PANORAMIC

COMPETITION IN DIGITAL MARKETS

Spain

LEXOLOGY

Competition in Digital Markets

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LEGAL AND REGULATORY FRAMEWORK

Legislation
What legislation governs competition in digital markets in your jurisdiction? Does the standard competition law framework apply or are there any special rules or exemptions?

There is no specific regulation governing competition in digital markets in Spain. Accordingly, the standard EU and Spanish framework on restrictive practices, abuse of dominance and merger control applies.

Under Spanish law, the key legislative texts are Act No. 15/2007 on the Defence of Competition (the Competition Act) and its implementing regulation. In addition, Act No. 3/1991 on Unfair Competition (the Unfair Competition Act) applies through article 3 of the Competition Act to any unfair competition conduct that affects the public interest.

Law stated - 25 junio 2025

Enforcement authorities
Which authorities enforce the competition law framework in your jurisdiction's digital markets?

In Spain, competition law, including its application to digital markets, is enforced by the National Commission for Markets and Competition (CNMC) at the national level, with additional investigatory powers granted to regional competition authorities within their respective jurisdictions. However, the CNMC retains exclusive decisional powers regarding merger control, making it the primary enforcer of competition law in the country.

There are no dedicated or independent units within the CNMC specifically tasked with competition issues in digital markets. Cases involving the digital economy are handled within the general framework of the CNMC's enforcement structure.

Regarding the implementation of Regulation (EU) No. 1925/2022 (the Digital Markets Act or DMA), the CNMC is empowered to cooperate with and assist the European Commission, employing its investigative and sanctioning powers under the Competition Act. Evidence or findings from investigations conducted under the Competition Act may also be leveraged to enforce its provisions alongside those of the DMA. The CNMC and the European Commission have established a joint investigation team under a memorandum of understanding to oversee large digital platforms. Additionally, the CNMC participates in the High-Level Group for the DMA, contributing particularly to discussions on artificial intelligence.

With respect to the enforcement of Regulation (EU) No. 2022/2065 (the Digital Services Act (DSA)), the European Commission has initiated infringement proceedings against Spain for failure to effectively implement the Regulation. The DSA requires member states to designate, by 17 February 2024, one or more digital services coordinators (DSCs) and to ensure that they are granted sufficient powers to enforce its provisions, including the ability to impose penalties for non-compliance. While Spain has designated the CNMC as the national

DSC, the Commission considers that it has not been entrusted with the necessary powers to fulfil its role under the DSA.

Law stated - 25 junio 2025

Regulatory guidelines

Have the authorities in your jurisdiction issued any guidelines on the application of competition law to digital markets?

The Spanish competition authorities have not issued any specific guidelines addressing the application of competition law to digital markets.

Law stated - 25 junio 2025

Advisory reports

Have any advisory reports been prepared in your jurisdiction on competition law issues in digital markets?

Yes, several advisory reports have been prepared in Spain on competition law issues related to digital markets:

- In 2016, the CNMC published findings from a public consultation on new service delivery models and the collaborative economy.
- In 2021, the CNMC conducted a study on the competitive conditions in the online advertising sector in Spain.
- In November 2023, the CNMC initiated a study, including a public consultation, on cloud services. This ongoing study aims to analyse market dynamics, identify competition challenges, such as provider concentration and switching difficulties, and propose recommendations to enhance competition in terms of price, quality and innovation.

Additionally, in 2016, the Catalan Competition Authority commissioned a report on peer-to-peer transactions.

Law stated - 25 junio 2025

Advance compliance guidance

Can companies active in digital markets ask the competition authority for advance guidance on competition law compliance before entering into an agreement or determining a pricing strategy?

There is no formal procedure for companies in digital markets, or in any other sector, to request advance guidance on competition law compliance from the Spanish competition authorities. This option is only available to legislative and governmental bodies or certain public-interest entities. For example, the Madrid City Council utilised this possibility, which led to the CNMC investigating case S/DC/0616/17 (2018) regarding alleged sales at a loss by Uber; however, no infringement proceedings were ultimately initiated.

