



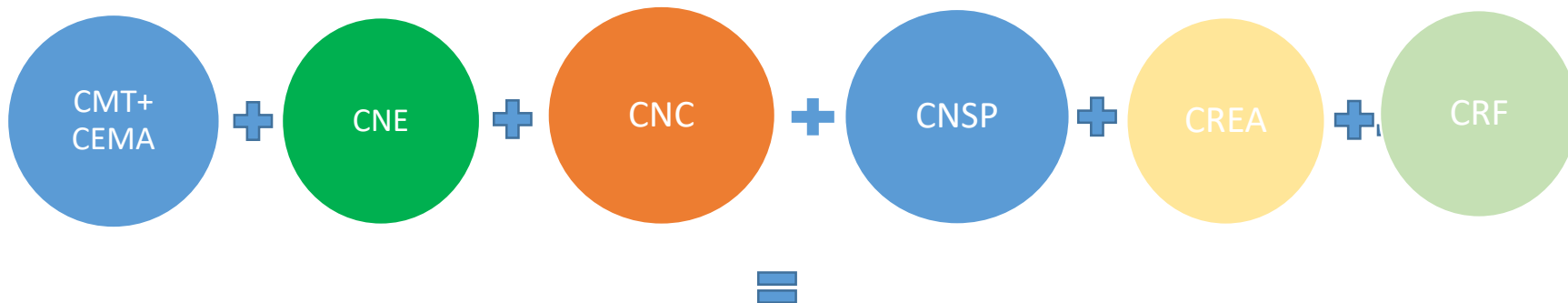
CNMC

COMISIÓN NACIONAL DE LOS
MERCADOS Y LA COMPETENCIA

*Planning an effective advocacy
strategy – 17 Nov*

*The CNMC Strategy for
Competition Advocacy*

The CNMC



- ❑ Act 3/2013 **creates** a new authority, the **CNMC**, by merging 7 agencies:

CNC (competition)

CNE (energy)

CMT (telecom)

