



DEE C
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RECOMMENDATIONS TO THE PUBLIC AUTHORITIES FOR AN INTERVENTION IN FAVOR OF MARKET COMPETITION AND AN INCLUSIVE ECONOMIC RECOVERY

Increasing competition in markets where it is possible to do so benefits society. Benefits materialise directly for the public in the form of lower prices, higher quality, and greater variety of available products. Long-term dynamic effects of competition stimulate investment, innovation, competitiveness, and productivity, create jobs and entrepreneurship opportunities, to the ultimate benefit of consumers.

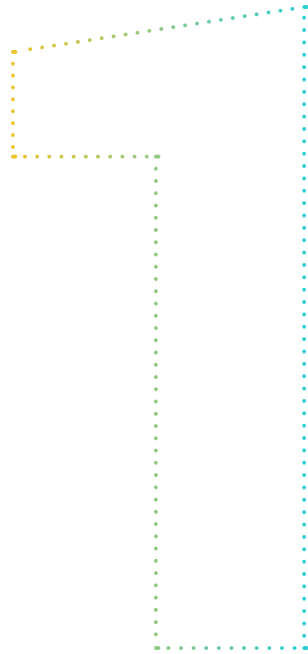
Competition is also an appropriate policy for minimising the impact of the economic crisis on the most vulnerable groups. Effective market competition favours access to the most basic goods and services (pharmaceutical or health products, food, supplies, transport, housing, etc.) at the lowest possible cost.

Lastly, competition is a key policy for achieving the goals of the twofold transition, ecological and digital, that will create a stronger economy in the future. In a competitive environment, companies have greater incentives and opportunities to be greener and more digital to attract consumers and to improve their own competitiveness.

For all the referred benefits to materialise, public intervention measures must, whenever possible, be conducive to market competition. Public authorities' decisions should be based on principles of efficient economic regulation (necessity and proportionality).

To promote effective market competition and bring about a solid, inclusive, and sustainable economic recovery, the CNMC has made available to all public authorities three sets of 10 recommendations (called "decalogues") on the areas where public intervention can have the greatest impact on competition: market regulation, public support, and public procurement. The CNMC's competition advocacy functions focus on these three areas, based on the agency's cumulative experience, which it is sharing with all public authorities.

This document contains a summary of the 3 decalogues. The original documents can be found here (<https://www.cnmc.es/guia-recomendaciones-poderes-publicos>)



A DECALOGUE OF RECOMMENDATIONS FOR MORE EFFICIENT REGULATION

The pandemic has brought about sharp economic contraction, led to the review of numerous regulations, and accelerated the digitalisation of the economy. All of this, in addition, has coincided with the transition towards a greener and more sustainable economy. Against this background, it is imperative to promote efficient regulation to achieve a robust, sustainable, and inclusive economic recovery.

1.1.

PROMOTING A PRO-COMPETITION MARKET REGULATION

- Avoiding unjustified barriers to entry and to the exercise of economic activities eliminates privileges for incumbent firms, intensifies competition and encourages entrepreneurship and innovation.
- Regulation in favour of competition rewards firms mainly based on their performance, stimulating higher levels of investment and improvements to productivity, and promoting higher-quality jobs.

1.2.

APPLYING THE NECESSITY AND PROPORTIONALITY PRINCIPLES

- Competition should be restricted only to achieve objectives of general interest that the market cannot achieve on its own.
- Actions must be proportional and must not cause more damage than that is intended to be avoided.
- Among the different measures available, authorities should choose the least distortive of competition.

1.3.

DEVELOPING STRATEGIC REGULATORY REVIEW PLANNING

- Strategic planning for regulatory review can serve as an effective tool for systematically identifying and eliminating anti-competitive, inefficient, or outdated regulations, as well as unnecessary or disproportionate restrictions on creating businesses and exercising economic activity.
- Doing so is consistent with introducing a cohesive package of reforms as called for in the EU's Recovery and Resilience Facility.

1.4.

EVALUATING THE IMPACT OF A REGULATION BEFORE ADOPTING IT

- Evaluating the effects of a regulation allows to anticipate its potential effects and enhance its effectiveness in achieving the intended purposes.
- A correct ex ante evaluation requires establishing its objectives at the beginning of the regulatory reform process.

1.5.

**ANALYSING THE IMPACT OF
EXISTING REGULATIONS**

- The effects of regulations on agents and markets must be examined ex post in a systematic way.
- This allows for an orderly reflection on whether the objectives have been achieved and whether they can be attained more efficiently.

1.6.

