



CNMC

COMISIÓN NACIONAL DE LOS
MERCADOS Y LA COMPETENCIA

Competition advocacy beyond advice – challenging restrictions to competition in regulation

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*Competition advocacy... refers to... the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through its relationships with other **governmental entities** and by increasing **public awareness** in regard to the benefits of competition.*

www.internationalcompetitionnetwork.org/advocacy

Why should competition agencies have a focus on the public sector?

Proposition 1: Public intervention can be as harmful for competition as anti-competitive behaviour

- Legal barriers to entry/expansion/competition
- Public/State aid
- Public procurement

Proposition 2: Competition authorities are well placed to advocate pro-competitive regulation

- Independence from Government/private interest
- Economic and legal specialization

Addressing competitive neutrality – traditional tools

	Ex ante intervention	Ex post intervention
Binding instruments		
Quasi-binding instruments		
Non-binding instruments	Regulatory reports	Market studies

Addressing competitive neutrality – additional tools

	Ex ante intervention	Ex post intervention
Binding instruments	Regulatory reports (if mandatory)	Market studies (if mandatory)
Quasi-binding instruments		Court challenges (active capacity)
Non-binding instruments	Regulatory reports	Market studies

Active capacity by the CNMC – legal basis

2005 White Paper on the Reform of the Spanish Competition System

2007 Competition Law – grants the CNMC legal active capacity

to challenge before courts administrative acts and regulatory provisions of a rank lower than a law that raise obstacles to effective competition

2013 reform of the Competition Law – maintains active capacity

2013 Law on Market Unity – additional legal active capacity for the CNMC

to challenge before courts administrative activity and regulatory provisions that raise obstacles to the freedom of movement or of establishment of goods and services

Active capacity by the CNMC – main features

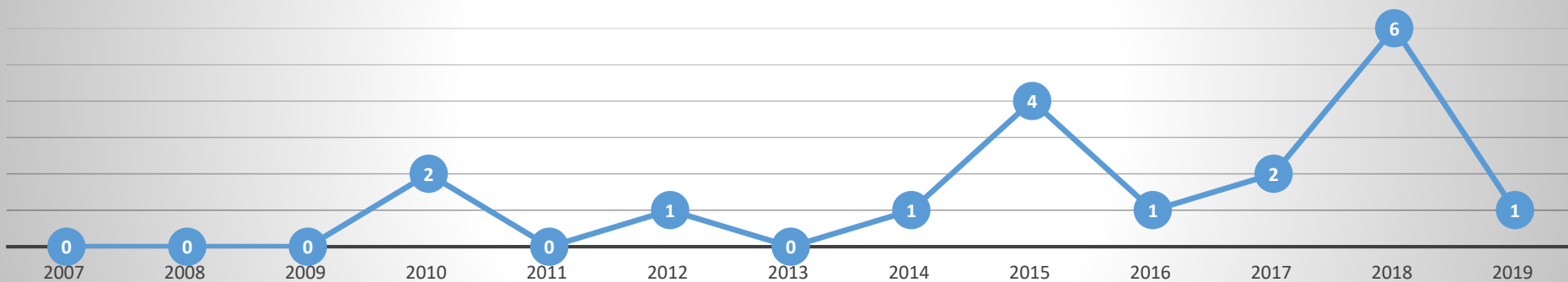
- *Ex officio capacity*
- *All sorts of regulatory provisions and administrative activity*
Of a rank lower than a law
- *All Government levels*
i.e. central, regional and local

Active capacity by the CNMC – legal test

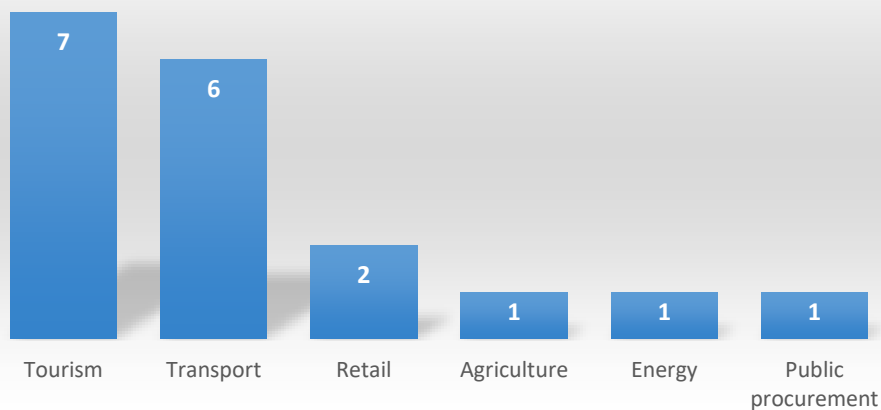
- *Restrictions to competition*
...but not elimination of competition
- *Lack of necessity*
i.e. the restriction is necessary to protect a legitimate general interest
- *or Lack of proportionality*
i.e. there may be less restrictive means to achieve the intended public interest goals

Active capacity by the CNMC – stats

By year of challenge



By economic sector



By Government level



Results and lessons learned

Outcome of challenged cases:

- 7 cases with complete victory – i.e. bad regulation repealed
- 11 cases pending in courts

Big-picture effects:

- Disciplinary effect on the public sector
- Improvement of advocacy by the CNMC