



# **2023 Annual Report**

## EXECUTIVE SUMMARY

[www.cnmc.es](http://www.cnmc.es)

## PRESENTATION

The ultimate aim of the CNMC is to ensure, preserve and promote the correct functioning of all markets for the benefit of consumers and companies.

Throughout 2023, as in every year since its creation, this institution has worked intensively to fulfil its legal mandate.

The Annual Report, a document prepared in compliance with Article 38.2 of Law 3/2013, of 4 June 2013, on the creation of the National Markets and Competition Commission, provides a detailed account of all its activities.

The main actions carried out by the different directorates and units of the CNMC during 2023 are outlined below.

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# COMPETITION ENFORCEMENT

The CNMC is responsible for investigating, inquiring and preparing reports on proceedings concerning competition advocacy, anti-competitive practices and merger control.



## COMPETITION ENFORCEMENT

In 2023, the directorate continued to promote and strengthen the ex officio detection of anti-competitive practices, especially through the intense work of the Economic Intelligence Unit (EIU). Specifically, 24 cases related to Articles 132 and 150 of Law 9/2017, of 8 November 2017, on Public Sector Contracts were reported to the EIU, due to indications of anti-competitive practices in public tenders.

From the point of view of citizen collaboration, 2023 was once again a year of upturn, with nearly 200 entries through the different channels available, on multiple sectors.

2023 was also notable for the number of inspections or dawn raids conducted. Up to nine dawn raids were carried out in the framework of eight cases, the highest number since 2019.

Moreover, seven infringement proceedings for anti-competitive practices were initiated during the 2023 financial year.

As for the number of decisions adopted, the CNMC resolved 28 cases as follows: twenty-two decisions to close the proceedings; two commitment decisions; and four decisions to impose sanctions.

Of these four decisions, three concerned collusive behaviour (two of them were classified as cartels) and the fourth involved an abuse of a dominant position.

Of particular note is the Amazon/Apple Brandgating case, which resulted in the CNMC fining Apple and Amazon 194 million euros for restricting competition on Amazon's marketplace in Spain.

In terms of merger control, in 2023, the CNMC was notified of 70 merger operations. Specifically, the CNMC issued a decision on 73 merger operations: in one case, which is currently under review, it was agreed to initiate Phase II of the merger control procedure; three of them were approved subject to compliance with a series of commitments in Phase I; another two were approved subject to commitments in Phase II; three were withdrawn; and the remaining 64 were approved without commitments.

Monitoring the CNMC's decisions was another key aspect of the Competition Directorate's activity. In 2023, 176 decisions were subject to monitoring.

In 2023, the close collaboration between the CNMC and the autonomous communities on competition matters continued. Pursuant to the assignment mechanisms provided for in Law 1/2002, of 21 February 2002, on the Coordination of the Powers of the State and the Autonomous Communities in Competition Matters, a total of 87 cases were assigned.

Finally, with regard to the judicial review of CNMC decisions on competition proceedings, the National High Court (Audiencia Nacional) and the Supreme Court (Tribunal Supremo) issued 83 rulings, resolving challenges to decisions adopted by the CNMC in its supervision of competition in the markets. Of these 83 rulings, 75 were issued by the National High Court and 8 by the Supreme Court.

Focusing only on decisions that meet the following requirements—(i) finding infringements of Ar-

ticles 1, 2 or 3 of the Spanish Competition Act and (ii) imposing one or more sanctions, including recalculations—the National High Court upheld 15 CNMC decisions involving 45 companies and annulled 6 CNMC decisions involving 12 companies. Therefore, the National High Court confirmed 71.4% of the CNMC's decisions in 2023.

The Supreme Court upheld 100% of the CNMC's decisions finding the existence of an infringement.



**Entries**  
**200**



**Sanctions**  
**215.7**  
million euros



**Dawn raids**  
**9**



**Infringement proceedings**  
**7** initiated



**Merger control**  
**70** notified  
**3** Phase I with commitments  
**2** Phase II



# ADVOCACY AND MARKET UNITY

Through its work to promote competition and market unity, the CNMC monitors regulation and public intervention, advises public authorities and promotes a culture of competition to improve the quality of public intervention and the regulatory framework.



