

**Unclassified**

**DAF/COMP/AR(2013)47**

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

**30-Oct-2013**

**English - Or. English**

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

DAF/COMP/AR(2013)47  
Unclassified

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SPAIN**

**-- 2012 --**

*This report is submitted by Spain to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 30-31 October 2013.*

**JT03347572**

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## Executive Summary

1. The Comisión Nacional de la Competencia (CNC) managed, one more year, to make progress in the defence of effective competition in the markets. The year 2012 is of special importance for various reasons:

- It marks the fifth anniversary of the entry into force of Act 15/2007, a law that ushered in extensive organisational and substantive changes to the defence and advocacy of competition in Spain.
- In February of 2012 the Government approved the preliminary Bill creating the National Markets and Competition Commission (*Comisión Nacional de los Mercados y la Competencia*, hereinafter CNMC), which entails merging the current CNC with various regulatory (energy, telecommunications, postal, airports, railway and audiovisual) and supervisory bodies<sup>1</sup> that exist today. In any event, it must be noted that the preliminary bill creating the new body ensures that Competition Act 15/2007 will remain in force in its entirety.

2. In this context of legislative and institutional changes, the Comisión Nacional de la Competencia has maintained the intense pace of work achieved in recent years:

- In competition enforcement, the best illustration of the level reached is the greater number of proceedings we have completed and the larger scale of the affected markets. Worthy of mention is the sanction imposed, in August 2012 to the Spanish Gas Association (*Asociación Española del Gas* — SEDIGAS) and the Spanish Association of Liquid Petroleum Gas Operators (*Asociación Española de Operadores de Gases Licuados del Petróleo* — AOGLP) for reaching agreement and recommending the price of periodic inspection services for installations receiving natural gas and Liquid Petroleum Gas, the connection, hook-up and checking of such installations and the emergency response service.
- As regards to mergers, in March 2012, the CNC authorized, with a series of commitments proposed by CEPSA, the concentration operation involving the acquisition by *Compañía Española de Petróleos, SA* (CEPSA) of 100% of the share capital of *Chevron España SA* (CHESA), taking exclusive control over this company.

Other highly significant merger, this time in the Spanish audiovisual sector, was the analysis of the transaction between *Antena 3* and *La Sexta*. In July 2012 the CNC authorized the operation, subject to the fulfillment of five conditions. However, in August 2012, the Council of Ministers resolved to modify the conditions imposed by the CNC, making use, for the first time, of the residual mechanism contained in article 60 of Act 15/2007.

- In the competition advocacy field, some of the milestones during this period include the studies on automotive fuel and of professional associations. As part of its advocacy activities, the CNC prepared a series of mandatory reports on legislative proposals underway, suggesting improvements to the authorities and recommendations to avoid unnecessary restrictions.

Reference should also be made to the impact of the fourth Report on 2011 State Aid, which provides, among other information, a general overview of the statistical context of State aid in Spain.

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<sup>1</sup> The [new Law 3/2013 creating the National Markets and Competition Commission](#) was approved in June of 2013 (for now, only in Spanish)

It is also worth mentioning a guide, published in September 2012, addressed to end consumers based on the lift maintenance report.

- Finally, and still part of its 2012 advocacy activities, the CNC prepared a study on the use of vehicular entities or in-house providers at public authorities and on public authorities' entrustment of the provision of specific goods and services to such providers. This case study will be approved during the next reporting period.
- Regarding the fuel sector, since its first study was published in 2009, this market has been a priority area for the CNC. In 2011, a monitoring report was published to examine competition in the sector and to verify compliance with the recommendations made in 2009. Again, in July 2012, the CNC published a third report in which it conducted an in-depth analysis of certain aspects of the Spanish automotive fuel market, in particular whether increases in international prices for automotive fuel were passed through to prices at the pump more quickly and intensely than reductions in those international prices (in other words, whether there were asymmetries in the transfer of price changes, the so-called “rockets and feathers” phenomenon). On 31 July 2012, the Ministries of Economy and Industry requested reports from the CNC and from the Spanish Energy Commission in order to examine possible measures to boost competition in this market. The CNC published its fourth report on the sector in October 2012.
- It is also important to underscore that the CNC has been able to make further progress in the application of new technologies to administrative procedures and, in particular, to the management of the cases handled by the CNC. All with the goal of reducing administrative burden for both the CNC and businesses and enabling easier and more direct access to the content of case files for interested parties. The last step should be the electronic notification of all proceedings before the CNC.
- The CNC has continued challenging acts of public authorities and subordinate legislation that impedes effective competition. In 2012, the CNC filed a cassation appeal before the Supreme Court, and against the judgment of Galicia High Court of Justice, which had dismissed the CNC's previous appeal. As of the date of this Annual Report, the appeal has yet to be decided. The CNC has also raised court action against provisions originating from central government authority; it filed appeal against a state-level legislative provision, which regulated the effects of the entry into operation of the link between the electricity systems of mainland Spain and the Balearic Islands.
- Also during 2012, the CNC received requests to appear as *amicus curiae* in more cases than in previous reporting periods, covering a wide range of issues and sectors. The proceedings in which the CNC has participated as *amicus curiae* and which were decided on in 2012 notably include *Ryanair Ltd. against Aeropuertos Españoles y Navegación Aérea (AENA)* conducted before Alicante Commercial Court No. 3, following a request made by the court to the CNC. This was the first time the CNC had submitted oral observations in a court proceeding, in the context of the hearing on *Ryanair's* application for interim measures.
- Regarding outstanding proceedings, it is also worthy of note, that in January 2012, in the oil and gas sector, the CNC issued a report at the request of a commercial court in the context of an ordinary proceeding arising from a complaint filed by a service station against an oil company.
- In the international arena, the CNC attended and actively participated in the ECN's current working groups. It has also been active in international fora -ICN, OCDE, and UNCTAD- and has provided technical assistance to several competition authorities from an ever-growing

number of countries, (Brazil, China, and Malta). Also, in July 2012, a delegation from the International Monetary Fund visited the CNC to ascertain the CNC's view of the progress made on competition matters in Spain in the last years.

## **2. Changes to competition laws and policies, proposed or adopted**

3. Drafting of Act 3/2013 of June 4 creating the Markets and Competition Commission began during 2012, even though the law was passed in June of 2013. The Act 3/2013 creates a new agency, the CNMC ("Comisión Nacional de los Mercados y la Competencia") and eliminates eight agencies. The antitrust Authority and seven regulatory agencies which merge into CNMC are: CNC (competition), National Energy Commission, the Telecommunications Market Commission, National Commission of Postal Sector, the Airport Economic Regulatory Commission, the Committee of Railway Regulation and the State Council of Audiovisual Media. The CNMC has a Council of ten members, but it will work divided in two chambers: one devoted to antitrust enforcement and the other devoted to regulatory matters. Each Chamber may report on the decisions issued by the other Chamber.

4. We have included an Appendix to this report devoted exclusively to the new CNMC.

## **3. Enforcement of competition laws and policies**

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

5. In 2012, 47 decisions were issued on articles 1 of the Spanish Competition Act (hereinafter CA) or 101 TFEU, of which 14 declared an infringement and imposed fines of 98,387,045€ (of which 9 were on cartel -strictly speaking- cases, i.e. hard-core cartels), 32 did not declare any infringement, and 1 was Commitments Decision. During 2012, five council decisions were based on leniency applications. Besides, 9 abuse cases were formally opened in 2012.