Companies may approach the competition authorities informally for feedback on the compatibility of specific practices with competition law. However, such engagement is uncommon, and meaningful responses from the CNMC are rare. Comfort letters or formal assurances are generally not issued in these cases.

Law stated - 25 junio 2025

Regulatory climate and enforcement practice

How would you describe government policy and the competition authorities' general regulatory and enforcement approach towards digital companies in your jurisdiction?

The Spanish government has not adopted a proactive policy regarding competition in digital markets, leaving enforcement largely to the CNMC and the courts. Traditionally, the CNMC's enforcement approach in digital markets has been reactive rather than policy-driven. For instance, investigations initiated before 2021, such as those against Google (cases S/0023/20, S/0007/20, S/0004/19, S/0431/12 and S/0346/11) and major online travel agencies (cases S/0053/19 and S/0043/19), were often dismissed without sanctioning proceedings.

However, since 2021, the CNMC has adopted a more proactive stance, as reflected in its strategic plan for 2021–2026, which prioritises digital markets. The CNMC has intensified its cooperation with the European Commission and other competition authorities while initiating major investigations into anticompetitive practices by digital companies. This shift has resulted in significant fines, including:

- Booking.com was fined €413 million in 2024 for exploitative and exclusionary abuses of its dominant position in case S/0005/21 (2024).
- Amazon and Apple were fined €194 million in 2023 for anticompetitive clauses affecting the online retail sale of electronic products in case S/0013/21 (2023).
- In 2021, several online real estate intermediaries were fined €1.25 million following a leniency application for imposing minimum fees S/0003/20 (2021).

The CNMC has also prioritised ongoing investigations into Apple, Google and parking app operators (S/0005/24, S/0013/22, and S/0002/24 and S/0003/24, respectively) and continues to focus on digital markets as a key enforcement area.

Law stated - 25 junio 2025

HORIZONTAL AGREEMENTS

Special rules and exemptions

Do any special rules or exemptions apply to the assessment of anticompetitive agreements between competitors in digital markets in your jurisdiction?

No special rules or exemptions apply to the assessment of anticompetitive agreements between competitors in digital markets in Spain. The general EU and Spanish competition law framework governs these agreements.

Law stated - 25 junio 2025

Access to online platforms

How has the competition authority in your jurisdiction addressed horizontal restrictions on access to online platforms?

The National Commission for Markets and Competition (CNMC) has not explicitly addressed restrictions on access to online platforms in the context of horizontal agreements. However, similar issues were raised in case S/0013/21 (2023) (***Amazon/Apple Brandgating***), where both horizontal and vertical elements coexisted. The CNMC determined that the vertical elements were more significant and applied the general framework for vertical agreements.

For completeness, the CNMC opened an investigation (S/0009/23) after the logistics platform LudaFarma complained that several pharmaceutical associations had jointly recommended pharmacists use their proprietary digital tools. According to the CNMC, the alleged guidance may have allegedly curbed competition by discouraging the adoption of alternative platforms such as LudaFarma.

Law stated - 25 junio 2025

Algorithms

Has the competition authority in your jurisdiction considered the application of competition law to the use of algorithms, in particular to algorithmic pricing?

The CNMC has not issued any prohibition decisions directly relating to algorithmic collusion but has considered algorithms in specific cases:

- In case S/0637/18 (2018) the CNMC dismissed allegations of price-fixing by Uber and Cabify, finding that their algorithms operated independently for dynamic pricing adjustments.
- In case S/0003/20 (2021), the CNMC investigated real estate intermediaries for using an algorithmic platform to coordinate minimum fees and share sensitive information. While collusion was identified, the means were not deemed sophisticated algorithms or artificial intelligence.
- In case S/0005/21 (2024), the CNMC examined Booking.com's ranking algorithms, focusing on their lack of transparency in programmes such as Preferred, Preferred Plus and Genius, which influence hotel positioning and visibility. These issues were, however, considered within the context of unilateral conduct (abuse of dominance), rather than horizontal or vertical agreements.
- In case S/0005/20 (2025), the CNMC reviewed fresh complaints that Uber, Cabify and Bolt were using algorithmic pricing to fix fares and engage in unfair practices. It

concluded that the algorithms were an inherent and proportionate element of their business models and therefore closed the file without further action.

