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2001

1. Executive summary

1. During 2001, important new competition legislation⁽¹⁾ has been passed in Spain concerning basically merger control and the administrative organization and resources of enforcement agencies. All this regulation adaptations and reforms have resulted in an increase of transparency, legal certainty and efficiency of the system, aiming at consolidating the updating of the Spanish legal and institutional competition framework to the liberalization process, to the increasing role of this policy as the guide of market economy, and to the new economic market conditions. In mergers, the reforms have conferred the Competition Bodies with more efficient enforcement instruments, have clarified some definitions and procedural aspects and have made the *Servicio de Defensa de la Competencia* (SDC)'s reports public. At the same time, the Competition Bodies have been reinforced, in particular the *Tribunal de Defensa de la Competencia* (TDC) with new financing sources.

2. Concerning anticompetitive conducts, the major and mainly administrative reform, due to a Supreme Court Resolution, has been the Law 1/2002, which constitutes the framework of a decentralised system of enforcement of articles 1, 6 and 7 of the Competition Act related to anticompetitive agreements and abuse of dominance.

3. Competition Authorities have been very active in 2001. In conducts, the number of cases were similar than in 2000, Competition Authorities having focused mainly on recently liberalised sectors, where most cases have arisen. Concerning merger control, the number and the complexity of cases have sharply increased, despite not reaching the peak of 2000.

4. As to competition policy, the Spanish Government kept on liberalising key economic sectors in order to promote growth and employment, adopting new measures, which implement and complement the contents of the package of liberalisation measures passed in June 2000, practically all of them in force.

5. Finally, concerning Competition Bodies, both the *Servicio* and the *Tribunal* have been strengthened and given new duties. In particular, the TDC becomes a new administrative body -with increasing resources that allow the institution to reinforce its staff-. In the SDC a new horizontal unit is already functioning.

⁽¹⁾ **Law 9/2001**, of June 4, modifying the sixth transitory provision of the Law 54/1997 of the Electricity sector, certain articles of the Law 16/1989 of July 17, on Defence for Competition; and certain articles of the Law 46/1998 of December 17, on the introduction of the euro; **Law 24/2001**, of December 27, of Fiscal, Administrative and Social Order Measures; **Law 1/2002** of February 21, on Coordination of Competencies of the State and the Autonomous Communities in defence for competition matters; and **Royal Decree 1443/2001**, of December 21st, implementing the Competition Act 16/1989 of July 17, on Defence of Competition.

2. Changes in Competition Laws and Policies; Proposed or Adopted

2.1 Summary of new legal provisions of competition law and related legislation

2.1.1 Law 9/2001, of June 4, modifying the sixth transitory provision of the Law 54/1997 of the Electricity sector, certain articles of the Law 16/1989 of July 17, on Defence of Competition; and certain articles of the Law 46/1998 of December 17, on the introduction of the euro

6. The Law 9/2001 contains two key measures to consolidate the Spanish defence of competition legal framework. The Law modifies articles 5, 15 and 21 of the Law 16/1989, in order to precise the contents of the Council of Ministers decisions in merger files matters and to provide the competition bodies with effective instruments to assure the compliance with that decisions.

7. On the one hand, it establishes a clear cut difference between the conditions a merger can be subject to and the limits imposed by the sectoral legislation on participation in regulated market operators allowing the Council of Ministers' decisions, when a merger is subject to conditions, to modify sectoral legislation restrictions for the compliance of those conditions.

8. On the other hand, the Law introduces the instrument of coercive fines as a means of compulsory execution of Cabinet decisions authorising a transaction subject to conditions. The adoption of this kind of measure, already included in other provisions of the Competition Act, fills a legal void since coercive fines were not applied to compliance with the conditions imposed in Council of Ministers' decisions and will permit to foster celerity and accuracy in that compliance. The Law 9/2001 also punishes the failure to respect the compulsory suspension of the transaction until clearance.

9. Other measures included in the law are the changes to provisions concerning block exemptions and the composition of the *Tribunal*.

2.1.2 Law 24/2001, of December 27, of Fiscal, Administrative and Social Order Measures

10. The Law 24/2001, of December 27, reformed articles 20, 21, 22 and 24 of the Law 16/1989 and modifies the administrative organisational nature of the *Tribunal de Defensa de la Competencia*; it assigns 50% of the revenues coming from the fees charged on the analysis of mergers to the *Tribunal's* own resources; and it increases the amount of the fees charged on the analysis of mergers.

