

Unclassified

DAF/COMP/AR(2011)40



Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

10-Oct-2011

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Cancels & replaces the same document of 16 September 2011

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SPAIN

-- 2010 --

This report is submitted by Spain to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 October 2011.

JT03308753

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

DAF/COMP/AR(2011)40
Unclassified

English - Or. English

TABLE OF CONTENTS

Executive Summary	3
1. Changes to competition laws and policies, proposed or adopted.....	3
2. Enforcement of competition laws and policies	4
2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions	4
2.2 Merger control	10
3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies.....	13
3.1 Report on the Draft Gambling Regulation Act	13
3.2 Report on the Universal Postal Service, Rights of Users and the Postal Market Act:	13
3.3 Report on the Draft Royal Decree on formal certifications of services by a professional body (Visados).....	14
3.4 Report on the Draft Sustainable Economy Law.....	14
4. Resources of competition authorities	14
5. Summaries of, or references to, new reports and studies on competition policy issues	15
5.1 Report on Competition and the agrifood sector	15
5.2 Report on 2009 State aid.....	16
5.3 Guide for business associations:	16
5.4 Report on the Marine Transport in the Line Algeciras–Ceuta- Algeciras	17
5.5 Specific advocacy measures: ex post challenge of anticompetitive regulation	17
6. Institutional activity	17
6.1 International cooperation	18

Executive Summary

1. Despite the budgetary constraints which have followed the economic crisis, the *Comisión Nacional de la Competencia* (CNC) has managed to hold the pace of its activities throughout 2010. As its key achievements in year 2010, the following may be highlighted:

- In enforcement, commitments decisions more than doubled between 2009 (4) and 2010 (9). The leniency program has been a great success, originating 3 of the 10 article 1/101 infringement decisions.
- In the advocacy field, a *Guide for business associations* and the second *CNC Annual Report on state aids awarded in Spain* were published. Market studies were made on agrifood, on standard setting and certification and on the definition of relevant markets in the telecoms sector. 9 reports on draft legislation dealing with sector issues (coal and energy, post, gambling...) as well as horizontal one (Sustainable Economy Act) were also released. An agreement was signed with the Ministry of Labour to monitor collective agreements as regards their compliance with competition rules.
- For the first time the CNC has activated article 12.3 of the Spanish Competition Act (CA). After a report in 2008 on competition in the sector of intercity passenger transport by bus and two monitoring reports in 2010, the CNC challenged two regional regulations governing concessions systems in the same sector. No other Regional Authorities have implemented similar schemes since then.
- In the same sector, the CNC has issued several reports to the administrative Courts reviewing the concessions granted by the Ministry of Public Works that had been challenged by private firms. Those reports were taken into account by the Courts, which shared the CNC's theses in 5 cases.
- Communications of civil proceedings from Courts to the CNC grew from 22 in 2009 to 39 in 2010. Besides, the CNC issued two reports assessing Courts in private cases.
- The CNC participated in several international competition fora -Spain hosted the European Competition Day in May- and provided technical assistance on competition matters in particular to Latin American countries, Egypt, Morocco, Serbia, China and others.

1. Changes to competition laws and policies, proposed or adopted

2. The current *Competition Act* was approved on July 3rd, 2007, the *Competition Regulation* on February 22, 2008, and the *CNC By-laws* on February 29, 2008.

3. An amendment raising fees concentration quotas has been approved in 2010 with effects for the year 2011.

Change in fees concentration quotas

Until 2010		From 2011		Increase (%)
Global Turnover (GT) (€)	Rate quota (€)	Global Turnover (GT) (€)	Rate quota (€)	
GT ≤ 240.000.000	3.000	GT ≤ 240.000.000	5.502,15	83,40
240.000.000 < GT ≤ 480.000.000	6.000	240.000.000 < GT ≤ 480.000.000	11.004,31	83,40
480.000.000 < GT ≤ 3.000.000.000	12.000	480.000.000 < GT ≤ 3.000.000.000	22.008,62	83,40
GT > 3.000.000.000	24.000+6.000 ¹ < 60.000€	GT > 3.000.000.000	43.944+11.004,31 ² < 109.860€	83,10

4. In addition, some modifications in the *By-laws* are being considered within the context of the *Sustainable Economy Act*

2. Enforcement of competition laws and policies

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

5. The capacity of CNC to prioritize in the area of enforcement is limited by its obligation to investigate all complaints received, which also explains the fact that many proceedings result in dismissal by the CNC on the grounds of no evidence of infringement. Most of these cases are related to manufacturing industry and energy.

6. In 2010, 61 decisions were issued on articles 1 of the Spanish CA (hereinafter CA) or 101 TFEU, of which 10 declared an infringement and imposed fines (of which 5 were on cartel -strictly speaking-cases), 42 did not declare any infringement, and 7 were Commitments Decisions. This year, the leniency program has had its first effects, with resolutions on three cases, two of which (on bath gels and on sherry) are described below. The number of proceedings concluded by the commitments procedure has also increased, from 4 in 2009 to 10 in 2010, as a result of the greater flexibility of that mechanism introduced by *Competition Act 15/07 of 4 July*. Besides, 14 abuse cases were formally opened in 2010.