**PROMOTING COMPREHENSIBLE,
ACCESSIBLE, TRANSPARENT,
AND CONSISTENT REGULATIONS**

- To maximise compliance with a regulation, the addressees must understand it and consider it reasonable and justified.
- The regulation should be based on available empirical evidence, considering the opinions of independent experts, international experiences, and best practices.
- To the extent possible, there should be hearing processes and public consultations for those affected by the regulation.

1.7.

**MAINTAINING COMPETITIVE
NEUTRALITY**

- The principle of competitive neutrality implies that the regulation does not unduly benefit any player on subjective grounds.
- When firms base their success on regulatory advantages, they devote part of their efforts to reaping such advantages, rather than to improving their products and services for consumers.

1.8.

**AVOIDING PROTECTIONISM
AGAINST EXTERNAL
COMPETITION**

- Limiting the entry of goods, services and firms from other regions or countries raises consumers' costs for accessing those goods and services.
- Protecting local firms by restricting competition from non-local firms reduces the potential competitiveness of the formers and can provoke a similar response, limiting domestic firms' ability to compete in other markets.
- Preserving international cooperation is essential for ensuring an optimal response to current challenges, which are increasingly global.

1.9.

ENCOURAGING PRO-COMPETITIVE REGULATIONS THAT PROMOTE THE ECOLOGICAL AND DIGITAL TRANSITION

- Digitalisation needs pro-competitive and effective regulations to guarantee taking advantage of the opportunities that it creates.
- Digital tools allow to increase administrative efficiency by saving unnecessary costs for firms, citizens, and public administration.
- The transition to a green economy requires efficient regulations that
- promote new economic activities and foster sustainability.

1.10.

COUNTING ON THE ADVICE OF COMPETITION AUTHORITIES

- All authorities and agents should take advantage of the technical capacity of regulatory and competition authorities such as the CNMC, legitimised as a consultative body to ensure that regulations are appropriate for achieving their objectives.
- The CNMC is ready to help and is committed to provide a quick response when required.



A DECALOGUE OF RECOMMENDATIONS TO IMPROVE THE EFFECTIVENESS OF PUBLIC AID

The pandemic has brought about sharp economic contraction, led to the review of numerous regulations, and accelerated the digitalisation of the economy. All of this, in addition, has coincided with the transition towards a greener and more sustainable economy. Against this background, it is imperative to promote efficient regulation to achieve a robust, sustainable, and inclusive economic recovery.

2.1.

IDENTIFYING THE OBJECTIVE PURSUED AND THE POSSIBLE PUBLIC POLICY ALTERNATIVES

- Once the public interest objective has been clearly identified, a cost-benefit analysis of the available public policy instruments must be carried out.
- An overall balancing test of the public support must be conducted, which assess the positive and negative aspects of granting it.

2.2.

PROMOTING TRANSPARENCY AND THE CONCURRENCE OF FIRMS IN ACCESS TO PUBLIC AID, ESPECIALLY FOR SMES

- Transparency allows a larger number of players to react to calls for bids, especially SMEs.
- There must be a commitment to proactive transparency mechanisms. This implies as well to put in practice assistance and

2.3.

PROMOTING THE INCENTIVE EFFECT OF THE PUBLIC AID

- The public aid must give rise to a change in the beneficiary's behaviour such that the scope of the project is broadened considerably or its amount or the pace of its execution increases substantially.
- It must be ensured that structural modifications are maintained permanently or, at least, for a reasonable period of time.

2.4.

ENSURING COMPETITIVE NEUTRALITY WHILE AVOIDING PROTECTIONIST MEASURES

- Access to public aid must be ruled by objective, non-discriminatory conditions in line with the OECD competitive neutrality recommendations.
- Economic compensation attached to public service obligations (PSOs) must be sufficient and proportionate to the value of the services provided.

2.5.

**REINFORCING THE RECOVERY
OF EFFICIENT FIRMS**

- It is necessary to be demanding in terms of the solvency profile of the firms that are going to receive the public aid.
- Instruments that incentivise recipient firms to recover their activity, such as loans or guarantees and other conditional instruments, should preferably be used.

2.6.

**PROMOTING STRUCTURAL
IMPROVEMENTS IN
PRODUCTIVITY AND
COMPETITIVENESS THAT
FAVOUR THE DIGITAL AND
ECOLOGICAL TRANSITION**

- Competition incentivises the transformation of businesses towards digitisation and environmental sustainability.
- Public aid can accelerate the ecological and digital transition by promoting competition and productive investments in these areas.
- Mechanisms that aim to objectively identify and select activities eligible for financing should be implemented specially using standard taxonomies all over the EU.

2.7.

**GRANTING PUBLIC AID
ACCORDING TO COMPETITIVE
CRITERIA WHEN POSSIBLE**

- Competitive procedures are, in principle, the best way to select the projects and firms that can do the most to boost the economy.
- Horizontal public aid to demand can serve as an alternative mechanism for allocating aid indirectly, according to competitive criteria.

