



CPI Talks: Interview with José María Marín



The CNMC just released its preliminary findings on the market study on new business models and the sharing economy. Some of the preliminary conclusions are groundbreaking, suggesting almost a complete deregulation of the markets for passenger road transport and tourist accommodation. Please tell us more about the goals this report aimed to achieve and in doing so try to answer the following questions:

Most of the recommendations target public administrations in order to ensure better regulation (eliminate barriers). Do you think these will be achieved at regional and national level?

The CNMC pioneered an analytical approach to the sharing economy and new business models in order to open a necessary debate on how we are going to deal with the profound changes that our economies are experiencing. With the digitalization of the economy new models of business are blooming and things are changing at a rapid pace. We cannot stop these changes from happening. We have to adapt our regulation in order to benefit from this innovation. Those who adapt better to the new environment will reap the fruits in the future. And this adaptation should cover all levels of the administration.

Obviously, all changes generate winners and losers and the public sector has to soften the cost that our societies have to bear as a consequence. But blocking or delaying the entrance of the new models of shared economy will result in higher costs to society. At the same time, the government should help accelerate the adaptation of our economies. One possible reaction is to act as if these changes were not here to stay, and to continue conducting business as usual, or even try to resist the change. It seems to me that this is the wrong decision. However, this does not mean that we have to completely deregulate. I'd rather talk about adapting the pieces of regulation that were designed for a 20th Century economy that worked in a completely different environment.

At the same time, strategies should be designed to soften the negative impacts on some groups of society.

I am quite optimistic about our capacity to adapt. Uncertainty is high, the present moment is full of challenges but advances in technology can help us build better societies and we have to take advantage of this opportunity.

These recommendations affect regulated markets with strong lobbyist that will try to strike them down. Do you think these vested interests will prevail over the consumers' interests?

I hope not. And I think they will not be able to prevail on the long term. But they can slow the adaptation process and negatively affect the distribution of wealth and economic growth. To avoid this risk the best guarantees are strong institutions that defend public interests above particular interests. We at the CNMC are





working for the people and we have a clear view of what our role must be.

When competition authorities evaluate regulatory barriers they always have in mind the benefits for consumers. However, the government may give more weight to the likely effect of deregulation in jobs, taxes and eventually votes. Did the CNMC face opposition or strong views from other governmental offices when it published these recommendations?

The CNMC has a clear mandate and focuses on protecting certain public objectives and promoting competition in the market. In any case, we try to balance our view with other social and political targets that are equally legitimate, and we take them into account. We try to explain our point of view and support it with a rigorous legal and economic background.

Of course we face opposition from different groups in both the private and public sectors. Our legal framework gives us very useful tools to face regulation that limits competition and the CNMC has already used it to take to court regional and national regulations in the hosting and transport sectors that do not favor the development of new technologies. New technologies destroy some jobs but also create new opportunities. We would still be riding horses if the transport industry of the 19th century had resisted the transformation brought about by the arrival of combustion engines. The current situation is not that different.

The new regulatory framework we defend is perfectly compatible with making sure taxes are paid and that labor's rights are protected. I think that new technologies could help shift some parts of the underground economy towards the formal economy and –among other things– could increase the protection of workers, as many activities linked to the digital economy are increasingly carried out through online platforms and can therefore be easily tracked by the authorities while they were completely invisible not so long ago.

This is the first comprehensive study in Europe about sharing economy released by a competition authority. How did your colleagues in Europe receive this report? Did you partner with some of them? Did you consult or ask for their opinions?

The CNMC is very active in international organizations and we have worked hard to give publicity to our report and get feedback from the European Union, OECD and ICN and other competition authorities, such as the Federal Trade Commission. We circulated our preliminary findings and asked for commentaries from foreign authorities. We are in permanent dialogue with the EU Commission and our European partners, and believe me when I say that we have obtained many benefits from this exchange, benefits that I like to think were mutual.

