

Positioning of Plataforma Pymes in support of the historical communication on November 25, 2019 of the Spanish National Stock Market Commission(CNMV in its Spanish acronym) alerting of cases of alleged irregular practices and the need to prevent corruption, which have affected some IBEX listed companies (Updated January 2020)

30 de enero de 2020 - Plataforma Pymes, in its defence of inclusive capitalism and the ex-ante distribution of wealth through the promotion of competition that contributes to fair price formation and improved productivity and therefore to the general interest, supports the communication from the CNMV on November 25, 2019, following the cases of alleged irregular practices known in recent months that have affected some listed companies, in which it reminds listed companies and other issuers of Spanish securities to seek to prevent or reduce as far as possible the likelihood of irregular practices and to ensure, as soon as they are detected, the cessation of such practices and the demand for accountability, as well as the prevention of corrupt practices.

Plataforma Pymes considers that the ultimate objective of these alleged fraudulent practices and the lack of prevention of corruption is used by excessive rents oligopolies to weaken competition, alter fair formation of prices and consequently weaken the productivity of advanced economies, making it necessary for them to be investigated by the European and Spanish courts.

In the document published by the IMF (The Cost Of Corruption, Finance & Development, September 2019, vol. 56, no. 3) in which reference is made to the costs of corruption, the negative effect is not dealt with as an instrument to alter the fair formation of prices and the obtaining of excessive income, which would precisely be that which would allow commissions to be paid without being negatively included in the profit and loss accounts as a consequence of that excessive income. From the Platform we see the need for the IMF in the future and on this issue to value including this point of view of the Platform in the analysis of the corruption present in the economies.

On December 5, 2019, the Council of Ministers agreed to renew the reservation made by Spain to the Criminal Law Convention on Corruption and to refer it to the Spanish Parliament. The reservation now approved by the Government, would be a renewal of others approved at the time and of those practiced by many EU countries, consisting of establishing a limitation in the application of the said convention on excessive rents oligopolies of Spanish nationality that commit corrupt practices in other countries in the sense of requiring double incrimination, which implies that the crime of corruption that is charged in a third country, must also be charged in the country of origin, in this case Spain. This would be a new form of favourable treatment towards excessive rents oligopolies in their transnational activity, which is extended in all advanced economies and not only in Spain. Plataforma Pymes considers it important that this reservation should not be applied to EU countries and advanced economies.

Plataforma Pymes, praising the initiative of the CNMV, considers that it could have been induced by the European regulator, ESMA, which would reinforce the supra-statehood of Inclusive

Capitalism movement defended by Plataforma Pymes.

Plataforma Pymes, like IMF and OECD, considers this type of action against alleged corrupt practices to be very important for the defence of competition, since in most cases corrupt practices are used by excessive rents oligopolies to try to alter competition and fair price formation, thereby weighing down the productivity of the economy and the general interest..

Furthermore, this communication from the CNMV is very appropriate taking into account that on October 31, 2019 the National High Court imputed as a legal entity another company listed on the Spanish stock exchange, whose activity would be developed in the excessive rents oligopolies from public works, on alleged corruption offenses in international transactions for the payment of commissions for the awarding of public works outside Spain, in the framework of the international judicial case Obredecht uncovered by international judicial actions that could have pressured the National Court to make this first charge for cases of corruption to a legal entity within excessive rents oligopolies.

Plataforma Pymes considers that the modification of the Good Governance Code should be aimed at protecting competition and eliminating excessive rents oligopolies and superstars firms with dominant positions, which damage productivity and the general interest of the economy, so that corruption is not the instrument to perpetuate those dominant positions in the market.

Plataforma Pymes proposes, as a practical example, that the Code should incorporate a commitment by listed companies not to compete in public procurement tenders, as long as the corruption liabilities in which they are involved are not purged.