Beyond specific investigations, the CNMC has demonstrated ongoing interest in the implications of algorithms for competition. Since 2018, its Economic Intelligence Unit has employed advanced IT and AI tools to detect anticompetitive practices. Additionally, the CNMC has contributed to the European Commission's White Paper on Artificial Intelligence, emphasising the potential risks posed by algorithmic coordination in transparent, data-driven markets.

Law stated - 25 junio 2025

Data collection and sharing
Has the competition authority in your jurisdiction considered the application of competition law to 'hub and spoke' information exchanges or data collection in the context of digital markets?

In case S/0005/20 (2025), two national taxi associations alleged that Uber, Cabify and Bolt formed a 'hub-and-spoke' cartel by acting as a common supplier that set uniform prices for their drivers. After reviewing the platform's algorithmic pricing, the CNMC found it to be an ancillary and proportionate feature of the business model, based exclusively on service-related variables (ride duration, distance, vehicle type, safety parameters and real-time supply-and-demand conditions). The complaint was therefore dismissed.

Law stated - 25 junio 2025

Other issues
Have any other key issues emerged in your jurisdiction in relation to the application of competition law to horizontal agreements in digital markets?

No other significant issues have arisen in Spain regarding the application of competition law to horizontal agreements in digital markets.

Law stated - 25 junio 2025

VERTICAL AGREEMENTS

Special rules and exemptions
Do any special rules or exemptions apply to the assessment of anticompetitive agreements between undertakings active at different levels of the supply chain in digital markets in your jurisdiction?

No special rules or exemptions apply to the assessment of anticompetitive agreements between undertakings active at different levels of the supply chain in digital markets in Spain. The general EU and Spanish competition law framework governs these agreements.

Law stated - 25 junio 2025

Online sales bans
How has the competition authority in your jurisdiction addressed absolute bans on online sales in digital markets?

In case S/DC/0631/18 (2020), involving distributor contracts for Adidas products, the National Commission for Markets and Competition (CNMC) identified alleged restrictions on online sales, such as obligations to sell exclusively at physical locations or failing to explicitly regulate internet sales. The CNMC accepted commitments from Adidas to notify distributors of updated contractual terms explicitly allowing online sales.

In case S/0013/21 (2023) (*Amazon/Apple Brandgating*), the CNMC found that 'brand gating' clauses restricted numerous non-authorised resellers from selling Apple products on Amazon's marketplace. This significantly reduced both intra-brand and inter-brand competition. The CNMC rejected the arguments of the investigated parties regarding the applicability of the 2022 Vertical Guidelines and the precedents set by the ECJ in C-360/12 – *Coty Germany* (2014) and C-345/14 – *Maxima Latvija* (2015), concluding that the conduct harmed competition.

Law stated - 25 junio 2025

Resale price maintenance
How has the competition authority in your jurisdiction addressed online resale price maintenance?

In case S/DC/0631/18 (2020), the CNMC examined Adidas's alleged resale price maintenance practices, including recommended retail prices provided through various tools. The CNMC concluded that these prices were non-binding, easily adjustable and not enforced, finding no competition concerns.

In earlier cases, the CNMC's predecessor, theNational Competition Commission(CNC), addressed online resale price maintenance but often ruled out violations due to insufficient evidence or the de minimis rule, such as in cases S/0417/12 (2013) and S/323/11 (2011).

Law stated - 25 junio 2025

Geoblocking and territorial restrictions
How has the competition authority in your jurisdiction addressed geoblocking and other territorial restrictions?

In Spain, geoblocking and other territorial restrictions are assessed under Regulation (EU) No. 302/2018, which prohibits sellers from blocking or limiting a customer's access to their website based on the customer's nationality, place of residence or establishment.

The CNMC has addressed geoblocking and territorial restrictions in several cases:

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In case S/0004/19 (2021), the CNMC dismissed a complaint alleging Google restricted certain booking options based on users' locations due to insufficient evidence.

