is assumed to be the value specified for the remedies. Otherwise, a default duration of 2 years is used when no information is available, in line with the OECD.
4. As mentioned above, the CNMC staff considers appropriate to assign to the year in which decisions are published the discounted value of future savings using a discount rate of 3.0%.

2.3. Potential for updating assumptions and expanding the OECD guide

17. The OECD guide was published in 2014. As the CNMC staff mostly follows those recommendations, revising the assumptions and expanding the guide would be very useful.

18. As for possible revisions of the guide, it would be useful to have other types of infringements included apart from cartels, as well as some guidance on the use of discount rates, treatment of appeals, merger withdrawals, and commitments received prior to a final decision. This way, all competition authorities could align their assumptions to a common methodology. These changes would require the CAs to compute anew the whole time series of estimates, but future estimates would be more robust.

19. Finally, regarding a possible expansion of the guidelines, the CNMC is already working on projects to estimate the impact of advocacy interventions such as recommendations on legal proposals², and it would also be beneficial to have a common methodology or, at least, some basic guidelines that all CAs can take into account. Another expansion of the guidelines could focus on estimating deterrent effects, as there is no established methodology on which to rely upon.

3. Main conclusions

20. Impact assessments are a necessity for CAs, who increasingly need to quantify the benefits to consumers produced by their interventions. This contribution presents the experience of the CNMC staff in assessing the impact of its interventions in antitrust enforcement, as well as how it compares to the OECD guide and how its recommendations could be updated.

21. Regarding competition enforcement, the CNMC staff conducts unofficial annual assessments to quantify direct savings generated by the prosecution of anti-competitive infringements and merger control interventions. The methodology, mostly in line with the OECD recommendations on impact assessment, assumes that each intervention prevents direct adverse effects on consumers in the form of higher prices resulting from anti-competitive infringements and problematic mergers. Estimates of consumer savings are based on information contained in the case files and on reference values selected according to the economic literature and the choices of more experienced competition authorities.

22. As for the potential modification of the OECD guide published in 2014, revising the recommendations would be very useful for all competition authorities that try to estimate the impact of their competition enforcement interventions. Updating the methodology of the guide would potentially require the CAs to compute their estimates again, but it would also allow them to produce more robust results in the future.

23. Finally, regarding a possible expansion of the guidelines, it would be beneficial to have a common methodology to estimate the impact of advocacy interventions or at least

² CNMC (2023)

some basic guidelines that all CAs can take into account. Another expansion of the guidelines could focus on estimating deterrent effects, as there is no established methodology on which to rely upon.

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