

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**Publicly funded education markets – Note by Spain**

**3 June 2019**

This document reproduces a written contribution from Spain submitted for Item 3 of the 67<sup>th</sup> OECD Working Party 2 meeting on 3 June 2019.

More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/publicly-funded-education-markets.htm>

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## Spain

1. This contribution addresses the subject of the roundtable on “Publicly Funded Education Markets”, to which the OECD has asked for contributions regarding the meeting of Working Party No.2 on Competition and Regulation, on June 3<sup>rd</sup> 2019.

2. The document describes competition advocacy of the CNMC in the education sector in chronological order. Sections 1 and 2 describe two regulatory reports concerning requisites for education centres and a major reform of the education system, respectively. Section 3 explains a judiciary appeal by the CNMC of an anticompetitive regulation that aimed to shield public university away from competition. Section 4 describes a public consultation on the university system run at the CNMC’s initiative. The Annex contains information regarding the higher education system in Spain, in response to the specific questions posed by the OECD for this roundtable.

### 1. Requisites for the establishment of education centres

3. The first initiatives of the CNMC’s competition advocacy in the education sector were reports on draft regulations, adopted in response to requests by the Government.

4. In Regulatory report [IPN 034/09](#)<sup>1</sup>, the CNMC assessed a proposal to reform regulation concerning **requisites for education centres** engaged in primary and secondary education and artistic teachings. The proposal aimed at adapting such regulation to principles of good regulation in line with the EU Services Directive<sup>2</sup>. The CNMC report endorsed the simplification of requisites applicable to education centres, such as the derogation of minimum class sizes, which might operate as a barrier to entry.

### 2. Competition between education centres

5. In Regulatory report [IPN 080/12](#)<sup>3</sup>, the CNMC assessed a profound projected legal reform of the Spanish education system. The reform was aimed at addressing poor results in the Spanish education system such as comparatively high early school dropout rates and low levels of performance in basic reading comprehension and math skills, and to enhance students’ employability.

6. The CNMC identified the main features of the Spanish education system that affect demand and supply of education services: (i) consumers do not bear the full cost of education; (ii) some suppliers do not seek to make a profit; (iii) information asymmetries that hinder rationality of consumer choice; and (iv) the combination of efficiency objectives with other social objectives.

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1 IPN 34/09. REALES DECRETOS ÓMNIBUS. EDUCACIÓN

2 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

3 IPN 080/12: ANTEPROYECTO DE LEY ORGÁNICA PARA LA MEJORA DE LA CALIDAD EDUCATIVA

7. In this context, the CNMC advocated the introduction of “market-type” incentives such as more transparency and comparability of education results in order to orient consumer choice towards better quality of service. In particular, the CNMC welcomed proposals to introduce yardstick competition between centres, to increase their managerial autonomy, to incentivise specialization and to increase accountability of education centres.

### 3. Competitive neutrality between universities

8. Even if competitive neutrality issues can arise in all stages of education, these situations are more frequent in higher education, where the presence of market-oriented providers is more generalized. The CNMC tried to address one of these problems by taking advantage of its powers to challenge anti-competitive regulations before Courts<sup>4</sup>.

9. In 2015, the Spanish region of Aragón adopted a provision prohibiting private universities from creating degrees analogous to the ones provided by the regional public university (Universidad de Zaragoza) in its small campuses (cities of Huesca, Teruel and La Almunia de Doña Godina). Furthermore, the approval of new Degrees by private universities was made subject to the government’s approval and conditional on their fitness to meet social demands. Finally, private universities were obliged to present financial and feasibility plans, including high guarantees. At the time, there was only one active private university in the region: Universidad de San Jorge.

10. The CNMC decided to appeal this agreement before the Courts (file [UM/001/16](#))<sup>5</sup>. The legal basis for the appeal was Law 20/2013 on Market Unity, whereby public administrations cannot restrict market entry of an undertaking on the basis of “economic” requisites, such as the existence of a similar supply or the need to meet demand needs<sup>6</sup>. Other barriers to access the market (such as financial and feasibility requirements) were considered to be disproportionate and contrary to the principles of good regulation.

