

Analysis of SMEs Platform “Plataforma PYMES” on the competition in the rental market for tourist housing

The economic crisis initiated in 2007 showed a stock of 800 thousand housings property of promoters and approximately 2,5 mill of empty housings what, up to this date, were considered families savings. The latter were not entered to the market, at least simultaneously, due to the increase supported of hisvaluations.

As the crisis unfolds, part of these housings and the second hand homes, were directed the tourist market under the concept of "vacation housing", "tourist housing of short duration" or "tourist housing without provision of hotel services", with low prices than those offered by the hotel sector.

To understand the impact of the tourist housing on the business of some of the major hotel chains with position of domain on the market, should be known some recent operation in the sector:

In 2015, some Spanish major hotel chains, strongly indebted, realized lease-back operations: transmission part of his debt in exchange for part of the property of his hotels and staying, in return, with contracts of services provision. 12,000 rooms of 4 star hotels were sold to newly constituted companies, in which investment funds would have 80% ownership and the companies until then owners of the hotels (now mere providers of services) 20%.

The fixed prices supposed the sale of rooms of 4 stars hotels for 69.000 € that the hotel chains providing services, in turn, would be rented for a period of 15 years at a cost of 615 € monthly, and on which they would provide hotel services

Opposition positions to the sector of leases of housing for tourist use

The opposition to the lease of the tourist apartments through of impediment to effective competition, has been manifested through various agents:

1. Property Developers: a significant percentage of small and medium properties developers had promoted hotels with patrimonial character, which leased to hotel chains. For their financing they contracted high mortgages, due to the high prices of land and construction costs before the start on 2007 of the financial crisis.

The fall in hotel revenues due to the competition of tourist housing, meant that hotel chains renegotiated their lease contracts, in many cases at prices below the financial costs of mortgages. This has been translated into problems for financial entities, converting this mortgages into "Non Performing Loans".

However, a very high percentage of the 2.5 million empty houses that have gone out to the tourist use market, are not mortgaged and, therefore, not obtaining yields for their lease, but does not represent a problem for the financial system.

2. Various business organizations and groups of operators in the tourism industry have also expressed their opposition to tourist rental, reflected in the approval plans against

the illegal offer in 2014 and 2015.

For its part, a group of tour operators published, in June 2015, a report on tourist rental:

- a) It quantified the offerings in 2.7 million places, 48% of the total offer of urban tourist accommodation in Spain and 40% in the 10 holiday destinations with the largest hotel offer.
- b) The concentration in cities meant the expulsion of the resident population, deterioration of their quality of life due to their intensive use and high turnover and the increase in the cost of housing.
- c) Stereotyping of the rent of the house of tourist use in the submerged economy (platforms P2P)

And he proposed a series of measures:

- a) Zoning, limiting this type of use in certain areas of cities
 - b) Previous agreement of the owners' community for this use, limiting a right as important as that of the property
 - c) Elimination of the VAT exemption on tourist accommodation, equating it with the 10% rate that tourists pay in regulated tourist accommodation, although the latter include the provision of a service not present in the holiday rental.
3. Simultaneously, Law 4/2013 of June 4, on Flexibility and Promotion of the Rental Market, incorporated a rule, which was not included in the preliminary draft or in the bill, related to the use of private housing for the tourism. The explanatory memorandum mentions that the increase in the use of private accommodation for tourism could be covering situations of intrusion and unfair competition, which would be against the quality of tourism services. For this reason, tourist accommodations are specifically excluded from the LRAU (Urban Leasing Law) to regulate them by a particular regulation or, failing that, to apply the seasonal lease regime.

The approval of this law allowed the Autonomous Communities to enact specific legislation, imposing limits on the period of time, surface to be leased, stays to be leased, obligation of inscription in administrative records

The CNMC (National Commission of Markets and Competition, in Spain) reacted against these regulations, because that limiting competition and indirectly favoring dominant positions in the market and, since then, it has required its modification and, failing that, its challenge by jurisdictional means. The warnings of the "CNMC" to the Autonomous Communities caused, in many cases, the voluntary modification of its regulations. In the cases where judicial challenges have been filed, to date, the different TSJs have granted the reason to the "CNMC".

