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### I. Changes in Competition Law and Policy Proposed or Adopted

1. During 1999, major changes have taken place in the Spanish Competition System.
2. In **April 1999**, Royal Decree 6/1999, on Urgent Measures for the Liberalisation of the Economy and to Enhance Competition, was approved. This Royal Decree modified Competition Act 16/1989.
3. The Royal Decree 6/1999 introduced the following major changes in the merger regulation:
  - \* A notification threshold was established, being mandatory for mergers to be notified, above the established threshold. Mergers have to be notified **either** if the parties' combined annual turnover in Spain exceeds 40 billion pesetas in the last fiscal year prior to the notification, provided two of the merged companies have each one an annual turnover in the Spanish market over 10 billion pesetas **or** if as a result of the merger the parties will obtain for a product or service over 25 percent of the domestic market or of a geographical market defined within it.
  - \* Prior to a notification enterprises may consult the *Servicio de Defensa de la Competencia* (Service for the Defence of Competition) in order to know if they are obliged to notify.
  - \* In order to increase transparency, the *Servicio* must publish the notifications. Since then, the notifications appear in the *Servicio* web site.
4. The *Tribunal de Defensa de la Competencia* can give publicity to its reports once the Council of Ministers has decided about a merger.
  - \* The *Servicio* is given the power to ask the notification of mergers that have not been notified in time.
  - \* Sanctions could be imposed if mergers that must be notified are not, or if firms do not comply with the obligation to reply the requirements of the Service. Sanctions could be imposed in case firms do not comply with the conditions established by the Government to approve mergers.
5. In **December 1999, Act 52/1999**, that modifies Competition Act 16/1989, was approved. The aim of this new Act is to support markets efficiency.
6. In relation to mergers, a tariff was set up to be paid by firms that notify mergers.
7. The new Act clarifies the conceptual overlap that existed between the Competition Act (1989) and the Unfair Competition Act (1991).
8. The sanctions procedure has been reformed in order to enhance the efficiency of the Spanish Competition policy institutions
9. Flexibility is introduced in the competition procedures by means of the consent settlement.
10. Finally, the 1999 Act, clarifies and reinforces the functions and powers of the *Servicio* and the *Tribunal*, adding new ones to those approved in Act 1989.

11. The Constitutional Court rejected in **November 1999** part of the contents of some articles of Competition Act 16/1989. Partly admitting the appeals Cataluña and Vasque Country had made in 1989. In order to comply with the Constitutional Court Decision, the Government must introduce some changes in the Competition Act.

12. In **June 2 000** the Council of Ministers approved a set of Royal Decrees in order to enhance liberalisation and competition in several sectors of the Spanish economy. Royal Decree 6/2.000, introduces the suspension of mergers until the operation has been approved by the Competition Authorities. From then on, mergers, that pursuant to Royal Decree 6/1999, must be notified, have to do so, prior to be carried out. The notifier may ask the *Servicio* to nullify the suspension, and the Minister of Economy in his resolution sending the file to the *Tribunal* may nullify the suspension. Second phase waiting periods are cut, the *Tribunal* has to submit its report within two months (instead of three) since the reception of the file, and the Government has one month (instead of three) to make a decision, once the Minister of Economy receives the *Tribunal*'s report.

## II. Enforcement of competition law and policy

### 1. *Action against anticompetitive practices, including agreements and abuses of dominant positions.*

#### A) *Summary of activities of Competition Authorities*

##### Servicio de Defensa de la Competencia (SDC)

13. The number of cases opened in 1999 were 183 (191 in 1998), 141 in response to complaints. At the end of the year there were 158 files opened. During 1999 206 files were completed. The *Servicio* decided to proceed in 60 cases, and sent the files to the *Tribunal*.

14. The *Servicio* initiated 154 actions against prohibited behaviours, of which, 53 were agreements cases, 53 abuse of dominance cases and 45 unfair competition cases, 29 cases of individual exemptions were studied and forward to the *Tribunal*.

15. *Servicio* officials have carried out 8 inspections in the premises of undertakings (air traffic operators and petroleum distribution).

##### Tribunal de Defensa de la Competencia (TDC)

16. During 1999, the *Tribunal* had to make decisions on 36 violation cases. The *Tribunal* took enforcement action in 25 cases and imposed fines on 22 cases, of which, 10 were agreements cases and 12 abuse of dominance cases. Fines imposed amounted to 3.400 million pesetas. Interim measures were decided in only one case.

17. The *Tribunal* decided on 42 individual exemptions, being 15 new exemptions granted, and 17 renewed.

18. The *Tribunal* issued 13 advisory reports on notified mergers. The *Tribunal* did not question seven mergers, was opposed to 4 and establish conditions to two mergers.

19. The *Tribunal*, complying with the Trade Act, issued 72 reports on the establishment of new hypermarkets in different regions of Spain.

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### B) *Description of significant cases*

#### AIRTEL /TELEFONICA

20. In January 1996 AIRTEL submitted a complaint to the *Servicio* against TELEFONICA, TSM and TELYCO (TELEFONICA' subsidiaries) for abuse of dominant position.

