

Title of the act: UM/002/15: TELECOMUNICACIONES ANTENAS TENERIFE II

Article invoked by the CNMC: Art. 27 of LGUM

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

NACE code of the relevant sector: J.61. Telecomunicaciones.

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 to be assessed

El mercado sobre el que versa el acto de la CNMC es el de instalación de antenas de telecomunicaciones. Dentro del mismo, se diferencian dos tipos de mercados afectados:

- 1 El mercado de antenas de telefonía y su equipo complementario.*
- 2 El mercado de antenas de radiotelevisión y su equipo complementario.*

Esta primera categoría de antena, también llamada estación base ("BTS" por sus siglas en inglés), se encarga de actuar como puente entre todos los usuarios de móviles de una misma área y una central de conmutación. Estas estaciones precisan de terrenos elevados para la cobertura de la señal, siendo frecuente que, en el ámbito urbano, las mismas se ubiquen en las azoteas de los edificios. Utilizando datos de la CNMC para 2014, el número de estaciones base en España era de 124.300, mientras que, para la provincia de Santa Cruz de Tenerife, esta cifra era de 2.849.

En segundo lugar, en relación con las antenas parabólicas de radio y televisión, puede destacarse que las más comunes son aquellas para televisión terrestre (TDT) y televisión por satélite. Según la superficie reflectora, existen cuatro tipos de antenas parabólicas: de foco centrado, de foco desplazado (offset), plana y multisatélite.

1.1.2 Short description of the competition issue and rationale for the act

La cuestión que se plantea en el recurso interpuesto por la CNMC es la relativa a determinar el ajuste legal de los artículos 10.5 y 6, 12.3 y 38.7 de la Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife que fue aprobada por el Pleno de dicha Corporación, el 6 de junio de 2014, que incorpora determinadas restricciones al ejercicio de la actividad económica.

Las restricciones objeto de recurso son las siguientes:

- 1 Prohibición de instalar antenas y conductos en las fachadas.*
- 2 Limitación del número de antenas en azoteas cubiertas.*
- 3 Establecimiento de excepciones, sujetas a la concesión de una licencia.*
- 4 Obligación de eliminación de conductos que por su situación perjudiquen la percepción de la fachada*

1.1.3 Specific objectives and main conclusions of the act

El objetivo del recurso de la CNMC es eliminar las mencionadas restricciones de la Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife, al considerar que son contrarias a los principios de necesidad y proporcionalidad recogidos en la LGUM.

2 Evaluation of the act

2.1 Relevance

2.1.1 Relevance of the sector

To assess the relevance of the sector, one might use the Financials of the companies registered under the *NACE J.61 - Telecommunications* (the one indicated by the CNMC on its website) in the province of Santa Cruz de Tenerife. However, this NACE may be too generic and not exactly referred to the activities that are the object of the act. In that case, the Evaluator could consider other NACE such as *4321 - Electrical installations*, *4742 - Retail sale of telecommunications equipment in specialized establishments*, *4222 - Construction of electrical networks and communications* or *2630 - Manufacture of telecommunications equipment*.

NACE J.61 - Telecommunications 2019 figures are reflected below. However, as already mentioned, the Evaluator shall be aware that these figures might be generated from a broad range of activities and are not exclusively limited to the installation of antennas to which the regulation at hand applies. Therefore, to run an accurate case-specific assessment, **the CNMC should request the necessary information from the individual economic agents under analysis.**

Table 1: Relevance of the sector

Theme	Indicators	Possible sources	Shortcuts / comments
Economic weight and structure of the market	Sector turnover	SABI database	<i>Regional turnover in the telecommunications sector in Santa Cruz de Tenerife in 2019 is estimated at 10.12 million euros (0.001% of National GDP).</i>
	Number of firms	SABI database	<i>The number of operators in the telecommunications sector in Santa Cruz de Tenerife in 2019 is estimated at 34 companies.</i>
	Average turnover per company	Estimated by KPMG based on SABI database data.	<i>Based on the data pointed out above, average turnover per operator in the regional market in 2019 is therefore estimated at 0.30 million euros.</i>
	Average price per installation	Web research: https://www.habitissimo.es/presupuestos/telecomunicaciones	<i>The average national price per installation is estimated at 3,500 euros.</i>
Labour market and employment	Total number of employees	SABI database	<i>The number of employees in the telecommunications sector in Santa Cruz de Tenerife in 2019 is estimated at 210 employees.</i>
Perception of consumers and policymakers	Is there the perception that the sector needs reform?	Surveys/Interviews	<i>See Annex 1</i>

2.1.2 Relevance of the act

Table 2: Relevance of the act

OECD Competition Issues	Specific question	Comments from the act / Deliverable 3
A. Limits the number or range of suppliers.	A2. Establecimiento de un procedimiento de licencia, permiso o autorización como requisito previo para la provisión de bienes o servicios.	La Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife establece las siguientes medidas restrictivas de la competencia: (i) Excepciones sujetas a la concesión de una licencia.
	A3. Límite a la capacidad de ofrecer un bien o servicio.	(ii) La prohibición de instalar antenas y conductos en las fachadas. (iii) La limitación del número de antenas en azoteas cubiertas. (iv) La obligación de eliminación de conductos que por su situación perjudiquen la percepción de la fachada, resultando excesivamente intervencionista y contraria a la Ley General de Telecomunicaciones.