4. In October 2017, the Socialist Parliamentary Group presented a Non-legislative Motion on the rental of housing for tourist use, which establishes that the growth of the offer of residential accommodation for rent represents an extraordinary challenge

for many Spanish tourist destinations, which even have some partial regulation in this regard, cannot avoid the unfavorable impacts of this phenomenon for the development of its tourism model and citizen coexistence. The Non-legislative Motion assumes the principles of some group of tour operators and also encourages review of the basic state legislation to limit the reaction of "CNMC".

5. On 09/25/2018 the Working Group on Housing for Tourist Use was created with the participation of the Ministry of Industry, Commerce and Tourism, the Autonomous Communities and the Spanish Federation of Municipalities and Provinces, authorities for Development and Economy and representatives of the hotel, business, and platform sectors, neighbors, consumers and unions.

The Group presents the following initiatives

- a) Modification of the Law for Urban Rents, delimiting the holiday lease to that performed for minimum periods of 7 consecutive days but that in its entirety does not involve the lease for more than 45 days a year.
 - b) Modification of the Horizontal Property Law, reducing to 3/5 the majority necessary to prohibit the exercise of the tourist rental activity or to set certain conditions for its exercise.
 - c) Proposed common definition of housing for tourist use and implementation of a single state registry of this type of housing.
6. The General State Budget 2019 Agreement signed between the Government and Unidos Podemos in October 2018, states that "the increase in rental prices and the limitation of the offer for residential use is especially serious in some cities as a result of the tourist use of accommodations. To deal with this problem, regulatory reforms will be promoted that allow the owners' communities to prohibit the exercise of tourist rental activity or set certain conditions for its exercise".

On 12/14/2018 the Council of Ministers approves the Royal Decree-Law on Urgent Measures in Housing and Rental. Although the Royal Decree-Law has not been validated by Congress, the press release of the Council of Ministers refers to two measures that would negatively affect tourist housing:

- a) Modification of Law 49/1960 on horizontal property to enable the possibility that, by a qualified majority of 3/5 of the owners, the residents' communities may adopt agreements that limit or condition the exercise of the tourist rental activity of living place.
 - b) Improvement and clarification of the remission of tourist rental housing contracts to the sectoral tourism applicable regulation.
7. On 10/12/2018 the Popular Parliamentary Group presents a Non-legislative Motion on the regulatory framework of tourist housing, proposing three measures:
 - a) Clarification, by way of a change of the Law for Urban Rents, differentiating character between tourist rental and seasonal leasing.
 - b) Establishment of a specific regulation within the Law of Horizontal Property that allows to limit the tourist rental activity in Communities of owners.

- c) Preparation of a Tourist Housing Regulatory Guide.

Position of the CNMC(National Commission of Markets and Competition)

The study published by the “CNMC” in August 2018 on the regulation of housing for tourist use in Spain, establishes the following principles:

1. Some Autonomous and Local regulations are highly restrictive with the activity of tourist housing, distinction regulating in other European capitals. Many regional and local regulations in Spain do not meet the proportionality and necessity test.
2. Expansion of tourist housing accompanies the popularisation of digital platforms and represents a real revolution in the tourist accommodation market.
3. This business model generates disadvantages for pre-existing models, which must adapt to the new reality.
4. The expansion of tourist housing competition has intensified, to propitiate lower prices and higher quality of tourist accommodation.
5. From opposite of other forms tourist accommodation, this type of housing can be inhabited usually by residents and leased to travelers at times of greatest demand. In addition, they contribute wealth to citizens, contribute to recover traditionally degraded neighborhoods and have a positive effect on local commerce and tourism as a whole.
6. Some of the negative effects attributed to the growth of tourist accommodation, such as congestion, are, in fact, inherent to the whole of tourism activity and require a global regulatory approach to the sector.
7. Pressure on housing prices does not have robust empirical evidence to support its magnitude.
8. The inconvenience that can occur in buildings where residents and travelers live together should be addressed in the most proportionate way, probably using other types of regulations, as has occurred in other European cities.
9. The regulation of tourist housing must be motivated by the existence of a market failure or a compelling reason of general interest and should be proportionate.

