

**Title of the act: UM/074/14 CC GRAN TURIA**

**Article invoked by the CNMC: Art. 27 of LGUM**

**Year of publication: 2015 (Appeal) / 2018 (National High Court Judgement)**

**NACE code of the relevant sector: G.47 Comercio al por menor, excepto de vehículos de motor y motocicletas**

# **Impact Assessment of CNMC**

## **Legal Appeal**

### **under art. 27 of LGUM**

# 1 Intro

## 1.1 Key features of the assessment

### 1.1.1 Short description of the market

*El mercado afectado por el recurso analizado es el de comercio al por menor en la trama urbana de Valencia y los municipios colindantes. En concreto, se analiza si el Centro Comercial Gran Turia, ubicado en el término municipal de Xirivella, estaría en disposición de competir en igualdad de condiciones con el resto de las superficies comerciales ubicadas en la denominada Zona de Gran Afluencia Turística, dentro de la trama urbana de Valencia, teniendo en cuenta las limitaciones horarias impuestas al citado centro comercial, o si, por el contrario, el Centro Comercial Gran Turia se encontraría en peor situación competitiva que otros centros comerciales con parecida oferta que sí pueden abrir los días festivos y que compiten con una clientela, en su mayoría coincidente.*

*Al respecto, el recurso de la CNMC señala que el Centro Comercial Gran Turia estaría ubicado en el Barrio de La Luz, inserto en la misma trama urbana de la ciudad de Valencia, dentro del área que cierra la autovía de circunvalación de la V-30; que, debido a esa ubicación, la mayor parte de su clientela no proviene del municipio de Xirivella; y que compite, por tanto, en el mismo mercado que los centros comerciales situados en la zona declarada de Gran Afluencia Turística de Valencia.*

### 1.1.2 Short description of the competition issue and rationale behind the act

*El Ayuntamiento de Xirivella, presentó a mediados de 2014 ante la Conselleria de Economía, Industria, Turismo y Empleo de la Generalitat Valenciana un escrito solicitando que, de forma excepcional, se autorizase que el Centro Comercial Gran Turia pudiera competir en igualdad de condiciones con el resto de superficies comerciales que estaban ubicadas en la trama urbana de Valencia, bien mediante su declaración como Zona de Gran Afluencia Turística o a través de la concesión de horarios excepcionales.*

*La Generalitat Valenciana dictó dos resoluciones, de 15 de octubre y 28 de noviembre de 2014, por las que se denegaba al Centro Comercial Gran Turia la autorización para aplicar el mismo horario de apertura que el resto de grandes superficies comerciales ubicadas en la trama urbana de Valencia.*

*El 11 de febrero de 2015, la CNMC acordó interponer un recurso contencioso-administrativo promovido al amparo del artículo 27 de la LGUM contra dichas resoluciones, demandando la nulidad de ambas, al entender que las restricciones de horarios aplicadas vulneraban los principios de necesidad y de proporcionalidad establecidos en el artículo 5 de la Ley de Garantía de la Unidad de Mercado, así como el principio de no discriminación previsto en el artículo 3 de la misma Ley, tal y como recoge la posterior sentencia de la Audiencia Nacional.*

*El recurso de la CNMC sostenía que mediante la liberación del comercio y los horarios comerciales se obtiene un mayor incremento del PIB, de generación de puestos de trabajo, de apertura de nuevos locales comerciales y de incremento del gasto de los horarios. En esta línea, consideraba que la restricción a la libertad de horarios de apertura del Centro Comercial Gran Turia suponía una limitación al ejercicio de una actividad económica, al fijar restricciones a la apertura de comercios. Restricciones que consideraba innecesarias y desproporcionadas.*

*Tanto el recurso como el informe económico que lo acompañaba, analizaban si, cuando la Generalitat Valenciana denegó al Centro Comercial Gran Turia la autorización de apertura comercial mediante la concesión de un horario excepcional, tuvo en cuenta no solo los requisitos previstos en la legislación autonómica aplicable a la citada solicitud, sino también que dichos requisitos atendieran a los principios de necesidad y proporcionalidad previstos en el artículo 5 de la Ley 20/2013, de garantía de unidad de mercado.*

