



CNMC

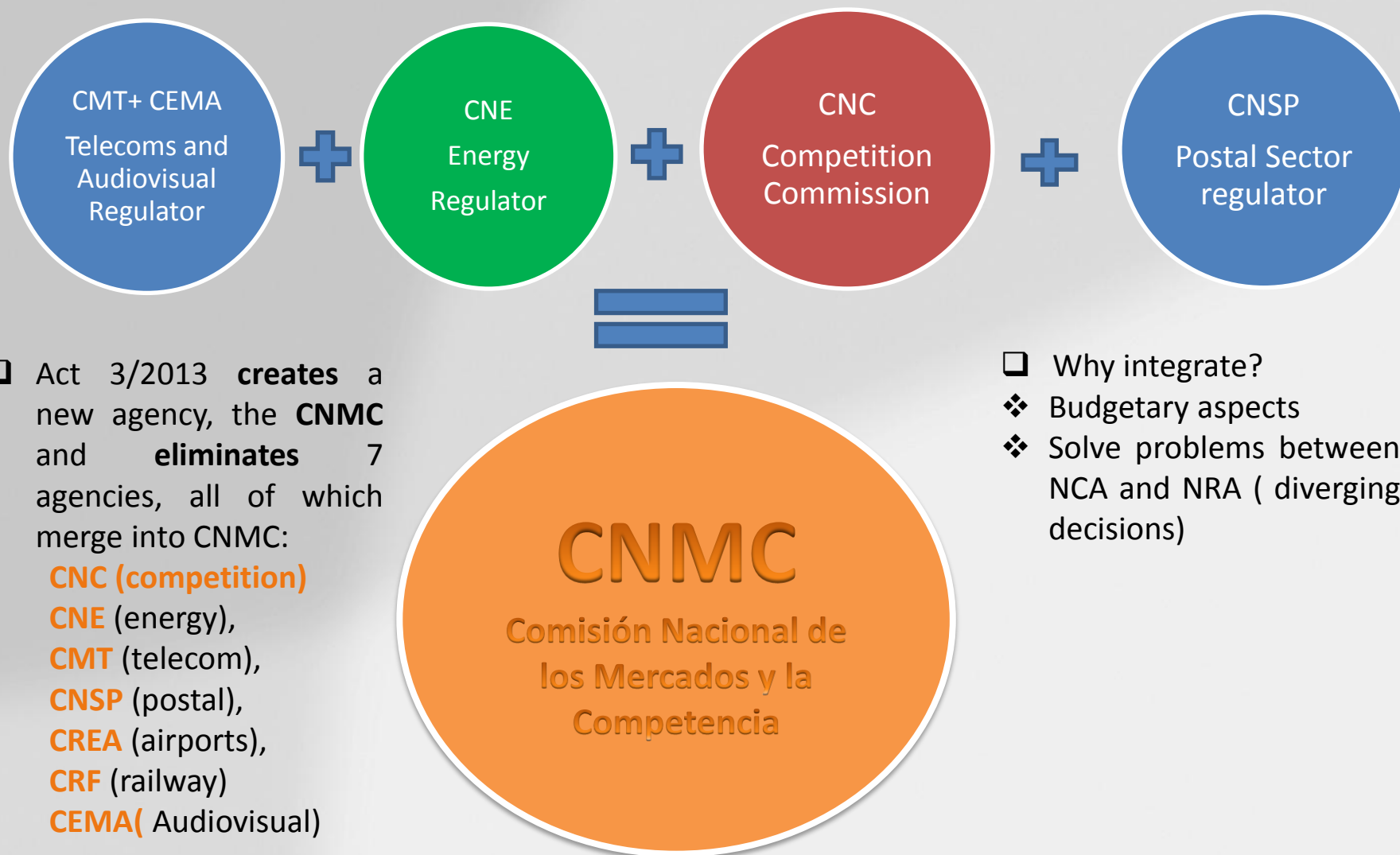
COMISIÓN NACIONAL DE LOS  
MERCADOS Y LA COMPETENCIA