11. The courts confirmed the CNMC appeal and annulled the contested restrictions. However, the regional Parliament included the same restrictions in the Law regulating universities in the region, so the barriers are still in place<sup>7</sup>.

12. The CNMC appeal was accompanied by an [economic report](#)<sup>8</sup> produced by staff of the Advocacy Department of the CNMC. The report provides a competition assessment of

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4 The CNMC is empowered to challenge both anticompetitive regulations (by means of Article 5.4 of Law 3/2013 creating the CNMC) and public interventions contrary to the freedom of establishment (by means of Article 27 of Law 20/2013 on Market Unity). The latter was the tool invoked in this case.

5 UM/001/16: ENSEÑANZAS UNIVERSITARIAS ARAGÓN

6 This Article of the Law on Market Unity mimics the spirit of the EU Services Directive (Directive 2006/123/EC in its Article 15.4).

7 The appeal powers of CNMC only reach regulation subordinate to law. Furthermore, the Constitutional Court ruled that the restrictions were not contrary to the Constitution.

8 INFORME ECONÓMICO SOBRE EL ACUERDO DE 27 DE OCTUBRE DE 2015 DEL GOBIERNO DE ARAGÓN SOBRE LOS OBJETIVOS, CRITERIOS Y REQUISITOS DE LAS ENSEÑANZAS UNIVERSITARIAS OFICIALES EN LA COMUNIDAD AUTÓNOMA DE ARAGÓN PARA EL PERIODO 2016-2019 - UM/001/16

the contested restrictions, finding that they reduce overall supply of university degrees, limit variety and choice for students and teachers, reduce incentives for innovation and hinder economic efficiency. The report found that the only private university in the region (Universidad de San Jorge) had specialized on undergraduate education, focusing on more “marketable” and “employable” degrees than the public university (Universidad de Zaragoza). Where the private university launched degrees that competed with the ones already existing in the public university, it managed to attract a high share of students, proving that competition before the contested public restrictions had increased consumer welfare.

#### 4. Public consultation regarding the Spanish university system

13. Universities can be depicted as platforms<sup>9</sup>. They have to decide to what extent costs are charged to students (through higher fees) or to professors (through lower wages or more demanding labour conditions). As a result of their condition as platforms<sup>10</sup>, they face network externalities both between sides (indirect) and within sides (direct)<sup>11</sup> and prices are not neutral. The pricing decision by the university will be critical for the size of the platform. The university will choose the agents to bear the costs of the platform in order to maximize network effects, balancing the demands of all groups<sup>12</sup>. All this gives self-regulation incentives to the platform in terms of reaching the optimal quantity and quality<sup>13</sup>.

14. In 2016, the CNMC carried out a [public consultation](#) on the university system in Spain. More than 600 replies to the consultation were received<sup>14</sup>. Two entries of the CNMC blog explained the main results ([here](#) and [here](#)).

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9 Rochet, J.C., & Tirole, J. (2004): “Two-sided markets: an overview”. Institut d’Economie Industrielle Working Paper. See the footnote 15 of this working paper.

10 Codagnone, C., Biagi, F., & Abadie, F. (2016): “The Passions and the Interests: Unpacking the ‘Sharing Economy’”. JRC Science for Policy Report; Evans, D.S., & Schmalensee, R., (2015): “The Antitrust Analysis of Multi-Sided Platform Businesses”. NBER Working Papers 18783, febrero

11 There are indirect network effects because the quantity and (especially) quality of professors affect demand by students and vice versa. There are also direct network effects because the quantity and (especially) quality of students and professors also attract agents from the same group (good students attract other good students and good professors attract other good professors). In addition, other agents with interdependent demands with students and professors can be additional sides of the platform: employees, research institutions, funding Administrations, alumni...

12 This explains why some institutions (even for-profit and without regulated caps on fees) may subsidize the access of low-income but capable students, in order to attract the other sides of the platform (professors, employers...and even other students).