### 1.1.3 Specific objectives and main conclusions of the act

*El recurso de la CNMC tiene por objetivo realizar un análisis de diversos aspectos relacionados con la denegación de una autorización de horarios excepcionales al Centro Comercial Gran Turia por parte de la Administración Pública de la Comunidad Valenciana. En primer lugar, se valoran, desde un punto de vista de la promoción de la competencia y la regulación económica eficiente, las restricciones en materia de horarios comerciales en la normativa de la Comunidad Valenciana, y se analizan los costes que generan en términos de competencia y eficiencia. Por otro lado, se valora la denegación de la autorización de horarios excepcionales al Centro Comercial Gran Turia, y se destacan sus efectos sobre la competencia y eficiencia en dicho caso concreto.*

*La conclusión a la que llega la CNMC es que la Generalitat Valenciana denegó la libertad de horario comercial solicitada por el Centro Comercial Gran Turia apoyándose exclusivamente en el incumplimiento de los requisitos exigidos por la legislación autonómica sectorial, pero en su interpretación no tuvo en cuenta los principios de necesidad y proporcionalidad exigidos por la LGUM, lo que creó barreras anticompetitivas que podrían haberse evitado.*

*Así, según establece el recurso y el informe económico que lo acompañaba, ninguna de las dos decisiones de la Administración de la Comunidad Valenciana realizó una valoración ajustada al procedimiento establecido en la normativa en conexión con la finalidad de una autorización de horario excepcional, esto es, ajustarse adecuadamente a la demanda de los consumidores y usuarios, ni tampoco acreditó que concurrieran razones de interés general que aconsejaran no conceder la libertad de horarios al Centro Comercial Gran Turia. Por tanto, se considera que dicha denegación tendría un impacto negativo evidente sobre la competencia efectiva en la distribución comercial de la Comunidad Valenciana, y, en última instancia, en la eficiencia y bienestar social.*

## 2 Evaluation of the act

### 2.1 Relevance

#### 2.1.1 Relevance of the sector

The case at hand refers only to the *Centro Comercial Gran Turia*, a shopping mall in the metropolitan area of Valencia. Therefore, the ruling of the legal appeal would specifically affect said shopping center and not the whole sector. However, we consider it appropriate to evaluate the **relevant figures for the sector at the provincial level** in case the ruling in this matter could incentivise other shopping malls in the area to carry out similar actions.

The Evaluator shall be aware that the figures presented below consider all the companies registered under the retail distribution NACE (*G.47 Comercio al por menor, excepto de vehículos de motor y motocicletas*) in the province of Valencia, including not only the magnitudes obtained by the retailers located in the *Centro Comercial Gran Turia* but also by the retailers located in other shopping malls in the province and in their own stores. Therefore, to run an accurate case-specific assessment, it would be ideal that **the CNMC request the necessary information from the individual economic agents under analysis**. Furthermore, the figures registered under the abovementioned NACE might be derived from a broad range of activities that might be different from those carried out by the retailers in the *Centro Comercial Gran Turia*.

**Table 1: Relevance of the sector**

Theme	Indicators	Possible sources	Shortcuts / comments
Economic weight and structure of the market	Sector turnover	SABI database	<i>Provincial turnover in the retail distribution sector in 2019 is estimated at <b>29,599 million euros (2.38% of National GDP)</b>.</i>
	Number of firms	SABI database	<i>The number of operators in the retail distribution sector in the province of Valencia in 2019 is estimated at <b>3,352</b>.</i>
	Average turnover per company	Estimated by KPMG based on SABI database data.	<i>Based on the data pointed out above, average turnover per retailer in the provincial market in 2019 is therefore estimated at <b>8.8 million euros</b>.</i>
Labour market and employment	Total number of employees	SABI database	<i>The number of employees in the retail distribution sector in the province of Valencia in 2019 is estimated at <b>131,453</b>.</i>
	Average salary	CCOO website, available at: <a href="https://www.ccoo-servicios.es/archivos/paisvalenciano/comercio-textil-valencia.pdf">https://www.ccoo-servicios.es/archivos/paisvalenciano/comercio-textil-valencia.pdf</a>	<i>Based on the salary tables in the textile distribution sector published in the Official Journal of the Province of Valencia (2019), the average salary, considering all professional categories, is estimated at <b>12,158 euros<sup>(1)</sup></b>.</i>
Perception of consumers and policy makers	Is there a perception that the sector needs reform?	Questionnaires/Interviews	<i>See Annex 1.</i>