***Integration of sectorial regulators and  
competition authorities; the Spanish  
experience.***

***Independence and institutional design of national  
competition authorities in the European context .  
Vienna, 12th Dec 2014***

**Eduardo Prieto  
Competition Director**

# Integration of agencies



- ❑ Act 3/2013 **creates** a new agency, the **CNMC** and **eliminates** 7 agencies, all of which merge into CNMC:

**CNC (competition)**

**CNE** (energy),

**CMT** (telecom),

**CNSP** (postal),

**CREA** (airports),

**CRF** (railway)

**CEMA** (Audiovisual)

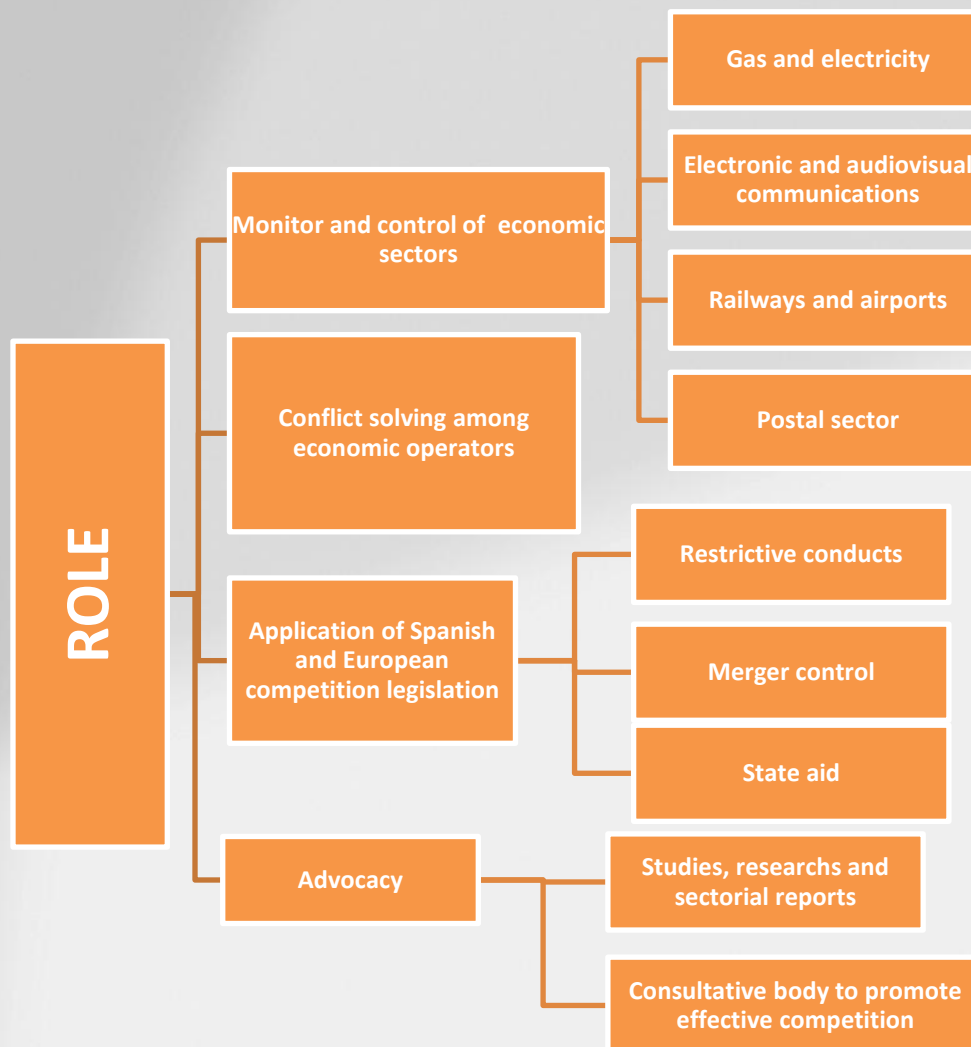
- ❑ Why integrate?

