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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SPAIN

-- 2005 --

This report is submitted by the Spanish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 October 2006.

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Executive Summary

1. 2005 has been again a year of intense activity for the Spanish Competition Authorities. Along with its ordinary functions of instruction and resolution of cases, the activity has aimed at one central objective: to carry on with the reform process of the Spanish Competition System lunched in 2004.

2. The *White Paper on the Reform of the Spanish Competition System* elaborated in 2004, was officially presented at the beginning of 2005. The document has opened a public consultation process which has been concluded with the drafting of a new Competition Act which is to be submitted to the Parliament in 2006.

3. Besides the additional work that this main project has implied, the Competition Authorities have kept their usual daily pace of work in the resolution of cases, international relations and coordination with the Autonomous Communities.

4. Concerning anti-competitive practices, while the number of complaints has decreased with regards 2004, the number of cases on which the SDC decided to proceed has increased, and most of them were sanctioning files. Additionally, several proceedings were initiated *ex officio*. As for merger control, the number of notified transaction has increased as well, reaching to an absolute record figure, but the pace on prior consultations and preliminary inquiries were decreased with respect to the previous year. Finally, the Spanish Competition Authorities have maintained an active participation in the different international organisations and conferences, such as the IV Latin-American Competition School (Escuela Iberoamericana de Defensa de la Competencia) in Madrid.

5. Based on these grounds, the Competition policy remains to play a central role in the framework of the domestic economic policy.

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

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

6. In 2005 no new legal provisions amending domestic competition law have been adopted. Nevertheless, there has been intense activity with the aim of reviewing the current Spanish Competition System.

1.2 Government proposals for new legislation

1.2.1 The White Paper on the Reform of the Spanish Competition System

7. In 2005 the update work of the Spanish competition legislation begun last year has been pursued. The legislative production work has been oriented to draw up a new Competition Act in order to replace the current Competition Act 16/1989, of 17 July.

8. This legislative work begun in 2004 with the preparation of the *White Paper on the Reform of the Spanish Competition System* which was officially presented by the Second Deputy Prime Minister and Minister for Economic and Financial Affairs on 20 January 2005. This document is a discussion paper intended to initiate a review of the legislative and institutional competition framework in Spain to ensure that the best instruments and structure are in place to protect effective competition in markets with a view to social well-being and efficient allocation of resources.

9. The White Paper proposes various reform measures affecting the institutional framework of the Spanish Competition Authorities, the fight against anticompetitive practices, the merger control system, the State aids and the advocacy role of the Competition Authority. These measures provide for greater independence for this Authority, strengthening of the antitrust action in particular by means of the introduction of a leniency program, speeding up of judicial review procedures, better coordination with industry regulators and, possibly, the direct application of national competition rules by courts.

10. The *White Paper* was published in the website of the Competition Service (Servicio de Defensa de la Competencia, SDC) following of a public consultation process which was finalised on 20 March 2005. During this period many contributions and comments have been received.

11. Since then, the Competition Service has been working on the preparation of the Draft Competition Act.

1.2.2 Preparation of the Draft law

12. The main proposals of the White Paper are included in the draft Competition Act currently under preparation. The draft has been sent for consultation to the Competition Tribunal (tribunal de Defensa de la Competencia). The Competition Tribunal has made several observations, some of which are included in the draft.

13. Furthermore, the Consejo de Defensa de la Competencia, which is the body in charge of mutual collaboration, co-ordination and information between the State and the Autonomous Communities to promote uniform application of the legislation on competition, has issued a favourable report.

14. The draft is to be submitted to the Parliament in the course of 2006.

2. Enforcement of competition laws and policies

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

2.1.1 Summary of activities of:

Competition authorities

Servicio de Defensa de la Competencia (SDC)

15. The number of cases opened in 2005 were 86 (91 in 2004), of which 64 in response to complaints (75 in 2004), 10 in 2005 were initiated ex officio (8 in 2004), 12 were individual authorisation proceedings (8 in 2004). During 2005, 93 cases were completed (80 in 2004). Most of them were shelved or dismissed (62) and one was a termination by agreement. The *SDC* decided to proceed in 26 cases (20 in 2004) and were forwarded to the *Tribunal*, of which were 6 individual authorisations (7 in 2004) and 20 sanctioning files (13 in 2004). At the end of 2005, 67 cases remained open (75 in 2004).