*Notes: Given that most of the retailers located in the Centro Comercial Gran Turia belong to the textile sector, we consider these data an adequate proxy for our sectoral assessment.*

## 2.1.2 Relevance of the act

**Table 2: Relevance of the act**

OECD Competition Issues	Specific question	Comments from the Legal Appeal and supporting documents (Source: Deliverable 3)
<b>A. Limits the number or range of suppliers.</b>	A3. Límite a la capacidad de ofrecer un bien o servicio.	<p>No se permite la fijación libre de horarios para prestar el servicio.</p> <p>La Sala de lo Contencioso-Administrativo de la Audiencia Nacional, en su sentencia de 23 de mayo de 2018, estimó el recurso contencioso administrativo núm.201/2015 anulando las actuaciones administrativas impugnadas por no ser conformes a derecho y reconociendo al Centro Comercial Gran Turia el derecho de libertad horaria en los términos solicitados.</p>

## 2.2 Effectiveness

### 2.2.1 Outreach: qualitative assessment

To assess the effectiveness of the act from a qualitative perspective, one must consider whether the Legal Appeal has been accepted by the court and its ruling, positive or negative.

The Evaluator must identify the following aspects in the ruling by this court:

<b>National High Court of Justice</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>
<i>Did the ruling by the High Court of Justice endorse the identification of competition issues raised by the CNMC in the Legal Appeal?</i>	X		
<i>Did the High Court of Justice ruling adopt the measures sought by the Legal Appeal by the CNMC?</i>	X		
<i>Where 'individual opinions' (votos particulares) issued against the ruling?</i>			X
<i>Did these individual opinions endorse the identification of competition issues raised by the CNMC in the Legal Appeal?</i>			N.A.

The judgment of the National High Court states the following:

***"Debemos estimar y estimamos el recurso contencioso administrativo núm. 201/2015, promovido por el Abogado del Estado en defensa y en representación de la Comisión Nacional de los Mercados y la Competencia contra la Resolución de 15 de octubre de 2014 del Jefe del Servicio territorial de Comercio y Consumo de la Consejería de Economía, Industria, Turismo y Ocupación de la Generalitat Valenciana que rechaza la apertura comercial del Centro Comercial Gran Turia que se ha confirmado por Resolución de la Dirección General de Comercio y Consumo de 28 de noviembre de 2014 de la Generalitat Valenciana y, en consecuencia, anulamos las actuaciones administrativas impugnadas por no ser conformes a derecho y se reconoce al Centro Comercial Gran Turia el derecho de libertad horaria en los términos solicitados".***

### 2.2.2 Outreach: quantitative assessment

<b>Theme</b>	<b>Indicators</b>	<b>Source</b>
Outreach to the general public	344 downloads from the CNMC's website	CNMC internal database

## 2.3 Efficiency

### 2.3.1 Efficiency for the CNMC

*This section will be completed by the CNMC depending on the availability of data on the production costs of the act.*

## 2.4 Coherence

<i>Checklist</i>	<i>Yes</i>	<i>No</i>
Are there inconsistencies between the Legal Appeal and reports of other types issued by the CNMC, including Market Studies, Market Unity Reports and other Legal Appeals?		X
Are there clear inconsistencies between the Legal Appeal and other Legal Appeals issued invoking the same principles?		X
Is the Legal Appeal contradictory with other Legal Appeals issued on cases affecting the same economic sector?		X
Is this Legal Appeal in line with the overall goals of the CNMC?	X	