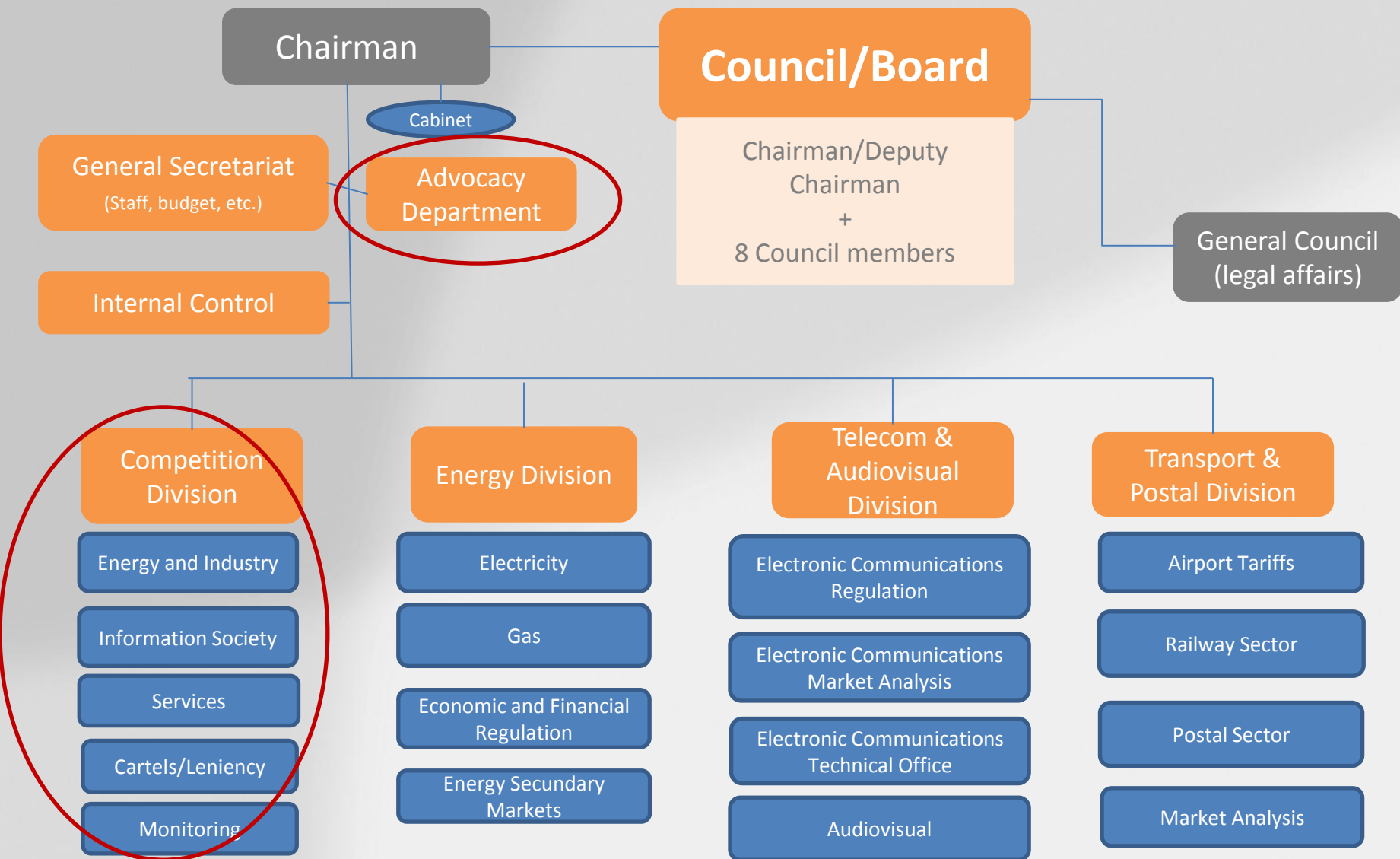
- ❖ Budgetary aspects

- ❖ Solve problems between NCA and NRA (diverging decisions)