11. First of all, The *Tribunal* becomes an autonomous body, with differentiated public legal status and management and administrative autonomy, what is more appropriate to its nature, independence status and functions conferred to it by the Competition Act and which remain all of them the same.

12. Moreover, the new configuration of the TDC have allowed the assignation of own resources to its budget. Accordingly, the *Tribunal* additionally counts now on 50% of revenues stemming from the fees charged for the assessment of mergers. This means the TDC is able to obtain part of its financing regardless of budget decisions and only depending on the structural developments of markets. In addition, this decision will allow for an increase in the TDC budgetary endowments since the assignment of the fees to the TDC coincides with the new and more progressive fee coming into force.

13. On effect, the Law 24/2001 also modifies article 57 of the Competition Act concerning assessment of mergers fees with the purpose of improving its progressiveness according to the notifying

undertakings turnover. This reform is based on the growing complexity of the analysis of transactions in the majority of cases due to the size and the activities of the undertakings concerned. In particular, new fee brackets are introduced for mergers where the undertaking turnover exceeds €3M⁽²⁾.

2.1.3 *Law 1/2002 of February 21, on Coordination of Competencies of the State and the Autonomous Communities in defence of competition matters*

14. The Constitutional Court decision of 11 November 1999, conferred the Autonomous Communities executive powers in the application of the competition legislation. In consequence, the decision ordered to set up the legal framework to develop the executive powers of the *Comunidades Autonomas* in competition matters and to coordinate them with those of the State. The Law 1/2002 is the result of that mandate. It was referred to the Parliament in June 2001 and came into force on May 23, 2002. The main elements and effects of this Law are:

- The Autonomous Communities have only competences in the application of the Spanish Competition Law concerning anticompetitive practices (agreements and abuse of dominance). Competition legislation and Merger control are still exclusively State competences.
- The Autonomous Communities will be competent in proceedings when the conduct produces effects only in their territories and there is no a national market effect.
- The Autonomous Communities will set up its own institutions to develop its competences on antitrust practices. In the end, this will mean an important increase in resources dedicated to maintain competition in markets.
- As coordination and collaboration among all the institutions concerned becomes the key element to efficiency and coherence, the Law establishes coordination mechanisms based on reciprocal information and the setting up of the Competition Defence Council.

2.1.4 *Royal Decree 1443/2001, of December 21st, implementing the Competition Act 16/1989 of July 17, on Defence of Competition*

15. It replaces Royal Decree 1080/1992 of September 11, of Defence of Competition, which established the procedure to be followed by Competition bodies on merger control and the form and contents of the notification. It has come into force on February 8, 2002 and it modernizes the merger control regulation and adapts it to the recent reforms of the Competition Act 16/1989 of July 17.

16. Over the last few years, the provisions of the Competition Act on merger control have been significantly amended by various reforms, the main effect of which has been the change from a system based on voluntary notification to a system based on prior compulsory notification. At the same time, the

⁽²⁾ The following filing fees for merger control proceedings are payable: 1) € 3.005, if total turnover in Spain of all the companies involved does not exceed €240.404.481,75. 2) € 6.010, if total turnover in Spain of all the companies involved ranges from €240.404.481,75 to €480.800.000. 3) € 12.000, if total turnover in Spain of all the companies involved ranges from €480.800.000 to € 3.000.000.000. 4) € 24.000, if total turnover in Spain of all the companies involved exceeds € 3.000.000.000 plus €6.000 per each € 3.000.000.000 that the total turnover exceeds the former amount up to a maximum limit of € 60.000.

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experience gathered by the Competition Authority throughout the first 10 years with the former regulation pointed to the need to improve the legal framework of implementation of the Competition Act.

17. In consequence, with the introduction of some procedural changes the transparency and legal certainty of the system have improved and updated it to the recent years economic reality which has increased the number and the complexity of the mergers assessed. Among the changes introduced by the Royal Decree the following are the most relevant:

- Clearer definition of concentration and control, which includes *de facto* control and the approximation of sales volume calculation to the EC concept, which is simpler and clearer. In addition, the Royal Decree develops the issues related to the suspension of the transaction with a special reference to takeover bids; previous consultations and the *terminación convencional*.
- The release of the SDC's reports after clearance in first-phase or once the file has been referred to the TDC.
- Modification of the Royal Decree on the regime of takeover bids to include the procedure before the Spanish Competition bodies.

