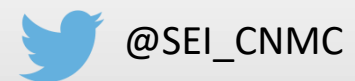




***Methodology for conducting Market Studies
CNMC***

***Raquel Tárrega
Market Studies Unit***



Studies as an advocacy tool

- ✓ Competition Advocacy was one of the major new features of the 15/2007 Competition Law.
- ✓ Article 5.1 of the Law 3/2013, on the creation of the CNMC, includes the CNMC's advocacy functions, in particular, the CNMC should:

“Promote effective competition in the markets through Studies and market investigations on competition issues, as well as general reports on sectors which could include, where appropriate, proposals for liberalisation, deregulation or changes to regulations”.

- ✓ The content of the market study is not binding, it does not affect third party interests and cannot be challenged in court.



Who makes the decision?

- ✓ The Advocacy Department proposes a Study Plan for the short and medium term. It may include studies in the plan for various reasons:
 - At the proposal of the technical services of the Advocacy Department of the CNMC.
 - At the proposal of an Enforcement Division.
 - As a result of complaints to the CNMC by consumers or operators.
 - The result of a Study request by the Government, Ministry, Legislative Chamber, etc.
- ✓ A plenary session of the CNMC Council shall approve the Action Plan and the Strategic Plan of the CNMC.



Criteria for selecting the markets to be analysed and their scope

“A Market Study is a comprehensive economic and regulatory analysis that analyses in depth the dynamics of competition in a market, identifying existing restrictions which may hinder or prevent efficient resource allocation.”



- ✓ Preliminary research to be carried out by the Studies Unit.
- ✓ The objective is to identify markets:
 - whose structure and characteristics are linked to potential restrictions on competition concerns or regulatory inefficiencies,
 - and importance for the Spanish economy.
- ✓ This preliminary research is based on databases and internal documents of the CNMC, as well as publicly-available and free (when possible) reports and data.
- ✓ Contact with economic operators and third parties of an external nature is usually avoided during this phase.
- ✓ If evidence of the existence of practices that restrict competition is detected, the Advocacy Department would inform the competent Enforcement Division .

Which markets should be analysed? I

Indicators to identify competition and regulatory concerns:

- High levels of concentration
- Stability in market shares over time
- Non-existence of companies entering or exiting the market
- High entry and/or exit barriers
- Price trends or levels higher than other countries within our scope.
- Restrictive regulation of competition
- Repeated enforcement decisions
- Repeated complaint.

Indicators to assess the importance of the market:

- Production value
- Gross added value
- Number of employees
- Weight in the total investment
- Weight in the total R+D
- Weight in the consumer basket of households
- Evolution of productivity
- Technological content.
- Capacity for innovation.
- Interrelationships with other sectors of the economy
- Social repercussions

Which markets should be analysed? II

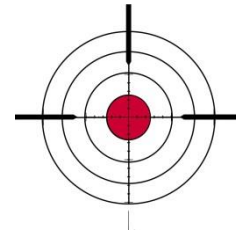
After the preliminary research, the Council of the CNMC will decide to conduct a study:

1. If there is a "*window of opportunity*" for the recommendations to be implemented in future regulatory changes.
2. If the market is important to the economy as a whole.
3. If the possible restriction on competition affects a significant part of the market in question.
4. If the most suitable tool to correct the possible restriction is a Market Study.
5. If the market is strategic, due to its influence on other sectors and on consumers.



Scope of the Market Study I

- ✓ Key aspects when defining the scope of a study:
1. Ensuring completeness, i.e. the study should cover the priority competition concerns identified.
 2. Resource constraints



Completeness

- ✓ The scope should be focused on the competition and regulatory concerns identified during the preliminary research. In this sense, it is key to:
- i. Define the main goals and objectives of the study in detail.
 - ii. Define the market.
 - iii. Identify the main concerns and the potential or foreseeable outcomes.
 - iv. Allow some flexibility in defining the scope of the market study.

Scope of the Market Study II

- v. The CNMC might decide to consult stakeholders on the scope of the study, specially when the market of study is:
 - a. Technically complex or with a high rate of innovation/dynamism
 - b. New markets on which the authority has no sufficient information available.

