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## CNC Action Plan 2010 - 2012

Stepping Forward



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# **CNC Action Plan 2010 - 2012**

Stepping Forward



## Stepping Forward

At the end of 2007 of the CNC published its **2008-2009 Launch Plan**, which is still in force and has served to set the guiding principles for the CNC's activities and the performance of its work over those two years. With the end of that period, the CNC feels it has a duty to set itself new challenges and directions to be implemented in the medium term. It therefore wants to give new impetus to the work it does, whilst consolidating itself as an institution, in all cases in line with the overall objectives defined by Act 15/2007 which informed the Launch Plan.

This Action Plan set out the areas of work and priority tasks to be carried out by the CNC in the coming three years. All these activities contribute to developing one or more of the three core areas which inspire the work of the CNC and ensure fuller attainment of its objectives: effectiveness in competition advocacy and the combating of the most damaging anti-competitive practices of economic operators, transparency in the decision-making and activities of the institution and the cohesion necessary to coordinate the Commission's activity by dovetailing internal and external communication mechanisms.

The Plan has been designed in the firm belief that competition protection and advocacy are particularly necessary if we are successfully to overcome the challenges posed by the current economic climate. It is precisely at times of crisis that there is increased risk of government and regulatory intervention in restraint of competition and of businesses committing anti-competitive practices to insulate themselves from the rigours of market demands. Support for competition is nonetheless crucial in these circumstances to encourage efficient reallocation of resources towards the most competitive sectors and to invigorate the activities of the most efficient and dynamic actors, thereby helping to promote innovation. Indeed, the preamble to Act 15/2007 posits the protection of competition as “[..] a primary tool for fostering productivity of assets and the general competitiveness of the economy.” The National Competition Commission, as the body responsible for implementing the Act, seeks through this Action Plan to contribute in real terms to advocating and protecting the maintenance of effective competition in all sectors of the economy.

The specific work to be done in the various spheres, and their impact on the three core activities, are described below.





**Optimising capacity for analysis**



**Development of procedure under Act 15/2007**



**Optimising the use of information technologies**



**Improving channels of communication with the public authorities and with supervisory bodies and sector regulators**



**Culture of competition**



**Cooperation and coordination with the regional competition authorities**



**Working with courts**



**Investment in the human capital of the CNC**



**Active presence and visibility in international relations**

# 1.

## Optimising capacity for analysis

Over the next three years the CNC will work on defining a number of criteria to identify the themes which, given the significance of their potential contribution to improving competition in the Spanish economy, it believes must be given priority analysis.

One of the purposes of this effort is to evaluate to what extent defining those criteria can contribute to progress in two CNC core activities. One is to improve efficiency in the resources dedicated to in-depth analysis of very diverse areas, potentially ranging from the study of sector characteristics considered particularly relevant for competition to the effects of any specific measures the CNC is considering it might adopt. The other core activity is to facilitate internal cohesion, since such criteria can be taken into account both in relation to preparing sector studies and for the ex officio investigation of potential anti-competitive practices.

**Efficiency and internal cohesion** will also be enhanced through:

- **The support** from the economic advisory services to the various CNC bodies which request it, specifically, facilitating empirical analysis.
- **Development** of an ex-post evaluation methodology which, alongside the supervisory functions under Act 15/2007, will make it possible to measure the long-term impact of CNC competition advocacy tools and resolutions on combating anti-competitive practices or on merger operations.
- **Designing** a benchmark methodology for diverse sector studies, which determines the information access channels, and the most appropriate measures to achieve maximum dissemination and ensure that other areas use the findings of the studies as the basis for their work.

# 2.

## Development of procedure under Act 15/2007

Act 15/2007 laid down a new regulatory framework for both enforcement and merger control, the procedure for which, despite having been the subject of subsequent implementing Rules (approved by Royal Decree 261/08 of 22 February) requires detailed analysis in terms of its practical application, if CNC decisions are to achieve greater effectiveness and transparency and therefore greater legal certainty for those involved in the procedures.

That analysis will contribute to improving those procedures and therefore to making better use of the time-limits for investigation and resolution, leading to greater effectiveness and better service to interested parties and the public, without detracting from the quality of reports and resolutions.