18. The Royal Decree includes nineteen articles organised in two chapters. Chapter I contains a series of general provisions on the scope of application, the concept of concentration and control, and the calculation of turnover. Chapter II consists of four Sections dedicated respectively to:

- Notification: responsibility to notify, form and contents of notification, the procedure in case of incomplete notifications and requests for information, consultations prior to notification.
- The instruction procedure before the Service for Defence of Competition and the Minister's decision: instruction, application of the EC Regulation on Merger Control, confidentiality, failure to notify.
- The procedure before the Tribunal for Defence of Competition.
- Resolution: the government's decision, compliance with the Council of Ministers' Agreement, fee on the analysis of mergers.
- And specific regulation for takeover bids.

19. Once the new Regulation is been into force, The SDC has elaborated **guidelines on merger control elements of assessment**. The document (still a draft) explains the general criteria usually considered by the SDC to determine if there is a merger to notify, the relevant markets potentially affected, the competitive structure of those markets, the application of the substantial test and so on. A copy of those guidelines is attached.

3. Enforcement of Competition Law and Policies

3.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

3.1.1 Summary of activities of Competition Authorities

3.1.1.1 Servicio de Defensa de la Competencia (SDC)

20. The number of cases started in 2001 were 122 (127 in 2000), 86 (96 in 2000) in response to complaints, 26 (25 in 2000) were single authorisation proceedings and 1 (2 in 2000) were initiated ex officio. During 2001, 119 cases were completed (166 in 2000). The *SDC* decided to proceed in 46 (51 in 2000) cases that were forwarded to the *Tribunal* (24 single authorisations and 22 sanctioning files). At the end of 2001, 122 (119 in 2000) cases remained open.

21. The *SDC* initiated 113 (124 in 2000) actions against anticompetitive practices, of which 30 (41 in 2000) were agreements cases (infringement of article 1 of Competition Act 16/1989 of July 17), 39 (37 in 2000) were abuse of dominance (infringement of article 6 of Competition Act 16/1989 of July 17).

22. Most cases have arisen in the service sector (99). In particular, the following are the most significant: 11 in production and distribution of electricity, gas and water; 4 in fuel sell; 22 in wholesale and retail distribution; 13 in transports and communications; 8 related to activities of the Public Administration; 5 related to health and social assistance; 10 to professions; 3 related to IPRs.

23. During 2001, *SDC* officials have carried out 13 inspections in premises of undertakings and 1 inspection together with officials of the European Commission.

3.1.1.2 Tribunal de Defensa de la Competencia (TDC)

24. In 2001, the *TDC* issued 28 sanctioning resolutions: there were 20 cases where the infringement was proven and the *TDC* imposed fines; 3 cases where the infringement was proven but the *TDC* did not impose any fine and 3 cases where the *TDC* did not appreciate the existence of infringement. Interim measures were decided in 1 case.

25. The *TDC* decided on 26 single authorisations. 10 of them, were renewed, 13 were new exemptions granted and 2 modified.

26. The *TDC* issued 9 non-binding reports on notified mergers. In 6 of them, the *TDC* recommended authorisation, in 2, authorisation subject to conditions and in 1, rejection.

27. Finally, complying with its advisory role in the opening of new hypermarkets in regions, the *TDC* issued 148 reports on this matter.

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3.1.2 Description of significant cases

3.1.2.1 Decision 490/00 y 501/00 REPSOL- CEPSA

28. There were two complaints against the main two national petroleum undertakings for subscribing restrictive agreements (art.1 national Law and art. 81 European Community Treaty) consisting of vertical fixing of prices to their retailers -the petrol stations- and for the infraction of the Commission Regulation 1983/84 which establishes the conditions for the categorical exemptions concerning certain buying exclusive agreements.

29. The Court for the Defence of Competition declared proved the vertical fixing of prices on the basis of the consideration that petrol stations are resellers but not commission agents, which was the pretension of both petroleum companies. The Court considered that the retailers were incurred on several commercial and financial risks, which turn them into independent entrepreneurs, so that they were under the application of art. 1 and 81.

30. Concerning the extension of the supply contracts time period, the Court did not considered proved the commission of fraudulent practices on the side of both respondent companies, with the objective of lengthening excessively the contracts.

31. The Court imposed REPSOL a fine of 3.005.060 € and to CEPSA a fine of 1.202.024 €.

3.1.2.2 Decision 489/00 MOB/Telefónica Móviles

32. *Distribuciones MOB, S.A.* submitted a complaint against *Telefónica Servicios Móviles, S.A. (TSM)* because of its inclusion in a so-called “*black list*” of the MoviLine and MoviStar service distributors.