### 3 Impact assessment

#### 3.1 Direct impact

Action sought by the CNMC	Actions	Outputs	Status of implementation
<b>Anular la actuación administrativa impugnada.</b>	<p><b><u>Implemented</u></b></p> <p>Recurso contencioso-administrativo promovido al amparo del artículo 27 de la LGUM contra las dos resoluciones administrativas dictadas por la Conselleria de Economía, Industria, Turismo y Empleo de la Generalitat Valenciana, de 15 de octubre y 28 de noviembre de 2014, por las que se deniega al Centro Comercia Gran Turia la autorización para aplicar el mismo horario de apertura que el resto de grandes superficies comerciales ubicadas en la trama urbana de Valencia.</p>	<p><b><u>Implemented</u></b></p> <p>Sentencia, de 14 de mayo de 2018, de la Audiencia Nacional de Madrid.</p> <p>Recurso: 201/2015.</p>	<p><b><u>Implemented</u></b></p> <p>La Sala de lo Contencioso-Administrativo de la Audiencia Nacional, en su sentencia de 23 de mayo de 2018, estimó el recurso contencioso administrativo núm.201/2015 anulando las actuaciones administrativas impugnadas por no ser conformes a derecho y reconociendo al Centro Comercial Gran Turia el derecho de libertad horaria en los términos solicitados.</p>



### 3.2 Impact on the specific market

OECD Competition issues	Relevant market unity principle	Impact	Indicator	Parameters proposed for the impact assessment		Potential economic impact
				Found in the Literature	Recommended Value	
A3. <i>Límite a la capacidad de ofrecer un bien o servicio</i>	<i>Necesidad y proporcionalidad</i>  <i>No discriminación</i>	<b>Demand features</b>	Potential increase in the number of consumers	<p>From its literature review, the CNMC found that sales might increase after the elimination of barriers to entry from <b>4% to 11%</b>. We consider that the increase in sales might be used as an adequate proxy to estimate the potential increase in the number of customers derived from the elimination of the restrictions to opening hours in this case. Therefore, we would consider a potential increase in consumers from 4% to 11%<sup>(1)</sup>.</p> <p>We also provide an alternative quantification based on public data on customers' attendance to the Centro Comercial Gran Turia<sup>(2)</sup>.</p>	<p>To be conservative, we recommend applying a potential increase in the number of consumers of <b>5%</b> derived from the elimination of opening hours restrictions.</p> <p>Our alternative quantification shows a potential increase in the number of consumers of <b>11%</b>, which would be in line with results found in the literature referred by the CNMC in its economic studies.</p>	<p><b>Estimates based on the proposed methodology:</b> Considering a 5% potential increase in the number of consumers, the welfare loss caused by not allowing the Centro Comercial Gran Turia to extend its opening hours is estimated at <b>333,333 consumers per year</b>.</p> <p><b>Alternative quantification:</b> Considering that the Centro Comercial Gran Turia attracts approximately 6.6 million customers per year and considering the additional days (41) that the shopping mall could have opened if the request for the extension of its opening hours had been estimated, the potential increase in the number of consumers (the welfare loss) is estimated at <b>748,858 customers per year</b>.</p>
			Potential increase in sales	<p>As mentioned above, from its literature review, the CNMC found that sales might increase after the elimination of barriers to entry from <b>4% to 11%</b><sup>(1)</sup>.</p> <p>We also provide an alternative quantification following the same approach applied to the number of consumers in the Centro Comercial Gran Turia<sup>(2)</sup>.</p>	<p>To be conservative, we recommend applying a potential increase in sales of <b>5%</b> associated to a reduction of entry barriers.</p> <p>Our alternative quantification shows a potential increase in sales of <b>11%</b>, which would be in line with results found in the literature referred</p>	<p><b>Estimates based on the proposed methodology:</b> Considering a 5% potential increase in sales, the welfare loss caused by not allowing the Centro Comercial Gran Turia to extend its opening hours is estimated at <b>27 million euros<sup>(3)</sup></b>.</p> <p><b>Alternative quantification:</b> By computing the share of the provincial sectoral turnover attributable to the Centro Comercial Gran Turia, based on its number of customers over the total</p>