**GOAL;** guarantee the existence of **effective competition** in the markets and economic sectors, to the benefit of consumers and end users







## THE COUNCIL

Collective decision making body; Resolution, consultation, competition advocacy, arbitration and conflict resolution functions

### Composition

- 10 members (Chairman, Deputy Chairman and 8 Council members)
- Council Resolutions exhaust administrative proceedings/ Only possible avenue of appeal before judicial review courts

### Performance and coordination

- Organization: Plenary Session and two Chambers
- **Competition Chamber** (Chairman and 4 Council members): enforcement of the competition law and competition advocacy
- **Regulatory Chamber** (Deputy Chairman and 4 Council members): supervision, monitoring and dispute resolution in electronic communications, electricity and gas, postal, audiovisual communication, airport tariffs and railway markets and sectors
- **Plenary Session**: Decides on matters that account a special impact on the competitive functioning of the markets or activities subject to supervision. Reinforces coordination between Chambers. Approves the CNMC strategic plans

## INVESTIGATIONS DIVISIONS

### Investigations Divisions

- Competition
- Telecom and Audiovisual
- Energy
- Transport and Postal
- + advocacy department

### Performance

- Exercise their investigation functions **independently** of the Council. Autonomy to initiate cases.
- Submit proposals on acts or cases investigated for discussion and approval of the Council
- Director and deputies appointed by the Council
- Coordination among Divisions appertains the President

## Appointments

### ☐ **Council members;**

- elected by the Government at the proposal of the Ministry of the Economy and heard by the Parliament
- among persons of high standing and recognised professional expertise in the action area of the Commission
- For six years term, not re-election
- Shall vacate office exclusively on grounds set by law

### ☐ **Director and deputies** appointed by the Council at the proposal of its President. Recruitment public and subject to procedures based on equality, merit and ability (Act on the Civil Servant Basic Statute)

**Budget;** funds allocated each year from the State Budget +any other assets and economic resources allocated to it by law .

**Accountability ;** CNMC only accountable to ***parliament*** and subject to judicial control

Integration among regulators and NCAs can **reinforce independence** towards the government ( sectorial ministries) and companies as it makes interest more disperse .



## □ Budgetary

- Savings of 9,5 M€ in 2014 compared to 2013 budget (16% savings)

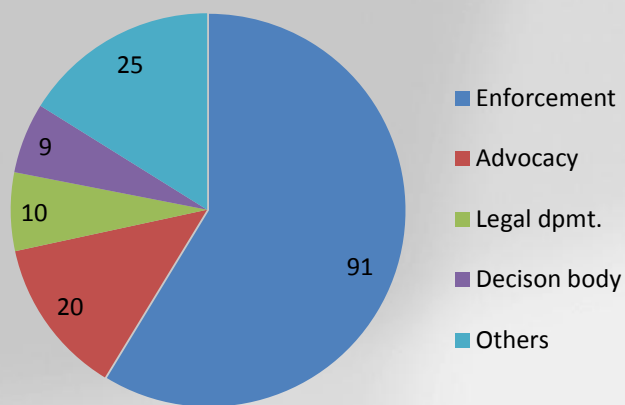
Budget (000 €)	2013	Competition	2014	Savings
<b>Staff</b>	36.540	9.375	28.361	-8.179
<b>Current expenditures</b>	20.157	2.125	19.947	-209
<b>Financial expenditures</b>			2.000	2.000
<b>Current transfers</b>	508	508	2.508	2.000
<b>Investments</b>	2.734	655	3.649	915
<b>Financial assets</b>	6.015	15	15	-6000
<b>Total</b>	<b>66</b>	<b>12.6</b>	<b>56.4</b>	<b>-9.473</b>

- Seizing the opportunities of an integrated model for regulated sectors from the competition perspective
- Others; avoiding proliferation of sectorial regulators.

