

**Impact of competition enforcement
by the Spanish Competition
Authority (2017)**

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1. EXECUTIVE SUMMARY

The main objective of the Spanish Competition and Markets Authority (CNMC) is to promote and defend proper functioning of all markets, in order to protect the interests of consumers and businesses. For this reason, since 2016 the CNMC carries out impact assessments (which are widely used by international competition authorities), so that they can be used as a way to show how its interventions in the different sectors of the economy benefit consumers.

Out of the many possible assessment methodologies, a simple methodology based on prudent assumptions was selected, so that it can be used as the basis for wider-ranging studies in the future. Using this methodology, which assumes that the interventions of the CNMC help avoid direct adverse effects on consumers in the form of higher prices, we have carried out an assessment of the benefits for society of the competition enforcement activities of the Spanish Competition Authority during the year 2017, in particular those regarding prohibited conducts and merger control.

Annual savings for consumers produced by the CNMC's enforcement actions are shown in the study in the form of 3-year moving averages, as it was considered that the positive impact on consumers does not correspond exclusively to the year of publication of the decision, but should be attributed also to subsequent years. According to this method, the total savings for consumers amounted to 844.7 million euros in 2017, of which 826.5 million euros correspond to interventions in cases of anticompetitive conducts and the rest to the merger control area.

The 2017 results of this paper, along with those referring to the period 2011-2016¹, clearly show the significant positive effect on consumers produced by the Spanish competition authority's activity.

It is clear that prosecuting prohibited conducts, especially breaking up cartels –for now, the analysis does not include cases of abuse of dominant position–, has a greater impact than merger control. However, it should be kept in mind that the assumptions used here to estimate the impact on welfare of merger decisions are extremely conservative, while the specialized literature shows that the effects on prices after a merger are probably higher than those used here.

Furthermore, it should be kept in mind that only direct effects of the CNMC's interventions are included, so that the estimated impact on welfare ignores a large

¹ See Document AE-02/17(0403) "[Estimating the impact of competition enforcement by the Spanish Competition Authority](#)".

part of the actual effect of the Spanish Competition Authority's activity. For example, neither deterrent effects nor positive effects on innovation are included.

The following section summarizes the methodology considered best suited for the CNMC², while the third and last section presents the disaggregated estimates of savings for consumers as a result of the CNMC's interventions dealing with anticompetitive agreements and merger control.

2. GENERAL METHODOLOGY

In order to quantify the consumers' savings produced by the CNMC's competition enforcement actions, some indicators to estimate have been chosen based on OECD recommendations on impact analysis³. This way, the most appropriate methodology has been chosen for estimating consumer's savings as a result of the CNMC's enforcement actions in the areas of anticompetitive conducts and merger control.

The main assumption is that no action by the competition authority has a negative impact. Furthermore, as stated before, assessments are based in very prudent assumptions, so that the results can be considered minimum estimates: any other reasonable assumption would result in greater estimated savings for consumers. Additionally, the estimate does not include dynamic effects benefiting consumers –improved productivity or innovation– since, while there is a great deal of consensus regarding their importance, there is as yet no tested methodology for estimating them. For the same reason, the deterrent effects of fines –the infringements they prevent– or of merger control –the anticompetitive operations which are ruled out before being proposed to the competition authority– are also excluded.

The study assumes that each intervention brings positive effects, part of which take place during the year when the competition authority's decision is published, and others take place over the following two years. To reflect this effect over time, it is more adequate to use annual moving averages. This way, the estimated impact for 2017 would be an average of the effects of the CNMC's interventions in the period 2015-2017. This methodological decision seems to be the correct one if we take into account that the effects of decisions published in a specific year have usually been generated over the previous two years. Therefore, it does not make much sense to attribute them exclusively and arbitrarily to the year of the Council's decision. At the

² For a detailed explanation, see Document AE-02/17(0403) "[Estimating the impact of competition enforcement by the Spanish Competition Authority](#)".

³ See OECD (2014), [Guide for helping competition authorities assess the expected impact of their activities](#).

same time, this methodological choice has the added advantage of avoiding excessive annual fluctuations in estimated savings produced by short-term factors.