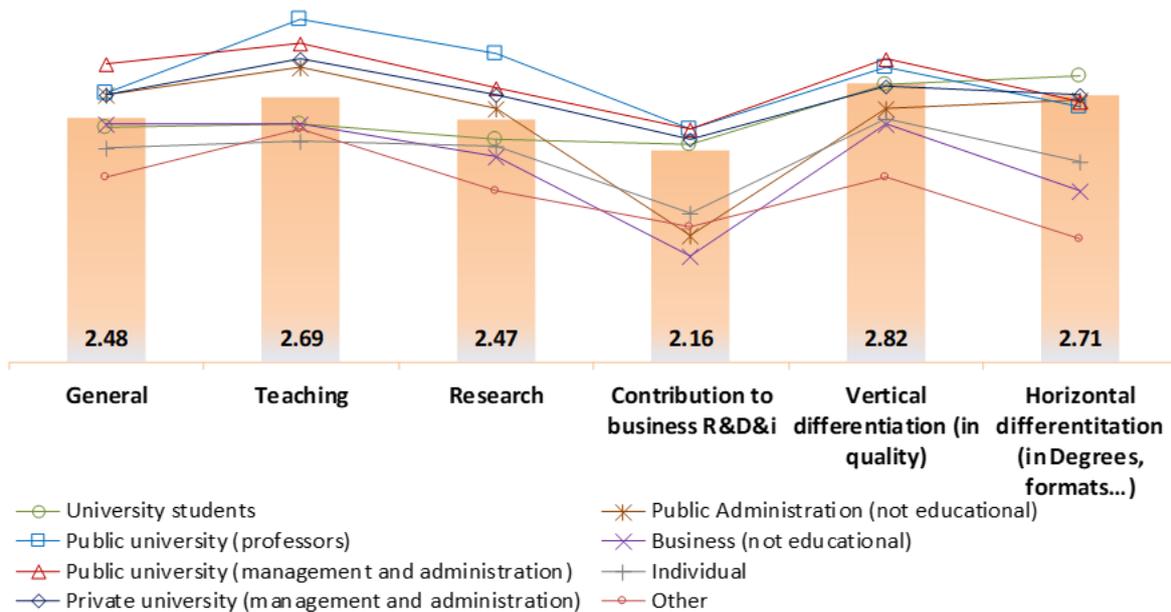
13 Suppose that, in the absence of public intervention, a university decided to lower standards in order to attract more students. The best professors would not usually work for that public university and other sides of the platform would be affected too (employers would lose the trust on the signal of the Degrees of that university, research institutions and funding administration would scale down financing, etc.). Finally, this would discourage students too, contrary to what was initially predicted.

14 The results must be taken with the appropriate caveats, since it was not a survey with an unbiased sample. In fact, there were many students among the respondents (60.2%) followed by teachers and researchers (20.7%).

15. As regards the results of the consultation, respondents ranked the university in Spain as medium quality, with a general grade around 2.5 out of 5, with better valuation of teaching and differentiation (around 2.7-2.8) than research and knowledge transfer (below 2.5).

**Figure 1. General assessment of universities in Spain**

(responses of the participants in the public consultation, where 0 is minimum and 5 is maximum)