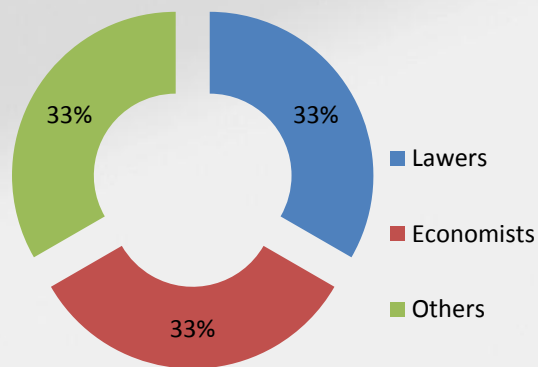
## Competition Directorate: Budget, HHRR,...

- Budget 2014 similar to 2013 56,4 M € (50 % spent on salaries)
- 155 of a total of 520 people

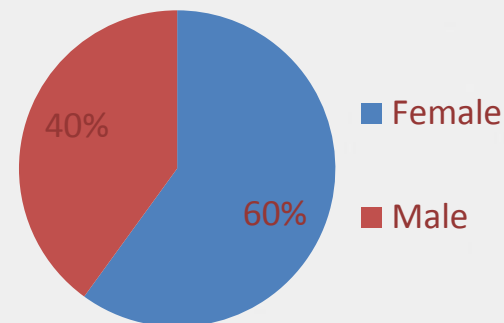
Tasks



Professions



Gender



Average age; 44

Average tenure; 4,5 years

Common ground between Competition and regulation exists, although is small.

**Main advantage; reduce the risks of disagreements between regulatory and competition approaches**

Ex ante and ex post approaches may yield different results as they use

- different sets of data (projections vs real data)
- different laws (Competition, Energy, Telecoms, etc.)

Internalization of the problem

Nonetheless, an integrated approach allows us to take into consideration the different perspectives and to decide more coherently

**How?**

## ➤ Allowing a better allocation of cases and resources to cases

- Reduces forum shopping and duplication of cases.
- Companies deal with one single authority /one stop shop
- ❑ Need to implement coordination between Directorates
- Establish flows of information between Directorates (when, what, who)
- Determine mechanisms to ensure early detection and **agreeing on the best positioned authority** to deal with the case (some cases can be analyzed both under competition law and under sectorial regulation)

### Endesa y Gas Natural Fenosa, investigadas por anuncios equívocos

► Han intentado convencer a sus clientes para que se cambien de tarifa

M. NÚÑEZ

MADRID

El laberinto de cambiarse de tarifa eléctrica empieza a salpicar también a las propias compañías. La Comisión Nacional de Mercados y Competencia (CNMC) ha abierto una investigación a Endesa y Gas Natural Fenosa por publicidad equívoca. En el primer caso la compañía publicó unos anuncios en prensa escrita en los que informaba a sus clientes de las ventajas de cambiarse de tarifa para los consumidores domésticos, mensajes que pueden ser «contrarios al artículo 3 de la Ley 15/2007 de Defensa de la Competencia».

La cuestión es que la CNMC cree que «dichas comunicaciones o anuncios pueden ser equívocos e inducir a los consumidores a adoptar decisiones poco meditadas». A estos consumidores domésticos, además, se les aplicaba la tarifa de último recurso y actualmente se les aplicaría el precio voluntario para el pequeño consumidor (PVPC). En este marco se ha solicitado también información a diversas empresas activas en el mercado de referencia y a otros agentes que pudieran haberse visto afectados por las citadas conductas.

El caso de Gas Natural Fenosa es diferente ya que esta compañía ha enviado una carta personal a sus clientes informándoles de las ventajas de cambiarse a la nueva tarifa para el pequeño consumidor.

La CNMC aclara que en caso de que como resultado de la información recabada se encontrasen indicios de prácticas anticompetitivas prohibidas por la Ley de Defensa de la Competencia se procedería a la «incoación formal de un expediente sancionador».



José María Marín Quemada, presidente de la CNMC

#### Libertad de decisión

La investigación de las prácticas que afectan directamente a la libertad de decisión de los consumidores en un bien de primera necesidad como es la energía eléctrica es una prioridad del nuevo regulador de la competencia en España, ya que esa libertad de elección es el fundamento de la libre competencia.