21. TELEFONICA was a monopolist in fixed telephony and analogic mobile telephone services and AIRTEL has entered as second operator in 900 GSM mobile telephony, being TELEFONICA the other operator in 900 GSM telephony. TELEFONICA has entered the GSM market three months in advance compared to AIRTEL and has not paid for the licence, AIRTEL has paid 50 billion pesetas.

22. AIRTEL accused TELEFONICA of subscribing exclusive distribution agreements, advertising analogic and GSM telephony services together and cross-subsidising monopolised activities and GSM services, not having separated GSM assets from the rest of the firm assets. AIRTEL asked for interim measures.

23. The *Servicio* opened a file against TELEFONICA and its subsidiaries, TSM and TELYCO, and in June 1996 proposed to the *Tribunal* interim measures.

24. The *Tribunal* adopted some of these interim measures in July 1996. In February 1999, the Tribunal adopted the following Resolution, to impose a fine of 610 million pesetas to TSM and a fine of 150 million pesetas to TELEFONICA for abuse of dominant position and ordered them to stop these prohibited practices

#### BT / TELEFONICA

25. In March 1996, BT submitted a complaint to the *Servicio* against TELEFÓNICA, for restrictive practices (articles, 6 and 7, Competition Act and article 86 EU Treaty).

26. Until November 1995 TELEFONICA was a monopolist in basic telephony and as carrier in the Spanish market, from November 1995 RETEVISION was entitled to provide those services.

27. Firms demanding international voice communication could obtained it through the basic telephone system then monopolised by TELEFONICA, leasing circuits to TELEFONICA or adding some elements to the leased circuits, as BT *Primex* service.

28. TELEFONICA provided those services to the International Monetary Market Brokers Association(AMMI). In 1993, BT made a proposal to the Association to provide its members the added value service *Primex*, the Association accepted TELEFONICA's proposal, and rejected BT proposal. Bt accused TELEFONICA to apply discriminatory tariffs in leasing circuits, fixing predatory prices, establishing exclusivity clauses and binding the provision of services open to competition to the provision of monopolised services.

29. The *Servicio* send its report to the *Tribunal* in August 1997

30. In January 1999 the Tribunal decided that TELEFONICA had abused its dominant position, and imposed TELEFONICA a fine of 580 million pesetas, ordering it to cease this violation.

## SPANISH AIR CARRIERS ASSOCIATION (AECA)--IBERIA-VIVA AIR-LTE-AIR EUROPA-SPANAIR-

31. In August 1997, AECA chairman declared to the press that air carriers were considering the possibility to increase tariffs due to the increases in fuel prices and variations in dollar exchanges rates.

32. The *Servicio* initiated action on its own and carried out an inspection in AECA premises in Palma de Mallorca, finding evidence that companies had reached agreements to increase tariffs.

33. The *Servicio* decided to proceed and sent the file to the *Tribunal* in November 1997.

34. The *Tribunal* decided in December 1999 that the companies had reached an agreement to fix the costs to calculate the tariffs for domestic charter flights during 1997/1998, and imposed each of them a fine of 15 million pesetas.

## 2. *Mergers and acquisitions*

### A) *Statistics*

35. During 1999, 51 mergers were notified to the *Servicio*.

36. The *Servicio* advised the Minister of Economy to send 15 of these notified mergers to the *Tribunal*. Of these 15 mergers that passed to the second phase, 5 were approved without conditions, five were approved subject to conditions, one was denied, 3 were pending at the end of 1999 and one was withdrawn.

### MERGERS NOTIFICATIONS 1990-1999 .

	90	91	99	93	94	95	96	97	98	99
<b>Notifications</b>	8	11	18	15	13	20	23	19	31	51
<b>Referrals to TDC</b>	3	0	7	4	1	6	2	7	5	15

### B) *Significant cases*

#### ENDESA/GAS NATURAL

37. On January 25, 1999, ENDESA S.A. and Gas Natural S.A. notified the *Servicio* two transactions to acquire joint control over two natural gas regional distribution undertakings, Gas Aragon and Gas Andalucia. Gas Natural Group has a dominant position in the Spanish natural gas industry and market and ENDESA is one of the two utilities, the other being IBERDROLA, that dominate the electricity production and distribution in Spain. The transactions reinforced the position of both companies in their respective markets. The Minister of Economy referred the case to the *Tribunal*. on February 25, 1999.

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38. The *Tribunal* argued that Gas Aragon and Gas Andalucia were the only potential competitors of Gas Natural in the distribution market in two regions Aragon and Andalucia. The *Tribunal* in its advisory report recommended the Government not to approve the mergers.

39. On July 31, 1999, the Council of Ministers did not give its approval to the transactions. It was the first merger to be blocked by the Spanish Government.

## BANCO SANTANDER/BANCO CENTRAL HISPANO

40. The merger was notified to the Servicio on January 25, 1999. Banco SANTANDER a universal bank, with 26 000 billion pesetas of total assets in 1997 and Banco Central HISPANO, also an universal bank with 11 800 billion pesetas of total assets were two major Spanish financial institutions. The *Servicio* did not find that the merger would harm competition in the banking and financial relevant markets, but some problems were found in the fact that both banks were main shareholders in Spanish enterprises. The *Servicio* studied in detail the stake of the merging banks in competing undertakings in key economic sectors of the Spanish economy, such as telecommunications and energy.