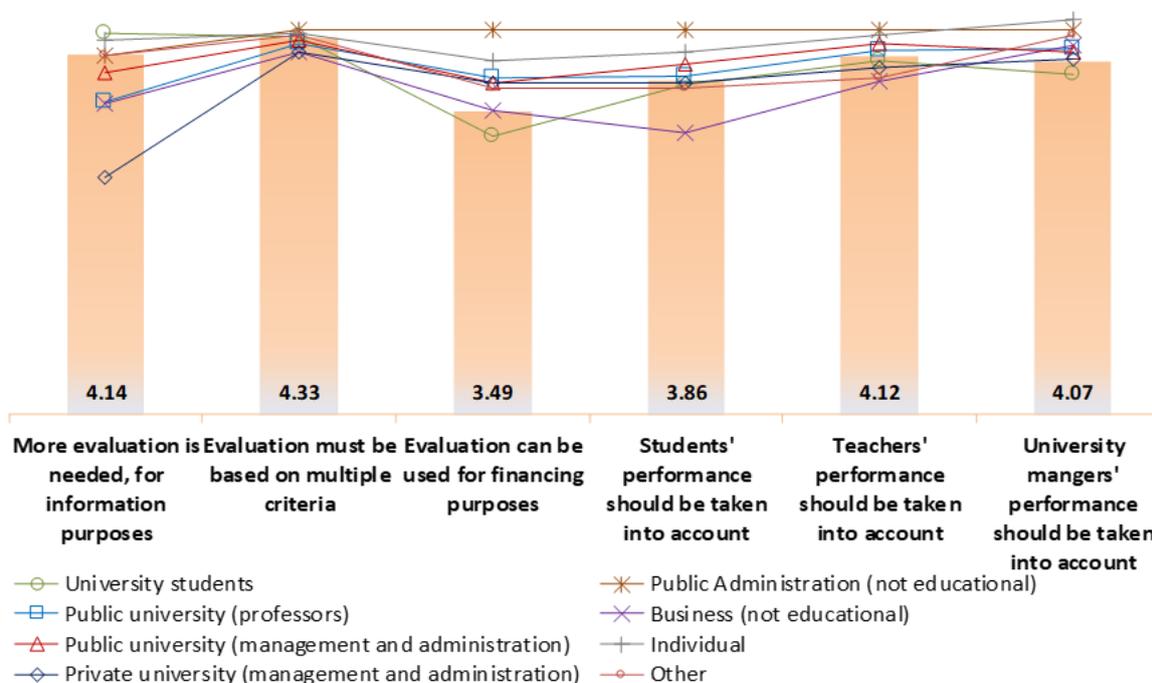


16. Most respondents were in favour (3.5 or more out of 5) of introducing reforms directed at generating competition incentives, reducing barriers (e.g. to hire professors) or financing upon relative performance. The only reform not fully endorsed (2.4 out of 5) was the greater autonomy of universities to set fees. Respondents broadly supported evaluation of universities in terms of employability, teaching quality and research performance (4, or above, out of 5), to make financing of universities conditional on this evaluation (3.5 out of 5) and especially to increase information (4.1 out of 5).

17. Participants in the public consultation highlighted the importance of improving information in order to guide better decisions by students and professors (4.14 out of 5), especially regarding university performance in terms of output (teaching indicators, like employability and student satisfaction, research and transfer of knowledge) conditional to inputs (resources and socioeconomic background of students).

**Figure 2. Assessment on the needs for further evaluation**

(responses of the participants in the public consultation, where 0 is disagree and 5 is agree)



18. Respondents also supported the importance of market-based financial incentives (3.42 out of 5), in particular to reinforce the link between public funding and performance<sup>15</sup> and increasing the percentage of financing which is channeled through the demand side (e.g. vouchers for students)<sup>16</sup>.