The main **areas of work** in the next three years will be as follows:

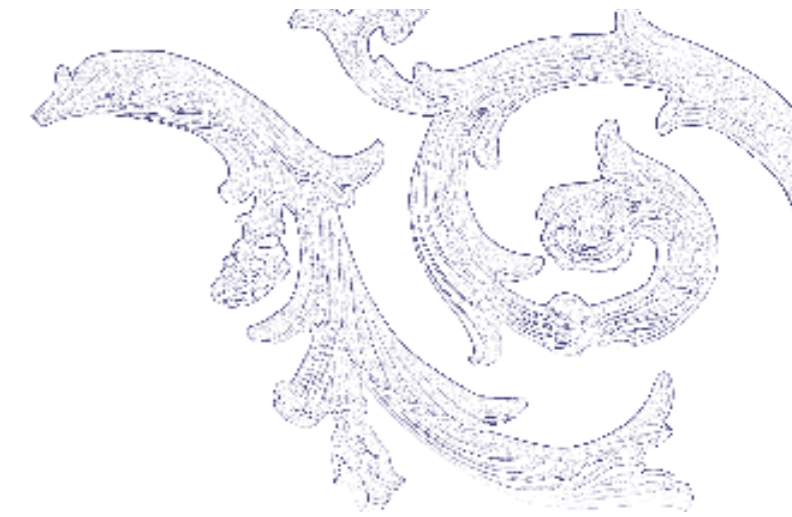
— Communications **will be drawn up** establishing the criteria to be followed for each of the following procedures:

1. Leniency programs;
2. Declarations of confidentiality in proceedings;
3. Abbreviated merger control procedure.

— Analysis **will be conducted** of other issues which could lead to the issuing of communications considered of particular interest to the public, such as agreed settlements of proceedings, commitments in mergers and interim measures.

— The necessary resources **will be made** available to enhance the Investigation Division's supervision of compliance with the conditions laid down in Council resolutions, both in enforcement proceedings and in merger operations, in the belief that proper supervision is essential for the full efficacy of the measures it adopts. The adoption of new wording for such conditions will also be considered, provided it achieves:

1. greater potential to deter anti-competitive practices
2. or increased capacity to overcome possible competition problems in merger operations,
3. and, in any event, provided they are capable of being effectively supervised.

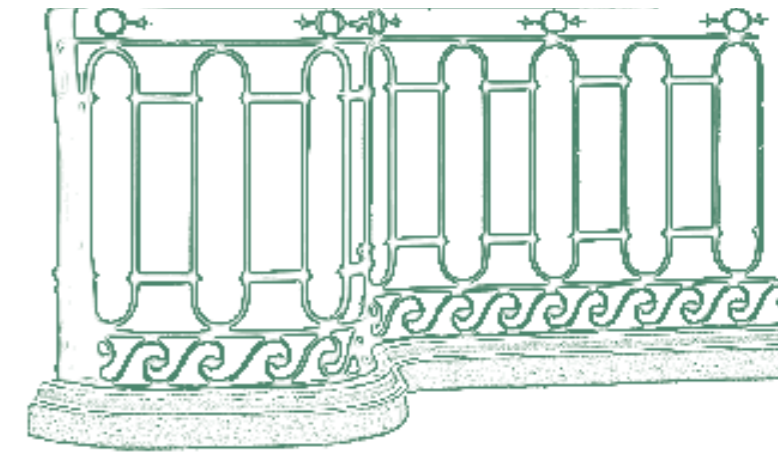


# 3.

## Optimising the use of information technologies



The CNC believes that one of its priority action goals in the next three years should be to optimise the use of information technologies in all its spheres of activity. The CNC has therefore committed itself to facilitating electronic applications in its procedures, with a threefold objective: reducing the administrative burden which those applications represent on businesses and individuals, expedite the processing of applications, saving the CNC time and resources which can be deployed in other tasks and giving a quicker response to those involved in the procedures. In short, the intention is to progress in the direction commenced by the Ley de Acceso Electrónico de los Ciudadanos a los Servicios Públicos (Law on electronic access by users of public services) and to take every opportunity to modernise and streamline the activity of the Spanish competition authority.