41. On February 25, 1999, the Minister of Economy referred the case to the *Tribunal*. The *Tribunal* in its advisory report recommended that the merged entity could retain a significant position in the stock of only **one** electricity utility and **one** telecommunication undertaking.

42. The Council of Ministers approved the merger on July 31, 1999 subject to the following conditions:

43. If, BSCH retains its equity participation in two or more undertakings, operating in the electricity generation or distribution markets, in the hydrocarbons market, in the mobile telephone or fixed telephone markets, its stock holdings can exceed three percent in only **one** of the major operators in each of those markets, and can only nominate members of the Board of just one of the major operators active in each market. The BSCH has to divest in those markets in order to comply with the government conditions.

## HEINEKEN/ CRUZCAMPO

44. Heineken International Beheer notified DGIV of the European Commission on July 2, 1999, the acquisition of 88.21 percent of the share capital of Grupo CRUZCAMPO. Heineken would acquire too 10.53 percent of the shares then owned by Carlsberg. The transaction had a European dimension although the affected market was the Spanish market. Heineken held 77.3 percent in the share capital of Aguila.. Both Aguila and CRUZCAMPO are very active in the production and commercialisation of beer in Spain. Spain is the third largest beer market in Europe, a highly competitive market with low entry barriers, and excess of production.

45. The Spanish Competition authorities asked the Commission on July 23, 1999, the referral of the case under article 9.2 of Regulation 4064/89. The Minister of Economy referred the case to the *Tribunal* that advised not to approve the notified transaction.

46. The Council of Ministers approved the transaction on December 17, 1999, subject to conditions. HEINEKEN /CRUZCAMPO had to divest 17 percent of its production and storage facilities, sell certain labels, cancel certain label production and distribution licences and do not ask exclusivity to its distributors.

### III. The role of competition authorities in the formulation and implementation of other policies.

#### *Telecommunications*

47. A new operator in fixed telephony ,UNI2, started to operate in 1999, with this new entry, Spain has three operators in basic telephony: TELEFONICA, RETEVISION and UNI2.

48. During 1998, there were two operators in the GSM 900 services market: TELEFONICA and AIRTEL. A new operator came into the market in 1999, AMENA, operating GSM 1.800. TELEFONICA and AIRTEL were also given authorisations to operate new services in GSM 1800.

49. In October 1999, six WLL (wireles local loop) concessions, access through radio, were given. The operators of these licences could offer local calls, competing with TELEFONICA, which keeps the local loop monopoly. These new licences will allow the development of alternative networks, whose advantages will be seen by the end of year 2 000.

50. Concerning cable networks, there are eight geographical areas, with two cable operators in each of them. TELEFONICA is one of the cable operator in each area, the other operators in the cable networks are related either to RETEVISION or CABLEEUROPA. Some cable operators have already started to offer local calls during 1999.

51. In April 1999, the government approved the conditions to make TELEFONICA widen its network with ADSL technology (Asymmetric Digital System Line) , in order to offer, at the end of year 2.000, flat tariffs for Internet, of which, 11.5 million people could benefit.

52. During 1999, international and long distance tariffs have been reduced, but fix to mobile tariffs are still high. To solve this problem, on December 1999, the government approved a new methodology to calculate tariffs from fix to mobile phone, based on real call duration (seconds).

53. On November 1999, the TOR for the UMTS licences were published and the Government gave entry to four operators in March 2 000.

54. In June 1999, a Royal Decree ( **Royal Decree 6/1999**) was approved to enhance competition and liberalisation. Beside changes in mergers regulation already explained, measures were approved related to telecommunications, electric sector, natural gas industry, pharmaceuticals, air traffic and the governing rules of public notaries and registrars.

#### *Public Notaries and Registrars*

55. Tariffs applied by these public professionals when registering mortgages, lodgings acquisitions, and transactions related to firms had to be reduced by 25 percent. In other transactions they could give discounts on the official tariffs.

#### *Air Traffic*

56. Any EU citizen having the official pilot title and licence to command a certain plane, can be engaged by Spanish air carriers.

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### *Natural Gas*

57. According to 34/1998 Hydrocarbons law, eligible customers of natural gas can satisfy their needs either importing or buying from retailers. gas-fired power stations are eligible customers irrespective of their annual consumption. Hydrocarbons Law 34/1998, approved an agenda to be qualified as eligible customers, Royal Decree 6/1999 modified this agenda, setting a new threshold of 5Mm<sup>3</sup>/year by January 2 000, which will represent the liberalisation of 63-66 per cent of the total market, and approved total liberalisation by the year 2008.

### *Electric Sector*

58. Tariffs for low voltage customers were reduced by 1.5 percent.

59. More customers could go to the market, as from July 2 000, and become eligible, as the threshold was reduced.

### *Telecommunications*

60. The Royal Decree forced TELEFONICA to reduced tariffs from fix to mobile calls, and to reduced long distance regulated tariffs.