

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Personalised Pricing in the Digital Era – Note by Spain****28 November 2018**

This document reproduces a written contribution from Spain submitted for item 1 of the joint meeting between the Competition Committee and the Committee on Consumer Policy on 28 November 2018.

More documentation related to this discussion can be found at:

www.oecd.org/daf/competition/personalised-pricing-in-the-digital-era.htm

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1. In Spain, the CNMC has the objective of maintaining and promoting effective competition in all markets and sectors of the Economy, to the ultimate benefit of consumers.
2. The CNMC works towards that goal by monitoring market operators' behaviour and concentration (*enforcement*) and by monitoring the regulatory framework and the activity of the public sector that can influence market conditions (*advocacy*).
3. Part of the CNMC's advocacy functions refer to the detection of barriers to entry or competition that arise from the regulatory framework. In this regard, the CNMC can assess draft regulation at the regulators' request as well as autonomously start market studies and come out with recommendations to the public authorities.
4. The CNMC has recently had the opportunity to analyse two practical instances of personalised pricing in digital sectors under the advocacy perspective. Firstly, earlier this year, the CNMC adopted an opinion concerning the regulatory alternatives to address some public concerns in the sale and resale of tickets for events by electronic means (e-ticketing).¹ Secondly, the CNMC has recently conducted a market study on the impact of new technologies in the financial sector (Fintech).²
5. The CNMC would like to share some of the issues and challenges for competition policy arising from its experience.

1. Personalised pricing in the e-trading of tickets for events

6. On 5 April 2018, the CNMC adopted a report on the sale and resale of tickets for cultural events via electronic means. The report responded to a request by the Spanish Ministry of Education, Culture, and Sports (MECS) asking for the CNMC's views on how to regulate those activities. The MECS identified some potential concerns as regards access to tickets, excessive pricing, and consumer protection.
7. In its report, the CNMC considered that secondary markets for the resale of tickets may serve as a countervailing factor to price-discrimination practices arising from operators with market power, since they enable arbitration by consumers. If consumers are offered different prices for similar tickets according to their willingness to pay, there will be an economic incentive for consumers with low valuations to sell their tickets to consumers with high valuations. A developed secondary market can help those transactions to take place, limiting the suppliers' ability to market different prices for similar tickets.
8. These considerations show that how surplus is allocated between suppliers and consumers is not irrelevant for competition. In the CNMC's view, an increase in suppliers' surplus at the expense of consumers' surplus is not a desirable situation, even if overall efficiency is not affected.

¹ See <https://www.cnmc.es/en/node/367862>. Only the Spanish version is available.

² The Study is expected to be publicly released in November 2018. It will become available in the following link: <https://www.cnmc.es/node/371812>

9. The CNMC's report also highlighted that price discrimination may lead to an increase in overall efficiency if it induces an increase in supplies to the market.

10. The CNMC did not explore the latter issue further as it was not necessary for the purposes of the report. However, a question may arise in situations where an increase in overall efficiency via personalised pricing is achieved at the expense of a reduction in consumers' surplus. In such cases, improvements of overall efficiency may not be desirable for consumers, at least from the point of view of static and partial-equilibrium analysis.

2. Personalised pricing in the financial sector

11. In the study on the impact of new technologies in the financial sector (Fintech), the CNMC identified potential concerns in terms of negative price discrimination arising from situations of privileged access to big data.

12. Companies face a number of difficulties to successfully apply personalised pricing strategies in real markets. For example, effective competition or consumer arbitration can discourage personalised pricing strategies. Another obstacle is that real markets tend to exhibit imperfect information. As a result, companies do not always have all the information they need to apply profit-maximizing personalised prices.

13. In the financial sector, massive data collection and analysis (big data) by new digital business models can help to overcome the hindrance of extensive information required to carry out personalised pricing, as firms are now better equipped to exploit massive amounts of personal data in order to reckon consumers' willingness to pay.

14. Fintech companies rely heavily on state-of-the-art information and communication technologies that can exploit information about borrowers and lenders more efficiently, thereby contributing to overcome the traditional information asymmetries that plague the financial industry. Although these activities might well lead to extract clients' surplus, the CNMC also noted the potentially negative reputational effects if such practices could not pass unnoticed. However, one should not magnify the self-regulatory effect arising from such reputational effects, as it may create an incentive for firms to conceal their personalised pricing practices.

15. However, in addition to personal information, companies would need to have some degree of market power to successfully apply personalised pricing strategies that negatively affect consumers.

16. In the financial sector, privileged access to information can be a source of market power. This can be a reason justifying open-banking approaches in regulation in some areas of the financial sector, that seek to prevent situations where the fact that only a company has access to users' data relevant for competition is detrimental to consumers welfare.

3. Conclusions

17. The CNMC has the objective of maintaining and promoting competition to the benefit of consumers. It is important to note that the maintenance and promotion of competition are both subject to benefitting consumers.

18. The CNMC's recent experience on price discrimination and personalised pricing in the area of advocacy confirms that overall efficiency is not a goal in itself, but only as long

as it benefits consumers. In situations where personalised pricing reduces overall efficiency or does not change overall efficiency but leads to a reduction in consumers' surplus, personalised pricing is not desirable from a competition standpoint.

19. The question arises in situations where personalised pricing increases overall efficiency but leads to a reduction in consumers' welfare. In such situations, a careful and comprehensive analysis of efficiencies seems reasonable – e.g. analysing both static and dynamic efficiencies. However, in the CNMC's view, consumers' welfare should always be the focus of competition policy.

20. As the CNMC detected in its 2018 Study on Fintech, some specificities of the financial sector increase the likelihood of successful strategies of personalised pricing. This requires competition authorities to be more vigilant, and may justify regulatory solutions that help preventing market power via privileged access to data.