33. TSM had a sale promotion on digital cellular mobile terminals through the payment of a subsidy to the wholesaler, which provided with these terminals to the MoviStar services distributors. This subsidy allows to sell consumers the terminals under market prices. TSM send several wholesaler a distributors *black list* arguing that they were “selling terminals abroad”.

34. The Court considered that the TSM pressures on several companies, taking advantage of its dominant position on the market and without taking any possible legal measures (judicial claims, contract cancellation), was a disproportionate answer towards a market operator action and also affect others operators to which TSM imposed to take decisions that otherwise would not have adopted. The Court imposed TSM a fine of 300.506 €.

3.1.2.3 Decision 504/00 Madrid Lawyers

35. *Mutuo Acuerdo, S.L. and Teleconsulta a Jurídica* submitted a claim against the *Ilustre Colegio de Abogados de Madrid (ICAM)* concerning certain practices that limit the publicity of the services provided by the lawyers.

36. The ICAM have specific publicity rules for their members on its Statutes (1981) and its Publicity Regulatory Code (10.2.00, last version). The Court affirm that to prevent or to difficult the development of

the publicity to the economic operators prevents or difficult the competition between them; this has been a historical practice carry out by the ICAM since a long time. This situation has been modified with the last version (1.4.00) of the Publicity Regulatory Code; nevertheless, the Court considered that the ICAM should have showed more diligent on the change, so that the Court noted existing practices banned under the Law for the Defence of Competition, consisting on: a) Failure to adapt its Statutes to the new regulation governing Professional Colleges established in the Law 7/1997. b) Having kept in force the Publicity Regulatory Code of 1995 with its publicity restrictions, after been enacted the Law 7/1997. c) Having approved a new Publicity Regulatory Code on 1998 that also contents prohibitions and limitations on the publicity of the lawyers professional services.

37. The Court decided to enjoin the ICAM to amend their publicity rules that are contrary to the competition law and to impose a fine of 120.202 €.

3.1.2.4 Decision 497/00 SEGUROS MEDICOS CIUDAD

38. Seguro Colegial Médico Quirúrgico, S.A. of Ciudad Real, established exclusivity clauses to the members of its Network Medical Staff. They could not belong to others competitors insurance companies, so that, Seguro Colegial had a dominant position on the province. At the same time Seguro Colegial was a renown shareholder of the owner company of Clinica Coreysa, and the same persons are, in both companies, the President, the Vice President and Secretary of the Board of Commissioners. In the last General Meeting (16.12.94) it was agreed that any sanitary professional which likes to work on the Clinica Coreysa should be authorised by the Board of Commissioners.

39. The exclusivity imposed by Seguro Médico Colegial was the cause to send off some sanitary professionals and the prohibition of using the Clínica Coreysa, despite the favourable judicial decision of the Audiencia Provincial de Ciudad Real that stated the obligation to readmit these professionals and the right of them to use the Clínica Coreysa.

40. The Court finally considered that Seguro Colegial, on the basis of the mentioned conditions imposed to the members of its Network Medical Staff, had a dominant position with regards to others insurance companies competitors and decided to impose a fine of 90.151 €.

3.2 *Mergers and acquisitions*

3.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

41. The system of compulsory notification has not only meant a substantial increase in the number of notifications to the SDC, with a record high of 93 notifications in 2000, but also it has enlarged the scope of control, the dimension and the complexity of the notified transactions. In 2001, the number of notifications remains high but slightly below the number registered in 2000, to reach 76 notifications.

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	1996	1997	1998	1999	2000	2001
Notifications	23	19	31	51	93	76
Referrals to the TDC	2	7	5	15	12	6

42. 65 notified mergers were tacitly authorised. The Minister of Economy, upon proposal of the SDC, referred 6 to the Tribunal. After the TDC issued its report, the Council of Ministers adopted its final decision, through an Agreement. 2 were authorised subject to conditions and 1 was declared contrary to Law.

Notifications: type of transactions in 2000			
Acquisition	Joint control	Merger	Takeover bid
82%	8%	3%	7%

3.3 *Significant cases*

3.3.1 *ROCA-LAUFEN*

43. The transaction notified consisted of the acquisition of KERAMIK HOLDING AG by COMPAÑÍA ROCA RADIADORES, S.A. The notification was made at request of the SDC in application of article 15bis.4 of the Competition Act 16/1989.

44. Once received the SDC's report on the transaction, the Ministry of Economy considered that the transaction could hinder the maintenance of effective competition in the market. Accordingly, the Ministry decided to refer the file to the TDC.