7. In 2010, 7 cases required down-raids, and CNC inspectors collaborated with the EC DGCOMP in another 3 dawn raids in the framework of EC cases.

¹ for every 3.000.000.000€ in which the aforementioned turnover exceeds the above sum up to a maximum limit of 60.000€

² for every 3.000.000.000€ in which the aforementioned turnover exceeds the above sum up to a maximum limit of 109.860€

2.1.1 *Summary of a selection of cases – Concerted practices*

2.1.1.1 *Proposals to close*

- S/0133/09 ASEM MAC 10/02/2010

On the basis of statements from the President of the Spanish Association of Manufacturers of frozen dough (ASEMAC) published in a newspaper EFEAGRO, the CNC initiated disciplinary proceeding against ASEM MAC.

The statements were: "The president of ASEM MAC pointed out that bread prices will raise around 5.5% due to rising production costs, primarily raw materials". "This situation forces the industry to pass on the cost overrun in the final price of the product to maintain the survival and profitability of the sector."

The question of whether the journalist reported these statements faithfully and promptly, as she said, was one of the main issues. EFEAGRO stated that the company does not conserve a record of the conversation with the President of ASEM MAC, and that the journalist who made the interview had left the company. The CNC closed the proceeding of ASEM MAC on the grounds that the existence of a collective recommendation or concerted practice had not been proven.

- S/0145/09 CESFAC 25/01/2010

The General Secretary of the Union of Small Farmers and Ranchers (UPA) submitted to the CNC a request to investigate the reasons why the decline in oil prices and commodities registered in the last months of 2008 had not been reflected in the input prices of agricultural production, indicating the possible existence of a price fixing agreement in the animal feed sector for the years 2007 and 2008, by companies integrated in the Spanish Confederation of Feed Manufacturers Animal (hereinafter CESFAC).

However, the investigation found no evidence of such possible pricing agreement violation of Article 1 by CESFAC within that period, and the CNC closed the case.

- 2575/04 Disa Canarias 19/02/2010

The Canary Islands Federation of Retailers of Petroleum Products informed against Shell Spain S.A, for alleged prohibited conducts, involving the violation of competition rules on vertical agreements as set in EC Regulation 2790/99 in contractual relations that bind the reported to certain service stations in the Canary Islands territory.

The CNC considered that the requirements of competition regulation were met, as the problem that arises in this case was limited to 5 individual contracts, and it was very unlikely to contribute significantly to the closure of business. Therefore, the CNC did not initiate disciplinary proceedings.

- S/0161/09 Empresas Reponedoras Grandes Superficies 23/04/2010

A complaint was lodged on behalf of the FIAB (the Spanish Federation of Industries of Food and Beverage) against various firms for alleged conduct prohibited by Article 1.1.a) of the CA consisting of a general and uniform increase in 10% of the rates for 2009 restocking services compared with those in 2008, under the pretext of the entry into force a new national collective agreement.

While some similarities in the behaviour of firms seemed suspicious, there was evidence that some of the companies reported had negotiated prices with their customers and had not applied a linear rise. Above all, there was an alternative explanation: a new collective agreement had been signed with wage increases of 10% from January 2009, in a service where according to the records, wage and Social Security costs are especially important.

Therefore, the CNC proposed to close the proceedings since no evidence of infringement in the conduct alleged was found.

- S/0218/10 Genoma España 12/07/2010

The Genome Foundation is denounced for restricting the domestic market of industrial property services in their tenders, by fixing the prices of services directly, and by restricting participation in the tenders to some particular intellectual property agencies (APIs) predetermined

However, the Genome Foundation did not make bilateral agreements with some specific APIs to the detriment of others, nor fixed prices for services. It organized opened public tenders based on qualitative criteria such as previous experience, working methods, personnel, etc. and set the fees within the limit set in the tender specification. Therefore there was no discrimination since the public tenders were developed within the principles of equality, competition and objectivity. As for the fees, the Genome Spain Foundation established the maximum ceiling that it was willing to pay for each service, but agent's fees were freely determined within that limit.

The CNC did not appreciate circumstances justifying the initiation of disciplinary proceedings.

- S/0243/10 Iberdrola Suministro 12/07/2010

The Mayor of Pego (Alicante) lodged a complaint against Iberdrola Generación, SA and Iberdrola Distribución Eléctrica SAU, for their refusal to provide electrical power to various parts of the City.

Pego Town Council agreed with Iberdrola certain conditions for the supply of electricity subject to the provision of a guarantee. The City Council proceeded to the signing of the contract but did not provide a bank guarantee, considering it inappropriate for a Public Administration. As a result, Iberdrola immediately decided not to validate the contract.

Since no regulation explicitly prohibits the provision of the guarantees required the CNC closed the proceeding.

2.1.1.2 *Sanctions*

- S/0014/07 Gestión Residuos Sanitarios 18/01/2010

ATHISA presented a complaint against health waste management companies for alleged anticompetitive practices. The companies listed are engaged in specifically in the management of dangerous waste from hospitals, which requires special treatment in collection, transport, etc... Some waste requires special containers for deposit, transfer and treatment.

The CNC considered that the following offenses to Article 1 CA had been accredited:

- Pact of no competition.
- Joint ventures to attend public tenders (Castilla La Mancha, Valencia, Madrid).
- Meetings with other competitors.