The actions planned in this area in the next three-year period are as follows:

- **Providing** the option to submit applications to the CNC electronically for the greatest possible number of procedures.
- **Completing** development of the recently-created Centro Informativo de Ayudas Públicas nacionales (Information Centre on State Aids) so as to make progress in mapping public aids given in Spain.
- **Continuing** the policy of increasing investment in financial and human resources targeting the development of information technologies in relation to inspections.
- **Further developing** the website, facilitating access and searches for information on competition.
- **Creating** a database of subscribers to the CNC website, periodically sending news giving access to constantly updated information about its work, and other relevant competition news.

# 4.

## Improving channels of communication with the public authorities and with supervisory bodies and sector regulators

Public authorities in general are prominent users of the competition advocacy services for which the CNC is responsible. The basic purpose of those activities is to raise the authorities' awareness of the profound influence which the design of the regulatory framework they establish has on the market conduct of economic operators. The key priority tasks proposed for the coming three years are:

— Highlighting the requirement to draw up a **competition report** in all the provisions established by the Real Decreto de Técnica Normativa (Royal Decree on Regulatory Technique) approved in June 2009. To that end all of the tools provided for by Act 15/2007 will be used, from seminars to disseminate use of the "Guide to preparing competition assessment reports" and preparation of reports on draft provisions, to use of the standing to bring proceedings mechanism by which provisions ranking below legislation which contain restrictions on competition can be challenged before the courts where circumstances so require.

— Channels of communication with the public authorities in general and with the sector ministries in particular will be optimised to facilitate the preparation of reports, whether mandatory or otherwise, and to cooperate with the ministries prior to the drafting of provisions.

— The Council will also promote cooperation with sector regulatory and supervisory bodies, through the conclusion, where applicable, of agreements, fostering the exchange of information for the preparation of reports and studies in their respective fields of activity. This cooperation may extend to other areas and take other forms, at all times within the limits laid down by Act 15/2007.

— An active policy of training on competition topics will be promoted in all areas of government. Agreements will be sought with regional and local governments to promote joint training actions to foster a culture of competition in all public spheres.



# 5.

## Culture of competition

Steps will be taken to encourage the penetration throughout society of a genuine culture of competition, emphasising the message that only in a framework of greater freedom for economic operators will it be possible to increase efficiency in resource allocation and social well-being. The following **specific actions** are proposed with that aim:

- **There will be** monitoring of the impact on public opinion and on the decisions of the actors involved of Council resolutions and of studies produced by the CNC.
- New channels of communication and cooperation **will be created** with consumers associations with the aim not only of providing information on citizens' competition rights, but also of referring all complaints and enquiries which have to be resolved to those other forums with capacity to resolve them. Specific cooperation agreements will be sought with those associations for that purpose.
- The most appropriate procedures **will be established** to disseminate the basic competition rules in business circles, including the drawing up of specific guides, or offering online courses from the CNC website.

— The technical cooperation and skills-building which the CNC has been undertaking in recent years with Ibero-American countries **will be taken further**. In addition to the initiatives of the Escuela Iberoamericana de Competencia (Ibero- American Competition School) and the online and classroom courses which we already provide in the region, a digital platform will be launched enabling the exchange of experiences amongst all the countries participating in these training actions and which will allow courses and teleconferences to be initiated on specific aspects of competition advocacy and protection.

— The framework agreements already set up with universities **will be implemented** and new formulae will be sought for cooperation in the academic sphere.

— Active and coordinated participation by CNC personnel **will be encouraged** as speakers at lectures, seminars, debates and other events aimed at disseminating the contents of our regulatory framework and the studies and reports produced.

— Complying with the mandate to set up a **Consejo Asesor de Defensa de la Competencia** (Competition Advisory Council) laid down in the Statute, we **will analyse** the design and composition most suited to performance of the specific functions assigned to it.



# 6.

## Cooperation and coordination with the regional competition authorities

Recent years have seen continued decentralisation in relation to competition matters, as a result of the creation of new regional authorities and the consolidation of those already in existence. The CNC must uphold the instruction given by the Tribunal Constitucional (Constitutional Court)<sup>1</sup> to **promote uniformity in the market**, by cooperation and coordination with the regional authorities. Accordingly:

— A debate **will be opened** with a view to looking at other formulae to maximise the effectiveness of cooperation between the authorities in the regions and the CNC, which will contribute to consolidating an integrated competition system.