Finally, it was decided to limit the analysis to the benefits for consumers produced by interventions related to prohibited agreements and merger control. To carry out this analysis we use previously established parameters instead of more sophisticated methods such as simulation. Consumers' savings estimates are based in three variables: the size of the relevant or affected market, the price increase that has been avoided by the CNMC's intervention, and the duration of the price effect (the time during which the conduct would have continued had it not been detected). However, the assumptions vary between cases of anticompetitive agreements and those of mergers.

2.1 Anticompetitive agreements

As the first step, all the decisions by the competition authority for infringements of article 1 of Law 15/2007, on Defense of Competition (LDC), during the year to be evaluated are compiled. This applies even where appeals were later brought against the decisions, as it is our view that the very fact of initiating the proceedings and reaching a decision will effectively interrupt the infringement, which is at the base of the estimations of consumers' benefits.

To estimate the size of the affected market in anticompetitive agreements, it was deemed appropriate to calculate the average of the annual affected market turnover during the infringement, i.e., the rate between the total affected market turnover and the duration of the infringement. We assume that a price increase of 10% is prevented by the intervention, as well as that savings generated for consumers last one year.

For various reasons, cases investigated by the regional competition services, those ending by conventional termination, and cases relating to abuse of dominant position are excluded. Individual companies for which information is not available are also excluded, along with entities that act as facilitators and associations which are fined at the same time as their member companies, in the latter case in order to avoid double counting.

Furthermore, the analysis does not include cases in which fines have been imposed on executives of the infringing companies, except cases where individuals were fined for their activity as self-employed business owners (identified in the case files both by their own names and by their company names).

Finally, cases relating to infringements where rival companies agree to act in a coordinated way towards their upstream counterparts (for example, distributors towards their product providers) will not be included in the analysis as the direct

effect on consumers is not clear. As the CNMC is also obliged to deal with these cases⁴, and since the favorable effect of its interventions for those affected by this behavior is clear, it is assumed that society has benefited from the prevention of a 10% price increase that would have happened without the competition authority's actions, although the estimated savings will not be added to the savings estimated for consumers.

2.2 Merger control

We will only include in our analysis cases in which the Spanish competition authority has blocked the mergers or in which mergers have been approved with remedies, in either first or second phase.

In merger cases, the “affected” market used in the savings estimates refers to the relevant market turnover (RMT) of the companies taking part in the merger operation, i.e., our calculations do not include the turnover of rival companies, although, in the absence of an intervention by the competition authority, the prices of their products could certainly rise due to the umbrella effect of the merger. The figure of the relevant market turnover is not annualized, as in the case of anticompetitive practices, because it always refers to a specific year. Finally, if we do not have the RMT, we estimate it from the total turnover (TT) of the relevant market, or find an approximation to one of these two values from the data in the case files.

Our analysis is based on the hypothesis that a merger control intervention prevents a 1% price increase, either by blocking the operation or by imposing some remedies. The study also assumes that the savings for consumers are generated for one year, i.e., it is considered that the price increase would have lasted only one year without the CNMC's intervention.

3. ESTIMATED SAVINGS FOR CONSUMERS

3.1 Total results

The total savings for consumers thanks to the CNMC's enforcement actions during the year 2017 regarding mergers and anticompetitive agreements added up to 844.7 million euros. As mentioned above, savings are measured in 3-year moving averages, i.e., they include part of the impact of the competition authority's decisions in the previous two years, while part of the money saved each year is projected into

⁴ The CNMC intervenes also in cases where competition is reduced even though they do not affect consumers directly but rather “other economic operators”.

the future⁵. A total of 8 case files were included in the calculations for 2017, fewer than in previous years.

TABLE 1. TOTAL CONSUMER SAVINGS DUE TO ENFORCEMENT ACTIONS BY THE CNMC (IN EUROS)

Year	Annual savings in euros (3-year moving average)	Case files included
2017	844,733,766	8
2016	861,111,229 ⁶	19
2015	889,359,542	22
2014	151,764,333	12
2013	235,921,186	22

The high level of savings generated during 2015 (889.4 million euros) have been maintained, broadly speaking, in 2016 and 2017. Both figures are especially outstanding when compared with the years 2013⁷ and 2014, when annual savings for consumers amounted, respectively, to 235.9 and 151.8 million euros.

3.2 Results of anticompetitive agreements

The following data were taken into account for the analysis of cases of anticompetitive agreements:

TABLE 2. NUMBER OF CASE FILES AND ENTITIES INVOLVED⁸

Year	Case files included	Entities included	Entities excluded (*)	Total entities
2017	5	67	6	73
2016	14	90	8	98
2015	19	270	33	303
2014	9	59	14	73
2013	17	139	27	166

(*) Due to lack of data, for referring to cases with "upstream" effects, being facilitators or to avoid double counting.