- Exchange of sensitive information.
- The accused companies were linked together and with competitors with significant commercial relationships.

Therefore, the CNC imposed fines on companies for a total of approximately €7 million.

- S/0084/08 Fabricantes Gel 21/01/2010

HENKEL IBERICA SA, SARA LEE HOUSEHOLD & BODY CARE SPAIN, SL, SARA LEE CORPORATION, PUIG BEAUTY & FASHION GROUP SL COLGATE PALMOLIVE SPAIN, SA and their respective parent companies agreed to the reduction of the size of bath and shower gels sold from a capacity of 750 ml to 650 ml, while keeping the same selling price. As this behaviour was considered to be a collusive conduct of Article 1 of the CA, with the purpose and effect of fixing prices indirectly, the CNC imposed a total of fines amounting to about €8 million on the companies involved. HENKEL IBERICA, SA and its parent company were exempted from the fine payment because it was the first to provide the evidence that triggered the down raid.).

This is the first case in which the leniency program has been applied in Spain.

- S/0103/08 Confederación Española Industriales Feriantes 01/02/2010

The CNC initiated the file following a complaint against the “Asociación Provincial de Industriales Feriantes de Valencia (APIFV) y la Confederación Española de Industriales Feriantes (CEIF)”. The complainant alleged that his request to change his fairground attraction located in the Fair of Valencia was denied on the basis of the CEIF Standards in force, and the CEIF argued that as these Standards did not apply to land allocation, they did not affect competition.

The CNC believed that certain provisions of the CEIF Statement of Standards "*restrict, control or prevent the installation of fairgrounds and land allocation at the fair to certain operators*" and therefore constituted a violation of Article 1.1 of the CA.

The CNC imposed a fine of €10.000 to CEIF.

- S/0051/08 Vinos Finos de Jerez 27/07/2010

The case began with a leniency application by one of the companies involved which defined the conduct as a cartel.

The application lead to the initiation of disciplinary proceedings against various wineries companies, wineries associations and the Regulatory Council of Appellation of Origin.

There was evidence of numerous contacts between the competitors involved, either through meetings or through other communications such as e-mail. The target market for the agreements reached was the overseas marketing of wines with Appellation of Origin "Jerez-Xérès-Sherry" (Jerez) and "Manzanilla Sanlúcar de Barrameda" (Manzanilla), specifically the marketing of wines of exclusive supply also called private label, store brands or products BOB ("Buyer Own Brand") to facilitate the recovery of export prices of BOB. The CNC concluded that it was a conduct prohibited by Article 1 of the Competition Act consisting of:

- Production limitations through supply restrictions agreed, limiting the sales volume by the assignment of a quota to each company.
- Market sharing. After putting limits on the production available for marketing, the companies shared the amount by allocating customers.

- Fixing minimum prices and updating these prices.
- Exchange of information on prices, customers and quantities sold.
- Control and monitoring mechanisms.

The fines imposed on companies amounted to approximately €6.5 million, the leniency applicant being exempted.

2.1.2 *Summary of a selection of cases –Abuse of dominance*

- S/0176/09 Sedifa y Grufarma 09/06/2010

SEDIFA, SL and GRUFARMA, SL, two drug dealer companies, filed a complaint against some pharmaceutical companies for an alleged abuse of dominant position. They based their complaint on conducts that limited the drug distribution, on the unjustified refusal to supply, and on the establishment of unequal conditions for distribution that put some distributors at a disadvantage situation with respect to others.

On the basis of an analysis of the substitutability of drugs, the CNC concluded that the accused had a dominant position only in relation to some of them. However, the CNC considered that freedom of action of these laboratories was constrained by the sector regulation, including prices and margins set by the Administration, which could only be modified upon request to the Administration. Furthermore, they were legally required to keep the market continuously stocked.

As there was no evidence that the laboratories wanted to act together, the CNC could not conclude the existence of a joint dominant position and, therefore, filed the complaint.

- S/0165/09 Gran Distribución Galicia 15/06/2010

The professional organization of agriculture "Agricultural Unions-UPA" submitted a complaint against several chains of retail outlets for a possible infringement of the Competition Act. According to Agricultural Unions-UPA, these retailers had engaged in alleged abuse of dominant position by making higher profit margins for manufacturer brands than for private label substitutes. However, on the basis of the quotas reported of the different operators in the market of retail distribution of consumer goods, no dominant position (not individual nor joint) was accredited, and the case was filed.

- S/0137/09 Telefónica 30/06/2010

The Association of Value Added Services in Telecommunications (AVA) denounced "Telefónica Móviles Spain, SAU" (Telefónica) for abuse of dominant position prohibited by Article 2 of the CA, consisting in the application of unfair prices to operators of premium rate services.

Telefónica was found to be the first operator in this market, as expected, with a market share of 40-50%, but this was not sufficient by itself to prove the existence of an individual dominant position, especially since there were two other operators (Vodafone and Orange) with significant market shares.

The CNC considered that there was no evidence of a predatory behaviour. The other operators had enough margins to offer attractive value-added services to consumers. Furthermore, they had been able to successfully develop their commercial activity in 2008 and 2009.