6. In 2012, 9 cases required down-raids, and CNC inspectors collaborated with the EC DGCOMP in one dawn raid in the framework of EC cases. Furthermore, there has been one sanctioning decision for obstruction to inspections cases: SNC/0020/12 *Florencio Barrera e Hijos*.

7. From a sectorial standpoint, the highest number of proceedings opened involved the information society industry and the activities of associations, professional bodies and trade union, followed by the manufacturing and construction industries.

8. In the area of enforcement the CNC has the legal obligation to investigate all complaints submitted, examining whether there are grounds for opening formal proceedings. This is the reason why, out 47 Council's resolution, 32 of them corresponded to case dismissals.

### **3.2 *Summary of a selection of cases:***

#### **3.2.1 *Concerted practices:***

##### **3.2.1.1 Proposals to close:**

9. In all, 42% of the resolutions adopted by the Council were dismissals. Most of these were taken on the basis of article 49.3 LDC due to the absence of prima facie evidence enabling infringement proceedings to be opened.

- S/0377/11 RETAIL TRADE VIA INTERNET (E-COMMERCE), 01/27/2012

10. The investigation was originated in a complaint (submitted on 09/26/2011) by the Spanish Independent Videographic Association (*Asociación Videográfica Española Independiente, AVEI*) against AMAZON EU for alleged acts of unfair competition, which is a conduct prohibited by the Spanish CA.

11. AVEI is a domestic association dedicated to the publication and distribution of audio-visual works in videographic format which exploitation rights and licenses are owned by its members (companies or persons). The purpose of the Association is the representation, protection and advocacy of the interests of the videographic and audiovisual sector.

12. AMAZON is company that sells through the internet a variety of consumer products, including DVD's and Blu-ray's. The Spanish website *-Amazon.es-* opened up in September 2011.

13. The complaints stated that AMAZON was marketing and selling many products, including DVDs and Blue-rays without neither getting the mandatory age rating by a competent Spanish authority, nor was paying taxes on it.

14. However, after analysing the case, the Council of the CNC considered that, on one hand, AMAZON was acting according to EU's regulations, which must prevail over national regulation on this sector, and on the other, AMAZON has not committed an act of unfair competition in any case, since for that kind of violation it is necessary to produce a distortion of competition significant enough, to affect also the public interest, not just the competitors. Therefore, based on the foregoing, the Council decided to dismiss the case.

- S/0390/2011 CERTIFICATION SERVICES SECTOR, 07/122012

15. In December 2011, the CNC received a complaint against AENOR, the main certification agency in the Spanish market, for abuse of dominant position. AENOR is a private non-profit organization that was established in 1986 for the certification and standardization in the field of quality.

16. Upon receiving this complaint, the Investigations Division (Dirección de Investigación, hereafter DI) opened a confidential fact-finding procedure *ex officio*, as prior diligence to the initiation -if necessary- of a formal proceeding.

17. The complainant -other accredited certification agency- argued that (1) AENOR had abused its dominant position by offering, for free, the audits legally required by the sector regulations, to those clients purchasing accreditation services according to the OHSAS18001:2007 specifications, and also that (2) AENOR was violating the principle of independence recognized in labor regulation by providing both services all together (the Statutory Audit and the OHSAS Audit).

18. In Resolution 12 July of 2012, the CNC's Council considered that, in one hand, there was no evidence showing that AENOR had a dominant position, nor in the market of statutory audits, where more than a 100 agencies offered this service, neither in the market of OHSAS audits and, on the other hand, it is common for the agencies to offer the same kind of deal to customers if they purchase both auditory services, because of the optimization of costs for the agency.

19. In the light of the above, the Council concluded there was no grounds to open formal proceedings and dismissed the case.

### 3.2.1.2 Sanctions

- S/079/09 CARTEL OF FIVE CEMENT MAKERS, including CEMEX and CEMENTOS PORTLAND VALDERRIBAS, 01/12/2012

20. The case originated with a complaint filed against several companies in the construction sector for a possible agreement between competitors, specifically in the cement, concrete, fines and mortar markets. The complaint was accompanied by transcripts of recordings of telephone conversations and meetings held between the different companies later accused in the proceeding, as well as by other documents.

21. After opening a confidential fact finding procedure and conducting the relevant on-site inspections, in December 2009 the Investigations Division resolved to open infringement proceeding S/0179/09 for anti-competitive practices against *Canteras de Echauri y Tiebas S.A.* (CETYA), *Canteras y Hormigones Vre S.A.* (VRESA), *Hormigones Beriain S.A.* (BERIAIN), CEMEX España S.A. (CEMEX) and *Cementos Portland Valderribas* (CPV).

22. In its resolution of 12 January 2012 the CNC's Council found there was evidence demonstrating the accused undertakings (with different degrees of participation) arranged to fix and progressively increase prices for concrete, fines and mortar and to divide up the market for those products. The agreements were implemented through a system for allocating works to the participating companies that could supply these products, within each of the zones defined, in accordance with quotas they established. The agreements affected the territory of the Historic Charter Community of Navarre and adjoining territories from June 2008 to at least September 2009.

23. The CNC Council founded that these anti-competitive arrangements constituted a single illegal cartel, according to the Competition Act, that is, "*any secret agreement between two or more competitors for the purpose of fixing prices, setting production or sales quotas, partitioning markets, including bid rigging, or curtailing imports or exports*". The CNC Council also held that the evidence showed that the cartel companies were aware of the unlawful nature of their conduct and of the need to keep both the cartel agreements and their meetings secret.

24. These were considered very serious infringements by the Competition Act and, therefore, the CNC Council decided to levy the following fines: CPV: €5,726,431; BERIAIN: €2,508,758; CETYA: €1,425,299; VRESA: €959,277, and CEMEX: €502,283

- S/0244/10 CARTEL IN THE FERRY SECTOR 02/23/2012

25. In this case, the CNC fined five shipping companies a total of €54 million for operating a cartel on freight and passenger shipping lines around the Balearic Islands.

26. On 19 April 2010, the CNC received a complaint against *Trasmediterránea* and *Balearia* in relation to alleged practices prohibited by the Spanish Competition Act, namely, the adoption of agreements aimed at sharing out the market and fixing prices and/or terms of trading, along with the imposition of unfair prices and terms of trading, all in the routes that connect mainland Spain with the Balearic Islands and the Balearic Islands with one another.

27. After carrying out dawn raids at the headquarters of *Trasmediterránea* and *Balearia*, the CNC opened formal proceedings against *Balearia Eurolíneas Marítimas*, *Compañía Trasmediterránea* and *Isleña Marítima de Contenedores*, and later extended the proceedings to include *Sercomisa* and *Mediterránea Pitiusa*, along with the joint-ownership *Trasmapi-Balearia*.

28. In Resolution of 23 February 2012, the CNC Council considered proved the prohibited agreements among different companies in several routes covering the ferry services in that area and imposed the following fines:

- Compañía Trasmediterránea, a fine of €36,110,800
- Balearia Eurolíneas Marítimas, a fine of €15,945,484
- Isleña Marítima de Contenedores, a fine of €495,826
- Servicios y Concesiones Marítimas Ibicencas, (Sercomisa) a fine of €1,155,205
- Mediterránea Pitiusa, a fine of €402,453

29. In 2011 the CNC Council had already fined various shipping companies, amongst them *Balearia Eurolíneas Marítimas* and *Compañía Trasmediterránea*, for their participation in similar agreements involving the maritime transport of passengers and vehicles on the *Algeciras–Ceuta* line. On that occasion they were fined a total of €2,351,689 and €12,102,969 respectively.