In these cases, it might be advisable to gather thorough information during the preliminary research, potentially including bilateral meetings with the main operators of the market or with public administrations. Also public consultations might be foreseen in exceptional cases.

Scope of the Market Study III



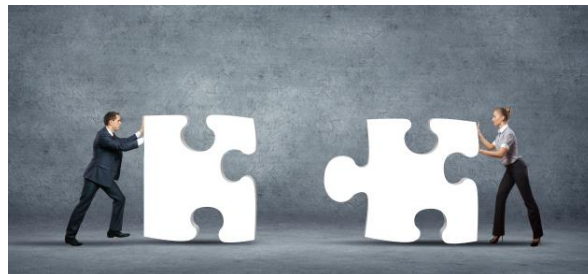
Resource constraints

- ✓ Once the study is approved, the CNMC will designate a core dedicated team that will be responsible for the market study process to its completion
- ✓ The teams are multidisciplinary, i.e. the Study Unit has different profiles and knowledge backgrounds.
 - i. This ensures market study teams that combine members with different professional skills and experience.
 - ii. It also gives the authority some flexibility to allocate resources with the relevant background and skills to the different studies.
- ✓ Team members have regular team meetings to monitor the market study progress and working plan.

Scope of the Market Study IV

Involving other units of the CNMC in the market study process:

- ✓ During the market study, the team is in close contact with the relevant regulatory directorates and the enforcement directorate.
- ✓ The level of engagement or involvement depends on the market and the concerns analyzed.
- ✓ The Council of the CNMC is closely informed in all key phases of the study.
- ✓ To ensure a high quality involvement of other units of the CNMC:
 - i. Meeting with the engaged units are regularly held.
 - ii. Feedback on particular issues is requested.



Planned Procedures and Actions

Collection and analysis of information:

- Meetings with operators and interested third parties that have a significant influence over the market of study
It is good practice to write up pre-meeting notes and the minutes of meetings held.
- Launching Public Consultations when market is atomized, new or close to consumers. Ex. Public consultations launched in the study on Sharing Economy
The CNMC will not meet with any stakeholder involved in the market until the public consultation is finished.

- Requests for Information:

Under the provisions of art. 28 of the LCNMC: “Any natural or legal person and bodies and agencies of any public administration are subject to the duty of collaboration with CNMC providing at its request and on time, all kinds of data and information available.”

The CNMC may impose coercive fines of up to 12,000 euros per day for non-compliance with the request.

- Confidentiality



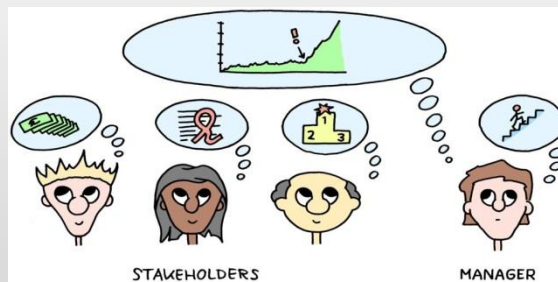
Stakeholders Involvement

The identification and management of the stakeholders would depend on the goal of the study:

- ✓ If the goal is an assessment of a possible policy/regulation on a market: stakeholders include public administration representation
 - Having significant challenges of 'vertical' representation up and down the hierarchy.
 - A national policy or regulation analysis would need to engage different stakeholders compared to a regional policy or a local competition issue.

- ✓ If the goal is a structural analysis of a market: '*business stakeholders*' will be more intensively sought than '*policy stakeholders*'.

- ✓ If the objective is to assess the competition restraints present in a market that is close to consumers: the CNMC would need to find a way to interact with those final consumers regardless of their number (*Public Consultations*)



Stakeholder involvement

Depending on their importance, the CNMC uses different methods to involve them:

1. Stakeholders that are crucial for the development of the study: bilateral meetings, videoconferences or teleconferences.
 - ✓ For SMEs, it is advisable to first brief them about the main underlying principles of competition policy and the areas of discussion of particular interest to the authority
2. Stakeholders that are close to the market, with information and interest in the study, but which are not decisive or whose number is too high: public consultation or RFIs.
3. Stakeholders that are not close to the market and without relevant information: PRs, website or twitter account.