Consequently, the CNC did not initiate disciplinary proceedings and closed the proceedings.

- S/0262/10 Microsoft 13/12/10

SUMMAR TECHNOLOGY AND MANAGEMENT, SA filed a complaint against MICROSOFT IRELAND OPERATIONS LTD. MICROSOFT IBERICA SRL, consisting of an alleged abuse of dominant position.

It examined whether the marketing policy of MICROSOFT might be considered unfair as it implied tying and bundling.

The CNC concluded that MICROSOFT did not have a dominant position in the market as its market share is below 30%.

Therefore, the CNC decided not to initiate disciplinary proceedings and closed the proceeding.

2.1.3 *Commitments Decisions*

- S/0020/07 Trío Plus 28/01/2010

Sogecable and Telefónica signed an agreement for joint action. This agreement proposed restrictions on competition, such as privileged access to customers of the counterparty, which eliminated an important source of differentiation between them. This would have strengthened the dominant position of Sogecable and Telefonica in the markets of TV and electronic communications. There were incentives for coordination prices.

It was necessary to adopt remedies that ensured a competitive environment. To that effect, Sogecable had proposed not to sell jointly the access to TV and internet Telefónica, and not to discriminate in the sales to be carried out among other access providers operating in Spain.

The CNC approved a commitment decision as the remedies submitted by the parties were adequate.

- 2800/07 Signus Ecovalor y tire makers 20/05/2010

The National Association of Tires Importers complained against some tires companies and against a management of used tires company (Signus Ecovalor) for alleged conduct prohibited by CA.

In particular, it alleged:

- The constitution of an agreement restricting competition contrary to Article 1 of the CA.
- An abuse of a dominant position as defined in article 2 of the CA because, other companies that wanted to manage used tires directly had to pay a management fee to the producers and the canon was not repaid.

SIGNUS Ecovalor, SL requested the initiation of commitment proceedings in a written statement and then presented the commitments. The commitments offered by SIGNUS Ecovalor, referred to the refund of fees, resolved potential discrimination.

The CNC agreed with the remedies proposed and reached a Commitment Decision.

- S/0255/10 Puntos Suministro E.ON 30/11/010

The President of the National Federation of Employers of Electrical and Telecommunications in Spain (FENIE) denounced Viesgo Electra Distribution SL (Now E.On Distribution, SL) for an alleged infringement of the Competition Law. The conduct denounced was an abuse in the downstream markets related to electricity installation companies and their customers.

This connection could lead to cross-subsidies between distribution and marketing. The distributor carried out a regulated activity, distribution, as well as marketing activities, which resulted in the possibility of cross-subsidies, and provided therefore an unfair advantage vis-à-vis the marketing competitors. The solution proposed was to separate the installation and distribution activities carried out by distribution companies at the point of service.

The CNC agreed to make a Commitment Decision accepting the remedies proposed by E.ON to separate these activities.

- S/0203/09 COAPI 22/12/10

A complaint against the Association of Industrial Property Agents (hereinafter COAPI) was presented denouncing a decision of the Board of this body limiting advertising activities and competition between Industrial Property Agents.

The CNC estimated that the Conduct Code of COAPI limited the freedom of entrepreneurship of Industrial Property Agents, since it prevented an Industrial Property Agent from disclosing to third parties the services he could provide.

As a remedy, COAPI offered to change this provision in the Code by prohibiting only "*an opinion or report on a case being handled by another partner, denigrating his work*".

The CNC resolved to make a commitment decision accepting the remedy.

2.1.4 *Activities of the Courts of Appeal*

8. The CNC's decisions can be appealed before the *Audiencia Nacional (AN)*, and the Judgments of the *Audiencia Nacional* may be reviewed in cassation by the *Tribunal Supremo (TS)*. In 2010, the AN decided on 35 appeals, of which 26 were rejected, 6 partially accepted and 3 accepted. The TS upheld the CNC Decisions in 10 of 21 cases, partially upheld them in 4 cases and annulled them in 6 cases. To sum up, of a total of 56 appeals submitted to the AN and the TS, the Courts ratified CNC Decisions in 64.29% of the cases, but the figure would reach 82.14 % if those appeals that confirmed the infraction but reduced the fines (10 cases) are taken into account

2.2 *Merger control*

2.2.1 *Mergers and acquisitions.*

9. Competition Act 15/2007 strengthened the role of the CNC in merger control. Now it is the CNC who makes the final decisions both in the first and second phases of the procedure. Nevertheless, the Act still reserves a minor role for the Government, which can revise, for reasons of general interest other than competition defence – such as defence, public health, free movement of goods and services, environment, R&D or sector regulation matters-, second phase merger decisions of the CNC prohibiting an operation or submitting it to conditions. The Act also has raised notification thresholds.

10. The total number of merger operations reported increased from 74 in 2009 to 119 in 2010. In particular, a very significant increase has taken place in the number of concentration operations processed through the pre-notification procedure, which generally facilitates the subsequent notification process. Specifically, 87% of concentration operations were pre-notified, as compared with 45% and 43%, respectively, in the preceding two years. The option of pre-notification, which is voluntary, has been so frequent that it has become in fact one more step within the concentration control procedure. Notifications made using the abbreviated notification form have also increased appreciably, amounting to 53% of notifications filed.