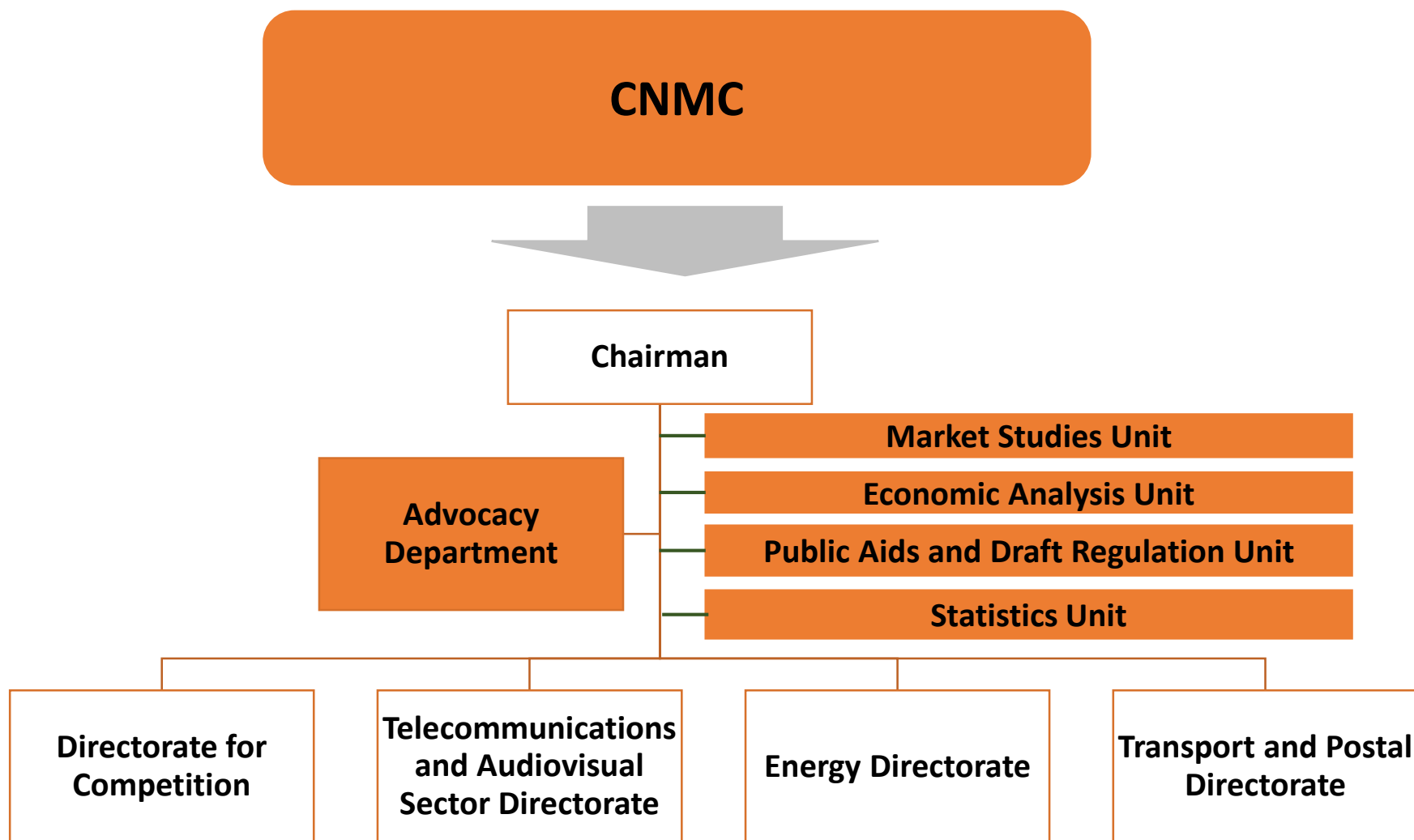
CNSP (postal services)

CREA (airports)

CRF (railways)

CEMA (audiovisual sector)





Strategic Plan

The **Strategic Plan** is designed to provide an initial response to the challenges faced by the new body in achieving its goals and founding principles. The CNMC Strategic Plan established:

Mission:

The CNMC promotes and defends the proper and correct operation of all markets in the interests of citizens and economic operators

Vision:

The CNMC , a model for effective economic regulation and competition: more efficient markets for increased welfare

Objectives, and main strategic lines of action. In terms of advocacy:

The CNMC will promote effective competition and better regulation to benefit of consumers and users. In particular:

- ✓ *The CNMC will approve and publish a programme of studies and reports*
- ✓ *The CNMC will review markets subject to regulation or supervision*
- ✓ *The CNMC will increase its active legal capacity*

The Action Plan

- ✓ The CNMC will carry out an **annual review** of the degree of compliance and adjustment of the Strategic Plan to the market situation and will approve an annual **Action Plan**.
- ✓ The CNMC Action Plan specifies the particular **actions** required to attain the objectives included in the Strategic Plan, in a **specific, transparent and measurable manner**.

2016 Priorities for Advocacy:

- **Annual review of the markets subject to supervision or regulation**, to assess the effectiveness of supervision mechanisms and make recommendations for improvement.
- An integrated approach to enhance **competition and efficient economic regulation**.
- **Publication of a Plan for studies** on priority sectors. Participation of stakeholders and academia.
- **Sharing Economy**: to conclude the report on sharing economy with the contributions from the Public Consultations on the preliminary findings of the investigation.
- **Public procurement**:
 - To continue the efforts to train public officials responsible for public procurement
 - To identify and prevent fraud in public procurement
 - Issue reports on draft regulation and publish a manual of proceedings on these reports.
 - Use of the CNMC active legal capacity.