— We **will continue** to vigorously pursue the policy of setting up working groups within the Consejo de Defensa de la Competencia (Competition Council, CDC) as the principal mechanism for harmonising criteria and encouraging communication with the regional competition authorities. The four groups which have been working actively during 2009 (commercial distribution, competition advocacy, criteria for allocating cases and the Red Española de Competencia [Spanish Competition Network] - REC) will continue to operate over the coming years if necessary or will be replaced by other ad hoc groups, depending on what is decided at each annual meeting of the CDC.

1. Judgment of 11-11-1999, no 208/1999

— We **will propose** the creation of a working group within the CDC, composed of members of the CNC Council and the councils of the regional competition authorities with the purpose of exchanging points of view and, if appropriate, harmonising criteria for decision-making in combating anti-competitive practices, in line with the instruction of the Constitutional Court referred to above.

— We **will work** with regional authorities to attain a joint competition advocacy policy, with a view to reinforcing the pro-competition message, both at State and regional and local level by, for example, issuing joint communiqués or declarations.

— We **will maintain** the policy of active cooperation on training with the regional competition authorities by systematically inviting them to internal seminars and other training activities arranged by the CNC. At the same time we will continue the specific inspection training actions which facilitate the creation of joint CNC – regional authority inspection groups.

— **Work will be done** with a view to raising additional funds allowing greater support for the investigation of cases by the regional competition authorities which consider it necessary.

— Specific cooperation agreements **will be concluded** with regions which do not yet have their own competition authorities.



## Working with courts

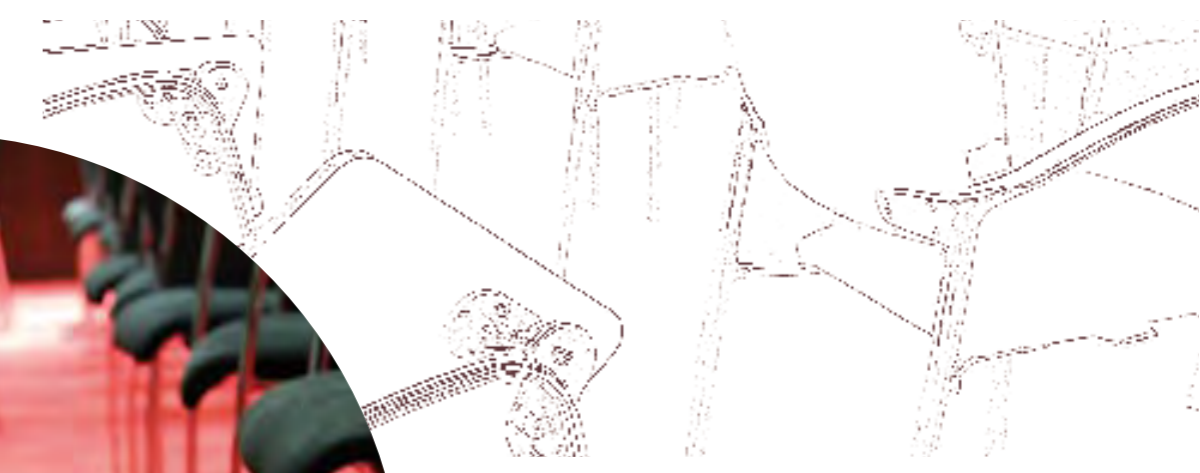
Act 15/2007 has strengthened the enforcement of competition rules by courts at all levels, making it necessary to coordinate specific mechanisms of follow-up, training and communication with all areas of court activity. **The specific tasks** to be undertaken in the next three years are to:

- **Monitor** enforcement and interpretation of Act 15/2007 by the civil courts.
- **Update** the cooperation agreement with the Consejo General del Poder Judicial (Judiciary Council) to promote new frameworks for work with the courts.
- **Continue** monitoring review by the Audiencia Nacional (National Appellate Court), the Tribunal Supremo (the Supreme Court) or, as the case may be, of the Court of Justice in Luxembourg, of decisions made by the CNC.
- **Encourage** participation by judges in the seminars and study days organised by the CNC.
- **Strengthen** the use of the amicus curiae mechanism for cooperation between the courts and the CNC.



## Investment in the human capital of the CNC

- We will encourage our staff to participate in external training activities which increase their specialisation and effectiveness (forensic techniques and inspections, follow-up and analysis of public aid and regulation and competition, for example).
- **Exchanges** or “stages” at competition authorities in neighbouring countries and the EU will be encouraged to improve the CNC’s investigation and research techniques.
- Training courses, seminars and internal lectures **will be organised** meeting the needs of our staff, enabling proper knowledge about the work carried on by the CNC and promoting exchanges of opinions with experts in the subjects being studied.