11. Most of the merger Decisions are authorized in the first phase without remedies, although the CNC has adopted 3 Decisions initiating Phase II.

- C/0230/10 y C/231/10 Telecinco/Cuatro y Prisa/Telefónica Telecinco 30/06/2010

The merger involved the acquisition by TELECINCO SOCIETY of 100% of CUATRO TELEVISION share capital, and the acquisition of DTS Distribuidora de Televisión Digital, SA (Digital +) by PRISA, Telecinco and Telefónica. All of them are TV channels.

The various agreements signed by the companies under the merger could have led to the coordination between these companies in various markets.

As part of the merger various agreements involving restrictions on competition had been set out:

- Agreements not to compete
- Agreements not to attract employees
- A contract for exclusive advertising sales

Furthermore, a collaboration agreement had been signed to identify possible areas of collaboration.

As the CNC considered necessary to analyse more thoroughly the effects on competition it decided to start the second phase.

The CNC finally authorized the merger subject to remedies, but in 2011 it opened further proceedings as a result of a breach of remedies, and has imposed a fine of € 3.600.000 to TELECINCO.

- C/0246/10 Dima/Siglo XXI Guadalajara 28/07/2010

The merger involves the acquisition of the sole control SIGLO XXI GUADALAJARA by DIMA

The acquired company had a monopoly in the province of Guadalajara, in the segments of newspapers, magazines and collectibles.

Nationally, the combined share in the distribution market of periodicals was [10-20] % in both segments of newspapers and magazines. However, the prior existence of links between the groups involved through cross-ownerships resulted in a greater combined share of more than [50-60] % for the market of periodicals, as a whole, and of [70-80] % for the daily newspaper segment. This was important when assessing the market power of the merged entity, since companies involved in the ownership groups of the notifying party were hardly a competitive alternative to the new entity, even if it did not exercise direct control over them.

The CNC's Council considered necessary to open a second-phase proceedings to further analyse the effects on effective competition of the structural changes that would come about in Guadalajara when the agreements between the publishers of newspapers, members of DIMA, and SIGLO XXI GUADALAJARA took effect. In 2011, actions have been shelved because of the applicant's withdrawal.

- C/0271/10 Redsys/Redy 13/10/10

It involved the companies *REDSYS SERVICIOS DE PROCESAMIENTO, S.L.U.* (“REDSYS”) and *REDES Y PROCESOS, S.A.* (“REDY”) both active in the field of processing means of payment transactions.

The CNC considered that the limited presence of foreign operators in the Spanish market for services related to the processing of card transactions, suggested the existence of barriers to entry, and since the concentration could further restrict competition, it opened second-phase proceedings. In 2011, the merger was approved subject to remedies.

2.2.2 *The SIP scheme*

12. Although manufacturing industry has remained the sector in which the CNC has analysed the largest number of concentrations, a notable increase in the number of concentrations in the financial sector has been analysed as result of the start of the banking sector restructuring in Spain, as well of the consequent restructuring of the underwriting activities of financial institutions. Such movements have resulted in an increase in the number of mergers notified to the CNC.

13. The regulation of the integration process of the savings banks involves basically two different mechanisms: either a full corporate merger, that is, the absorption of one or more entities by a pre-existing savings bank or by a new savings bank, or what is known as a *cold merger* or contractual integration through a SIP (Sistema Institucional de Protección). A SIP is a mechanism proposed in *Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006* on the taking up and pursuit of the business of credit institutions, which defines it as a contractual or statutory liability arrangement aimed to protect the institutions that adhere to it, while ensuring their liquidity and solvency to prevent bankruptcy scenarios when needed. Recently amended Spanish regulations do allow for various credit institutions to be treated as a consolidated group when, through a contractual arrangement, they build up an institutional protection scheme, provided that the following requirements are met:

- a) Existence of a central entity that determines in a binding manner the members' policies and business strategies, as well as internal control and risk management standards. Such entity will be responsible for complying with the regulatory banking requirements of the SIP on a consolidated basis.
- b) The central entity must be either one of the members of the scheme or another credit institution subject to public supervision, and must be owned by all of the members who form part of the scheme.
- c) The contractual arrangement must contain a mutual solvency and liquidity commitment between the entities making up the scheme, covering at least 40% of the legally relevant net worth (*recursos propios computables*) of each one of them as far as solvency support is concerned.
- d) The institutions making up the SIP must pool a significant portion of their profits, with the individual contributions being assigned proportionally to the members' financial share under the scheme, subject to a minimum of at least 40% of them.
- e) The contractual arrangement must require the parties to remain as SIP members for at least 10 years, and to provide at least a two year prior notice if they wish to leave the scheme after this period. In addition, the arrangement has to include penalties for early leave, in order to reinforce the stability and strength of the SIP.
- f) In order to assign a zero per cent weight to the financial risk exposure that members of the SIP have vis-a-vis each other, the requirements established regarding financial institutions' own net supervised worth have to be met.