					by the CNMC in its economic studies.	provincial population, and considering the additional days (41) that the shopping mall could have opened if the request for the extension of its opening hours had been estimated, the potential increase in sales (the welfare loss) is estimated at <b>62 million euros</b> <sup>(3)</sup> .
		<b>Labour &amp; Employment</b>	Potential increase in employment	From its literature review, the CNMC found that employment might increase after the elimination of barriers to entry from <b>1% to 12%</b> <sup>(1)</sup> .	To be conservative, we recommend applying a potential increase in employment of <b>5%</b> .	<b>Estimates based on CNMC approach:</b> Considering a 5% potential increase in employment, the welfare loss caused by not allowing the Centro Comercial Gran Turia to extend its opening hours is estimated at <b>41 employees</b> <sup>(3),(4)</sup> .

Notes: (1) The specific sources of these parameters are presented in Annex 2; (2) The methodology used to quantify the potential economic impact under the different approaches is shown in Annex 3; (3) Considering the period between the filing of the legal appeal and the Court's judgment (2015-2017); (4) Assuming that the number of new employees would remain stable through the period analysed; (5) The estimated loss of welfare would be associated with the period during which the provision appealed by the CNMC was in force, until its annulment after the ruling of the National High Court. Seen from the opposite point of view, this quantification could be taken as a reference to determine the gains associated with the success of the act, insofar as the ruling was favorable, annulled the aforementioned precept and, therefore, contributed to the reduction of entry barriers.

### 3.3 Impacts on the wider economy

	YES	NO
<b><i>Court action sought is fully/partially implemented?</i></b>	<b><i>X</i></b>	
<b><i>Recommendation had an impact on the specific market? <sup>(1)</sup></i></b>	<b><i>X</i></b>	
<b><i>The specific market has a relevant weight in the wider economy?</i></b>		<b><i>X</i></b>

Notes: (1) We consider the Centro Comercial Gran Turia as the 'specific market' in this case.

As stated above, the Legal Appeal sought by the CNMC and, consequently, the High Court's ruling is only applicable to the *Centro Comercial Gran Turia*. Therefore, although the CNMC's claim was fully considered and accepted by the Court, given the residual weight of the potential economic impact derived from the elimination of entry barriers (between 0.0009% and 0.0019% of the Spanish GDP between 2015 and 2017), **a significant spill over effect on the wider economy could not be expected in this case.**

However, it is worth mentioning the possible dissuasive effect that the measure adopted by the CNMC and accepted by the courts could have in similar cases. In this sense, it would be expected that those agents or institutional bodies involved in the economic and policy-making activities would take into consideration the result of this act before establishing limits to commercial activities or opening hours and would be discouraged from introducing it.

## 4 Conclusions

The main conclusions extracted from the Legal Appeal are presented below:

- The legal appeal filed by the CNMC concludes that the *Generalitat Valenciana* did not consider the principles of necessity and proportionality required by the LGUM when denying the freedom of opening hours requested by the *Centro Comercial Gran Turia*, which created anti-competitive barriers that could have been avoided.
- These anti-competitive barriers would have meant a loss of welfare for the consumers of the shopping mall and for the companies located in it. The economic impact derived from these barriers has been calculated solely and exclusively for the *Centro Comercial Gran Turia*, considering the period between the filing of the Legal Appeal and the ruling of the National High Court (2015 to 2017).
- To approximate the **loss of consumer welfare** that would have derived from the restrictions on opening hours, the impact assessment presents two different methodologies: first, the application of a list of recommended parameters following the OECD thumb rule approach; and second, an alternative estimation based on more case-specific assumptions. Both methodologies are detailed in Annex 3.
- The **welfare loss related to the potential increase in sales** derived from the elimination of barriers is **estimated at between €27 million and €62 million** between 2015 and 2017, keeping all the other factors constant.
- The increase in sales would be accompanied by an **increase in the number of customers of between 33,000 and 748,000 customers per year**.
- Regarding employment, it is estimated that the elimination of barriers would lead to an **increase of 41 employees**.
- Given that the CNMC's Legal Appeal refers only to the *Centro Comercial Gran Turia*, even though the favourable judgment of the National High Court and the consequent elimination of the restrictions on opening hours, **an identifiable and relevant impact on the Spanish economy was difficult to ascertain** given the operator's economic weight over GDP. However, it is worth mentioning the **possible dissuasive effect** that the measure adopted by the CNMC and accepted by the courts could have in similar cases. In this sense, it would be expected that those agents or institutional bodies involved in the economic and policy-making activities would take into consideration the result of this act before establishing limits to commercial activities or opening hours and would be discouraged from introducing it.