⁵ The use of 3-year moving averages makes it impossible to obtain the savings for 2011 and 2012 for lack of observations.

⁶ Estimated savings in conducts for 2016 have been amended slightly with regard to Document AE-01/17(0209).

⁷ Estimation for 2013 is affected by 18 case files of 2012 and 23 of 2011 which were not included in the table.

⁸ In the years 2011 and 2012, which influence the estimated impact for the next three years, the analysis included 19 and 15 files for the years 2011 and 2012, respectively, which involved a total of 146 companies in the first year (plus other 17 excluded) and 58 in the second year (with 15 excluded).

Estimated savings for consumers in 2017 are based on a total of 5 case files, less than the number included in 2016. However, the total number of companies taken into account is 67, which represents a greater number of entities per case than the previous year (13.4 versus 6.4).

Out of the 6 companies excluded, 3 acted as facilitators that did not have any activity in the affected market, and the rest were associations excluded to avoid double counting of the affected market, since their members were also fined and they had already been taken into account in our estimation.

The estimated savings generated for consumers are shown in Table 3. As can be seen, the interventions of the Spanish competition authority in cases of anticompetitive agreements in 2017 produced 826.5 million euros in savings for consumers, slightly lower but similar to the 835.7 million euros in 2016 and the 886.1 million euros in 2015.

TABLE 3. ESTIMATED CONSUMER SAVINGS DUE TO CASES OF PROHIBITED CONDUCTS (IN EUROS)

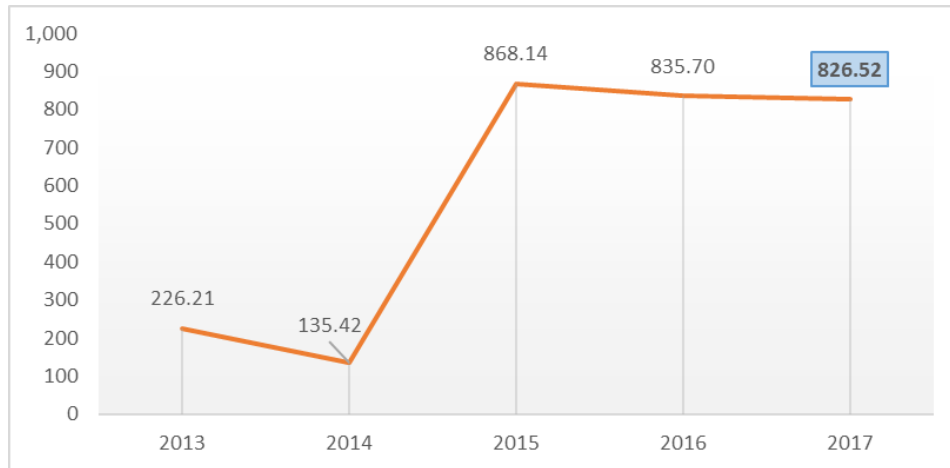
Year	Annual savings in euros (3-year moving average)
2017	826,520,817
2016	835,696,218
2015	868,139,527
2014	135,424,387
2013	226,209,887

In the last three years, savings have been much higher than the values estimated for previous years, and this is largely due to the lasting impact of the extraordinary level of activity achieved in 2015 in this area. As already mentioned, the annual figures are calculated in the form of three-year moving averages, which means that estimated consumer savings do not correspond exclusively to the year when the decision is published, but should be assigned also to the two following years.

On the other hand, the estimated savings are only slightly lower in 2017 compared to 2016, even though the number of cases included in the 2016 calculations was almost three times higher. This means that the cases included in the analysis in 2017 involved larger affected market turnovers for the infringement.

Figure 1 shows the evolution of annual consumer savings.

**FIGURE 1. SAVINGS DUE TO CASES OF PROHIBITED CONDUCTS
(3-YEAR MOVING AVERAGES, MILLIONS OF EUROS)**



As stated before, part of the 826.5 million savings generated in 2017 are influenced by the impact of the decisions approved by the Council in 2015 and 2016. Consumer savings in 2015 were very high because several of the decisions published that year refer to cases involving an unusually large relevant market turnover (over 1,000 million euros), and the average duration of the infringements (4.48 years) was lower than the average duration of the cases resolved between 2011 and 2017 (6.32 years), meaning that the average annual affected market turnover (AMT), and therefore the savings, were higher. Regarding the five cases from 2017, which involve fewer companies than the previous year, none of them involve an annual affected market turnover (AMT) over 1,000 million euros.