- In case S/0417/12 (2013), the CNC applied thede minimis rule to a case where a supplier with less than 15 per cent market share prohibited retailers from selling outside Spain, finding the conduct not actionable.

Law stated - 25 junio 2025

Platform bans

How has the competition authority in your jurisdiction addressed supplier-imposed restrictions on distributors' use of online platforms or marketplaces and restrictions on online platform operators themselves?

The CNMC generally aligns its approach with EU case law, including the principles established in the judgment of the European Court of Justice in C-360/12 – *Coty Germany* (2014), which allows certain restrictions on online platform use within selective distribution systems, provided specific conditions are met.

In case S/0013/21 (2023), the CNMC fined Amazon and Apple for an agreement that effectively excluded over 90 per cent of resellers from selling Apple products on Amazon's marketplace. This agreement significantly reduced competition among resellers and consolidated sales within a limited group of authorised distributors. Both Amazon and Apple argued that the restrictions were permissible under C-360/12 – *Coty Germany*(2014), reasoning that:

- the clause under scrutiny was not part of a selective distribution system;
- Apple maintained a direct contractual relationship with Amazon, giving it greater control over distribution; and
- Apple did not object to its products being sold on Amazon's general marketplace, as both Apple itself and certain authorised distributors continued to sell products through this platform.

The CNMC ultimately dismissed such arguments.

Law stated - 25 junio 2025

Targeted online advertising

How has the competition authority in your jurisdiction addressed restrictions on using or bidding for a manufacturer's brand name for the purposes of targeted online advertising?

In case S/0431/12 (2012), the CNC examined a complaint about Google AdWords but focused on alleged abuse of dominance rather than vertical restraints, ultimately dismissing the case. A later similar complaint was rejected by the CNMC in case S/0007/20 (2021).

In case S/0013/21 (2023) (***Amazon/Apple Brandgating***), the CNMC found that marketing restrictions barring competing brands from purchasing advertising space on Amazon for Apple-related searches harmed competition by limiting consumers' ability to discover alternative products.

The CNMC also discussed online advertising issues in its 2021 study on competition in the online advertising sector, emphasising Google's market power and the potential anticompetitive harm of such restrictions.

Law stated - 25 junio 2025

Most-favoured-nation clauses

How has the competition authority in your jurisdiction addressed most-favoured-nation clauses?

The CNMC has not specifically addressed most-favoured-nation clauses in vertical restraints in digital markets.

Incidentally, in case S/0005/21 (2024) (***Booking.com***), the CNMC examined narrow price-parity clauses as part of an abuse of dominance case, finding that these clauses hindered hotels from offering lower prices on their own channels compared to Booking.com.

Law stated - 25 junio 2025

Multisided digital markets

How has the competition authority in your jurisdiction addressed vertical restraints imposed in multisided digital markets? How have potential efficiency arguments been addressed?

No specific cases involving vertical restraints in multisided digital markets have been identified. However, the the CNMC's 2016 report on collaborative economy models highlighted the relevance of efficiencies that such platforms provide to consumers.

Law stated - 25 junio 2025

Other issues

Have any other key issues emerged in your jurisdiction in relation to the application of competition law to vertical agreements in digital markets?

No other significant issues have emerged in Spain regarding the application of competition law to vertical agreements in digital markets.

Law stated - 25 junio 2025

UNILATERAL ANTICOMPETITIVE CONDUCT

Establishing market power

What are the relevant criteria for establishing market power in digital markets in your jurisdiction? Is there any concept of ‘abuse of economic dependence’ where a company’s market power does not amount to a dominant position?

No special criteria for establishing market power in digital markets exist in Spain beyond the general EU and Spanish competition law framework.

For instance, in case S/0005/21 (2024) (*Booking.com*), the National Commission for Markets and Competition (CNMC) considered several factors when determining dominance, including:

- high and sustained market shares over time;
- barriers to entry, such as indirect network effects and high fixed costs; and
- limited countervailing power of demand.

