Working Party No. 2 on Competition and Regulation

VERTICAL SEPARATION IN REGULATED INDUSTRIES

-- Spain --

This note is submitted by the Delegation of Spain to the Working Party No. 2 FOR INFORMATION at its next meeting on 27 October 2000.
EXPERIENCE WITH VERTICAL SEPARATION IN REGULATED INDUSTRIES

Spain

1. In Spain, vertical separation has been imposed by law in two regulated industries, electricity and gas. As a first step, accounting separation was approved, structural separation will take place in the electric sector as from December 2000, and in the gas sector as from October, 2000.

Electric Sector

2. Regulated activities are transmission and distribution. Non regulated activities are, generation and retailing. Electricity production and distribution are dominated by two utilities, Endesa and Iberdrola. The government has sold its stake in the country’s largest utility, Endesa.

3. Undertakings operating non regulated activities may hold up to 40 per cent of the total capital of the transmission undertaking. Undertakings operating non regulated activities cannot be shareholders of distribution activities.

4. The national transmission company, (high voltage transmission network), Red Electrica Española, REE, is 25 per cent owned by the State, (until December 2003). Each of the four operating utilities holds 10 per cent of the shares of REE, the rest is quoted in the stock market. As the law limits the stakes of utilities or other agents in the electricity sector up to 40 per cent of the capital of REE, new entrants, in the electricity sector, wishing to purchase shares in REE will only be able to do so if one of the utilities sells some of its shares (DAFFE/CLP(99)36 pg.24).

5. Government fixes prices in regulated activities. Industrial electricity prices in Spain are in the average among OECD countries. Domestic prices before tax are among the highest in the OECD. Energy policy-related costs have been important in pushing energy prices higher in Spain. During the five last years, regulated prices have declined in line with falling unit costs.

Gas Sector

6. Hydrocarbons Law, passed in 1998, classifies as regulated activities in the Gas Industry those of regassification, storage, transmission and distribution, and as a non regulated activity that of retailing.

7. The natural gas industry in Spain is dominated by Gas Natural, a privately owned gas company operating as a de facto monopoly that owns the transportation system through Enagas and 90 per cent of all gas distribution system. Gas natural is owned 45 per cent by Repsol, and 25 per cent by the savings bank La Caixa.

8. Enagas owns 84 per cent of the transmission pipeline network, and three regassification facilities. It was the only importing firm, but the 1998 Hydrocarbon Law allows other undertakings to import gas and to transport it through the basic network paying a tariff for the access.

9. Enagas is owned 100 per cent by Gas Natural. Royal Decree 6/2.000 on Urgent Measures to Enhance Competition rules no shareholder could own more than 35 per cent of Enagas. In the future Gas Natural will own 20 per cent of Enagas, Repsol 10 per cent, and La Caixa 5 per cent, the rest 65 per cent will go public in the stock exchange. Royal Decree 6/2.000 defines Enagas as the Gas System Technical...
Manager, being its responsibility the technical management of the basic and secondary transmission networks, and the coordination of access points, storage sites, transmission and distribution.

**Railways**

10. In Spain, national railways infrastructure belongs to the State. The conventional network (Spanish gauge) belongs to RENFE (national state owned railways company) and the high speed lines (European gauge) belong to a public body, state owned, GIF, a railways infrastructure manager. Negotiations are being carried out to pass all infrastructure assets and maintenance to only one state owned enterprise, that could be the GIF. At present the maintenance of all infrastructure is carried out by a *business unit* of RENFE.

11. Accounting separation within RENFE, between infrastructure management and commercial business units (suburban, intercity, high speed, freight) is in place since 1994.

12. At present, no independent private operator is operating passengers services, but two private firms are active in freight transport, hiring traction to RENFE. RENFE outsources passenger coaches maintenance to private firms.

**Telecommunications**

13. The State has no participation in the stocks of telecommunication undertakings.

14. Telecommunication undertakings are vertically integrated. Fixed telephony services have regulated prices.

15. Telefonica, former telecommunication monopolist, has been declared by the regulator, Comision del Mercado de las Telecomunicaciones, operator with a dominant position. Telefonica must allow access to its network to third parties, the conditions and prices of this access are fix by the regulator, following the principles of transparency, non-discrimination and cost-related prices. Telefonica must submit information about its network costs to the regulator.

16. The access of third parties to the other networks is not subject to any regulation.

17. New regulation has been approved by the government to guarantee competition in the telecommunication industry (Royal Decree 6/2.000, of 24 June, 2000) Undertakings having more than 3 per cent of the stock in more than one major operator in fixed or mobile telephony will have restrictions in their voting rights in the governing bodies of these enterprises.