# Annex 1. Questionnaires

## *Relevance assessment questionnaire*

### **Policy makers**

- *Was the market in need of reforms/updates? If yes, which were the main concern from a competition policy point of view?*
- *Were you aware by possible market operators concern over the functioning of the market addressed by the Legal Appeal?*
- *Which were the needs the Legal Appeal aimed to address?*
- *How urgent were the issues to be addressed by the Legal Appeal?*

### **Stakeholders**

- *Have you ever raised concern to policy makers over possible competition issues in the given market?*
- *Were you consulted at any stage of the Legal Appeal? If yes, which one?*
- *Have you (or your organisation) actively stimulated the debate over the regulatory framework?*
- *Have you used the Legal Appeal to have a better understanding of the regulatory framework?*

## *Questionnaire on effectiveness: qualitative assessment*

### **Policy makers**

- Please, describe your overall knowledge of the Legal Appeal and your familiarity with it
- Was the Legal Appeal and its outcome used during committees/meeting aimed at updating or changing the regulatory framework?
- Do you think that the argument of the Legal Appeal was clear enough? Was it consistent with the needs and objectives of the competition issues?
- Will the Legal Appeal lead to regulatory reforms in different economic sectors or jurisdictions or prevent the enactment of legislation that poses competition issues?

### **Stakeholders**

- Do you consider that the Legal Appeal captures the key competition issues affecting the relevant market?
- Do you believe that the legal action sought by the CNMC in the Legal Appeal are well designed and proportionate?

*Questionnaire on efficiency*

- Is it possible to define the time spent by the CNMC employees in delivering the Legal Appeal? If yes, was it in line with the average effort required to elaborate this kind of act?
- Did the Legal Appeal require the support/advise by external experts? If so, was the cost of these external experts and the time spent by them working on the Legal appeal?
- Compared with other Legal Appeals, do you think that this act had higher/lower outputs for the same costs?