Spain also recognises the concept of ‘abuse of economic dependence’ under article 16(2) of the Unfair Competition Act, which can be enforced under article 3 of the Competition Act if the conduct affects the public interest. In case S/0005/21 (2024) (*Booking.com*), the CNMC investigated abuse of hotels’ economic dependence but found insufficient evidence to substantiate this claim, notwithstanding the finding of abuse of dominance.

Law stated - 25 junio 2025

Abuse of market power

To what extent are companies with market power in digital markets subject to the rules preventing abuse of that power in your jurisdiction?

The general EU and Spanish rules on abuse of dominance, under article 2 of the Competition Act and article 102 of the Treaty on the Functioning of the European Union, apply to companies with market power in digital markets. Holding a dominant position does not in itself constitute an abuse.

The only case finding an abuse of dominance in digital markets is case S/0005/21 (2024) (*Booking.com*), where the CNMC identified both exclusionary and exploitative practices:

- Exclusionary abuses: Booking.com imposed narrow parity clauses and non-transparent ranking conditions that disadvantaged competing platforms, as well as other asymmetric commercial conditions.
- Exploitative abuses: Booking.com used performance requirements and ranking systems that prioritised its platform over others.

Ongoing cases, such as S/0005/24 (*Apple*), S/0013/22 (*Google*), and S/0002/24 and S/0003/24 (parking apps) may provide further guidance on abuse of dominance in digital markets.

Law stated - 25 junio 2025

Data access

How has the competition authority in your jurisdiction addressed concerns surrounding access to data held by companies with market power in digital markets?

The Spanish competition authorities have not explicitly addressed concerns about access to data held by companies with market power in digital markets.

Law stated - 25 junio 2025

Data collection

How has the competition authority in your jurisdiction addressed concerns surrounding the collection of data by companies with market power in digital markets?

The CNMC has not explicitly addressed concerns about data collection by companies with market power.

Incidentally, in case S/0005/21 (*Booking.com*), the CNMC considered data availability and its use in maintaining market power as factors contributing to the company's exploitative abuse.

Law stated - 25 junio 2025

Leveraging market power

Has the competition authority in your jurisdiction adopted any decisions involving theories of harm relating to leveraging market power in digital markets, such as through tying, bundling or self-preferencing?

The CNMC has not yet explicitly addressed other theories of harm related to leveraging market power in digital markets, such as tying, bundling or self-preferencing.

Law stated - 25 junio 2025

Other theories of harm

What other types of conduct have been found to amount to abuse of market power in digital markets in your jurisdiction?

No other types of conduct have been explicitly identified by Spanish competition authorities as abuses of market power in digital markets.

Law stated - 25 junio 2025

MERGER CONTROL

Merger control framework

How is the merger control framework applied to digital markets in your jurisdiction?

There are no special rules for assessing mergers in digital markets in Spain. The general Spanish merger control framework, enforced by the National Commission for Markets and Competition (CNMC), applies. Notifications are required if either of the following thresholds are met:

- Market share threshold: The transaction results in the acquisition or increase of a 30 per cent or greater share in a relevant market within Spain.
- Turnover threshold: The combined turnover of the participants in Spain exceeds €240 million in the previous financial year, provided at least one participant has a turnover of €60 million or more. Exemptions may apply if the target's turnover in Spain is less than €10 million and the combined or individual market share is below 50 per cent.

Digital mergers have been captured under these thresholds, despite no specific provisions targeting digital markets.

Law stated - 25 junio 2025

Prohibited mergers

Has the competition authority prohibited any mergers in digital markets in your jurisdiction?

To date, the CNMC has not prohibited any mergers in digital markets in Spain.

Law stated - 25 junio 2025

Market definition

How has the competition authority in your jurisdiction addressed the issue of market definition in the context of digital markets?

The CNMC has addressed market definition in digital markets by considering both product and geographic dimensions. In case C/1046/19 (2019) (online food delivery platforms), the CNMC identified distinct features of the product market, such as added value, price sensitivity and the non-viability of in-house delivery for many restaurants.