Structure of the Study

The basic structure of a Market Study is as follows:

1. Executive Summary and Introduction
2. Legal nature of the market: regulatory framework and principles of efficient economic regulation
3. Economic nature of the market: Competition Indicators from the demand and supply side, such as:
 - ✓ International comparisons of price levels, Evolution of prices, Elasticity of demand, Production process, Profitability and earnings, productivity, innovation, etc.
4. Analysis of the level of competition in the market: structural and behavioural factors. Main indicators:
 - ✓ Level of concentration, HHI, market shares, bargaining capacity, competitive pressure, market segmentation, barriers to entry, vertical integration, cost structures, network effects or externalities, switching costs, consumer preferences, elasticity and cross elasticity of demand, price dispersion, Lerner index, Churn rate, degree of innovation, etc.
5. Conclusions and Recommendations to promote greater competition in the market and/or a regulatory improvement through:
 - ✓ The elimination or reduction of existing restrictions
 - ✓ Recommendations on the behaviour of market operators

Dissemination of the Study

✓ **Methods of communication at the start of the Study (ex-ante)**

- Annual Action Plan of the CNMC
- PRs and CNMC's website
- Social networks like Twitter or blog entries.

✓ **Methods during the Study (intermediate)**

- Public Consultation
- Articles
- Social networks like Twitter or blog entries.

✓ **Main methods of ex-post dissemination**

- A non-public version of the Study shall be communicated to the relevant government departments
- A copy of the Study is sent to the addressees of the Recommendations
- The Study will be published on the website of the CNMC in both Spanish and English.
- Articles and workshops
- ICN and ECN for further dissemination



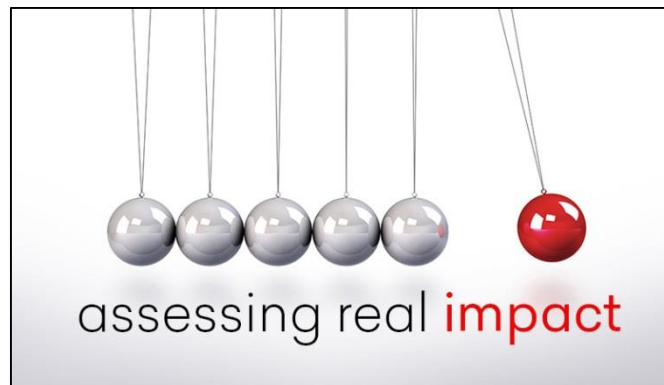
Impact of the Study

✓ **Why an assessment is necessary**

- An impact assessment of a Study is necessary to determine the effects
- It can also shed light on the strengths and weaknesses of this tool to promote competition

✓ **Monitoring the degree of acceptance and implementation of the proposed recommendations**

Qualitative methodologies such as surveys or interviews, and quantitative methodologies are used, particularly: comparative methods, diff in diffs, or more sophisticated methods like simulation techniques.



Lessons Learned I

- ✓ Developing a **standardised process** for carrying out market studies could ensure efficiency and transparency of the overall process.



It also enhances the authority's reputation and credibility.

- ✓ Having a **consistent** process for collecting information is key. Might help to minimise the burden of managing information and to achieve data/information robustness.
- ✓ Ensure that any request for information is **as clear and explanatory** as possible. It is useful to check the RFIs internally before they are sent out.
- ✓ The authority should be clear about the use of **sensitive and confidential information**. This can help the authority to obtain information from reluctant sources.
- ✓ To **engage with SMEs** is particularly difficult. To explain the potential benefits of stakeholders participation and the underlying principles of competition policy is crucial.

Lessons Learned II

- ✓ **Overlaps with an enforcement** investigation: the authority should be specially careful with the interaction between the advocacy and the enforcement services.
- ✓ The use of **empirical evidence** reinforces the qualitative analysis of the market.



Anecdotal evidence should be only used to illustrate key aspects.

- ✓ Releasing **preliminary findings** can help to double-check the study's main preliminary concerns.
- ✓ It is useful to check the feasibility and the likelihood of the implementation of the study's recommendations.



Check with market operators

- ✓ **Impact assessment:** (i) helps to identify whether follow-up actions are needed, (ii) to determine the success of the recommendations, (iii) to persuade public administrations to change policy or legislation, or market operators to change their behavior.



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Thank you!