14. The SIP scheme has been applied in 2010 to Cases C/0227/10 *Grupo Banca Cívica* 09/06/2010; C/0259/10 *Mare Nostrum* 15/09/2010; C/0286/10 *Cajamadrid/Bancaja/Caja Insular Canarias/Caja Ávila/Caixa Laietana/Caja Segovia/Caja Rioja* 29/09/2010; C/0281/10 *CAM/Cajastur/Caja Extremadura/Caja Cantabria* 27/10/2010; and C/0290/10 *Caja Inmaculada/Caja Círculo/Caja Badajoz* 15/11/10.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

15. Competition Act 15/2007 has assigned new and more powerful functions to CNC in the area of advocacy, to be carried out through its new Advocacy Division. The advocacy instruments of CNC include its assessment of draft legislation affecting competition, as well as reports on state aid and market studies.

16. The advocacy role complements the work of CNC on instruction and resolution of disciplinary proceedings. Its main purpose is to favour the existence of a competitive environment in the economy through various non-coercive activities, in particular recommendations to Public Administrations and market operators issued in the context of reports and studies on how to improve competition in specific markets. The creation of the Advocacy Division has substantially strengthened the public impact of the work carried out by CNC.

17. In 2010 the CNC has issued 18 reports on draft legislation, including the following:

3.1 Report on the Draft Gambling Regulation Act

18. The Report analyses the consequences of the enactment of the draft law on market access conditions and on the position of traditional operators.

19. The draft law proposes a dual model for accessing the market depending on whether the gambling activities relate to traditional lottery services or to other types or categories of activity, and gives some competitive advantages to traditional operators over new operators.

20. The CNC considers that regulatory asymmetries of treatment may have a particularly adverse impact on competition, given that traditional operators already enjoy special advantages, including fiscal exemption of lottery activities, which are reinforced by the draft law. The CNC is sceptical as to the need to maintain the tax exemption, and has requested that any differences in taxation regimes of the various gambling activities be explicitly justified. The different taxation regimes may also impact on future competition within the sector, as it facilitates the access of traditional operators to deregulated activities in better conditions than those faced by other operators.

3.2 Report on the Universal Postal Service, Rights of Users and the Postal Market Act:

21. The purpose of the Act is to establish the regulatory framework for the provision of the Universal Postal Service which culminates the gradual process of deregulation and opening to competition in the EU Directives.

22. The CNC Report has pointed out the timid deregulation provided for in the draft compared to the objectives laid down in Directive 2008/6/EC despite the inclusion of measures aimed at opening the sector to greater competition, in particular the removal of areas of operation reserved to *Correos* (the traditional incumbent) and several modifications in the definition and financing of public service obligations in the context of the Universal Postal Service.

23. The purpose of the CNC Report has been to provide some guidelines for the regulatory development of the Act, calling attention to those aspects considered particularly harmful to competition, many of which are related to special advantages granted to *Correos*. But also it introduces various elements that may delay the development of competition for 15 years.

- The exemption of *Correos* from certain taxes payable on activities connected with the Universal Postal Service
- The exclusive right granted to *Correos* to distribute documents sent, physically or electronically, to public authorities or judicial bodies, under conditions which may constitute a *de facto* reserved area and which are not sufficiently justified.
- The possibility of establishment of rates for network access which might be discriminatory.

3.3 *Report on the Draft Royal Decree on formal certifications of services by a professional body (Visados)*

24. The purpose of the Royal Decree has been to implement in this area of activity the provisions of Act 17/2009 on free access to services activities and their exercise, which transposed into national law the Services Directive. Overall, the CNC considers very positive the removal of the mandatory requirement for formal certification in approximately 70 professional jobs, which allows for a significant reduction of unnecessary administrative burdens and obstacles to competition in the economy.

3.4 *Report on the Draft Sustainable Economy Law*

25. This Law, aimed at palliating the negative effects on the Spanish economy's growth rate of the international economic crisis, incorporates a comprehensive set of structural and institutional reforms that will help companies and traders to redirect their activities towards sectors with better potential long-term growth. The Draft is built on three pillars: the improvement of economic activity, advocacy of competition, and the quest for environmental sustainability.

26. The recommendations made by the CNC in the Report are also structured in three blocks:

- *Reforms on sectoral regulation Agencies*. The CNC understands that its functions do not correspond to those of such Agencies, and therefore it should not be excluded from the scope of this Law.
- *Proposals concerning the public instruments (both budgetary or procurement)*. The CNC has indicated its support, in particular, to the uplifting of better regulation principles to the level of legal standards.
- *Sector reforms*: The CNC has made specific observations in each one of them, aimed at highlighting their potential impact on the level of competition of the many markets affected.

4. Resources of competition authorities

- Total staff: 193
- Non-administrative staff: 125
- Percentage of lawyers: 32%
- Percentage of economists: 32%
- Percentage of other degrees: 36%

- No. of PhDs in economics: 1 (plus 26 State Economists, the highest economy specialized body of Spain's Public Administration)
- Average age of staff: 42 years
- Average tenure: 3 years
- Budget: €13,467,498 million
- Amount spent on salary: € 9,117,070 million
- No. of staff who left: 20
- No. of staff who retired: 1
- No. of staff who joined in 2010: 14
- No. who have spent at least 5 years in private practice: 4 (This information is only available for the directors)

27. The CNC's staff working at the Investigations Division is organized by industry/sector, rather than by enforcement area.