45. The TDC issued its report recommending the authorisation of the transaction. The TDC based that recommendation on the fact that the transaction would improve the competitiveness of the group ROCA, by the means of the opening of new exports markets, the development of new technologies and the reduction of labour costs thanks to the relocation of production to countries with lower labour costs. In addition, the TDC took account of the continuous weakening of the existing barriers to entry, especially with regards to the expected developments in distribution and the marginal presence in Spain of the group acquired by ROCA, which minimised the impact of the transaction.

46. On March 2, 2001 the Council of Ministers decided not to oppose to the transaction.

3.3.2 *BANCO SABADELL- BANCO HERRERO*

47. It was notified the transaction consisting of the acquisition of 98,9% of the capital of BANCO HERRERO by BANCO SABADELL.

48. The Ministry of Economy after receiving the SDC's report decided to refer the file to the TDC provided the potential risks to competition of the transaction. The TDC defined the market affected by the transaction as the national market of retail banking. However, in the transaction considered the geographic relevant market is narrower due to the importance of the network of branches. In addition, the TDC considered that the market share of BANCO SABADELL after the acquisition of BANCO HERRERO did not create any threat to competition, either at national or regional level. Accordingly the TDC recommended not opposing to the transaction.

49. Taking into account the TDC's recommendation, the Council of Ministers decided not to oppose the transaction.

3.3.3 *ENDESA-IBERDROLA*

50. The SDC was notified of the transaction consisting of the merger between IBERDROLA and ENDESA.

51. The Ministry of Economy referred the file to the TDC due to the potential harm of the transaction to competition in the electricity sector. In its report, the TDC pointed out that the transaction would have adverse effects on competition in the markets affected due to the intense degree of vertical integration and concentration in the electricity sector and the high barriers to entry that existed in that sector.

52. In generation, which is characterised by high transparency and predictable behaviour of operators, the TDC considered that the transaction would replace a joint dominant position for an individual dominant position favourable to the resulting entity, since the main competitor of ENDESA would disappear and the new entity would improve the composition of its generation plants.

53. In addition, the TDC considered that the market share of the resulting entity in transportation and distribution would increase its competitive advantage in commercialisation, reinforcing its position in this market.

54. As a result of all this, the TDC concluded that the transaction would hinder the maintenance of effective competition in the market of electricity recommending its prohibition. However the TDC added that the transaction could be approved if subordinated to certain conditions limiting the resulting entity's capacity of production, transportation, distribution and commercialisation, which implied the realisation of certain divestitures.

55. Finally, taking account of all the previous arguments and following the TDC's recommendation, on February 2, 2001 the Council of Ministers decided to subordinate the transaction to certain conditions to solve the restrictive effects on competition of the transaction.

3.3.4 *NUTRECO-AGROVIC*

56. NUTRECO and AGROVIC are two groups integrated that focus their activities on poultry meat industry and production and sell of feedings.

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57. The transaction notified to the SDC, was referred to the TDC. The TDC recommended authorising the transaction. However, during its investigations, the TDC uncovered the so called “*Junta del Pollo*” (chicken board), which by the means of a voting system, set weekly the price of chicken, which is the reference price for Spain.

58. The TDC concluded that after the transaction, the power of the resulting firm in the voting system of the “*Junta del Pollo*” would be very high, therefore in order to avoid the creation of a dominant position, the TDC recommended the Government to subject the transaction to the condition that NUTRECO renounced to the votes of AGROVIC corresponding to NUTRECO after the acquisition. All of that without prejudice to the measures the TDC could adopt with regards to the setting price mechanism, since in the TDC’s view this system could be contrary to the Competition Act.

59. Given the participation of the resulting firm in the voting, which was inferior to 50% and the investigation which the SDC was conducting on the price setting mechanism, the Council of Ministers decided to authorise the transaction but subject to the condition that the acquirer should provide the SDC weekly and for three years with detailed information on its activity, due to the incidence of prices in the agricultural sector on the Consumer Price Index.

3.3.5 *PIO CORONADO-CEMETRO*

60. The transaction notified to the SDC consisted of the acquisition of CEMETRO by PIO CORONADO. On March 2, 2001, the file was referred to the TDC who considered that the transaction could hinder the maintenance of effective competition in two of the markets affected by the transaction: cash and carry retail distribution of consumption goods in Gran Canaria island. The transaction was subject to the divestiture of certain of certain outlets, following the recommendation of the TDC.

3.3.6 *KURARAY-CLARIANT*

61. The transaction consisted of the acquisition of the businesses of polyvinyl alcohol (PVA) and polyvinyl butyric (PVB) of CLARIANT GmbH by KURARAY SPECIALITIES EUROPE GmbH.