## Annex 2. List of parameters applied by the CNMC in its economic studies

Indicator	Parameter			Source
	Found in the Literature	Average Value	Recommended Value	
<b>Reduction in waiting time</b>	2%-7%	5%	5%	OFT – Office of Fair Trading (2003): The regulation of licensed taxi and PHV services in the UK.
<b>Reduction in prices</b>	3%-35%	19%	5%	CNMC: UM/085/15
				Bekken, J. T. (2006): "Experiences with Regulatory Changes of the Taxi Industry", 9th Conference on Competition and Ownership in Land Transport, 2006.
				Canada Competition Bureau (2015): Modernizing Regulation in the Canadian Taxi Industry, White Paper.
				CEA – Council of Economic Advisers (2015): "Occupational Licensing: A Framework for Policymakers", Department of the Treasury Office of Economic Policy, the Council of Economic Advisers of the President of The United States and the Department of Labor of the Government of the United States.
				Kleiner, M. (2006): "Licensing Occupations: Ensuring Quality or Restriction Competition?" W.E. Upjohn Institute for Employment Research 1-15. Kalamazoo, MI: Upjohn Institute Press.
<b>Increase in employment</b>	1%-12%	7%	5%	Pilat, D. (1997), "Regulation and Performance in the Distribution Sector," OECD Economics Department Working Papers 180, OECD Publishing
				Burda, M. and P. Weil (2005), "Blue Laws", documento de trabajo, octubre.
				Goos, M. (2004), "Sinking the Blues: The Impact of Shop Closing Hours on Labour and Product Markets", Center for Economic Performance Discussion Paper Series.
				Skuterud, M. (2005), "The Impact of Sunday Shopping on Employment and Hours of Work in the Retail Industry: Evidence from Canada", European Economic Review, 49, 8, 1953– 1978.
				Genakos C. y S. Danchev (2015): "Evaluating the Impact of Sunday Trading Deregulation", Center for Economic Performance Discussion Paper N° 1336, marzo.
				FMI - Fondo Monetario Internacional: Spain: 2003 Article IV Consultation, Country Report.
				Bertrand M. y Kramarz F. (2001): "Does entry regulation hinder job creation? Evidence from the French retail industry". Nber working paper series.
				Viviano E. (2006): "Entry regulations and labour market outcomes: Evidence from the Italian retail trade sector". Banca d'Italia (Servizio Studi).
<b>Increase in sales and production</b>	4%-11%	8%	5%	Pilat, D. (1997), "Regulation and Performance in the Distribution Sector," OECD Economics Department Working Papers 180, OECD Publishing
				Goos, M. (2004), "Sinking the Blues: The Impact of Shop Closing Hours on Labour and Product Markets", Center for Economic Performance Discussion Paper Series.
<b>Increase in the number of operators</b>	12%	12%	12%	Kleiner, M. (2006): "Licensing Occupations: Ensuring Quality or Restriction Competition?" W.E. Upjohn Institute for Employment Research 1-15. Kalamazoo, MI: Upjohn Institute Press.

## Annex 3. Impact assessment methodology

In order to quantify the potential economic impact of the CNMC's Legal Appeal, the number of new consumers, sales and employment have been selected as the relevant variables. The economic impact is estimated assuming that the potential loss due to the restrictions on opening hours would have come from a potential decrease in consumers, sales, and employment; in other words, it is assumed that if the *Centro Comercial Gran Turia*'s claims had been accepted since the very first moment, when they requested the freedom on opening hours in 2015, these variables would have increase, for the benefit of consumers.

Given the nature of the legal appeals related to market unity failures, which are focused on very concrete economic agents -in this case, the *Centro Comercial Gran Turia*- the first step of the proposed analysis consists of estimating the number of consumers who frequently make their purchases in said shopping mall. Then, sales and employment generated by those consumers is estimated by applying the proportion of said consumers over the population of the province of Valencia.

According to the public sources available<sup>1</sup>, the annual clients of the shopping mall amount to 7 million. Given that this number is the most recent figure, it might already include the effect of the elimination of the *Centro Comercial Gran Turia* opening hours restriction. Therefore, in order to disentangle the potential effect already included in that figure, we have first reduced it by 5%, resulting in 6,666,667 customers, which represent 0.72% of the Valencian population<sup>2</sup>.

Total population of the province of Valencia (x365 days)	927,465,000
Number of consumers per year	6,666,667
%	0.72%

To quantify the impact of **removing the restriction on opening hours** in the *Centro Comercial Gran Turia*, two different methodologies are proposed:

### Proposed methodology based on the economic literature

First, the Evaluator might apply the list of economic indicators proposed to evaluate this kind of impact based on the findings of the economic literature.

- One might apply a **5% potential increase in the number of annual consumers**<sup>3</sup>. This is automatically applied to the annual number of consumers abovementioned (6.67 million), resulting in an annual increase of **333,333 consumers**.

Number of consumers per year	6,666,667
Increase in consumers (5%)	<b>333,333</b>

- To evaluate the potential increase in sales, the Evaluator shall first estimate the regional turnover attributable to the *Centro Comercial Gran Turia*. Based on the proportion of the shopping center's consumers over the population of the province of Valencia (0.72%), the turnover of the

<sup>1</sup> See: <https://www.centro-comercial.org/gran-turia/>

<sup>2</sup> It is assumed that the total population could visit the shopping mall 365 days a year.

