The Spanish National Authority of Markets and Competition: A New Institutional Model of Competition and Regulatory Supervision

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A new integrated model of competition enforcement and multisectoral supervision

- Act 3/2013 of June created the Spanish National Authority for Competition and Markets
- The new Authority comprises the former competition Authority and several sectoral regulators (telecommunications and audio visual products, energy, railways and airports, postal services)
The main functions of the CNMC:

- Ensure, preserve and promote the correct operation, transparency and effective competition in all markets and economic sectors: competition enforcement and dispute resolution

- Perform regulatory supervision of the regulated industries: the electronic and audiovisual communications markets, the electricity and natural gas sectors, railways tariffs and the postal services

- Provide advice to the government regarding competition and the correct operation of markets

Considering the importance and scope of its functions, the CNMC could be a dynamic factor for the stable growth of the Spanish economy and an important link in the process of structural reform
Why change the model?

- When the trend towards liberalization became widely accepted in Europe, Spain chose a functional separation between the sectoral regulators, and also between any of them and the competition authority.

- Why change the model now to a single authority with the mandate:
  - to regulate a wide array of economic sectors (multisectoral regulatory model)
  - and to incorporate also the task of competition enforcement (integrated model)?

- A careful examination of the literature on regulation indicates that there is no “one-size-fits-all” solution to regulatory institutional design: great importance of context.
Main critiques of the new model

- The problems of a multisectoral regulatory model:
  - the risk of losing industry-specific knowledge and specialization of skills (especially when the new authority has fewer resources available)
  - the lack of diversification against institutional failure, which would affect all regulated sectors

- The different nature of the tasks of competition enforcement and sectoral regulatory supervision
  - the possible lack of debate between the sectoral regulation and the competition rules, and the dominance of one set of rules over the other
  - possible “loss of focus” of the new institution
  - again, the reduced diversification against institutional failure
There are significant advantages to a multisectoral regulator that is integrated with the competition authority:

- A reduced risk of regulatory capture by the private sector or by the government
- Synergies of costs in technical, legal, economic and administrative services
- Consistent use of principles, rules and procedures (especially important for convergent products and companies): overcome regulatory fragmentation and inconsistent policy initiatives
- The know-how and the best practices of different sectors can be used
- The benefits increase as sectoral markets grow in maturity over time
- Higher effectiveness in the defense of competition due to the immediate knowledge of the sectoral regulators integrated into the same authority
The new Spanish authority was introduced to exploit the advantages of the new model in achieving several objectives:

- to guarantee the coherence between competition rulings and sectoral regulation
- to take into account the external effects of strategic sectors like energy or telecommunications on the rest of the economy
- to take advantage of synergies
- to respond to changes in the telecommunications, energy and transport industries during the past decade (due to more competition and convergence between sectors)
- to ensure a predictable business environment and legal certainty for the firms, indispensable conditions if investment and innovation are to be promoted, especially for network industries.
- to make regulatory capture much more difficult, preventing the alignment of the authority with sectoral interests
To achieve the objectives mentioned before, the CNMC’s institutional design had to fulfil several key features:

- Independence
- Accountability
- Transparency
- Global vision
- Efficiency
- Flexibility
- Predictability
The CNMC’s structure and operation are designed to guarantee that it remains independent, behaves with transparency and is effectively accountable to the Parliament:

- Appointment of the Board subject to control by the Parliament and non-renewable terms
- Collective decision-making (10 members of the Board)
- Exclusion of any other activities for the Board, Directors and staff
- Prohibition to accept and request instructions from the Government
- Appointment of Directors and managerial staff by the Board
- Independence of the investigative Directorates
- Coordination among Directorates by the President
- The size and sectoral diversity of the new Authority makes regulatory capture harder
Challenges for the new authority

1. Effective integration into a cohesive unit: the difficulties in the implementation of the new model should not be underestimated
   • Coordination across Divisions
   • Cohesive institutional culture

2. Effective independence: the crucial point of financial independence

3. Attracting and retaining human resources
Thank you

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Appendix. Structure of the CNMC

President
- Council
  - Competition Chamber
  - Regulatory Chamber
- General Secretariat
- Internal Audit Department
- Advocacy Department
- Chief Economist

Vice President
- Cabinet

Council Secretariat

Council:
- President
- + Vice President
- + 8 Council members

Competition Directorate
- Energy and Industry
- Information Society
- Services
- Leniency
- Monitoring

Energy Directorate
- Electricity
- Gas
- Economic and Financial Regulation
- Energy Secondary Markets

Telecom & Audiovisual Directorate
- Electronic Communications Regulation
- Electronic Communications Market Analysis
- Electronic Communications Technical Office
- Audiovisual

Transport & Postal Directorate
- Airport Tariffs
- Railway Sector
- Postal Sector
- Market Analysis