2.8.

**DEVELOPING EFFECTIVE
STRATEGIC PLANNING**

- Planning makes it possible to analyse needs and thus define the best strategies to meet those needs.
- Planning minimises errors in forecasts and encourages coordination and consistency among the public authorities' strategies.

2.9.

IMPLEMENTING A CULTURE OF EVALUATION OF THE EFFECTS OF THE PUBLIC AID

- By monitoring and assessing the effects of public aid it is possible to improve the design of future interventions.
- Disclosing ex post evaluations improves the effectiveness of other policymakers.

2.10.

RECEIVING SUPPORT AND ADVICE FROM COMPETITION AUTHORITIES

- The CNMC discloses its actions regarding public aid and offers its advice to public entities requesting it.
- This advice is complementary and does not replace controls carried out by other competent authorities.



A DECALOGUE OF RECOMMENDATIONS FOR EFFICIENT PUBLIC PROCUREMENT

Public procurement accounts for a considerable portion of domestic GDP (between 10% and 20%) and involves sectors with a significant impact over the economy. It is crucial that both the regulatory framework and the implementation of public tenders promote effective competition.

Achieving a truly strategic public procurement requires going one step further. Projects that promote the twofold transformation – ecological and digital – must foster competition among firms and improve their competitiveness.

3.1.

PERFORMING A STRATEGIC PLANNING OF PROCUREMENT NEEDS

- Strategic needs planning is essential to identify and prioritise those purchases that, in accordance with their objectives, should be considered strategic for the entity's operation.
- Proper planning reduces forecasting errors and promotes competition in public procurement.

3.2.

PROMOTING COMPETITION, TRANSPARENCY, AND THE PARTICIPATION OF FIRMS, ESPECIALLY SMES

- Promoting open, transparent and non-discriminatory bidding processes that encourage bidders' participation.
- Establishing proactive communication instruments that complement required forms of publicity.
- Access to information must be accompanied by measures that effectively promote economic operator's participation in tenders.

3.3.

RESTRICTING THE USE OF ALTERNATIVES TO PUBLIC PROCUREMENT, SUCH AS IN-HOUSE CONTRACTS AND COLLABORATION AGREEMENTS, TO CASES IN WHICH THEY ARE MORE EFFICIENT

- These alternatives exclude competition.
- They should be only used in cases in which they represent a net gain in efficiency compared with competitive procedures.

3.4.

IMPROVING PUBLIC PROCURERS' CAPACITY BUILDING AND THEIR MARKET KNOWLEDGE

- Implement training of and specialisation among public procurers, within multidisciplinary teams.
- Raise the level of market knowledge where public procurement takes places, given their increasing complexity.

3.5.

ENSURING COMPETITIVE NEUTRALITY WHILE AVOIDING PROTECTIONIST MEASURES

- Public procurement should not favour access by some operators rather than others due to subjective conditions.
- Measures that require a specific territorial location or proximity should be avoided.

3.6.

PROMOTING ECOLOGICAL AND DIGITAL TRANSFORMATION THROUGH COMPETITION

- Promoting tender procedures that give a boost to the digital and environmental transition, setting parameters that ensure objectivity and competition among operators specially using standard taxonomies all over the EU.

3.7.

DIGITISING INFORMATION RELATING TO PUBLIC PROCUREMENT

- Completely digitising information related to contract documents and files.
- Promoting cooperation and interoperability among public entities, especially those with less access to resources.

3.8.

PROMOTING COMPETITION IN PUBLIC-PRIVATE PARTNERSHIPS IN ORDER TO CARRY OUT PROJECTS FOR THE STRUCTURAL TRANSFORMATION OF THE ECONOMY

- Projects managed through forms of public-private partnerships must give rise to an authentic structural transformation of the economy, in line with the objectives of digital and/or environmental transition.
- Selecting projects and operators through open, transparent, objective, competitive and non-discriminatory procedures ensures that these mechanisms are used more efficiently.

3.9

IMPLEMENTING A CULTURE OF EVALUATING THE EFFECTS OF PUBLIC PROCUREMENT

- A system of control and evaluation of results should be put into practice, especially for cases relating to objectives of innovation, digital transformation and/or environmental sustainability.
- The conclusions of this analysis, as well as the measures adopted by the main entities involved, should be made public.

3.10

RECEIVING THE SUPPORT AND ADVICE OF COMPETITION AND REGULATORY AUTHORITIES

- All public entities are encouraged to use the CNMC's advisory and training functions on public procurement.
- Public entities have the obligation to report to the CNMC any indication of anti-competitive conduct, which they are in a privileged position to detect.