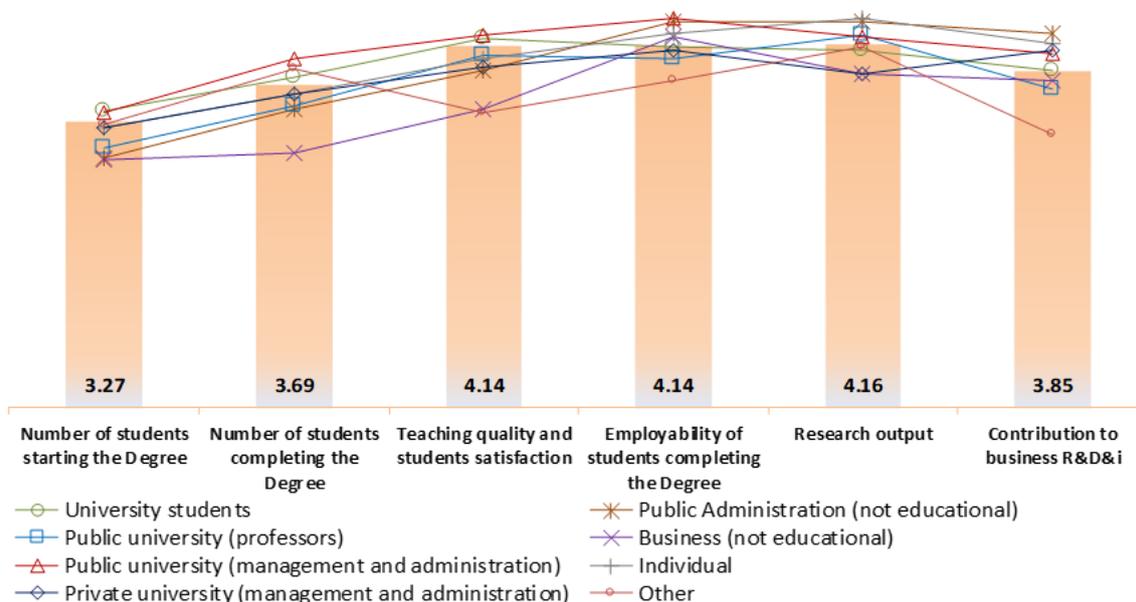
19. Respondents supported measures that increased decisional autonomy for universities in order to convey market incentives (financing and information) towards appropriate competition in the market. However, the only one of the measures identified in the consultation that did not receive support of a majority of respondents was increasing public universities' autonomy to set fees (2.4 out of 5). Other measures received more support by respondents, like flexibility for universities to determine the level of supply in every degree, to create, design and eliminate degrees, to hire professors and set working conditions (notably wages), or to set their internal governance rules. Other measures linked to competitive neutrality also received support, like the rationalization of barriers to entry and exit of universities.

15 Conditional to inputs, as previously specified, and with appropriate caveats to preserve social externalities (e.g., special funds for some disciplines with positive externalities).

16 Including adequate grants to ensure that no capable student is left apart from the university (because of the lack of resources) and also in order to reduce geographical segmentation (ensuring optimal matching between students and Degrees/Universities).

**Figure 3. Views on criteria for performance-based financing for universities**

(responses of the participants in the public consultation, where 0 is disagree and 5 is agree)



## Annex. A brief overview of the higher education system in Spain

Universities face a combination of central and regional legislation. Central legislation<sup>17</sup> regulates aspects such as the creation of universities, the creation or modification of Degrees, or the working conditions of professors. Regional legislation can develop this framework legislation (e.g. they can include extra requisites for the creation of Universities of Degrees or they can create more flexible regimes for professors) and establishes financing criteria for universities within the region. This provides for different regional approaches: while some regions have stricter rules for universities and Degrees, other regions give more autonomy to universities to hire professors (Basque Country, Catalonia) and have introduced limited performance-based financing (Andalusia, Galicia, Catalonia).

The financing model of public universities is mostly supply-side and the most common criteria (taking into account that this is region-specific) to allocate resources is the number of students. Fees are decided at the level of each region and must be proportional to audited costs<sup>18</sup>.

Students are free to choose the Degree and the university without any geographical restriction, since priority is given depending on high-school grades. In practice, however, mobility is more limited for low-income students, who may be more dependent on the availability of grants. In addition, universities cannot adapt the number of places to demand, since the allocation of places among Degrees and universities is planned and centralised at a regional level, in coordination with other regions and the central government.

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17 Whose main elements are: Ley Orgánica 6/2001, de 21 de diciembre, de Universidades; Real Decreto 420/2015, de 29 de mayo, de creación, reconocimiento, autorización y acreditación de universidades y centros universitarios; Real Decreto 1393/2007, de 29 de octubre, por el que se establece la ordenación de las enseñanzas universitarias oficiales; Real Decreto 1313/2007, de 5 de octubre, por el que se regula el régimen de los concursos de acceso a cuerpos docentes universitarios.

18 Universities cannot price-discriminate (grants are conditional on income or high-school marks)