# 9.

## Active presence and visibility in international relations

The CNC's contribution to international competition protection has been one of the main areas of work since it was set up.

Over the last two years, the CNC's work in this area has focused particularly on institutional relations in the context of the Community competition bodies, given its greater potential impact on the daily work of the CNC, and on relations with competition authorities in Ibero-American countries.

Both areas of work must continue to form part of the core of the CNC's international policy. In the Community sphere, in particular, the Spanish presidency of the European Union in the first half of 2010 will call for priority attention to be given to the work necessary to contribute to defining and achieving the objectives which will govern Community competition policy in that period, and for the holding of the European Competition Day in Spain next May.

The CNC, nevertheless, proposes **to expand its international profile** in the next three years, promoting two parallel courses of action:

— **The first** is the furthering of bilateral contact with the national competition authorities of our Community partners, in particular with Germany, France, the United Kingdom and Italy, as well as existing relations with Portugal.

— **The second** course is the development of closer institutional relations with competition authorities in countries outside the Community and Ibero-America. We therefore envisage more pro-active participation in the working groups of the International Competition Network, and on the OECD Competition Committee and its working groups, where the discussion of good practices, including a number proposed by Spain on specific aspects of competition advocacy in particular, can contribute to fostering development of this aspect of competition protection in the member countries.

Sphere of Action	Tasks	Effectiveness	Cohesion	Transparency
Optimising capacity for analysis	Defining criteria for priority analysis	●	●	●
	Support from the EA in empirical analysis	●	●	
	Development of an ex post evaluation methodology	●		●
	Designing benchmark methodology for diverse sector studies	●	●	●
Development of procedure under Act 15/2007	Drawing up communications on leniency programs, declarations of confidentiality and abbreviated merger control procedure	●		●
	Analysis of other issues of the procedure	●	●	●
	Enhancing supervision of compliance with established resolutions	●		●
Optimising the use of information technologies	Electronic processing of procedures	●		●
	Completing development of the Information Centre on State Aids	●		●
	Investing in information technologies in relation to inspections	●		
	Further development of the website	●		●
Improving channels of communication with public authorities and supervisory bodies and sector regulators	Highlighting the requirement to draw up a Competition Report	●		●
	Optimising communication channels with public authorities	●	●	
	Promoting cooperation with sector regulatory and supervisory bodies	●	●	
	Active policy of training public bodies on competition	●		
Culture of Competition	Monitoring impact of Council's resolutions	●		
	New channels of communication with consumers associations	●	●	●
	Disseminating basic competition rules in business circles	●		●
	Implementing set up framework agreements with universities	●	●	●
	Promoting technical cooperation with Ibero-American Competition Associations		●	●
	Competition Advisory Council: analysing composition and functions	●	●	●

Sphere of Action	Tasks	Effectiveness	Cohesion	Transparency
Cooperation and coordination with the regional competition authorities	Maintaining and promoting working groups within the Competition Council	●	●	
	Proposing working groups composed of CNC Council members and regional competition authorities	●	●	
	Searching for a joint competition advocacy policy	●	●	●
	Cooperation on training with regional competition authorities	●	●	●
	Cooperation agreements with regions that do not yet have their own competition authorities	●	●	
	Raising additional funds for case investigations	●	●	
Working with courts	Monitoring enforcement and interpretation of Act 15/2007	●		●
	Updating cooperation agreement with the CGPJ (Judiciary Council)	●	●	
	Follow-up on reviews by the AN, TS and TPI on CNC resolutions	●		●
	Encourage participation by judges in seminars and study days organised by the CNC	●	●	
	Strengthen the use of Amicus Curiae mechanism	●	●	
Investing in human capital	Encourage participation in external training activities for greater specialisation	●	●	
	Encourage "stages" in neighbouring countries and the EU	●	●	
	Organization of training courses, seminars and internal lectures	●	●	
Active presence and visibility in international relations	Furthering of bilateral contacts with national competition authorities of the Eu	●	●	
	Improve pro-active participation in the ICN, the ECN and the OECD	●	●	●

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