- S/0331/11 ANOTHER CARTEL IN THE FERRY SECTOR 12/12/2012

30. The CNC fined six shipping groups<sup>2</sup> over €88.5 million for having operated a cartel in the maritime transport market between the Spanish Peninsula and Morocco. This is the second-largest penalty ever imposed by the CNC.

31. Formal proceedings were opened in March 2011 for possible anti-competitive conduct consisting in reaching agreements to share out the market and fix prices and/or commercial terms with respect to services for the transport of passengers and vehicles by sea between the Spanish Peninsula and Morocco. After an investigation period, the CNC found evidence that proved the companies agreed on prices, fees, commercial conditions and timetables for ferry transportation between Spain and Morocco between 2002 and 2010. To the detriment of consumers and users, the cartel fulfilled the common objective of obtaining from the maritime transport services between the Spanish Peninsula and Morocco higher profits than would have been the case had all operators involved respected the functioning of the market and competed in it.

32. The investigation was initiated by the CNC after two series of dawn raids in 2010 and 2011 where it found evidence of collusion in the route between Spain and Morocco and also in other two ferry routes connecting mainland Spain with the Balearic Islands and Spanish North African towns of Ceuta y Melilla.

33. *Balearia Eurolíneas Marítimas* applied for leniency and was granted a 40% discount for it and its subsidiary *Euromaroc 2000 SL*, entailing a fine of €1,334 million. The rest of the defendants were imposed the following fines:

- Trasmediterránea, SA and Europa Ferrys, a fine of €25,516,377
- Förde Reederei Seetouristik Iberia and Förde Reederei Seetouristik Maroc, Sarl, a fine of €11,106,809

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<sup>2</sup> Compañía Trasmediterránea, SA, Europa Ferrys SA, Cenargo España, SLU, Ferrimaroc, SA, Balearia Eurolíneas Marítimas, SA and its subsidiary Euromaroc 2000, SL, Förde Reederei Seetouristik Iberia, SL (FRS Iberia, SL), Förde Reederei Seetouristik Maroc SARL (FRS Maroc, SARL), International Maritime Transport Corporation, SA (IMTC), Compagnie Maritime Marocco-Norvegiènne, S.A.R.L. (COMARIT), Líneas Marítimas Europeas, SA, Comanav Ferry SA, CMA-CGM, SA and COMANAV, SA



- International Maritime Transport Corporation, a fine of €8,153,453
- *Compagnie Maritime Marocco-Norvegiënne, Líneas Marítimas Europeas, and Comanav Ferry* were fine €27,753,647, the last of which is jointly and severally liable up to €10,708,564.
- CMA-CGM, *Comanav*, and *Comanav Ferry* were fined with €13,834,519; the last of which is jointly and severally liable up to €2,905,401.

34. In calculating the fines, the CNC took into account, among other factors, the seriousness of the conduct, its prolonged duration, and the fact that the cartel affected the entire market. It imposed a fine of 15% of the companies' turnover in the market affected by the infringement. The fine was increased for some of the companies for recidivism.

- S/0287/10 CARTEL AND BID RIGGING OF SEVEN ENGINEERING COMPANIES, 08/02/2012

35. In April 2010, the controlling shareholders of the company *Dywidag Sistemas Constructivos* (DSC) filed a leniency application to submit evidence of cartel activity in the market of post-tensioning and geotechnical systems. It accused six other companies, besides DSC<sup>3</sup>. The CNC carried out dawn raids at the offices of suspected companies in July 2010 and, based on the evidence found, it opened proceedings (S/0287/10) against those companies it believed to be involved in the cartel.

36. All these companies operate in the civil engineering field, offering post-tensioning and geotechnical systems. Together they are the main operators on the market and, in some cases, they are subsidiaries of large construction companies such as FCC (BBR) or *Ferrovial Agroman (Tecpresa)*.

37. The relevant market is, on the one hand, the market for post-tensioning systems, which are systems that permit the reinforcing of concrete structures used in numerous types of buildings, and on the other hand, the market for geotechnical tensioning systems, which serve to fix the structures and stabilize the ground. The demand on these markets comes from large companies in the construction sector.

38. In Resolution 07/31/2012, the CNC's Council found proven the following infringements:

- On the post-tensioning systems markets, agreements to share out contracts for post-tensioning systems – including various large projects – and supply of bars.
- On the geotechnical market, the existence of customer-sharing agreements, for at least 14 years, until the time of the inspections in 2010.

39. The companies held periodic meetings amongst themselves (sometimes monthly) in order to proceed with the sharing out of potential contracts and the monitoring of the sharing arrangements. Quotas were defined per company, which reflected their weight on the market, and potential contracts were shared out by reference to these quotas. Companies colluded on the price to be submitted to customers seeking the services in order to ensure the designated company would obtain the contract. Mechanisms were also defined for compensation between companies by reference to the quotas, particularly in the context of large projects.

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<sup>3</sup> BBR Pretensados y Técnicas Especiales, S.L (BBR), CTT Stronghold, S.A. (CTT); Freyssinet, S.A. (FSA), Mekano4 S.A. Técnicas del Pretensado y Servicios Auxiliares, S.L (Tecpresa) and VSL-Spam, S.A.

40. The CNC's Council fined the companies a total of €11.6 million, distribute as follows:

- On BBR Pretensados y Técnicas Especiales, a fine of €2,640,000
- On *CTT Stronghold, S.A.*, a fine of €2,426,000
- On *Freyssinet S.A.*, a fine of €2,805,000
- On *Mekano4, S.A.*, a fine of €1,420,000
- On Técnicas del Pretensado y Servicios Auxiliares, S.L., a fine of €1,957,000
- On *VSL-SPAM, S.A.*, a fine of €384,000

41. *Dywidag Sistemas Constructivos* and its parent company *DSI International* were granted immunity from a potential €5,2 million fine through the CNC's leniency programme.

### 3.2.2 Abuse of dominance:

- S/0207/09 TRANSPORTE TELEVISIÓN,08/02/2012

42. The CNC fined telecoms company Abertis Telecom S.A.U. €13.8 million for abusing its dominant position through margin squeeze, in the market for DTT signal transport and distribution services.

43. In April 2010 the CNC, based on a complaint of ASTRA, opened formal proceedings against Abertis for allegedly preventing competitors from entering the market for digital terrestrial television (DTT) signal transport and distribution services.

44. By virtue of the regulations of the Spanish Telecommunications Market Commission (CMT), Abertis is obliged to allow access to its network of locations and centers for broadcasting DTT signals, because it is an asset that cannot be replicated and one that is essential for the provision of the DTT signal transport and broadcasting service. Abertis also provides these DTT transport and broadcasting services to television operators, where it also has a dominant position.

45. After a very detailed analysis of the costs and income of Abertis, CNC concluded that, at the prices at which the company provides the service of access to its centers, and given the terms that it has agreed with customers in the retail market, competitors who are as efficient as Abertis have no margin for survival in the DTT signal transport and distribution services market. This type of practice, which is technically known as a margin squeeze, is considered an abuse under European and domestic competition law.

46. This infringement is considered as very serious by Spanish CA, and Abertis was fined 13,755,000 euros for hindering the entry of competitors to the DTT signal transport and distribution market.

47. Abertis had already been fined by the CNC in May 2009 (Case 646/08 Axion/Abertis) for committing an abuse of dominant position, because the design of its contracts, in terms of duration and structure of discounts, led to a market foreclosure in the provision of the television signal transport service.

- S/0211/09 ENDESA DISTRIBUCIÓN ELÉCTRICA, 02/21/2012

48. In Resolution of 21 February 2012, the Council of CNC imposed fines on *Endesa Distribución Eléctrica* for a total of over €23 million<sup>4</sup> on two accounts of abuse of dominance, continuing to punish electricity companies for using inside information to exclude rivals from the market.