For geographic markets, the CNMC often considers the national scope but incorporates local factors, such as postcode-level analysis. In case C/1046/19 (2019), the CNMC decided to leave the market definition open, following the approach used in case C/0730/16 (2016), while incorporating local market considerations for online home delivery platforms.

Law stated - 25 junio 2025

‘Killer’ acquisitions

How has the competition authority in your jurisdiction addressed concerns surrounding ‘killer’ acquisitions in digital markets?

The general Spanish merger control framework does not include provisions specifically addressing below-threshold transactions. Consequently, most ‘killer’ acquisitions are unlikely to fall within the CNMC’s jurisdiction. Additionally, following the European Court of Justice’s ruling in Joined Cases C-611/22 P and C-625/22 P –*Illumina/Grail* (2024), the CNMC cannot refer non-notifiable ‘killer’ acquisitions to the European Commission under article 22 of Regulation (EU) No. 139/2004.

The CNMC examined concerns about ‘killer’ acquisitions in C/1046/19 (2019) but ultimately determined that the target company did not qualify as an innovative or disruptive competitor. To date, no other cases have explicitly addressed this issue.

Law stated - 25 junio 2025

Substantive assessment

What factors does the competition authority in your jurisdiction consider in its substantive assessment of mergers in digital markets?

The CNMC applies the general criteria under article 10 of the Competition Act, including:

- the structure of all relevant markets;
- the market position of the merging companies, including their economic and financial strength;
- actual or potential competition from both domestic and international firms;
- the choice available to suppliers and consumers, as well as their access to sources of supply or markets;
- barriers to entry in the markets;
- the evolution of supply and demand for the products and services involved;
- the bargaining power of suppliers and consumers and their ability to counterbalance the market position of the merging companies; and
- the economic efficiencies arising from the concentration.

Additionally, the CNMC follows the European Union’s Significant Impediment to Effective Competition test to assess the merger’s potential harm to competition.

Law stated - 25 junio 2025

Remedies

How has the competition authority in your jurisdiction approached the design of remedies in mergers in digital markets?

The CNMC typically favours behavioural remedies over structural ones in digital markets. For example, in case C/0730/16 (2016) (***La Nevera Roja/Just Eat***), the CNMC accepted commitments, including:

- no exclusivity obligations for restaurants;
- no linking of fees to exclusivity; and
- no penalties for joining competing platforms.

Similar remedies were accepted in cases C/1072/19 (2019), concerning the acquisition of Just Eat by MIH, and C/0573/14, concerning the acquisition of Mil Anuncios by Schibsted.

Law stated - 25 junio 2025

UPDATE AND TRENDS

Recent developments and future prospects
What are the current key trends, legislative and policy initiatives, recent case law developments and future prospects for the enforcement of competition law in digital markets in your jurisdiction?

Although there has been limited action by the Spanish government and legislature at the state and regional levels to develop specific policies for digital markets, the National Commission for Markets and Competition (CNMC) has adopted a vigorous approach. This is particularly evident in its ex officio investigations targeting GAFAM (Google, Amazon, Facebook, Apple and Microsoft) companies. Recent cases, such as the €413 million fine on Booking.com (S/0005/21) and the €194 million fine on Amazon and Apple (S/0013/21), highlight the authority's focus on addressing abusive practices by dominant platforms.

Judicial review of CNMC decisions is likely to play a crucial role in developing case law in digital markets. Furthermore, pending cases before the CNMC against Apple (S/0005/24) and Google (S/0013/22) may set important precedents, especially regarding unfair terms and exclusionary conduct in the sector.

Private enforcement, while not yet prominent in digital markets, has significant potential. Considering Spanish companies' active use of private actions in non-digital sectors, both stand-alone and follow-on claims may become more common in this field. Landmark CNMC decisions and the enforcement of the Digital Markets Act (DMA) could incentivise businesses and consumers to seek damages for anticompetitive conduct by digital platforms.

Looking ahead, digital markets are likely to remain a key focus for the CNMC, driven by its ongoing cooperation with the European Commission under the DMA framework and further bolstered by the increasing role of private litigation.

Law stated - 25 junio 2025