

PROMOTION OF COMPLIANCE WITH COMPETITION FROM AN ADVOCACY PERSPECTIVE

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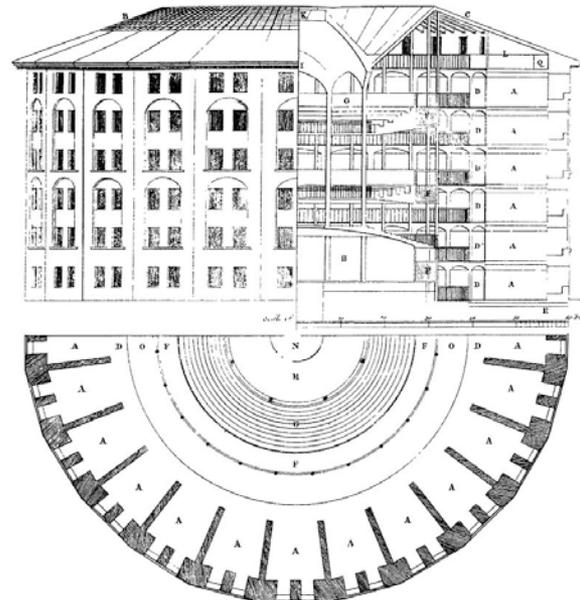
This presentation doesn't necessarily reflect CNMC's views



"The more strictly we are watched, the better we behave."

Jeremy Bentham

unpublished, from the manuscripts of Jeremy Bentham in the Library of University College London



Outline

1. State of play in Spain

2. Benefits (> Costs) of compliance from an advocacy perspective

3. Two specific products of CNMC
 - a. A guide for business associations
 - b. Tools for self-diagnosis and reporting

Outline

1. State of play in Spain

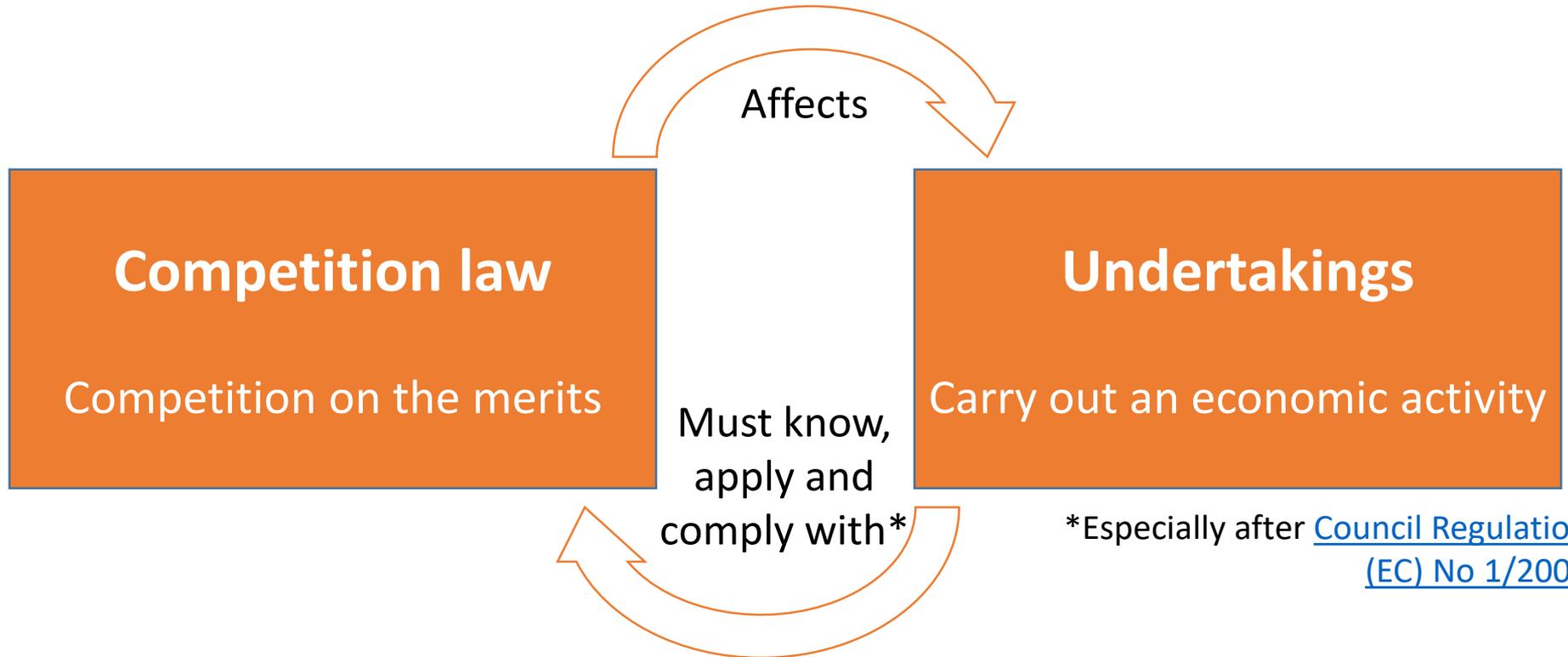
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State of play in Spain