49. The case was initiated as a result of a complaint from the National Federation of Electrical and Telecommunications Installations Businesses of Spain (*Federación Nacional de Empresarios de Instalaciones Eléctricas y Telecomunicaciones de España - FENIE*). As a result of the case, the CNC Council ruled that *Endesa Distribución Eléctrica S.A.* was liable for two offences of abuse of a dominant position as electricity distributor.

50. Both offences related to the electrical installations market. This market includes the carrying out of the necessary works (connection, hook-up, extensions, connection etc.) to connect the distribution grid to the reception facilities of the end users. The rules and regulations distinguish between installation activities that are reserved to the distributors and activities that are not reserved (the latter can be done by any authorized installer).

51. In the case of the first offence, *Endesa* was found to have taken advantage of its position in the distribution market to distort competition in the related market for electrical installations that are not legally reserved to the distributor. *Endesa* made use of information on customer's supply applications to which it had privileged access due to its status as distributor (the identity of each customer who needed an installation and all the technical details of the point of supply) in order to offer to carry out the electrical installation work for the largest customers in this market. This practice made it more difficult for the rest of the operators present in the installation market to compete with *Endesa Distribución Eléctrica* in its distribution areas. *Endesa* was fined €14,967,960 for this offence.

52. This was not the first time competition authorities imposed fines for abuse in this sector. In 2011 the distributors in the *E.ON*, *Gas Natural Fenosa* and *Hidrocantábrico* groups were fined for similar conduct, as was *Endesa* itself in 2006 on the island of Mallorca.

53. With respect to the second offence, the Council believed that *Endesa* had abused its dominant position by charging customers for the execution of the junction and connection on the installation. The regulation provides that such work must be done at the expenses of the distributor. However, for a time period, the distributor charged customers for this work, which has been considered exploitative abuse, and punished with a €8,158,000 fine.

- S/0256/10 MARKET OF PERIODIC GAS INSPECTIONS, 07/30/2012

54. In July 2012, the CNC fined the Spanish Gas Association (*Asociación Española del Gas — SEDIGAS*) and the Spanish Association of Liquid Petroleum Gas Operators (*Asociación Española de Operadores de Gases Licuados del Petróleo — AOGLP*) for reaching agreement and recommending the price of periodic inspection services for installations receiving natural gas and Liquid Petroleum Gas, the connection, hook-up and checking of such installations and the emergency response service.

55. First within SEDIGAS and then in the AOGLP, the distributors agreed on the prices that the authorities of the autonomous communities should be recommended to set, on the justification for those figures, on the need to recommend that they be updated annually, as well as on the way in which this information would be provided to the Regions.

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<sup>4</sup> Two fines of €14,967,960 and €8,158,000 each

56. In a situation where different local monopolies coexist, it is inevitable and positive from a regulatory standpoint that they could serve as a point of comparison with one another in order to guide the actions of the regulator or regulators. This comparative exercise is known as referential competition and, in the absence of direct competition, the elements that permit it must be preserved in order to make it easier for the regulation to achieve efficient results.

57. As a result, the practices penalized would have reduced the uncertainty amongst distributors about each other's behavior regarding prices and would have distorted the process of forming the prices, since the prices agreed and recommended tend to act as minimum prices or at least benchmark prices, in a concrete market or series of markets, even though they are regulated.

58. In fact, the analysis undertaken showed that in many of the cases the prices fixed by the Regions very closely followed the prices recommended by the Associations.

59. For all of these reasons the CNC Council considered that the practices analyzed represented a breach of article 1.1.a) on the Spanish Competition Act and fined SEDIGAS and AOGLP €900,000 and €500.000 respectively.

- S/248/10 MARKET OF MOBILE'S TEXT MESSAGES, 12/19/2012

60. The CNC fined Telefónica, Vodafone and Orange €120 million for abusing their collective dominant position in the market for text messages.

61. In January of 2011, the CNC opened formal proceedings against these companies, on its own initiative, because it believed the mobile operators set very high wholesale prices for text and multimedia messages on their own networks, between 2000 and 2009, which represented an abuse of dominant position because each of the companies holds a monopoly position in SMS and MMS termination services in their respective networks.

62. The CNC argued that the overpriced termination services allowed the companies to maintain higher retail prices for users of SMS and MMS services.

63. The CNC based its investigations on data requested from the companies by the Spanish Telecommunications Market Commission (*Comisión Nacional de las Telecomunicaciones –CMT-*), including the regulatory accounting of costs that the operators must submit to the regulator.

64. While the telecoms regulator fixed wholesale costs for voice calls, it left telecoms operators free to set prices for text messages between 2000 and 2009, which allowed the three operators to fix prices freely, and this conduct raised prices significantly in the retail markets over a long period of time.

65. Consequently, in Resolution of 19 December 2012, the CNC's Council declared that each of the accused operators committed an infringement consisting in the exploitative abuse of dominant position, and fined Telefónica €46,5 million, Vodafone €43,5 million and Orange €29,9 million. The CNC Council, however, did not consider it appropriate to impose regulatory measures on the parties.

### 3.2.3 *Acts of unfair competition*

- S/0213/10 ELECTRIC DISTRIBUTION MARKET, IBERDROLA GROUP 02/24/2012

66. The investigation began when the CNC received a complaint from *Gas Natural Servicios SDG, S.A. and Unión Fenosa Comercial, S.L.* against Iberdrola for transferring contracts from the distributor of last resort to the deregulated distributor without obtaining the consumer's express consent, as required by

the sector's regulations. Formal proceedings were opened in July 2010 (S/0213/10) against *Iberdrola Comercialización de Último Recurso, S.A.U. (Ibercur), Iberdrola, S.A. and Iberdrola Generación S.A.U.* for acts of unfair competition.

67. In Resolution 24 of February 2012, the CNC Council considered the infringement proven during the time frame of August 2009 - March 2010, and fined *Iberdrola Sur* almost €11 million for transferring customers without their consent and, in doing so, affecting the public interest.

68. The CNC Council highlighted in its Resolution that this breach occurred at a moment when the full effects of the deregulation of the retail electricity supply market were going to be felt. The deregulated distributors were going to be able to compete for consumers who were going to be supplied on a transitional basis by a distributor of last resort and for the consumers themselves the possibility of finding better supply alternatives would be opening up.

69. The CNC believed the supply of electricity is a basic input of the economy and, given that to a large extent the customers involved were consumers connected to the low voltage grid, with a contracted power in excess of 10KW, who until 1 July 2009 had had the right to the tariff of last resort, it was not going too far to state that the intended recipients of these actions of Iberdrola were small and medium-size enterprises.

70. Therefore, taking into account the legal and economic context in which the conduct with which it was charged occurred (the deregulation of the retail market for the supply of electricity), the group at which it was directed (small and medium-size enterprises) and the service affected (a basic input for businesses and an essential service for domestic consumers), the CNC Council took the view that there was no doubt that Iberdrola's conduct had affected the public interest.

71. For all these reasons the CNC Council resolved to fine *Iberdrola S.A., Iberdrola CUR S.A.U. and Iberdrola Generación S.A.U.* 10,685,000 euros, for which they will be jointly and severally liable.