Another pioneering initiative conducted by CNMC is the creation of a database containing information about the interest groups or lobbyist in Spain, mirroring the efforts made by the European Parliament at a European level. Even though registration is not mandatory, the advantages for these groups of doing so clearly outweigh the disadvantages. Why create this database? What are the benefits of this register if we compare to the previous situation?

In the last general elections the Spanish voters conveyed a clear message about the need for change. They demanded a deep regeneration of public institutions and we at least got the message. We firmly believe in independent and transparent institutions, and we consider that it is very positive for everyone to make transparent who we talk to and what we talk about with them. Furthermore, we believe that our relations with interest groups should follow very clear ethical rules. That is why we launched our register, following the EU existing framework. And we have complemented this initiative with other measures such as opening to the public the President's and other Board member's appointments, and also the establishment of a confidential internal procedure to denounce abuses aimed at defending our employees –and thus the institution– from potential political interference. We believe in these objectives and therefore are implementing a strategy to improve our transparency, so that our institution is strengthened and people's demands are satisfied.





Spain has spent more than 3 months with an interim government and this will continue for a few months more. Although the CNMC is an autonomous entity, has this lack of political certainty affected the normal activities of the regulator in any way? For instance, in terms of financial resources.

Of course it affects us. We would prefer to have a Government and a Parliament even if we are kept out of the political cycle by the legislation. We have not faced any financial problems up to now. However, it seems clear to me that we are in urgent need of wider autonomy to manage our human resources. To gain this necessary autonomy we will have to wait for the next Government.

The CNMC was created in October 2013, two and a half years ago, uniting in one entity five different sector regulators and the competition watchdog. In your opinion, what are the biggest successes the institution has achieved and what are still the biggest challenges ahead?

The biggest success is that we kept doing our job with efficiency and without any interruptions. The day we arrived at the new institution we had many pressing practical problems, such as making sure that everyone would be paid at the end of the month. A merger is always a complex process and this one was specially complicated by the lack of time to get things ready. So we are very satisfied with this result.

It is also important that we are increasingly taking advantage of synergies between our different units, and that the public perception of our work is quite positive. Our “customers”, the citizens, generally consider that we are doing a good job. In any case, there is still much to be done in terms of building a common culture for the whole institution, and there is still much to be gained from a more fluent collaboration between different units. That is our next challenge.

What are the CNMC’s priorities for this year?

There are several main priorities for the CNMC in 2016. First, we will keep fighting cartels with all the tools we have. And in this respect we will especially focus on bid rigging cartels, which are particularly harmful for society, in close cooperation with the public administration. Second, we will assess the performance of the leniency program after 8 years of experience and many cartels dismantled thanks to it. We want to improve its effectiveness and promote public awareness of its existence, especially among firms and managers. Third, there are two new instruments that we would like to bring to bear in the fight against cartels: the prosecution of managers directly involved in the illicit behavior of their firms, and the use of the prohibition to take part in public procurement bids as a punishment for anticompetitive infringements. Besides, we will closely monitor some industries like pay TV, broadband services, football broadcasting rights, agriculture, digital economy and financial services.

What is the current status of the new guidelines to impose fines? Could this uncertainty have an impact on their deterrence effect?

There are no actual new sanctioning guidelines as such, but we have certainly been developing and improving a new system to set fines for competition infringements in accordance with the new jurisprudence created by the Supreme Court since January 2015. However, the lack of guidelines does not result in under-deterrence but simply in a certain –albeit unwanted– lack of predictability, which sometimes reduces but in other occasions increases the level of actual deterrence. We are carrying out an assessment of our fines in the past and it will hopefully help us move closer to the optimal level of fines in the near future.

As far as we know the CNMC has started to assign individual responsibilities for competition infringements. What are the effects of this measure so far? Can we expect more steps in this direction?

Yes, as I mentioned before, this is one of our priorities for the near future. Some of the first cases, which go against firm managers in cases of anticompetitive infringement, are already in the pipeline, and we expect this new development to increase the deterrence of our competition enforcement and to provide new incentives for them to personally apply for the leniency program.