2.2 Effectiveness

2.2.1 Outreach: qualitative assessment

The judgement of the National High Court, from November 2, 2018, stated the following:

"Estimamos el recurso interpuesto y en consecuencia **declaramos la nulidad de los artículos 10.5, 10.6, 12.3 y 38.7 de la Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife** aprobada por el Pleno de dicha Corporación, el 6 de junio de 2014".

National High Court	Yes	Partially	No
<i>Did the ruling by the National High Court endorse the identification of competition issues raised by the CNMC in the Legal Appeal?</i>	X		
<i>Did the National High Court 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.

2.2.2 Outreach: quantitative assessment

Theme	Indicators	Source
Outreach to the general public	142 downloads from the CNMC 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	

The Legal Appeal is coherent and in line with previous Market Unity Reports in the same product and geographic market and related to the Urban Landscape Ordinance in the city of Santa Cruz de Tenerife (see UM/073/14).

3 Impact assessment

3.1 Direct impact

Action sought by the CNMC	Actions	Outputs	Status of implementation
<i>Eliminar algunas de las medidas aprobadas en la Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife, consideradas inadecuadas y muy intervencionistas.</i>	<u>Implemented</u> <i>Recurso contencioso-administrativo promovido al amparo del artículo 27 de la LGUM contra determinados artículos de la Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife.</i>	<u>Implemented</u> <i>Sentencia, de 2 de noviembre de 2018, de la Audiencia Nacional. Recurso: 206/2015.</i>	<u>Implemented</u> <i>La Sentencia favorable de la Audiencia Nacional anuló los artículos 10.5, 10.6, 12.3 y 38.7 de la Ordenanza de Paisaje Urbano de Santa Cruz de Tenerife aprobada por el Pleno de dicha Corporación, el 6 de junio de 2014.</i>

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 under the proposed approach
				Found in the Literature	Recommended Value	
A2. Establecimiento de un procedimiento de licencia, permiso o autorización como requisito previo para la provisión de bienes o servicios	Necesidad y proporcionalidad	Price	Potential decrease in price	From its literature review, the CNMC found that price increases in cases of barriers to entry ranged from 3% to 35% . The specific sources of these parameters are presented in Annex 2.	To be conservative, we recommend applying a potential decrease in price of 5% ¹ derived from the reduction of entry barriers.	Considering a 5% potential decrease in the price due to the reduction of entry barriers, the welfare loss caused by the introduction of the limitations to the activity of the installers of telecommunications antennas in Santa Cruz de Tenerife is estimated at 400,021 euros , assuming that these limitations were eliminated right after the National High Court judgement (2018).
A3. Límite a la capacidad de ofrecer un bien o servicio						<p>The estimated welfare loss would be associated with the period during which the rule was in force, until its annulment after the National High Court judgement. However, from an opposite viewpoint, the quantification proposed would serve as reference for determining the welfare gains related to the success of the act, given that the National High Court judgement annulled the mentioned rule and, therefore, helped the reduction of the entry barriers.</p> <p>The methodology used to quantify the potential impact on the number of consumers is shown in Annex 3.</p>

¹ With the aim of being conservative, the specific 5% parameter has been selected. The Evaluator might use any other parameter within the proposed range if the specific objectives of the evaluation to be performed requires a different choice. Nonetheless, the general recommendation is to maintain a consistent selection throughout all the assessments to be carried out.

3.3 Impact on the wider economy

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

As stated above, the Legal Appeal sought by the CNMC and, consequently, the High Court judgement, are only applicable to a very specific service provided by the installers of telecommunications antennas in the city of Santa Cruz de Tenerife. 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 limitations to the professional activity of these operators (0% of the Spanish GDP in 2019), a significant spill over effect on the wider economy could not be expected in the case at hand.

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 and would be discouraged from establishing restrictions similar to the ones under analysis.