#### 3.2.4 Commitments Decisions:

- S/0338/11 SUBARU 16/08/2012

72. The CNC agreed to a termination by commitments of the formal proceedings opened against SUBARU.

73. The commitments offered by SUBARU related to the guarantee of vehicles bought in other countries:

- SUBARU agreed to recognize any SUBARU brand vehicle warranty and forced its workshops to repair the vehicles free of charge provided such warranty was in effect, had been issued in a European Union country, and had been included in the SAIS system.
- In the case where it was not possible to check the validity of the guarantee through SAIS system, SUBARU Spain would take all necessary actions to ensure that the guarantee is discharged in the shortest time possible in order to allow repair of the vehicle in question without delay.
- SUBARU Spain would send to all car dealers and workshops a circular, agreed by the CNC, describing the procedure to follow in case a car needs to be repaired at the workshop and warranty has been issued by another member state.

- SUBARU Spain agreed to verify if the vehicle was discharged in the SAIS system without delay.

### **3.3 Merger control**

#### *3.3.1 Mergers and acquisitions.*

74. In 2012, the number of merger operations has decreased with 71 merger filings submitted.

75. In addition, all have been resolved in first phase without remedies, except 2 merger Decisions which have been resolved with remedies, both on second phase (CEPSA/CHESA C/0366/11 and ANTENA TRES/LA SEXTA C/0432/12).

- SNC/0025/12 REDSYS/REDY 21/12/2012

76. The CNC fined REDSYS, S.L. €819,000 for breaching the commitments it assumed in the REDSYS/REDY concentration.

77. The Council of the CNC, handed down its Resolution in case C/0271/10 REDSYS/REDY authorising the merger between REDSYS and REDY, subject to the fulfillment of certain commitments voluntarily submitted by the companies involved. The CNC Council entrusted surveillance of the operative part of its Resolution to the Investigations Division of the CNC.

78. As a result of the Investigations Division's proceedings to monitor compliance, the CNC Council handed down a further Resolution in which it found that there was prima facie evidence that REDSYS S.L. had failed to perform a number of the obligations deriving from the commitments it had voluntarily entered into, commitments which enabled the REDSYS/REDY merger to proceed. Consequently, the Investigations Division of the CNC opened formal proceedings (SNC/0025/12) against REDSYS S.L. for an alleged infringement of article 62.4.c) of the Spanish Competition Act 15/2007 of 3 July 2007 (LDC).

79. In its Resolution, the CNC Council held that there had been a breach of the obligations under section g) of the commitments set. The Council found that REDSYS S.L. had failed to ensure continued observance of the principle of separation between management of the processing entity and the payment systems, in order to guard against the risk of information exchanges occurring through REDSYS S.L. between the SERVIRED and 4B systems, enabling them to coordinate their strategies in the downstream market for the provision of payment services. The CNC Council also considered it proven that REDSYS S.L. had improperly or failed to fully perform section D of the commitments, as it had not correctly informed the Council members of its restricted access to disaggregated information.

80. Since a breach such as this constitutes a very serious infringement under article 62.4.c) LDC, the CNC Council fined REDSYS, S.L. €819,000, in accordance with article 63.1.c) LDC.

- SNC/0022/12 VERIFONE/HYPERCOM 31/10/2012

81. The CNC fined Verifone €286,000 for breaching its duty to notify a concentration operation.

82. The CNC received the full notification form for the concentration operation involving the acquisition by Verifone Systems Inc. (VERIFONE) of exclusive control of Hypercom Corporation (HYPERCOM), which gave rise to concentration proceeding C/0410/11 VERIFONE/HYPERCOM.

83. Concentration operation C/0410/11 VERIFONE/HYPERCOM was authorised in the first phase, subject to the fulfilment of certain commitments, pursuant to the CNC Council's Resolution of 29 December 2011.

84. However, Verifone had acquired Hypercom on 4 August 2011, before notifying the concentration operation to the CNC.

85. The Council of the CNC handed down a Resolution in which it found that the execution of the VERIFONE/HYPERCOM concentration operation without prior authorisation entailed a breach of article 9.2 of the Spanish Competition Act.

86. The Act classifies the execution of a concentration operation subject to control by the CNC without prior notification as a serious infringement. Accordingly, the CNC Council fined Verifone €286,000.

- C/0432/12 ANTENA 3/LA SEXTA 13/07/2012

87. The CNC Council decided to open the second phase of the merger procedure, on the ground that the acquisition by ANTENA 3 of exclusive control of LA SEXTA could hinder the maintenance of competition in various audiovisual markets in Spain.

88. Following an in-depth investigation into the impact of the ANTENA 3/LA SEXTA merger, the CNC concluded that the operation could give rise to significant competition problems in several audiovisual markets in Spain, especially the television advertising market, due to the disappearance of LA SEXTA as an independent operator, the increased market power of ANTENA 3 and the enhanced ability of, and enticement for, MEDIASET and ANTENA 3 to tacitly coordinate with each other after the merger.

89. The Spanish Competition Act provides that in such circumstances, the notifying company may propose commitments in order to resolve the competition problems identified. The Act also provides that if the CNC does not consider the suggested commitments to be sufficient, it may make clearance of the operation subject to the fulfilment of certain conditions.

90. Accordingly, with a view to resolving the competition problems, ANTENA 3 lodged and negotiated several proposed commitments at the CNC, the last of which (dated 14 June 2012) was considered by the CNC to be insufficient, especially as regards the television advertising market.

91. On July 2012, the CNC therefore made clearance of the operation subject to the fulfilment of five conditions that would safeguard competition in the affected markets, thereby resolving the competition problems detected in a proportional and satisfactory manner.

92. The first condition addressed the problems identified in the television advertising market.

93. The aim of the obligations set forth in the first condition was to ensure that after the merger, ANTENA 3's ability to use its newly acquired market power was limited. To that end, the obligations seek to prevent ANTENA 3 from implementing commercial policies that unduly restrict advertisers' and media agencies' contractual freedom or exclude third-party operators from free-to-air television.

94. The obligations contained in the first condition can be summarised as follows:

- ANTENA 3/LA SEXTA must terminate their agreements for the joint management of advertising on free-to-air TDT (televisión digital terrestre or digital terrestrial television) channels owned by third parties, and may not sign any new agreements of this kind.
- ANTENA 3/LA SEXTA must use different companies to separately sell advertising space on their two free-to-air television channels with the highest audience ratings. Each of these

companies may sell television advertising products in respect of channels whose joint audience ratings do not exceed 18% of the average six-monthly share.

- ANTENA 3/LA SEXTA must publish its range of television advertising products at least once every three months. This must include, as a minimum, the products necessary to ensure that advertising space can be purchased individually on each of ANTENA 3's television channels.
- ANTENA 3/LA SEXTA may not implement commercial policies that entail the imposition of certain advertising products over others. In particular, the companies that sell television advertising for ANTENA 3/LA SEXTA may not give precedence to the joint purchase of advertising space on several television channels over individual purchases in respect of each separate channel simply because advertising space is bought jointly on various channels.
- ANTENA 3/LA SEXTA may not offer to sell advertising space in simulcast unless the advertiser makes an express written request to that effect beforehand. This obligation does not apply to the company that sells advertising on the channel Antena 3.
- ANTENA 3/LA SEXTA may not place conditions on commercial offers to advertisers or media agencies, requiring them to enter into contracts subject to a minimum investment or GRP level.
- Negotiations between, on the one hand, the companies that manage television advertising for ANTENA 3/LA SEXTA and, on the other, advertisers and media agencies, must be governed by minimum principles of transparency, objectivity, foreseeability and legal certainty.
- The second condition contained obligations to limit the reinforcement of ANTENA 3's position on the free-to-air television market, which also indirectly safeguards competition on the television advertising market. Specifically:
  - ANTENA 3/LA SEXTA may not extend their range of free-to-air channels by leasing TDT channels from third-party operators.
  - ANTENA 3/LA SEXTA may not block quality improvements at television channels with which they share TDT multiples.
- The third condition required ANTENA 3/LA SEXTA to allow audiovisual content it has acquired or may acquire to be regularly released on the market. To that end:
  - ANTENA 3/LA SEXTA must limit the term of their agreements for the exclusive acquisition of content to three years, excluding pre-emptive acquisition rights and extensions.
  - ANTENA 3/LA SEXTA must restrict their ability to exclude national television producers as suppliers of programmes to free-to-air television competitors.