28. Specific training of staff has been a major characteristic of CNC policy since the beginning. The training is focused primarily on three areas:

- Competition law and policy.
- Specialized information technologies, as required in particular for inspections.
- Languages.

29. Also, in compliance with *Law 11/2007 on Electronic Access of Citizens to Public Services*, the CNC has made available to the public the use of CNC electronic filing and electronic ID since the first quarter of 2010.

5. Summaries of, or references to, new reports and studies on competition policy issues

30. The CNC has published several in depth studies throughout 2010, all of which have generated a significant response from the affected sectors and the media.

5.1 Report on Competition and the agrifood sector

31. The CNC considers that the analysis of the applicability of competition rules to this sector requires taking into consideration the characteristics of the food supply chain, as well as the recent performance of the sector, especially in regard to price trends, and the main differences in supply and demand conditions according to the specific agrifood products involved.

32. The main conclusion of the Report³ is that EU as well as domestic competition rules are fully applicable to the agrifood sector. Although the EU sector regulation allows for certain possible exemptions, the situations in which those exemptions apply are very limited and undoubtedly exclude such practices as price-fixing agreements. As for domestic legislation, the Spanish Competition Act applies without restrictions to the agrifood sector. As in other sectors of the economy, prohibited practices might be compatible with the Competition Act only if they fulfil at least one of the following very specific

³ Executive summary in English and full report in Spanish.

conditions: they satisfy the requirements of article 1.3 of the Act (virtually the same as those under article 101.3 of the TFEU), or they fall under the category of *de minimis*, or they are covered by a Law. Any other form of participation of public authorities in such practices, such as facilitating, permitting or promoting such conducts, do not exempt the parties from the obligation to comply with competition law.

33. The CNC considers, in addition, that the exemption of the sector from application of competition rules would discriminate against other economic activities and, most important, would not be effective to solve the sector's problems.

34. The CNC has nevertheless called attention to the wide range of instruments available to both public authorities and private operators to overcome the problems of agricultural producers, while observing competition rules. In its report, the CNC describes some of those instruments or initiatives, including the development of cooperatives and of formal contractual relationships between producers and processors, as well as the establishment of codes of conduct, and transparency-enhancing measures.

5.2 Report on 2009 State aid

35. Under Competition Act 15/2007 the CNC may analyse the competition implications of state aid policies and submit recommendations to the competent public authorities aimed at preserving competition in the markets. It is also expected to issue an annual report on the main developments regarding public aid in the period considered.

36. The 2009 Public Aids Report⁴ presents a statistical section with estimates on public aid granted in Spain in 2008-2009, as well as a series of principles for the assessment of public aid based on the economic analysis of the effects of a number of specific aid programs, including a plan subsidizing the purchase of less contaminating automobiles.

5.3 Guide for business associations:

37. As a result of a number of cases of infringement of competition law by business associations, both the CNC and the associations of various sectors showed interest in receiving some form of technical assistance from the CNC regarding the application of competition law.

38. At the end of 2009, the CNC published its *Guide*⁵ to business associations, a brief document of 23 pages of easy use and interpretation which provides guidelines on the factors to be taken into account by business associations to avoid anticompetitive practices.

39. The Guide presents in different chapters the main breaches of competition in which business associations may incur, explaining the nature of the offense and illustrating it by means of practical examples taken from actual CNC cases. Some of the main violations pointed out are joint decisions and/or recommendations on prices, market allocations, boycotts, and exchanges of sensitive information among associated companies.

40. The Guide explains as well the consequences of committing any of the listed offenses, which include the nullity of the decisions taken and the imposition of fines. The association may also be sued and is obliged to compensate for damages.

⁴ Link in [Spanish](#).

⁵ Link in [Spanish](#) and [English](#).

5.4 Report on the Marine Transport in the Line Algeciras–Ceuta- Algeciras

41. The CNC issued this Report in response to a Ministry of Development's request to be informed on the competition implications of establishing maximum tariffs for the coastal transport of passengers and vehicles on the Ceuta-Algeciras-Ceuta ferry line, which is subject to public service obligations. The CNC has considered that the establishment of maximum tariffs did not respect the principles of necessity and proportionality, and that the proposed measure could interfere with the efficiency of resource allocation, besides reducing the quality and frequency of the service provided outside the boundaries imposed by the public service obligation. It could also restrict competition, in so far as it might discourage entry of potential operators and provide a focal point of alignment for operators. In conclusion, the CNC has proposed the Ministry to consider less restrictive regulatory alternatives if it deems necessary to correct a malfunctioning of the market which is keeping prices artificially high.

5.5 Specific advocacy measures: *expost* challenge of anticompetitive regulation

42. In 2010 the CNC has made use for the first time of the capacity to challenge anticompetitive regulations granted to it by the Competition Act in force.

43. The measure has been taken after a prolonged follow-up by CNC of the deficient competition conditions observed in the procedure for granting concessions of intercity passenger transport by bus, both by state and regional authorities. In 2008 the CNC issued a first report calling attention to a system that established high entry barriers as a result, *inter alia*, of concessions granted for excessively long periods, the existence of a previous holder's right of preference in public tenders, and the high weight assigned in those tenders to some quality criteria that also favoured the concession holder's chances, at the expense of other key variables such as price and frequency of the service. Two monitoring reports followed in 2010 which revealed insufficient change at the national as well as at the regional level. In particular, some regulatory procedures had been approved by two regional governments which allowed for very little competition, since they amounted to an almost automatic extension of all the concessions and for a long period of time, which could in practice close down the markets.