Restrictions must be eliminated in the regulation of tourist housing such as: demand for licenses for tourist housing, application of moratoria and zoning of cities, establishment of quotas by zones, prohibition of renting rooms, limitation of the length of stay, establishment of sizes minimum, regulation of rental prices, requirement of equipment and minimum services, prior authorization regimes or requirement of price communication to the administration...

The “CNMC” report was only valued in writing by the political group Podemos, in a document published on its website, which states that it is biased and, using lobby's sector arguments, doubt to the impartiality of the “CNMC”:

1. What for the “CNMC” supposes an increase of the tourist offer, with reduction of costs and improvement of the offered quality, for the political group Podemos mean a decrease of the offer of housing for residents, that results increase of the average price of the residential housing.
2. For the “CNMC” the tourist rental works against of prices increase in season. However, political group Podemos observes that both the prices of the most used Platform and those of the hotels continue to rise strongly during the tourist season.
3. For the “CNMC” the tourist rental remove the asymmetric information, since there is a rating and the tourist can see the characteristics of the property. Political group Podemos clame in that sense that none of the regulations approved in the Town Halls prohibits the sharing of information between users, in no way detrimental.
4. The “CNMC” points better traceability and greater transparency of economic transactions, since they are mostly carried out electronically. Podemos points out that the European Commission accused the Airbnb platform of lack of transparency and unfair commercial practices, urging it to comply with consumer regulations and transparency. Also remember Podemos that this type of platforms practice fiscal dumping.
5. For Political group Podemos, the entry of individuals into the market produces a process of concentration of property, intending to achieve a process of concentration of income, in contrast to the “CNMC” points out. According to “Podemos”, an association with 246 marketers manages 90,000 places in the Balearic Islands, which represents 66% of the total. According to another Platform, in Madrid, 53% of registered users have more than one house for rent. In Barcelona, the percentage would rise to 57%.

Stance of the SMEs Platform “Plataforma PYMES”

- Endorses fully the report presented by the “CNMC.
- It notes the proliferation in the tourist rental housing sector of restrictive measures of competition, contrary to the principles of inclusive capitalism.
 - They prevent improving the productivity of the Spanish economy in the short term and ensure equal opportunities for the lessors of these homes with respect to some hotel operators, who have a dominant position in the market that landlords lack.
 - Possibly the seeds of these measures is that a part of the hotel sector, which operates under oligopolistic regime of excessive rents, will have serious problems to compete in price against the new rental for tourist use. This has been largely responsible to its heavy indebtedness, as a result of an inefficient allocation of financial resources.

- Also should be avoided dominance or concentration positions in the activity of leasing for tourist use, equally opposing to the inclusive capitalism's tenets and therefore detrimental to the improvement of productivity and the general interest of the economy.
- The Government is urged to legislate in favor of the competition criteria, supported by European and Spanish regulators. The RD Law on Urgent Measures in Housing and Rental, not validated, causes uncertainty. In its Explanatory Memorandum, it attributes to the renting of houses of tourist use the generalized increase of the price of the rent of all type of houses in certain zones of Spain, without mentioning any real influence about that, in the Euro Zone, accommodative monetary policy and unconventional low interest rates set in motion by the Central Banks. A change in this type of monetary policy and the introduction in Spain of borrower-based macroprudential measures would help to reduce the inflationary pressure of rents.
- It is also essential to take account the impact that the restriction on the movement of people that Brexit will cause will have on this sector
 - The flows from tourism and, in particular, from tourist rental, have great importance on the financing capacity of the Spanish economy (balance current account + capital account), now with a positive balance. In view of the foreseeable fall in the rate of coverage of exports, maintenance of these flows should be ensured.
 - Any restriction to the competition of this type of accommodation in front of the traditional tourist accommodation, will reduce its productivity and therefore, of the Spanish economy in general.
 - Foreseeable momentary devaluation of the British economy will reduce the number of British visitors, habitual users of this type of accommodation, having an additional impact on the worsening of the Spanish's economy financing capacity.
 - The initial devaluation that the Brexit will suppose should be compensated, in part, by improving the productivity of the lease for tourist use, for which it is necessary to eliminate entry barriers to said lease segment.