<sup>3</sup> As pointed out in Section 3.2, it is considered that the increase in sales found in economic literature might be used as an adequate proxy to estimate the potential increase in the number of customers because of the elimination of the restrictions to opening hours in this case.



*Centro Comercial Gran Turia* between 2015 and 2017 is estimated at 552,199,513 euros<sup>4</sup>. Then, the Evaluator might automatically apply a **5% potential increase in sales**, resulting in a total increase of **27,609,976 euros**.

	2017	2016	2015	Total 2015-2017
Turnover, province of Valencia	27,128,650,284	25,432,068,511	24,261,139,439	76,821,858,234
Turnover attributable to CCGT	195,002,149	182,807,031	174,390,332	552,199,513
Increase in turnover (5%)	<b>9,750,107</b>	<b>9,140,352</b>	<b>8,719,517</b>	<b>27,609,976</b>

- Following the same approach, the Evaluator might estimate the regional employment attributable to the *Centro Comercial Gran Turia*. Based on the proportion of the shopping center's consumers over the population of the province of Valencia (0.72%), the average annual employment of the *Centro Comercial Gran Turia* between 2015 and 2017 is estimated at 814 employees. Then, the Evaluator might automatically apply a **5% potential increase in employment**<sup>5</sup>, resulting in an average increase of **41 employees**, assuming that the number of employees would remain stable during the analysed period.

	2017	2016	2015	Average 2015-2017
Employment, province of Valencia	119,841	113,465	106,232	113,179
Employment attributable to CCGT	861	816	764	814
Increase in employment (5%)	<b>43</b>	<b>41</b>	<b>38</b>	<b>41</b>

### Alternative quantification

The second methodology presented in this impact assessment consists of estimating the increase in the variables analysed during the additional days -concretely, 41- that the shopping mall would have been able to open its doors if it had obtained permission from the Generalitat Valenciana.

- First, based on the annual number of consumers in the *Centro Comercial Gran Turia*, the Evaluator might calculate the estimated number of consumers per day. Then, he/she might estimate the potential increase in the number of consumers derived from opening 41 additional days, resulting in an annual increase of **748,858 consumers**.

Number of consumers per year	6,666,667
Number of consumers per day	18,265
Number of additional opening days	41
Annual increase	<b>748,858</b>

- To evaluate the potential increase in sales, the Evaluator shall first estimate the regional turnover attributable to the *Centro Comercial Gran Turia* and, after that, its daily turnover. Once the daily turnover has been estimated, the Evaluator might estimate the potential increase in sales derived from opening 41 additional days, resulting in an increase of **62,027,891 euros** between 2015 and 2017.

<sup>4</sup> Turnover data are collected from SABI database for the companies registered under the NACE G.47 Comercio al por menor, excepto de vehículos de motor y motocicletas in the province of Valencia.

<sup>5</sup> Employment data are collected from SABI database for the companies registered under the NACE G.47 Comercio al por menor, excepto de vehículos de motor y motocicletas in the province of Valencia.

	2.017	2.016	2.015	Total 2015-2017
Turnover, province of Valencia	27.128.650.284	25.432.068.511	24.261.139.439	76.821.858.234
Annual turnover attributable to CCGT	195,002,149	182,807,031	174,390,332	552,199,513
Daily turnover attributable to CCGT	534,252	500,841	477,782	1,512,875
Number of additional opening days	41	41	41	41
Annual increase	<b>21,904,351</b>	<b>20,534,488</b>	<b>19,589,051</b>	<b>62,027,891</b>

- Finally, with regard to employment, it is considered more appropriate to maintain the approach proposed under the previous methodology, given that this variable is not expected to vary on a daily basis. Therefore, the **potential increase in employment is estimated at 43 employees** for the period 2015 to 2017.

	2017	2016	2015	Average 2015-2017
Employment, province of Valencia	119,841	113,465	106,232	113,179
Employment attributable to CCGT	861	816	764	814
Increase in employment (5%)	<b>43</b>	<b>41</b>	<b>38</b>	<b>41</b>