44. In view of the fact that no action had been taken by those regional Governments after that report and despite a specific written announcement to them by the CNC of the possibility to use its legal capacity to challenge the norms involved before the competent Courts, the CNC proceeded to do so. The judicial process is likely to take a long time, but some deterrent effect of the CNC's intervention might be taken place already, since no more regional authorities have developed similar schemes since then.

45. The CNC confidence on the result of that process has been reinforced by a Court decision in March 2011 to nullify the concessions granted by the Ministry of Public Works on the basis of a public tender with a design similar to those denounced by CNC, following a challenge of those concessions by some private firms having participated in the tender. The arguments presented by the Court reflect to a large extent those included in CNC reports on the matter.

6. Institutional activity

46. As every year, the President of the CNC appeared before Parliament in order to explain the institution's main past activities and plans for the future.

47. In addition, a Collaboration Agreement has been signed with the Ministry of Labour and Immigration establishing an Action Protocol which will allow for more effective monitoring of collective labour agreements as far as compliance with competition rules is concerned.

6.1 *International cooperation*

48. Besides an special collaboration with European and Latin American competition authorities, the CNC has continued to participate actively in many international competition fora, including ICN, OECD Competition Committee (- as well as the Global Forum on Competition and the Latin American Forum on Competition), ECA, ECN and UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.

49. The CNC has also hosted in its premises in Madrid the 2010 European Competition Day, as part of its responsibilities as holder of the rotating presidency of the European Union. This is the second time that Spain has hosted the event (the first was in 2002, before the creation of CNC and, in this occasion, CNC has been in charge of the organization with the support of the Ministry of Economy and Finance. One main purpose of this Day is to make the general public more aware of the importance of competition issues and of the work carried out by competition authorities to promote a more efficient functioning of the economy. Various distinguished speakers took part in the event, such as the Commissioner, Joaquín Almunia; the Chair of the Committee on Economic and Monetary Affairs of the European Parliament, Sharon Bowles; and the former Competition Commissioner, Mario Monti. The main themes have been the optimal deterrence of anticompetitive behaviour and the implementation and impact on consumers of the Services Directive. The European Competition Day was closed by Ms Elena Salgado, Second Vice President and Minister of Economy.

50. Regarding technical collaboration with the courts, communications of Courts civil proceedings to the CNC grew from 22 in 2009 to 39 in 2010, and CNC has issued two reports assessing Courts in private cases.

51. Technical assistance/training programs with other Competition Authorities have continued, mainly with Latin America (Ibero-American Competition School, on-line training programs, bilateral collaboration agreements...), but also through bilateral cooperation meetings with the Egyptian, Moroccan and Serbian Competition Authorities, and a training programme on competition for Chinese civil servants, among others. The full cooperation program is shown in the table below.

Spain in 2010

Date	Event	Participating Countries	Organising Country/Organisation	Location	Additional Information
March 3rd	Training programme on competition for Egyptian civil servants	Spain and Egypt	AECID-CNC	Madrid, Spain	
March 22nd-28th	Ibero-American Competition School, VIII Edition	Spain and Ibero-American countries	Spain/CNC	Madrid, Spain	Update on developments regarding competition policy and practice, case studies, exchange of experiences...
April 8th	Panel on the institutional organisation of the CNC	Mexico and Spain	México	Mexico	
May 15th-18th	Training programme on competition for Chinese civil servants	Spain and China	ICEX and the Centre for Commercial Studies (CECO)	Madrid, Spain	
May 17th	Visit of Serbian competition authority	Spain and Serbia	UE-CNC	Madrid, Spain	
July 7th	Visit of Moroccan competition authority	Spain and Morocco	CNC	Madrid, Spain	
July 30th	Course: Strategies and Policies on Competition Advocacy	Spain and Ibero-American countries	Spain/AECID (Agencia Española de Cooperación Internacional para el Desarrollo) and the Spanish Competition Authority (CNC)	Montevideo, Uruguay	
August 25th-26th	Visit of the CNC President to the competition authority of Nicaragua, the Central American Court, the top judiciary in Nicaragua and the National University	Spain and Nicaragua	Nicaragua	Nicaragua	
October 6th	Telephone seminar on soft law	Spain and El Salvador	Spain	telephone	
October 23th	Training programme on competition for Egyptian civil servants	Spain and Egypt	AECID-CNC	Madrid, Spain	
October 18th- November 22nd	5-weeks training programme on Introduction to Competition Defence	Spain (CNC employees are the professors) and Ibero-American countries (30 students)	Spain/CEDDET Foundation (Fundación Centro de Educación a Distancia para el Desarrollo Económico y Tecnológico), the Instituto de Comercio Exterior (ICEX) and the Spanish Competition Authority (CNC)	Distance-learning course	http://cursos-online.ceddet.org
December 15th	Training programme on competition for Egyptian civil servants	Spain and Egypt	AECID-CNC	Madrid, Spain	