

## **Intervención en evento Revista Cocurrences Paris, 26 de juin de 2017**

### **INDEPENDENCE**

Competition authorities must be independent by definition regarding both the public and the private sector.

The absence of independence puts at risk the legitimacy of these institutions, especially when Government interests clash with private sector interests and free competition.

Today there is a clear risk of using antitrust law towards industrial policy objectives or financial stability concerns that are not aligned with free and well-functioning markets. Independence is very useful to limit this possibility.

But it is difficult to draw the line: ¿to which extent should Antitrust authorities be independent? My position is rather ambitious: total independence solely controlled by the Parliament and the judiciary.

However, in places where antitrust is less developed, I consider that a gradual approach is necessary. The Spanish authority works a lot with Latin American countries and the level of independence is limited in many places. I consider that total independence will arrive later on, once the antitrust authority is well established in the country. Rushing could be a bad strategy for the long term.

There are two types of independence: ad intra and ad extra. Ad intra independence is a guarantee for the strength of the institution and makes it easier to focus on clear objectives. It allows technical staff to work without interference, looking at issues from a non-political point of view.

Ad extra independence depends heavily on the legal framework and the quality of the people governing the institution. Nowadays there is a wide consensus over which measures should be taken to guarantee independence.

Transparency is a safeguard for independence. It would be very difficult to defend an independent institution that lacks transparency regarding its activity and decisions. Furthermore, transparency is necessary in the digital era, our citizens want more and more transparent public administrations and we, Antitrust authorities, should be in the lead.

As you well know, the current Spanish antitrust authority was born in 2013 with the merge of the previous antitrust authority and the energy, telecoms, transport media and postal regulators and supervisors. The new legal framework increased both independence and transparency. However, I consider that we should be ambitious, and go further on and introduce new tools to reinforce both independence and transparency beyond the mere written legal provisions.

In fact, actions to increase transparency have been used to promote our independence. The idea underneath our strategy is that we should go beyond the legal framework that is not advancing in Spain at the required speed.

For instance, there is a political will with a wide consensus to deliver a legal framework for the lobbying activity but there has not been increased regulation so far. CNMC has launched a register for lobbies, based on the Commission's legal framework. We cannot make it compulsory without a proper Law, but we give a clear signal of what we believe independence and transparency is all about. Our register is the first launched by a national institution and there are already over 400 firms in it.

In addition, in 2014, just after the creation of the CNMC, we launched our Strategic Plan which was designed to provide an initial response to the challenges faced by the new institution in achieving its goals and founding principles, one of which is transparency. In order to ensure this, it was submitted for public consultation to various sectors of society: consumers and users, financial operators, public authorities and academia. Every year, our strategic plan is further developed and published with specific sectoral targets for the year in course and followed by an internal evaluation on the achievements at the end of the year.

Moreover, to favor ad intra independence, we have launched an internal confidential complaints mailbox managed by our internal audit department. Anyone in our staff can refer its concerns to this mailbox if they receive external or internal pressure that could jeopardize their independence, including pressure by counselors.

Independence and transparency go hand by hand and are of the utmost importance for Competition authorities. I defend an ambitious approach even if sometimes this means that we will have to face important challenges. However, the sooner we adapt to the new times, the better.

### **PRIORITISATION**

Some of you may be aware that Spain is one of the few jurisdictions in which prioritization is limited by law. We have the obligation to address every single case that is submitted to the Investigations unit. We cannot reject cases under our current competition Act.

We are not comfortable with this situation given our scarce resources and I favor more discretionality to choose actions. The authority should have the power to select cases and use efficiently limited resources rejecting less relevant cases, but always on the basis of specific criteria, in line with the EU prioritization system in place.

In the past we have launched investigations on issues with marginal impact on competition due to the nature of the anticompetitive behavior (for instance, resale

price maintenance in a market with enormous inter-brand competition such as women garments) or the limited scope of its effects (i.e. pure local agreements on a very short period of time and among very few competitors). Hence, the Spanish competition authority has been devoting resources even to cases with fines totaling less than €10.000. In addition, the Council is also competent to file away complaints where a similar time-consuming procedure needs to take place, consisting on a sound assessment by the case handler, a proposal by the Investigations Directorate and the adoption of a final decision by the Council.

So far, the CNMC has been trying to set at least clear priorities for its ex officio investigations through the annual strategic plans, which help to shed light on the sectors and types of infringements on which the competition division will focus its ex officio work.

With the occasion of the 10th anniversary celebration of our Antitrust Law, the CNMC has recently launched a reflection period with stakeholders to suggest fine tuning changes of the current Law and to introduce new tools. One of the issues of discussion are prioritization rules and there is a wide understanding that our technical services need more discretionality to select cases taking into account their importance.

#### **ECN+**

The European Commission's proposal aims at tackling several gaps and divergences in national toolkits and procedures that would allow for more effective NCAs.

The truth is that the Spanish legal framework already covers many of the proposed requirements, which are set as a minimum so that NCAs can go further if allowed under their national competition acts.

Nevertheless, we believe that this proposed Directive can be very helpful to reinforce some elements of our current toolkit such as the need for deterrent fines or the possibility to reject complaints as I explained before.

We regret that some articles may fall short of ambition, including those referred to the enhancement of independence and resources of NCAs, as they depend heavily on vague concepts such as "sufficient resources" or the willingness of policy makers to interpret such provisions in a broad sense during the transposition of the Directive.

Yet, we are actively engaging in the discussions with the Council to work constructively towards a final proposal that truly reinforces our effectiveness both at national and European levels.