- In Spain (\approx European Union)



1. Am I (potentially) violating competition law?
2. If so, can I benefit from exemptions/exceptions?

- Self-evaluation \Rightarrow Compliance policy is key

State of play in Spain

- In Spain (\approx countries), trends in favour of compliance
 - Domestic: compliance policy mitigating criminal liability of legal persons
 - Competition law in Spain involves administrative (\neq criminal) sanctions
 - Foreign (US, Fra, UK, It): compliance policy mitigating competition sanction
- So far, CNMC enforcement (\approx European Commission “[Compliance Matters](#)”)
 - Compliance programme \neq mitigating factor (S/0482/13 SNC/0036/15)
- But adopting compliance policy ex post \approx possible mitigation (S/DC/0544/14)
- Regardless of enforcement...
- Compliance policies have to be upheld from an advocacy perspective
- Why? Competition culture, whistleblowing and collaboration with authority
- How?

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- Compliance policies have to be upheld from an advocacy perspective
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- How?

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1. State of play in Spain

Emphasizing that

2. Benefits (> Costs) of compliance from an advocacy perspective

With specific products

3. Two specific products of CNMC

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- Regardless of enforcement...
- Compliance policies have to be upheld from an advocacy perspective
- Why? Competition culture, whistleblowing and collaboration with authority
- **How?**

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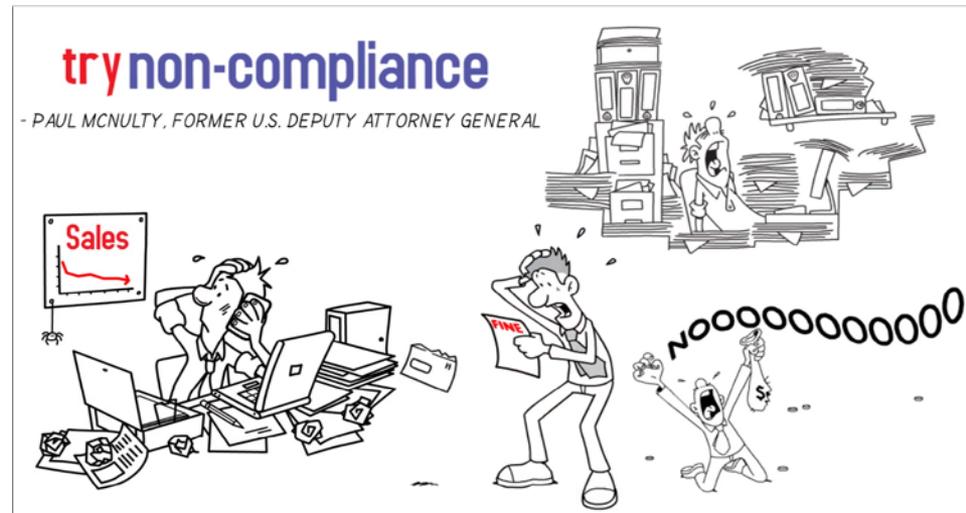
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Benefits (>Costs) of compliance

- Why not complying?
- Lack of knowledge 
- Cartel/abuse profitable  (*groupthink*)
- We can fight that with
- Competition advocacy (communication...)
- Good regulation (low barriers to entry so that cartel/abuse are not profitable in the long run)
- We can also emphasize other benefits of complying (costs of not complying)



If you
think
compliance is expensive...



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- Avoiding fines, damage claims, criminal(?) sanctions
- Avoiding administrative sanctions
 - Fines to managers (recently used in Spain)
 - Exclusion from public procurement (Art 71.1.b Law 9/2017 ≈ EU Directive)
 - Can be avoided if sound compliance programme (Art 72.5 ≈ EU Directive)

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- We can also emphasize other benefits of complying (costs of not complying)
- Avoiding fines, damage claims, criminal(?) sanctions
- Avoiding administrative sanctions
- Anticompetitive practices are void (not enforceable)
- Compliance can be a comparative advantage
 - Reputational gains
 - Internal knowledge (lower risks and agile response if there are risks)

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Guide for business associations

<http://www.cnmc.es/expedientes/g-2009-01>

- Help them comply with competition law
- Conducts (to be avoided):
- Joint decisions to set prices
- Joint decisions to boycott firms/products
- Exchanges of information
- Self-regulation codes which subdue competition
- Standards and contracts which unnecessarily restrict competition

Competition:
a benefit for all

Guide for Business Associations

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Tools for self-diagnosing and reporting

<http://arguide.cnmc.es/>



- Questionnaire to self-evaluate compliance and reporting standards
- Provides a measure (with mandatory/voluntary/advisable practices)
- Beyond the scope of competition: governance, integrity, transparency
- Standards/metrics: some legal certainty even without legal effects
- Generate some “ripple effects”

Thank you!