La nueva metodología que determina la tarifa eléctrica o precio voluntario para el pequeño consumidor (antes TUR y ahora PVPC) a partir del 1 de abril utiliza el precio medio del mercado mayorista o «pool» durante los

#### Cambios

Las comercializadoras de energía tienen hasta el 1 de julio para implantar el nuevo sistema de tarifas

sesenta días de facturación. Las compañías tienen de plazo hasta el 1 de julio para implantar el nuevo sistema aunque está vigente desde el mencionado 1 de abril, por lo que es la fecha desde la que los consumidores estamos pagando un precio provisional. Con la primera factura en la que se aplique ya el nuevo método las compañías tendrán que regularizar las facturas emitidas desde abril y cobradas con esa tarifa provisional, lo que se traducirá en un ajuste.

Esta regularización se añadirá a la que va desde el 1 de enero hasta el 31 de marzo aunque ya se ha comprobado que en ese trimestre el precio provisional fue superior al precio del mercado, por lo que las eléctricas tendrán que devolver dinero a los consumidores, aunque no será mucho.

Todo apunta a que el plazo para que las distribuidoras faciliten a las comercializadoras la información de los consumos horarios de los clientes que tengan ya los nuevos contadores se acabarán ampliando.

➤ **Creation of multidiscipline teams to tackle the most complex issues**

Mergers, market definitions, sectorial obligations, etc.

- WGs on; replicability/ markets 4 and 5 of telecoms/ gasoline prices and margins' recent evolution, etc.

Facilitates a faster and more efficient resolution of most difficult cases

➤ **Share knowledge over multiple domains**

- Use of extensive data bases and information of the regulator by the competition division
- Regulatory and competition approaches may be used in the same file as complementary tools

➤ **Economies of scale**

- Allows a more efficient use of shared resources (IT systems, databases, etc.)

➤ **Crossfertilization/better understanding Training courses**

## ➤ Accommodate different cultures

Competition authorities have one aim, promote effective competition, and usually decide what is prohibited/authorized

Regulators may have different aims (such as promoting the deployment of networks) and usually decide what companies must do (i.e. setting wholesale prices)

Some authorities (CNC, CNSP, CRF) were integrated by civil servants. The others (CNE, CMT) had a workforce where there were no civil servants.

Different mental frameworks

## ➤ Integrate different proceedings

- Each authority applies different regulations and there are significant differences in the way internal proceedings are organized.

### ➤ Ensure coordination...

- Council is the final arbiter, but its role is limited as:
  - Directorates have autonomy of proposal
  - Separation between investigation and resolution in infringement proceedings must be respected

### ...at all levels:

- Directions; coordination must be assured from the beginning (WGs, information exchange, trust, etc.)
- Formal coop. (cross reports); regulatory section issues opinion on competition cases in regulated sectors and vice versa
- In case of disagreement between Directions the Council will decide in plenary

### ➤ Same facts different legislations; difficult choice

### ➤ Council must decide on many and very different issues

- Risk of becoming a bottleneck and difficulties to specialize under a rotation system between sections

➤ **NCA may risk loss of visibility due to**

- Competition many & disperse interests/ Regulators few, concentrated & powerfull industries
- Media attention to competiton decreases in favor of regulated industries which move big money ( media, journalists, publications, forum,lobbying, etc.)

➤ **Human capital;**

Needs of regulators and competition authorities differ. Same treatment for both poses risks on the regulators` ability to do their job.



Despite the problems, integration is

- Good for the budget
- good for a better application of competition policy to regulated sectors (uniformity and coherence) and for having in mind a *more competition approach* to regulation
- Could affect regulatory job (need of experts / budgetary restrains compared to previous situation (tax on regulated activities) / long run implications for keeping highly specialized work force, etc.)



CNMC

Spain's National Authority for  
Markets and Competition

**Thank you**

[www.cnmc.es](http://www.cnmc.es)