## ADVOCACY

In 2023, the CNMC approved 26 reports, 20 of them on draft regulations. Most of them (15) referred to draft royal decrees and all were requested by the corresponding ministries. In terms of the economic sectors analysed, most of the regulations analysed referred to the waste and professional services sectors.

In addition, the Department for the Promotion of Competition produced a study on the transfer of the VAT reduction to the food sector and three guides: the Guide on Competition and Inflation; the Guide on Assignments to Own Resources and Agreements as part of the update of the Guide on Public Procurement and Competition; and the Guide to the Quantification of Damages for Competition Law Infringements.

The Competition Promotion Department also prepared an *ex-post* assessment study on the recommendations issued by the CNMC in the report on aid granted through the MOVES III Plan, and the annual report on State aid granted in Spain in 2021.

Furthermore, pursuant to Article 5.4 of Law 3/2013, of 4 June 2013, on the creation of the National Markets and Competition Commission, the CNMC filed four administrative appeals, considering that the administrative rules or acts restricted effective competition in the markets.



### Reports

**26**

(20 draft regulations)



### Studies

**2**

(Transfer of the VAT reduction to the food sector; Recommendations in the report on Aid granted through the MOVES III Plan)



### Guides

**3**

(Competition and Inflation; Public Procurement and Competition; Quantification of Damages for Competition Law Infringements)

## MARKET UNITY

In 2023, it issued 19 reports in relation to Article 26 of the Spanish Market Unity Act and 24 reports concerning Article 28 of this Act. The CNMC also issued 25 decisions in relation to Article 27 of the Spanish Market Unity Act and lodged four appeals. The appeals lodged concern the management of livestock waste, subsidies to training centres and the requirements for the installation of photovoltaic panels for self-consumption of electricity.

Finally, from the point of view of dissemination and raising awareness of the importance of promoting competition, the ICN and the World Bank awarded the “Municipalities and Competition” project for contributing to improving communication between local authorities, economic operators and citizens, as well as increasing interest in the promotion of competition at the local level.



### Appeals

**4**

(management of livestock waste, subsidies to training centres and the requirements for the installation of photovoltaic panels for self-consumption)



### Reports

**19**

Article 26  
LGUM

**24**

Article 28  
LGUM

# TELECOMMUNICATIONS AND AUDIOVISUAL MEDIA

The CNMC is responsible, firstly, for guaranteeing the correct functioning of the electronic communications markets through various regulatory instruments. Secondly, it supervises the content broadcast on audiovisual media with national coverage, as well as on video exchange platforms, and their users of particular relevance.



## TELECOMMUNICATIONS

With regard to the analysis of regulated markets, the Commission approved the decision on the fifth review of wholesale voice call termination markets in individual mobile networks (Market 2/2014). In this decision, the CNMC found that mobile termination services are provided in an environment of effective competition as a result of the approval of the Eurotariff Regulation, which ensures competitive market prices for mobile termination. Consequently, the obligations imposed on mobile operators for the provision of termination services on their respective networks were removed as they are no longer necessary.

Lastly, the CNMC launched a public consultation on the proposed definition and analysis of the markets for wholesale trunk segments of leased

lines (Market 14/2003), corresponding to the fifth review of this market.

The CNMC also approved the decision on the fifth review of the parameters of the economic replicability test (ERT15) applied to broadband products marketed by Telefónica in the residential segment. The CNMC concluded that all flagship products passed the replicability test and, consequently, that the prices of NEBA local and NEBA fibre freely set by Telefónica satisfied the replicability condition.

Meanwhile, in 2023, 242 new operators (companies or individuals) were registered in the Operator Register and 638 operators were deregistered. The total number of registered operators as of 31 December 2023 was 2956.



### Review markets

Wholesale voice call termination markets in individual mobile networks / Public consultation wholesale trunk segments of leased lines



### Disputes

**24** resolved in terms of access and interconnection and portability



### Infringement proceedings

**8** 200,000 euros (fines)

In terms of dispute resolution, 24 disputes between telecommunications operators were resolved, both in terms of access and interconnection and portability.

The CNMC resolved eight infringement proceedings, resulting in fines totalling more than 200,000 euros.