95. In order to make it easier to monitor compliance and implementation of the above conditions, the fourth condition laid down a series of obligations relating to regular reporting on ANTENA 3/LA SEXTA's conduct on the affected markets.

96. The conditions are to remain in place for five years.



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

97. Competition Act 15/2007 attributed new and stronger functions to the CNC in the area of advocacy, to be carried out by the Advocacy Division. The strengthened tools provided by the Competition Act in the area of advocacy include reports on legislative proposals, standing to challenge anti-competitive initiatives, reports and studies on economic sectors, and guides and recommendations.

98. The CNC believes that competition protection and advocacy are particularly necessary if we are successfully to overcome the challenges posed by the current economic climate.

99. In 2012 the CNC has issued 18 mandatory reports on draft legislation. Through these reports, the Advocacy Division analyses the restrictions on competition that the proposed legislation may entail, along with the necessity and proportionality of the restrictions for achieving the public interest objective pursued by the legislation in question. The conclusions of the analysis include a general evaluation of the legislative proposal from a competition perspective, together with a series of recommendations for changes.

100. These reports on legislative proposals are published on the CNC's website. This Annual Report shall mention the most significant ones.

##### **4.1 Report on Preliminary Bill to amend the General Audiovisual Communication Act**

101. Regular television broadcasting services began in Spain in 1956. As in other European countries, the television broadcasting company that had just been created came under the ownership and management of the Government.

102. Commercial television arrived in Spain in 1990 much later than in other European countries, following the publication of the Private Television Act (10/1988) which regulated private television companies.

103. In 2006, the current government undertook a new reform of RTVE, by passing the Law of State Radio and Television aiming at achieving political independence and efficient economic management.

104. One of the latest legal development of this reform process was the publication of the new General Audiovisual Communication Act 7/2010 of 31 March 2010 (LGCA, hereinafter) which sought to “consolidate existing current legislation, update aspects that have undergone significant modifications, and regulate the new situations that are lacking a legal framework”, and reinforced the provisions of previous legislation on public television services. The LGCA has become the basic legislation for the public and private sector, and a process of legal reforms at the region level that has not ended yet. The new legislation defines the communication audiovisual service as of general economic interest, and imposes specific obligations to the entities in charge of providing such services.

105. Within this regulatory context, the amendment of LGCA tries to add flexibility to the management mechanisms available for those Public Administrations which wish to provide this public service, so they can adjust to the budgetary restraints.

106. In general the CNC welcomes the draft and believes the amendment include elements that contribute to the enhancement of competition in the audiovisual market.

107. In summary, the reform (1) opens the door to private capital in public television -it enables the management of the public broadcasting service by the Autonomous Communities<sup>5</sup>, which can be done directly, indirectly, or by public-private- partnership and (2) eliminates the restriction of outsourcing certain services -other than own public service management, production and editing of new programmes and other content.

108. Therefore the reform does not impose a model but expands the range of possibilities open to public providers.

109. However, the CNC recommends some changes in the wording of the draft, in order to minimize the impact that decisions taken by the Public Administrations (or the entities in charge of managing the broadcasting service) may have on the effective competition of the sector. The CNC proposes to include an article in the law to ensure Regions (i.e. Autonomous Communities) comply with transparency and ensure free competition in the process of recruiting firms that choose to manage their public television or some of its services. The CNC highlights the importance of regional governments respecting the principles governing the public procurement rules in the choice of a private partner.

#### **4.2 Report on the Draft Bill creating the *Comisión Nacional de los Mercados y la Competencia*.**

110. The Bill to Reform the Supervisory Bodies aims at introducing a series of measures to restructure the organization and functioning of the various sector regulatory bodies (the "Regulators").

111. This reform will mean the integration of the Spanish National Competition Authority with various Regulators (energy, telecommunications, postal, airports, railway and audiovisual) into one larger body, the National Market and Competition Commission (*Comisión Nacional de los Mercados y la Competencia* -CNMC-).

112. In its Report, the CNC focuses on the aspects of the Bill that may affect the adequate and effective application of current Competition Act 15/2007 and to that end it makes a series of recommendations.

- Reports regarding amendments of Official Colleges' Bylaws, like, among others:
  1. Draft Royal Decree approving the General Bylaws of the Official Colleges of Agronomists and of their General Council;
  2. Report on the Proposal to amend the Bylaws of the Official College of Geologists;
  3. Report on the Draft Royal Decree amending the General Bylaws of the Official Colleges of Spanish Agricultural Engineers and Agricultural Experts and of their General Council.

113. In Spain, the transposition of the Service Directive 2006/123/CE has posed a major challenge in many sectors, especially in those areas that concentrate most service activities. Therefore, in the professional services the impact has been significant (in Spain 87 professions are regulated by a national or regional professional body), particularly by means of the amendment of Law 2/1974, of 13 February, on Professional Bodies.

114. The reform requires that all these professional bodies bring their charters into line with the Law, against the background of a process which is already in motion and is expected to come to a conclusion in

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<sup>5</sup> Regional Public Administrations

the coming months. In this context, Official Colleges from different service activities have been changing their Statutes and corporate regulations to adapt them to the Service Directive<sup>6</sup>.

115. The CNC analyses all these reports and makes observations and recommendations, trying to eliminate or mitigate restrictions and barriers to professional activity.

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

116. The CNC has published two in depth studies throughout 2012 and a guide, as well as the mandatory Annual State Aid Report.

117. Sector studies analyse the actual competition situation in a given economic sector in great detail, with the objective of identifying competition problems and offer recommendations to the different agents of the sector or proposals to improve regulation in order to reestablish or enhance the competition in the market.

### **5.1 *The Report on Professional Colleges after the Transposition of the Services Directive***

118. This Report takes a very positive view of the progress made in national law as regards professional services following the approval of the Services Directive in 2006 and its transposition into the Spanish legal system by the Umbrella and Omnibus Acts of 2009.

119. However, the report notes that these reforms have not yet been fully embraced by all operators and institutions involved in the provision of professional services, with the result that significant constraint on effective competition remain in place in this market. Thus, the internal rules of professional colleges still contain numerous restrictions that ought to have disappeared with the transposition of the Services Directive. The existence of such restrictions means that professionals are faced with significant obstacles in their day-to-day work, impeding them from pursuing their professional activities and exercising their geographic mobility. The report also observes that these problems are caused by disparities in the regulation of professional services between autonomous communities, the failure to expressly adapt regional regulations to basic national laws, as well as the absence of nationwide legislation on mandatory membership of professional colleges.

120. The report therefore identifies numerous examples of competition restrictions which it recommends should be eliminated from colleges' internal rules and issues specific recommendations to the Government and the autonomous communities on how to improve the horizontal regulation of professional activities.

121. In relation to this situation, as we have mentioned in the foregoing section, the CNC keeps receiving reports amending corporate regulations of professional colleges in order to make sure that the new statutes are respectful with competition legislation.