62. The Ministry of Economy referred the file to the TDC who once analysed the transaction, reached the conclusion that the increase in the degree of concentration was not going to harm competition in the market. Following the report of the TDC, the Council of Ministers decided not to oppose the transaction.

3.3.7 *GRUPO CORREO- PRENSA ESPAÑOLA*

63. It was notified to the SDC the transaction consisting of the merger between PRENSA ESPAÑOLA and GRUPO CORREO DE COMUNICACIÓN. S.A.

64. The transaction was referred to the TDC. In its report, the TDC considered that the markets affected by the transaction were those of publication and sale of daily press of general information, publication and sale of weekly supplements, sale of publicity space in written press and radio, television, distribution of written press and intermediation services for negotiation and sale of publicity space in the media.

65. After the transaction, the resulting group would have a market share in the national market of dairy press of general information of 24,6% in terms of circulation (number of sold issues) and of 23,6% in terms of turnover. In the market of publication and sale of weekly supplements, the resulting group would have a market share of 51,2%.

66. In its report, the TDC contends that the transaction would not restrict effective competition in the markets of publication and sale of diary press, since the high market shares of the resulting group in some markets at regional are not due to the transaction level. They were already high prior to the transaction. In addition, the strength of competitors preserves the alternatives for consumers and their ability to choose in a market where there are not significant barriers to entry.

67. These conclusions are applicable to the other markets affected by the transaction. Nevertheless in the market of sale of publicity space in radio and television, there are legal barriers to entry due to the applicable regulation, in particular the existence of a regimen of administrative concession of licences for the provisions of radio and television services. Nevertheless the application by the competent bodies of ruling legislation would mean that the markets of reference would not be affected by the notified transaction. Accordingly, the TDC recommended the approval of the transaction.

68. The Council of Ministers decided not to oppose the transaction, without prejudice to the application of ruling legislation in the matter of radio and television.

4. The Role of Competition Authorities in the Formulation and Implementation of Other Policies

69. Spanish Competition Authorities are among the most activist in OECD countries in promoting reform. They have played a key role in the process of liberalisation by ensuring that consumers benefit from it through effective competition.

70. Spanish Competition Authorities have focused mainly on economic sectors that have been recently liberalised. In fact, most cases related to anticompetitive conducts have arisen in these sectors. In addition, recent reforms of competition legislation have enlarged its scope. First by limiting exemptions from the application of competition legislation only to those anticompetitive conducts stemming from the application of a law. Concerning mergers, the scope of Competition Act 16/1989 of July 17 provisions, has been also extended by mandatory notification of all those transactions that reach the thresholds specified in the Law.

71. On the other hand, Spanish Competition bodies have advisory functions concerning new legislation that relates to competition. They may also issue reports on competition upon request. Concerning exemptions from the application of competition legislation, the *Tribunal* may issue a report to propose amendments of those provisions that allow anticompetitive conducts.

72. Concerning Competition Policy, in addition to the amendments introduced in the competition legislation, the Spanish Government has approved further measures throughout 2001. Increasing the openness and degree of competition of product and factor markets is a priority for Spain. The liberalisation package of June 2000 has accordingly been built on and supplemented through the implementation of component measures and the design and development of new reform policies.

73. Initiatives in goods and services markets sought to increase their openness and foster competition. The focus, once more, was on those sectors, which as providers of basic inputs to the whole

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economy or key development drivers for the information and knowledge society have the most power to leverage the economy's potential growth.

74. In the labour market, a wide reform enacted in the year's opening months aimed at furthering the job creation process, providing more incentives to permanent hiring and securing a better demand and supply match by means of more adaptable contract formats.

75. Finally, the goal of more efficiently allocating financial resources was addressed through a series of reforms to aid capital markets in their role of channelling savings to investment.

4.1 Network industries

76. The opening and liberalisation of network industries ranks high on the Government's economic policy agenda. These sectors are of key importance for the competitiveness of the Spanish economy, both as development drivers for the information and knowledge society and as suppliers of basic inputs to the rest of the economy.

77. The Government's liberalisation strategy is to separate out ownership from management at each stage of activity (production, transport, distribution), dismantle entry barriers and ensure effective competition throughout the industry.

4.2 Energy

78. Liberalisation efforts again pursued a more competitive structure in energy sectors (electricity, gas and liquid hydrocarbons) and their more efficient functioning.