Finally, it should be emphasized that the estimated savings generated by the CNMC do not coincide with the fines imposed, which are usually lower. While the fines are intended to deter companies from engaging in anticompetitive conducts, the impact is estimated by calculating the benefit for consumers due to CNMC's intervention in these cases.

3.3 Results of merger control cases

All merger cases used in our analysis are shown in Table 4. As can be seen, the Spanish competition authority imposed remedies in relatively few cases in 2017 (around 3% of total reported mergers), and the number is fairly stable over the last few years analyzed⁹.

⁹ In 2011, four files are included and in 2012, three.

TABLE 4. NUMBER OF MERGER CASES INCLUDED IN THE ANALYSIS

Year	Number of case files
2017	3
2016	5
2015	3
2014	3
2013	5

As indicated in the methodology, consumer savings were estimated with the extremely prudent assumption that intervention avoided a 1% price increase. The results of the estimation are shown in Table 5.

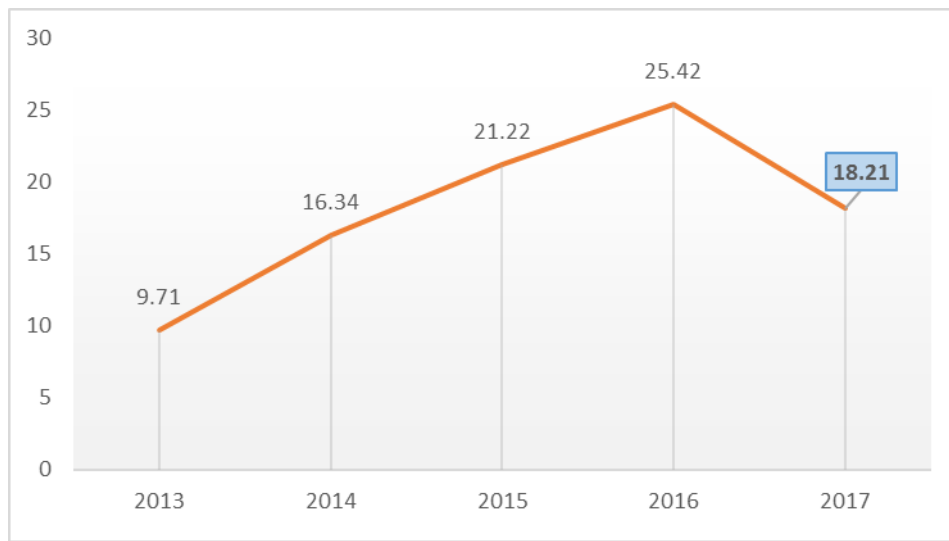
TABLE 5. ESTIMATED CONSUMER SAVINGS DUE TO CASES OF MERGER CONTROL (IN EUROS)

Year	Annual savings in euros (3-year moving average)
2017	18,212,949
2016	25,415,011
2015	21,220,014
2014	16,339,945
2013	9,711,300

If we look at the results obtained using 3-year moving averages, consumer savings added up to 18.2 million euros in 2017, less than the savings for 2015 and 2016, but still higher than the figures for the years 2013 and 2014.

The evolution of consumer savings over the last 5 years can be seen more clearly in Figure 2:

**FIGURE 2. SAVINGS DUE TO MERGER CONTROL CASES
(3-YEAR MOVING AVERAGES, MILLIONS OF EUROS)**



Differences in savings can vary significantly from year to year. This is due, on the one hand, to the number of cases analyzed and, on the other, to the turnover of the relevant market in each case. For example, the 2013 figure includes part of the savings from 2011, which was significantly lower than the rest of the period analyzed due to the Spanish economic crisis. Meanwhile, in both 2014 and 2015 the authority intervened in fewer mergers, but some of them involved very large companies with higher relevant market turnovers.

In 2017, the relevant market turnover is significantly lower than the two previous years, resulting in a smaller moving average since, in spite of including some cases involving large affected market, the issues encountered, and therefore the remedies imposed, referred only to a small part of those markets.