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## José María MARÍN-QUEMADA: The experience of an integrated competition and regulatory authority in Spain

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**José María Marín-Quemada**

Chairman, National Authority for Markets and Competition (CNMC), Madridav

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### 2013 – Until today

Chairman, National Authority for Markets and Competition (CNMC)

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### 2005 – Until 2013

Member, Governing Council, Spanish Central Bank

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### 1984 – Until today

Full Professor, Applied Economics

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### 1972 – Until 2004

Held different positions in the private sector

# José María MARÍN-QUEMADA: The experience of an integrated competition and regulatory authority in Spain

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Chairman, National Authority for Markets and Competition (CNMC), Madrid

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Interview conducted by Santiago Martínez Lage, Managing partner,  
Martínez Lage Allendesalazar & Brokelmann, Madrid

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**Although your career is well known in Spain, could you please give a broad outline of your professional Curriculum Vitae for the readers of Conurrences? In your opinion, is a jurist or an economist better suited for the job?**

I am a Full Professor of Applied Economics, and for more than 30 years I held different positions working for the private sector. Until my appointment as President of the CNMC I spent almost nine years as Member of the Board of the Bank of Spain.

**“There is no optimum institutional design for regulatory and competition authorities. The success depends on the actual implementation of the model and on the ability to learn from our mistakes. Design is important, but actual implementation is critical.”**

As a Professor I have worked in areas like energy policy and energy security, finance and monetary policy and public goods among others.

It is not an academic training in law or economics that matters most for my job. In my opinion it is not a question of “either or”: the head of a competition and regulatory authority should ideally possess a solid legal mind, a thorough economic knowledge, some direct experience of the environment in which firms operate, good managerial skills and an ample measure of prudence.

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**After a year since the inception of the CNMC, what are the specific benefits and the main challenges posed by a merger of competition and regulatory functions?**

The most clear benefits come from the synergies that can be exploited when the competition authority has all the information, expertise and resources of the bodies formerly in charge of sectoral regulatory supervision, and when the regulatory role of the CNMC is performed with a wider perspective that includes the effects of regulation on competition and welfare. But other positive results emerge from the need for internal and external transparency of an integrated institution, and from the greater difficulty for any public or private agent to influence the decisions of the new, more complex authority.

There are three main challenges: First, to achieve an effective integration into a cohesive unit of the competition and regulatory sides of the CNMC's mandate, since the difficulties in the implementation of the new model should not be underestimated, especially in achieving the necessary coordination across the Directorates and a cohesive new institutional culture. Second, to achieve effective independence, that depends among other things in the crucial point of financial independence. And third, to build an institution that is capable of attracting and retaining the best human resources, which hinges on the possibility of providing rewarding professional careers to our employees, something where we need to keep working in order to find an appropriate solution.

**Would you say the new institutional structure was the right move? Would you recommend other European States to adopt it?**

I would say without hesitation that it was an intelligent decision that makes sense from many different perspectives, but not without practical problems. Therefore, careful consideration has to be given to the peculiar circumstances of each country before giving advice on this point, or before suggesting that others follow our example. There is no optimum institutional design for regulatory and competition authorities. The success of each specific institutional framework depends mostly on the actual implementation of the model and on the ability to learn from our mistakes. Design is important, but actual implementation is critical.

**The now extinct CNC was hailed as one of the best European Competition Authorities. Once the adaptation period is through, what do you think the CNMC can do to surpass the recognition of the CNC?**

The standard set by the CNC is a good reference point for the new authority, and it is good to remember that most of the skilled and highly-motivated human resources that contributed to the success of the CNC are working now for the CNMC. That places a serious responsibility on the shoulders of the Board that is responsible for the decisions issued by the new authority, and also on the courts that are in charge of the judicial review of our decisions. It should not be overlooked that the responsibility for competition enforcement in the EU's Member States is entrusted both to the national competition authorities and to the national courts.

**In your opinion, shouldn't the drastic institutional change brought about by Act 3/2013 be coupled with changes**

**to the Spanish Competition Act as well as changes to the regulated sectors?**

Actually, I do not really think that the Spanish Competition Act has to be modified in the wake of the introduction of the CNMC, since the new institution has inherited the role of competition authority in Spain for all purposes. On the other hand, the legislation of some regulated sectors supervised by the CNMC has changed, especially in energy and telecommunications, but sometimes it has been a move in the wrong direction, taking powers away from the independent regulator toward the ministries. While I would not say that no changes are needed, I think that it is still too early to suggest specific modifications.

**Does the newly created CNMC have enough human and material resources at its disposal?**

The CNMC has in principle enough human and material resources from a global perspective, but it cannot be denied that we are facing serious problems due to the lack of flexibility of the hiring arrangements imposed by the current rules that apply to the public sector, for example the impossibility of going to the market for workers with specialized skills that are needed in regulation. We are well aware that the economic crisis had a great impact on the ability of public bodies to hire new staff or reorganize their resources and we will need greater flexibility in the near future.

**“ It should not be overlooked that the responsibility for competition enforcement in the EU's Member States is entrusted both to the national competition authorities and to the national courts.”**

**On a more specific note, how is the leniency programme faring?**

It can be said without exaggeration that the leniency programme has been very successful in Spain, becoming one of the most important instruments for competition enforcement in our country. Leniency applicants are very sensitive to the intensity of *ex officio* competition enforcement, to the perceived probability of cartel detection, to the level of fines, the possibility of damages claims and, more in general, to the behaviour of the competition authority and the attitude of the courts. An important institutional change like the creation of the CNMC caused at first some uncertainty that resulted in a certain slowdown of leniency applications, but that has already been overcome.

**How has the (hopefully ending) economic crisis affected the CNMC's work (more/less cartel investigations? less mergers?)**

On the one hand, the economic crisis put pressure on companies that, in some cases, reacted by entering into anticompetitive agreements and cartels to avoid closedowns. From this perspective the economic crisis probably raised the number of cartels and of cartel investigations during the last five years.

On the merger side the economic downturn reduced the number of M&As and had a direct impact on merger notifications that fell from 96 in 2011 to 60 in 2013. However, economic recovery has again increased mergers in 2014, reaching 81 notifications.

**There has been a significant increase in Dissenting Opinions since the CNMC's creation. What are the reasons? Do you think this is good/bad for the institution's reputation?**

Dissenting opinions may be very useful if they are technically rigorous, respect the private nature of the proceedings within the Board, and are used sparingly, according to their purpose in our legal framework and tradition. Otherwise, they send a message of institutional disunity to the firms, the courts and the public, and would eventually harm the CNMC's reputation and the effectiveness of its work. This situation can only help those that would benefit from a relaxing of competition enforcement in Spain.

**At the beginning of your mandate, you said that "sanctions represent the failure of the system". Do you still stand by that assertion?**

With the benefit of some perspective it is now clear to me that it was quite easy to misunderstand the true meaning of that assertion without additional explanations. It is obvious that it is better to prevent illicit actions than having to punish them, but one of the most effective ways to prevent infringements is to have a system of sanctions that is really deterrent of future crimes. In Spain there are no criminal sanctions for anticompetitive behavior, and up to now damages for competition infringements have been claimed in very few occasions. Therefore the effectiveness of competition enforcement in Spain inevitably revolves around fines, fines that have to be proportionate but also sufficiently deterrent. A firm should never profit from restricting competition when the possibility of fines is factored in. The CNMC is ready to use all the means at its disposal to ensure that the level of fines is sufficient to discourage anticompetitive conduct and to give incentives to infringing undertakings to apply for leniency. ■

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