Regarding judicial review in telecommunications matters, during 2023, a total of three rulings were issued (two were issued by the National High Court and one by the Supreme Court).

The three rulings relate to appeals against rulings on disputes between operators and all three dismissed the appeals filed by operators against the CNMC's decisions.



### Infringement proceedings

**3** in process



### Public consultation

Age verification systems and the requirements to ensure age verification when accessing content particularly harmful to minors

## AUDIOVISUAL MEDIA

The CNMC ensures that the content broadcast does not seriously harm the physical, mental or moral development of minors, such as pornography or gratuitous violence, and that the content that is likely to harm minors is broadcast in accordance with the obligations established by the Spanish Audiovisual Media Act. In 2023, the CNMC initiated 34 preliminary enquiry procedures and eight preliminary enquiries for providers established in Spain, which operate 16 Internet sites.

Likewise, in the case of pornographic video-sharing platforms established in other EU countries, the CNMC has requested cooperation from the competent regulators (following the country of origin principle).

In this context, the CNMC launched a public consultation in December 2023 to analyse the different age verification systems and the requirements to ensure age verification when accessing content particularly harmful to minors.

Finally, as part of the control of audiovisual content, it is worth mentioning the CNMC's activity in the area of universal accessibility. In this regard, in 2023, the CNMC initiated 47 preliminary enquiry procedures and it approved the report on the degree of accessibility of commercial communications broadcast by State-level audiovisual media service providers.

As regards the CNMC's sanctioning activity, the Commission has initiated three infringement proceedings, which are currently underway. In addition, the CNMC has resolved five consultations on commercial communications and on obligations to promote European works.

In 2023, the National High Court and the Supreme Court issued four rulings: three by the National High Court and one by the Supreme Court. Of all the rulings, half (50%) rejected the appeals lodged by the operators against the CNMC's decisions.

# ENERGY

The CNMC is responsible for supervising the electricity and hydrocarbons markets, both wholesale and retail, as well as regulating the remuneration methodology for regulated activities; the structure and methodology for calculating access tolls and fees; the methodologies for the provision of balancing services and the methodology for access to electricity and gas networks.



## ENERGY

With regard to the retail gas and electricity market, the increase in energy prices in wholesale markets has been passed on to consumer contracts. In this context, the CNMC has made a special supervisory effort to ensure that, in accordance with Royal Decree-Law 23/2021, distributors clearly and transparently communicate the impact of these changes on the consumer's bill. In particular, special mention should be made of the implementation of the "Entiende tu factura" (Understand Your Bill) tool.

In the electricity sector, among all the actions carried out in 2023, it is worth highlighting the verification and monitoring of the information on the system operator's settlements for the reduction of the remuneration of non-emitting technology production facilities, established by Royal Decree-Law 17/2021. The CNMC also supervised the energy exempted from the temporary mechanism to limit the price of electricity, established by Royal Decree-Law 10/2022, and addressed queries on its application.

In the gas sector, the Energy Directorate supervised the implementation of the last-resort tariff by last-resort retailers for household consumers to monitor the correct functioning of customer services.

In the liquid hydrocarbons sector, the CNMC completed the supervisory functions entrusted by Royal Decree-Law 6/2022 regarding the 20 c€/L rebate on fuel prices and the additional discounts applied in the main distribution networks.

In relation to regulated activities, the CNMC approved decisions establishing access tolls for electricity transmission and distribution grids, for the gas transmission grid and for local grids and regasification plants. It also issued decisions provisionally establishing the remuneration for distribution companies and owners of electricity transmission facilities for the 2023 financial year and for companies carrying out regulated activities in regasification plants and natural gas transmission and distribution for the 2024 gas year.

Within the framework of the CNMC's regulatory powers, it is worth highlighting, firstly, the modification of Circular 4/2019, establishing the remuneration methodology for the electricity system operator, as well as Circular 4/2020, establishing the remuneration methodology for the technical manager of the gas system.

With regard to dispute resolution, in 2023, 367 access disputes were processed and resolved, mostly related to the expiry of access and connection permits due to non-compliance with the milestones set out in Royal Decree-Law 23/2020. Meanwhile, in the gas sector, a new type of conflict arose in relation to access and connection for hydrogen blending, with 13 disputes handled in 2023.