4 Conclusions

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

- The Legal Appeal filed by the CNMC considered that the Urban Landscape Ordinance was inadequate and very interventionist with respect to the General Telecommunications Law. Furthermore, according to the LGUM, the CNMC considered that the restrictions included in the Ordinance were contrary to the principles of proportionality and necessity.
- The impact assessment presented in this document assumes that the limitation to the professional activity of the installers of telecommunications antennas in the city of Santa Cruz de Tenerife could have led to an increase in the price of the installation of 5%. Since every building requires a telecommunications antenna, a change in demand is not expected.
- To approximate the loss of consumer welfare that would have been derived from these restrictions, it has been assumed that the limitation to the professional activity of the installers was eliminated immediately after the National High Court's judgement in 2018.
- The number of new buildings during the period before the economic crisis (2002-2007) has been used to estimate the approximate number of new buildings -and, consequently, the number of antennas installed- during the period 2015-2018. The impact assessment methodology is detailed in Annex 3.
- The **welfare loss related to the potential increase in price** derived from the introduction of entry barriers is **estimated at 400,021 euros**, for the period 2015-2018. From an opposite viewpoint, the estimated welfare loss might serve as a reference for determining the positive impact that the CNMC act would have had since the objective sought by her would have materialised with the National High Court judgement and, therefore, it would have helped to reduce the entry barriers.
- The barriers to entry affect a very specific service offered by the installers of antennas in the city of Santa Cruz de Tenerife. Therefore, in spite of the favourable judgment of the National High Court and the consequent elimination of the limitation to the professionals' activity, **an identifiable and relevant impact on the Spanish economy was difficult to ascertain** given the tiny economic weight of the affected services over the national 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 and would be discouraged from introducing restrictions similar to the ones under analysis.

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

- 1) *Please, describe your overall knowledge of the Legal Appeal and your familiarity with it*
- 2) *Was the Legal Appeal and its outcome used during committees/meeting aimed at updating or changing the regulatory framework?*
- 3) *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?*
- 4) *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

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

Questionnaire on efficiency

- 1) *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?*

- 2) *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?*
- 3) *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	
Reduction in waiting time	2%-7%	5%	5%	OFT – Office of Fair Trading (2003): The regulation of licensed taxi and PHV services in the UK.
Reduction in prices	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.
Increase in employment	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).
Increase in sales and production	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.
Increase in the number of operators	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

The Urban Landscape Ordinance included some measures that limited the activity of the professionals who install telecommunications antennas in the city of Santa Cruz de Tenerife. These limitations could have led to an increase in the price of the installation of these antennas due to two main reasons:

- The Ordinance limited the number of antennas that could be installed and hindered the installation process. This fact may lead to an increase in the price of these services to cover the operators' margins.
- The mere fact of requiring a license to get an exception to install more than one antenna or to install it in a different place than those established by the Ordinance would increase the installation costs, also having an impact on the price of these services.

The estimate presented in this document must be considered conservative since, to approximate the number of antennas that would have been installed since the implementation of the Ordinance, the number of newly constructed buildings is used, assuming that only one antenna per building would have been installed.

To calculate the number of new buildings between 2015 and 2018 in the city of Santa Cruz de Tenerife, the Evaluator might use public regional data from the Housing Survey published by the INE (Spanish National Statistical Office) in 2011. Specifically, the Evaluator might estimate the annual average number of new buildings built (for housing and other purposes) between 2002 and 2007 - period prior to the economic crisis- and assume that it would have remained constant during the period 2015 to 2018. This figure is estimated at 2,854 new buildings per year in the province of Santa Cruz de Tenerife. To approximate the number of new buildings in the city of Santa Cruz de Tenerife the Evaluator might apply the population ratio (20.02%) to the regional figure, obtaining an annual number of new buildings in the city of 571 (or 2,286 new buildings for the period between 2015 and 2018).

Assuming that at least one telecommunications antenna would have been installed in these buildings, the loss of consumer welfare is calculated based on the installation price of the antennas, which is estimated at 3,500 euros according to the price comparators found on the Internet². Assuming that the measures included in the Ordinance would have led to an increase in the price of the installation of 5%, the loss of welfare per installation is estimated at 175 euros.

As a consequence, taking into account the number of new buildings built between 2015 and 2018, the loss of consumer welfare during said period, assuming that the aforementioned buildings would only have one antenna, would be 400,021 euros.

	2015	2016	2017	2018	Total
(A) Number of new buildings (Provincial level)	2,854	2,854	2,854	2,854	11,417
(B) Number of new buildings (Local level)	571	571	571	571	2,286
(C) Installation price per building	3,500	3,500	3,500	3,500	3,500
(D) Increase in the installation price (5%)	175	175	175	175	175
Consumer loss of welfare = (B)*(D)	100,005	100,005	100,005	100,005	400,021

² Source: <https://www.habitissimo.es/presupuestos/telecomunicaciones>