EX-ANTE

EX-POST

**NO
COACTIVE**

REPORTS ON
LEGAL NORMS
(IPN)

STUDY

GUIDE

PUBLIC AID
REPORTS

POSITION REPORTS
(PRO)

ANNUAL PUBLIC
AID REPORT

STUDY

**CUASI-
COACTIVE**

[...]

COMPLAINT TO
ENFORCEMENT UNIT

ACTIVE LEGAL
CAPACITY 27

ACTIVE LEGAL
CAPACITY 5.4

STATISTICS

**STATISTICS ON NETWORK
SECTORS AND COMPETITION**

**ECONOMIC
ANALYSIS**

ECONOMIC ANALYSIS

Studies and Guides :

efficient economic regulation standards

The CNMC promotes and encourages a competitive environment in the Spanish economic sectors.

Ex officio (at its own initiative) and non binding.

Objective: to identify competition problems of specific sectors and propose recommendations to change/modify the behaviour of the economic agents and/or the applicable regulation.

CNMC's **Methodology for conducting market studies** released in 2016

Public Consultations. In 2016:

- Public Consultation on sharing economy
- Public Consultation on regulation and competition among universities

Studies on wide range of sectors: energy, water management, health (pharmacies), universities, transports (road and air transport, railway...), road fuels, professional services, intellectual property, retail markets, etc..

Guides: on public procurement, for business associations, to public administrations on efficient regulation.

Published on the website www.cnmc.es

Regulatory scrutiny: to evaluate effects on markets, efficient economic regulation standards

Also Public
Aids
(including
Parliament)

Influencing policy and law makers, generating public debate

Under request (coming from public entities) or ex officio (at its own initiative)
Quick, informal advice at different stages is provided

Non mandatory and non binding

Reports:

- ✓ Position papers in foreseeable reforms
- ✓ Formal reports (in-depth analysis) of undergoing proposals
- ✓ Legal obligation to refer draft regulation that might affect competition to the CNMC

Problem: ¿non success in promoting request? Position Report

Wide range of sectors: public procurement, professional services, health (medication), insurances, energy, telecommunications, transports (railway...), intellectual property...

Published on the website www.cnmc.es

Active Legal Capacity

Any regulatory instrument (subordinate law):
harm effective competition in the markets

Information coming from public entities or ex officio

Evaluate effects on markets: efficient economic regulation standards

Exceptional use: i) other advocacy instruments failed, ii) complete a *'story'*

Double legal basis: art. 5.4 Act 3/2013 (obstacles to competition) + art. 27 Act 20/2013 (market unity: freedom of establishment...)

Cases: bus transport, public procurement, sharing economy (taxis, holiday accommodation)...

Published on the website www.cnmc.es

Economic Reports

Reasons: (i) economic relevance (ii) if no competition, no efficiency for consumers and society

Objective: to conduct an in-depth economic and quantitative analysis on the restrictions to competition present in the Spanish markets. If possible, including a quantification of their cost in terms of loss of welfare to consumers, and to the society as a whole.

Economic Reports to Court: elaborated to support the judiciary lawsuits presented by the CNMC

Economic Reports: cover different sectors, such as road freight transport, urban passenger transport, retail distribution, or tourism (elaborated up to date).

Public Procurement: a priority

Reasons: (i) economic relevance (ii) legal framework is changing (iii) if no competition, no efficiency

Instruments: (i) Reports on CNMC's own initiative (*Guide to Public Procurement and Competition, Report on in-house providing ...*); (ii) Reports on draft legislation (*Report on the Draft Law on public sector contracts*); (iii) Other reports (*Ex ante Reports on specific tenders' documents...*)

Spanish regulation: areas for potential improvement

- a more ambitious approach
- Re-balance the situation: focus on economics more than administrative issues (ensuring procedural guarantees)
- Ex ante and ex post evaluation: practical consequences
- The principle of efficient management of public funds (guiding principle): staff incentives
- Current detection bid-rigging mechanisms have serious shortcomings



Thank you!