As regards inspection activity, the Energy Directorate carried out 2,323 inspections, of which 2,288 were in the electricity sector—2,034 of them at renewable energy, cogeneration and waste generation facilities—and 35 in the gas and hydrocarbons sector.

Moreover, the Energy Directorate conducted 70 infringement proceedings in energy matters. The total number of infringement proceedings resolved amounted to 45, with fines totalling more than 11 million euros.

Finally, regarding the judicial review of energy cases, 94% of the rulings were entirely in favour of the CNMC.



### Disputes

**367**

access



### Inspections

**2,323**

(2,288 electricity sector / 35 gas and hydrocarbons sector)



### Infringement proceedings

**45**

resolved

**11**

million euros fines



### New tool - "Entiende tu factura"

(Understand Your Bill)



# TRANSPORT AND POSTAL SECTOR

The CNMC is responsible for investigating cases relating to the supervision of the rail and postal sectors, as well as the oversight of airport tariffs. It is also responsible for hearing disputes raised by economic operators in these areas.



## TRANSPORT SECTOR

In the airport sector, the CNMC has determined that the maximum annual adjusted revenue per passenger for airport tariffs for 2024 is €10.35 per passenger (4.09% more than in 2023).

In the rail sector, the CNMC approved the annual report for 2022, which pointed to a trend in passenger transport that was confirmed by the quarterly reports for 2023. The data for the third quarter of 2023 show strong year-on-year growth in the liberalised corridors: all of them exceeded the 2019 passenger numbers by at least 20%, and in the Levante corridor, pre-pandemic passenger numbers doubled.

The CNMC also adopted several decisions on the modification of ADIF Alta Velocidad's framework agreements with railway operators to increase the flexibility margin for annual capacity requests.

In addition, the CNMC reported on the draft regulation to determine railway charges for 2024 for ADIF and ADIF Alta Velocidad.

Finally, as regards the judicial review of cases in the railway sector, the National High Court issued three rulings rejecting appeals lodged by operators against CNMC decisions, and the Supreme Court rejected an appeal against a National High Court ruling confirming a decision by the CNMC.



### Airport sector

**+4.09%**

(maximum annual adjusted revenue per passenger)



### Rail sector

**+20%**

passengers in the liberalised corridors

Modification of ADIF Alta Velocidad's framework agreements with railway operators

## POSTAL SECTOR

Regarding the postal sector, the CNMC approved the annual report of the postal sector for 2022, which highlights that letter deliveries decreased by 13.7% compared to 2021.

Following the approval of the methodology for calculating the net cost of the Universal Postal Service (UPS) by the Council of Ministers, the CNMC has begun to exercise its duty to verify the net cost of this service.

The CNMC also adopted its first decision on the monitoring of the quality of the provision of the UPS by the designated operator since the UPS Delivery Plan set new targets.

In postal matters, the National High Court issued five rulings: two dismissals and three upholding appeals lodged against CNMC decisions.



**Approval of the methodology for calculating the net cost of the Universal Postal Service (UPS)**



**First decision on the monitoring of the quality of the provision of the UPS**

# INTERNATIONAL



## INTERNATIONAL ACTIVITY

In terms of competition advocacy and promotion, in 2023, the CNMC participated in the main international forums and organisations. Of particular note are the CNMC's activities focusing on engaging with its European counterparts within the framework of the European Competition Network (ECN), the activities carried out in the context of the European Competition Authorities (ECA) and the meetings and gatherings held with other European and third-country authorities.

Moreover, the CNMC actively participates in other international forums on competition advocacy and promotion, such as the OECD, the International Competition Network (ICN) and UNCTAD. It cooperates closely with competition authorities in geographical areas of particular interest, such as Latin America and the Caribbean, through projects such as the Ibero-American Competition School, the Latin American and Caribbean Forum and the Ibero-American Competition Forum.

Among the various activities carried out in 2023, special mention should be made of the organisation of the European Competition Day to mark the Spanish Presidency of the Council of the European Union in Barcelona, as well as the organisation of the 22nd Annual Conference of the ICN, also held in Barcelona.