4.2.1 Electricity

79. Measures contained in Royal Decree-Law 6/2000 were implemented in 2001, in particular those aimed at increasing operator numbers and assuring transparent, non-discriminatory network access. Work proceeded this year on the regulatory development of Royal Decree-Law 6/2000, dated 23 June. Though final texts are not yet available, some of the main features will stand as follows:

- Incentives to encourage more producers into the special regime market, and new obligations on certain participants as a function of their installed capacity. This measure:
 - Diversifies supply paths to the market, so improving the short-term efficiency and long-term security of the electricity system.
 - Increases supplier numbers, with a boost effect on competition.
 - Reduces the system inefficiencies, which emerge when plants that do not tender power to the pool deviate upwards or downwards of forecast levels in the power they actually place onto distribution networks. This conduct generates an extra cost which till now has been borne by the distributor.

80. The new provision introduces a penalty regime for producers making such deviations, when they exceed a certain limit. This measure seeks to improve producers' efficiency by obliging them to fine-tune generation projections. Royal Decree on new variants of forward supply purchases. This provision will expand opportunities for forward purchasing, and will presumably benefit consumers by giving demand forces a greater say in power pricing and market operation.

81. These two measures will exert a positive influence by perfecting the functioning of the wholesale market. Just concluded is the reform and review of transmission and distribution network access fees to align them with the changed competitive framework in place since 1 July 2000. The new tariff structure will simplify access conditions while conferring greater transparency and legal certainty.

4.2.2 *Natural gas*

82. Gas market liberalisation is at an earlier stage than that of electricity. Nonetheless, important measures have been taken and the first results are now showing through. The following measures were approved in 2001: Development of an integrated economic system for the natural gas sector including a calculation mechanism for network access tolls and a remunerative system based on costs. Three main goals are pursued: to provide incentives for the entry of new and efficient competitors, to increase competition and to foster infrastructure development. The framework established is thus clear, predictable and based on the costs of third-party use. The system also envisages the joint planning of the main pipeline network.

83. The appointment of ENAGAS (owner of the main natural gas network) as the system's Technical Manager, and the placing of a 35% cap on the equity interests held in the same by any company or corporate group, was followed up in 2001 by approval of ENAGAS's Action Plan for the enlargement of its shareholder base and the divestments required under current legislation. The auction to suppliers of 25% of the gas covered by the Algerian supply contract. Successful bidders must sell the gas on to eligible consumers, i.e. may not use it for internal consumption. This measure will promote the rise of new supply companies, assure the source of supply and increase competitor numbers, to the benefit of qualified consumers.

4.2.3 *Liquid hydrocarbons*

84. New steps were taken in 2001 to build competition in the liquid hydrocarbons sector. Network use was made more transparent, and progress made in assuring the management neutrality of dominant logistics operator *Corporación Logística de Hidrocarburos* (CLH), which owns 100% of the transport network and 80% of storage facilities. Measures taken in 2001 were:

85. Action plan to open up the shareholder base of CLH. Firstly a 25% ceiling is imposed on individual shareholders' participation, direct or indirect, in the company's capital or voting rights. Secondly, shareholders with refining capacity may not exceed a joint ownership interest of 45%. A step-up in market transparency, provided by a new government website which posts the latest prices of retailer products. This data can also be accessed by mobile phone.

86. Elimination of minimum distances between highway service areas. This measure seeks to foster competition in the retail sector by enlarging the number of sales points. To remark in closing that the Competition Tribunal has fined *Cepsa* and *Repsol* for anti-competitive conduct, namely the fixing of service station re-sale prices, and called on both to discontinue these practices.

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4.2.4 Telecommunications

87. Keynote liberalisation measures in 2001 were the unbundling of the local loop and changes to the network access system. The fruits of year-2000 liberalising measures began to come visibly through in 2001. September 2001, for instance, saw the effective opening of the local loop and the first of the corresponding services are now up and running. Freedom of operator choice is also leaving its mark: there are presently 1.3 million numbers with a pre-selected operator, of which half correspond to long-distance and fixed-mobile and the other half to local calls. Finally, awardees of the six radio access licences (LMDS) issued in 2000 have started offering their services. Main reforms adopted or envisaged in 2001 are:

- Changes to the Reference Interconnection Offer (RIO), **which** sets the prices and conditions to apply for other operators' access to *Telefónica* lines. The Telecommunications Market Commission has conducted an in-depth review of the RIO, in the light of *Telefónica's* cost accounts, and established a new model based on capacity. Another change is the option of sharing out interconnection resources. Finally, an automatic updating system will come into action (at the request of any party) whenever the General Interconnection Agreements are affected by regulatory changes or administrative or judicial resolution. This will foreseeably put the market on a more dynamic footing. These changes to the RIO have brought access prices down considerably: between 16% and 28% in local access and between 23% and 41% in single transit.
- Approval of a Royal Decree on radioelectric emissions to guarantee public health and comply with Community recommendations.
- Lastly, measures now in the pipeline are:
 - Approval of regulations to govern the functioning of Virtual Mobile Operators.
 - Incorporation into Spanish law of European rules on service quality.
 - Elaboration on some aspects of the Universal Service Regulations.
 - Regulation of telephone directory services.
 - Start-up of the programme to replace Rural Cellular Access Technology lines with a different type of network supporting fixed wire services with Internet access.
 - Reduction in the radioelectric spectrum reserve fee, based on its current valuation, and creation of a new fee model to run on a multi-annual basis.

4.2.5 Transport

88. Keynote 2001 measures were those to improve transport safety and the design of a new tariff review system, using the CPI-X formula, for inter-city road passenger transport. This formula has already been applied to the toll tariffs of motorway concession-holders. The privatisation of IBERIA culminated in April 2001 with the company's stockmarket flotation. Spain's leading air transport carrier also engages in complementary activities like baggage handling and aircraft maintenance. All these business are now conducted under conditions of competition. A Royal Decree approved in early November seeks to boost

sector competition by tightening up the rules on airport slots. A five-year strategic plan was approved last June for the haulage sector (Plan PETRA), geared basically to the redimensioning of its entrepreneurial fabric.

89. Measures envisaged are support for the training of professional drivers and the fold-in of new technologies, and for improving the safety of haulers and the integrity of merchandise. The plan will also seek to promote transport intermodality.

90. Measures now at the preparation stage are:

91. Changes to the tariff review system for regular road passenger transport services under concession contracts, to establish an objective formula, automatically applied, based on the evolution of the CPI and the traffic carried by each concession. This will replace the present system that remunerates firms on a cost basis, and will provide incentives for a better functioning service.

92. The reworked system will enhance market transparency by simplifying review procedures, and obliging concession companies to keep separate accounts of the transport services under their management. Measures to foster short-distance maritime transport as an alternative to overland routes, in view of the environmental benefits attached.

93. An in-depth review of the legal-economic framework governing ports and port services in order to enhance their competitive standing and entrench the freedom of pricing principle within a framework of free competition. The ultimate aim of port reforms will be to bring down the cost of freight transport.

4.2.6 *Postal Services*

94. The Law on the Universal Postal Service and the Liberalisation of Postal Services (July 1998), transposing Community provisions in this respect, was followed up by Law 14/2000 of 29 December on Fiscal, Administrative and Social Measures, which approved the transformation of public corporation *Correos y Telégrafos* into a state-owned enterprise.

95. The public postal operator is by this means equipped with the appropriate legal status to negotiate deepening sector liberalisation. *Correos y Telégrafos*, meantime, has rolled out its own Strategic Plan 2001-2003, which seeks to modernise its services and adapt itself to technological change and the new competitive landscape. Some of the Law's provisions go further than Community legislation, for instance, in the opening up to competition of city mail and direct advertising services.

5. **Resources of Competition Authorities**

96. At present, the budget of the Competition agencies is around 4,7 million euro (2,4 corresponds to the SDC y 2,3 to the TDC). There is a staff of about 135 people. The SDC has a staff of 95 people (from which 13 economist, 16 lawyers and 9 other professionals and a support staff). The TDC is a body of 10 members (President, *Vocales* and *Secretario*, from which 7 economists and 3 lawyers) which is supported by an additional staff of more than 30 people.

97. Over the last two years, the Spanish agencies, in a framework of public budget balance, have increased its resources substantially. Concerning the SDC, a new unit was created in 2001 with new staff which has freed the other two units specialised in mergers and anticompetitive practices. This new unit has

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resulted in a new staff of 12 people in 2002. Finally, the new General Direction has been very recently created with the incorporation of a Director, exclusively dedicated to competition, which is having in the next months an additional support unit.

98. As for the TDC, its budget increased more than 20% last year. This rate of increased is going to be higher in the present year with an additional 35%. This trend will continue and intensify next year in which it is envisaged a considerable increase of the TDC financial resources of about a 100%. At the same time, new staff (probably about the double of present human resources, pending of approval) is also envisaged for next year.

99. Concerning the SDC, a 45% of human resources are applied to enforcement against anticompetitive practices, a 40% to merger review and enforcement and a 15% to advocacy efforts.