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<sup>6</sup> In Spain, transposition at the Central Government level has taken the form of Law 17/2009 on Free Access to Service Activities and the Exercise Thereof ('Umbrella Law'), which transposes into internal Spanish law the general principles of the Directive; in addition, 50 laws and 118 royal decrees have been amended. These fifty laws have been amended by means of Law 25/2009, of 22 December, amending various laws to bring them into line with the Law on Free Access to Service Activities and the Exercise Thereof ('Omnibus Law'), which amends 48 laws.

## **5.2 *The Report Monitoring the Automotive Fuel Distribution Market in Spain***

122. The CNC has published a number of reports on this sector, most recently in 2009 and 2011. The latest report notes that the indicators of evolution in retail prices and distribution margins for fuels in Spain over the past year have not improved compared to previous years and includes a quantitative examination of the relationship between retail prices and international prices for automotive fuel. The study contains robust empirical evidence of the existence of the rockets and feathers phenomenon in Spain for the period under review, whereby increases in international prices are passed through to pre-tax retail prices more quickly than reductions. This reveals a rigid asymmetry in the behaviour of margins, harming end consumers, and could be a sign of insufficient competition. The report recalls that despite being the third CNC study to identify insufficient competition potentially due to deficient regulation, the recommendations made in the 2009 and 2011 studies have still not been implemented.

## **5.3 *Guide to save on your elevator maintenance***

123. The Guide is a pioneering initiative in Spain, and tries to show consumers and end users the advantages of having good information when negotiating the terms of contracts for maintenance of elevators, which is an important bill of the condominium's monthly expenses.

124. The Guide is based on the market Report Maintenance of Elevators in Spain published by CNC in 2011, and offers "ten tips to save money on the maintenance of your elevator". It notes that many times consumers extend automatically a contract of fixed duration without renegotiating the terms or considering switching companies.

125. The Guide recommends being proactive and start looking for alternatives before it is time to renewing the current contract. Homeowners should be alert of possible automatic extensions and remember that not only the manufactures can make elevator maintenance, but also there are companies dedicated exclusively to the maintenance of lifts and are trained to repair various brands.

## **5.4 *Report on 2011 State Aid***

126. Like in previous years, this year's fourth Public Aid Annual Report, which covers 2011, forms part of the CNC's duty to monitor the development activities of public authorities.

127. It has three core aims: the first is to provide a general overview of the statistical context of state aid in Spain by reference to the most recent data available; second, to describe the principal new developments in the rules and regulations and case law emanating from Community authorities since the publication of the previous report; and, third, to summarize the activity carried out by the CNC in relation to state aid since that publication, identifying the main actions.

128. This year, in contrast to what was done in the previous reports, which included an analysis of certain aid schemes in a specific programme or sector, we have opted for a formal separation between such sectoral analysis and the annual report. In this connection, during the last year a study has been conducted of the degree to which public authorities utilise certain types of instrumental entities, using management-commissioning arrangements in which the provision of certain goods and services is commissioned directly to those entities, without the need, therefore, to carry out government procurement procedures (in house providing). Despite the possible connections of this question with the proper administration of public resources and even with state aid, it has been decided that the potential implications for effective competition deriving from certain practices involved in these arrangements, especially in certain markets, call for a study that goes beyond the strict contours of the analysis of state aid. Consequently, and without prejudice to its connection with this report, it has been decided to publish the two reports separately, deferring the second one to the year 2013.

## 6. Relations with Courts

129. The CNC has intervened several times through *amicus curiae* briefs before Civil Courts and Administrative Courts, in the context of private cases, both submitting written observations and providing requested information. The areas for which information or observations were specifically requested are varied, among others: conflicts related to intellectual property, claims for damages for anticompetitive behaviours, fee scales and other restrictive regulations approved by Professional Associations, electricity and conflicts among transport companies and travel agencies.

130. The CNC's decisions can be appealed before the Audiencia Nacional, and the Judgments of the Audiencia Nacional may be reviewed in cassation by the Tribunal Supremo. In 2012, the Audiencia Nacional (AN) decided upon 79 appeals against CNC decisions, of which 51 (64.57%) were rejected, 6 (7.6%) accepted and 18 (22.78%) partially accepted. In the other 4, the appeal was dropped. The Supreme Court upheld the CNC Decisions in 12 out of 16 cases (75%). To sum up, of a total of 91 appeals (not including the four withdrawn) submitted to the AN and the TS, the Courts ratified CNC Decisions in 69.23% of the cases.

131. Within the intense advocacy work, the CNC had a great success in the first ever jurisdictional challenge. As a result, Courts upheld the CNC appeal against one regional government for establishing regulations on intercity bus transport as they would have had "a perverse effect on competition without any basis in European or national law". Moreover, for the first time, the CNC filed an appeal against a state-level legislative provision which regulated the effects of the entry into operation of the link between the electricity systems of mainland Spain and the Balearic Islands.

## 7. Institutional activity

132. This year marks the fifth anniversary of the entry into force of Act 15/2007, a law that ushered in extensive organisational and substantive changes to the defence and advocacy of competition in Spain.

133. The most significant institutional change in the Competition Act is the reform that provides for the establishment of the Comisión Nacional de los Mercados y de la Competencia (CNMC) by merging the current CNC with various regulatory (energy, telecommunications, postal, airports, railway and audiovisual) and supervisory bodies that exist today. In March 2012, the CNC issued its mandatory report on the bill, underlining the need for Spain to have a strong competition authority, which is well equipped with human and material resources, that can continue doing as usual the work to combat anti-competitive conduct and competition advocacy.

134. The reform of the rules on university work placements introduced by Royal Decree 1707/2011 of 18 November 2011 and the entry into force of the new "European Higher Education Area" as a consequence of the Bologna Plan laid the foundations for the launch of the CNC's hands-on training plan for university students. To begin, the CNC has signed agreements for unpaid work placements with several universities from the Community of Madrid (Universidad Carlos III, Universidad de Alcalá de Henares, Universidad Autónoma and Universidad Complutense).

135. Moreover, the CNC has recently launched a paid placement scheme which is more ambitious both in terms of its duration and training objectives.

136. A collaboration agreement was signed between the CNC and the General Council of the Spanish Judiciary in June 2012. The aim of the agreement is to combine the efforts of both institutions, principally in the area of technical assistance to third countries and the training of judges on competition law, and to strengthen the effectiveness of the role of *amicus curiae*.

137. In addition, the CNC assisted to the Annual Competition Day on May 2012, in Santiago de Compostela.

### **7.1 *International cooperation***

138. International cooperation on articles 101 and 102 of the TFUE enforcement with ENC members, under EU Regulation 1/2003 and –in Merger control- under EU Regulation 139/2004, was part of the daily CNC work.

139. Besides a 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), Ibero American Forum on Competition, ECA, ECN and UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.

140. 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 Competition Authorities from Brasil, China, Malta. The full cooperation program is shown in the table below.

## **8. Resources of competition authorities<sup>7</sup>**

- Total staff: 187
- Non-administrative staff: 124
- Percentage of lawyers: 33.06%
- Percentage of economists: 33.06%
- Percentage of other degrees: 33.87%
- No. of PhDs in economics: None (21 people are State Economists, the highest economy specialized body of Spain's Public Administration)
- Average age of staff: 42 years
- Average tenure: 4.5 years
- Budget: €12,761,810 million
- Amount spent on salary: € 8,449,661.26 million
- No. of staff who left: 20
- No. of staff who retired: 3
- No. of staff who joined in 2012: 17

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<sup>7</sup> As for December 31<sup>st</sup>, 2012.