In telecommunications matters, the CNMC actively participates in the Body of European Regulators for Electronic Communications (BEREC). Specifically, in September 2023, the CNMC organised the third BEREC Contact Network meeting in Barcelona, bringing together representatives of member regulators, observer countries and rep-

resentatives of the EC. It is also worth highlighting the CNMC's involvement in Regulatel—the main forum for cooperation between telecommunications regulators in Latin America and the Caribbean—as a member of its Executive Committee and its active presence in the working groups.

Regarding audiovisual media, the CNMC holds the vice-presidency of ERGA, the European Regulators Group for Audiovisual Media Services. The CNMC is also active at the technical level, with a special focus on discussions about the implementation of the Audiovisual Media Services Directive (AVMSD) in the Member States, the implementation of the Digital Services Act (DSA) and the draft European Media Freedom Act (EMFA).

In the field of energy, the CNMC has a very active presence in the European energy regulators (ACER and CEER). In 2023, European efforts focused on the debate and negotiation of the regulatory package on electricity market design (EMD), the amendment of the REMIT regulation on wholesale market supervision, the approval of the regulatory proposals for the Fit for 55 package and the negotiation of the natural gas decarbonisation package.

In addition, during the Spanish Presidency of the Council of the European Union, the CNMC organised the plenary meetings of ACER and CEER in Madrid.

Also noteworthy is the CNMC's involvement in MIBEL and MIBGAS, as well as in ARIAE, where the Commission holds the first vice-presidency and the executive secretariat of the forum of Ibero-American regulators.

Finally, in the transport and postal sectors, it should be noted that the CNMC has been elected to hold the vice-presidency of IRG-Rail in 2024, with the presidency to follow in 2025. With regard to the activities carried out in 2023, it is worth highlighting that the CNMC co-chaired the Access to Service Facilities Working Group.

In the airport sector, within the Thessaloniki Forum, the CNMC led the preparation of two re-

ports: one on the functions that independent authorities must have in their national frameworks to ensure that they can fulfil the functions entrusted to them by the Airport Charges Directive and the other on the modulation of airport charges for environmental reasons.

The CNMC has also been closely involved in the European Regulators Group for Postal Services (ERGP), notably by co-leading the Access and Interoperability Working Group.

# SUPPORT UNITS

Along with the governing and management bodies, the CNMC has several units that provide essential support services to the rest of the organisation.



## SUPPORT UNITS

### Secretariat of the Council

Firstly, in 2023, the **Secretariat of the Council**, in addition to its usual functions, undertook the analysis and preparation of Communication 1/2023 of 13 June 2023, which sets out the general criteria that the CNMC will take into account when determining the duration and scope of the prohibition on entering into contracts with the public sector in the event of breaches of competition law.

The Secretariat of the Council is also responsible for the **Legal Department**.

### General Secretariat

In 2023, among the most relevant achievements of the General Secretariat in the area of human resources, it is worth highlighting the entry into force and implementation of the CNMC's collective labour agreements, as well as the creation of jobs to perform new duties assigned to the CNMC. Furthermore, the CNMC obtained ISO 14001 certification, confirming that its environmental management system meets the requirements of the international standard ISO 14001:2015.

### Internal Control Department

In 2023, the CNMC continued to exercise all its powers in accordance with these principles, avoiding conflicts of interest.

### Economic Advisory Department

In 2023, it collaborated on investigations of competition infringement proceedings and merger control proceedings. It also contributed to the preparation of the guide for the quantification of damages for infringements of competition law. This work was led by the Department for the Promotion of Competition, with the Legal Department also collaborating intensively.

### Communication Department

It maintained throughout 2023 its firm commitment to actively promoting a culture of competition, good regulation and transparency. Specifically, a total of 221 press releases were published in 2023 (many of them in English), publicising the CNMC's most relevant decisions. Also noteworthy is the activity carried out through the CNMC Blog, which serves as a communication benchmark for the Spanish Public Administration. Thanks to its informative language, the blog is accessible to a wide audience while providing detailed analyses and explanations on current issues. In 2023, the CNMC Blog featured up to 105 entries.



#### Communication 1/2023

which sets out the general criteria that the CNMC will take into account when determining the duration and scope of the prohibition on entering into contracts with the public sector



#### CNMC's collective labour agreements



**+200** press releases  
**+100** entries CNMC blog



#### ISO 14001 certification



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