- No. who have spent at least 5 years in private practice: 5 (This information is only available for the directors)

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

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

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

143. 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.

## Spain in 2012

Date	Event	Participating Countries	Organizing country/ Organisation	Location	Additional information
January 19 <sup>th</sup> -20 <sup>th</sup>	Visit to the CNC by a Delegation from the Brazilian CADE	Spain and Brazil	Brazil/CADE, Spain/CNC	Madrid, Spain	
March 12 <sup>th</sup> -16 <sup>th</sup>	Course: Competition course for lawyers	Spain and Ibero-American countries	Spain/AECID (Agencia Española de Cooperación Internacional para el Desarrollo) and CNC	Montevideo, Uruguay	
March 24 <sup>rd</sup> -31 <sup>st</sup>	Ibero- American Competition School, X Edition	Spain and Ibero-American countries	Spain/CNC	Madrid, Spain	News on investigation and on advocacy. Case studies and experiences on competition.
May 11 <sup>th</sup>	Visit by a delegation from Shandong Provincial Administration for Industry and Commerce	Spain and China	China/Shandong Provincial Administration for Industry and Commerce, Spain/CNC		
April 17 <sup>th</sup> -20 <sup>th</sup>	ICN Annual Conference			Río de Janeiro	
14 May - 1 July	7-weeks training programme on Introduction to Competition Defence	China and Spain (CNC employees are the professors) and Ibero-American countries (30 students)	Spain/ICEX (Spanish Institute of Foreign Trade), China/Central Party School of Spain/CEDDET Foundation (Fundación Centro de Educación a Distancia para el Desarrollo Económico y Tecnológico), ICEX (Instituto de Comercio Exterior) and Popular Republic of China	MadDistance-learning courserid, Spain	<a href="http://cursos-online.ceddet.org">http://cursos-online.ceddet.org</a>
July 9 <sup>th</sup> -11 <sup>th</sup>	UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, twelfth session	LDCs	UNCTAD	Geneva, Switzerland	<a href="http://www.unctad.org/Templates/Page.asp?intItemID=4717&amp;lang=1">http://www.unctad.org/Templates/Page.asp?intItemID=4717&amp;lang=1</a>



## Spain in 2012

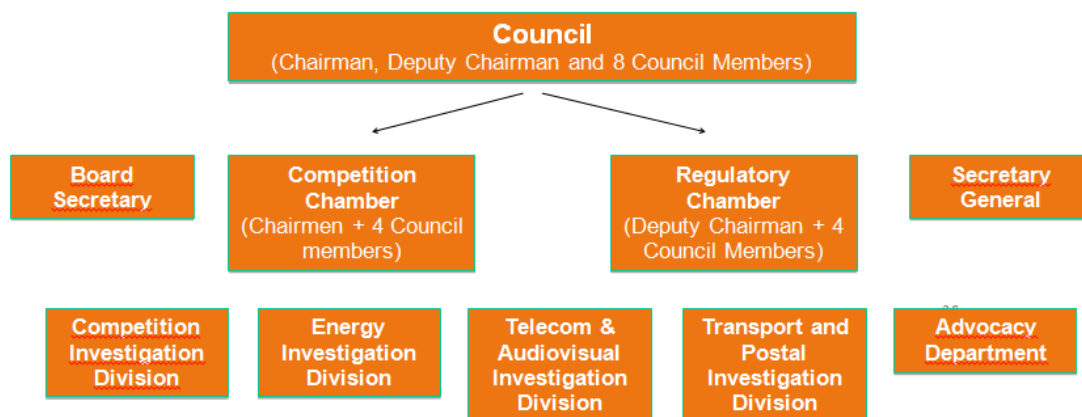
Date	Event	Participating Countries	Organizing country/ Organisation	Location	Additional information
September 18 <sup>th</sup> -19 <sup>th</sup>	Latin-American Competition Forum	OECD Ibero-American countries	OECD	Santo Domingo, Dominican Republic	<a href="http://www.oecd.org/pages/0,3417,en_40382599_40393122_1_1_1_1_1,00.html">http://www.oecd.org/pages/0,3417,en_40382599_40393122_1_1_1_1_1,00.html</a>
September 20 <sup>th</sup>	Ibero-American Competition Forum	Ibero-American countries	Portugal and Spain	Santo Domingo, Dominican Republic	
October 22 <sup>nd</sup> -25 <sup>th</sup>	OECD Competition Committee	Multinational	OECD Competition Committee	Paris, France	
October 26 <sup>th</sup> -27 <sup>th</sup>	ICN Advocacy workshop	Various	FAS Russia (Vladimir Kachalin)	Paris, France	

**APPENDIX**

**THE CNMC**

144. On 4 June 2013, the Spanish Parliament adopted Act 3/2013 creating a new authority in charge of both competition and regulatory matters: the Comisión Nacional de los Mercados y la Competencia, CNMC (National Markets and Competition Commission). The new authority merges the competition authority, the CNC, with several sector regulators responsible for Telecom, Energy, Railway, Postal, Audiovisual and Airports. It thus has hybrid functions: enforcing competition rules and regulating economic sectors.

**Structure of the CNMC**



145. The Act creates the CNMC with the aim of guaranteeing, preserving and fostering the correct operation, transparency and effective competition in all Spain's productive sectors and markets.

146. Since legal certainty and institutional trust are achieved by clear rules, a rigorous institutional framework and principles of conduct which all economic agents are aware of and can foresee, the larger the degree of proliferation of bodies with supervisory powers over the same activity, the greater the risk of unnecessary overlap in the monitoring of individual operations and of conflicting decisions on the same issue.

147. The new system permits to exploit the economies of scale deriving from the existence of identical or comparable supervision duties, similar methodologies and procedures and, above all, knowledge and experience, the pooling of which is a must.

148. The CNMC enjoys complete institutional and functional independence in exercising its authority. It has separate legal personality and full public and private capacity. It shall be fully subject to the law, be structurally and functionally autonomous, and be fully independent of the Government, of public authorities and of all business and commercial interests. Notwithstanding its independence, the Commission shall safeguard the uniform application of sector and general legislation on competition in Spain through cooperation with Central Government, with the autonomous communities, with the courts, with the institutions and bodies of the European Union, especially the European Commission, with the competent authorities and bodies of other Member States in the performance of their activities and finally with international organisations.

149. The functions that the Commission will exercise in those sectors were traditionally discharged by sector regulators, due to the need for independence vis-à-vis the public interests that may be present. In particular, the functions cover supervision and control, as well as dispute resolution functions, which are wider and more flexible than simple arbitration functions.

150. The transparency of the Commission's actions is a factor which strengthens its legitimacy and contributes to creating the necessary climate of trust in the institution among citizens. In this connection, the Commission is required to publish all of its reports, including its annual report, and its yearly and multi-year plans. The Commission must also publish the resolutions and decisions adopted by the Council and the organisation and functions of each of its bodies. Moreover, it will have an internal supervision body. Parliamentary oversight takes the form of appearances by the President before the Congress, which must take place at least once a year. In it he will explain the basic outline of the Commission's work, together with its goals and priorities for the future.

151. At the request of the Chamber, one or more Council members may appear alongside the Chairman. Annual appearances shall be based on the annual report and the action plan. Moreover, every three years, the President shall make an extraordinary appearance to discuss the evaluation of the action plan and the outcomes of the National Markets and Competition Commission.

152. Lastly, in order to safeguard the independence of the Commission's decisions, the Act provides that resolutions adopted by the Council, both in plenum and in chamber, shall exhaust administrative proceedings and may only be challenged before the judicial review courts.