16. Concerning sanctioning proceedings, the *SDC* initiated 35 (31 in 2004) actions against anticompetitive practices, of which 20 (15 in 2004) were prohibited agreements (infringement of article 1 of Competition Act 16/1989), 13 (11 in 2004) were abuse of dominance (infringement of article 6 of Competition Act 16/1989) and 2 (5 in 2004) were unfair acts of unfair competition (infringement of article 7 of Competition Act 16/1989).

17. Most cases have arisen in the service sector (34). In particular, the following are the most significant: transports and communications production and distribution of electricity, gas and water; fuel sell for automobiles; wholesale and retail distribution;; financial and insurance services; activities of the Public Administration; health and social assistance; services to undertakings; sports and cultural activities and funeral services.

18. During 2005, *SDC* officials have carried out 2 inspections in premises of two different economic agents (Food Association and Machinery distribution company) in the framework of the proceeding. Additionally, enforcing EC Regulation 1/2003, the SDC in collaboration with the European Commission, carried out four inspections, one in a Information technology company and three in the premises of different Chemical products companies.

Tribunal de Defensa de la Competencia (TDC):

19. The TDC issued 97 resolutions in 2005: 17 sanctioning resolutions; 26 individual authorisations and 36 appeals against decisions issued by the SDC; concerning the reports, the Tribunal issued 112 reports, 7 of them corresponding to M&A. Banking (Card Payments), Road Transport.

20. The fines imposed by the TDC in 2005 amounted up to 9.800.000 Euros.

Courts

Application of national competition rules

21. During 2005, the Audiencia Nacional has issued 57 judgements concerning appeals against resolutions of the TDC: among them 53 were rejected, 2 were admitted and 2 were partially admitted. This statistics clearly reflects the high degree of judicial confirmation of the decisions issued by the Tribunal.

22. In its turn, during 2005, the Tribunal Supremo has issued 16 judgements concerning appeals against judgements of the Audiencia Nacional against resolutions of the TDC: 2 of them were admitted, 2 judgements partially admitted, and 12 judgements were dismissed.

Application of EC competition rules

23. According to EC Regulation 1/2003, since 1 May 2004 Member States should send to the European Commission the judgements concerning the application of EC competition rules by national courts. Ten judgements have been sent in 2005.

24. Nine judgments related to proceedings brought by petrol stations against oil companies and one concerns the abuse of dominant position of *Telefónica* in the sector of telephone information service. The matters disputed in the nine legal proceedings between oil companies and petrol stations have all been similar in nature, focusing principally on the possible invalidity of the supply contracts and their nullity. The courts have classified these contracts as either commission agreements (genuine agency agreements) or re-sale agreements (non-genuine agency agreements) that maybe compatible with Article 81(1) (general prohibition) since they could fall within the scope of the Block Exemption Regulation No 1984/1983 of 22 June 1983 and its successor Regulation No 2790/1999 of 22 December 1999, which relate to the application of Article 81(3) EC to certain categories of vertical agreements and concerted practices.

25. Five of these proceedings were appeals against judgments handed down by courts of first instance. The first instance court is either a “Juzgado de lo Mercantil” or a “Juzgado de Primera Instancia”, with the court of second instance being the “Audiencia Provincial”.

26. Finally, in 2005 19 *pre-judicial questions* and 86 appeals before the First Instance Court and/or Justice Court of the European Community were submitted to the knowledge and study of the SDC in order to analyse the possibility of intervening in the proceedings.

2.1.2 *Description of significant cases, including those with international implications*

The most significant cases that the TDC has issued in 2005 might be the following.

ASEMPERE-CORREOS

27. On 21 January 2002, the ASOCIACIÓN PROFESIONAL DE EMPRESAS DE REPARTO Y MANIPULACIÓN DE CORRESPONDENCIA (ASEMPRE) lodged a complaint with the Competition Service against SOCIEDAD ESTATAL CORREOS Y TELÉGRAFOS (CORREOS) alleging the infringement of Article 6 of the Competition Act and Article 82 EC. The applicant claimed that CORREOS signed contracts with large clients for the joint provision of postal services provided in competition with other operators and those reserved by law to CORREOS, and applied predatory pricing policies through cross-subsidies.

28. During its investigations, the dossier was split into two cases n° 395 ECN and 397 ECN due to the impossibility of obtaining data from the cost accounting system as it was not available at that time.

29. The first dossier n° 395 was closed by a fine decision. On 15 September 2004, the Competition Tribunal handed down Decision 608/04 finding CORREOS to be in breach of Article 6 of the Competition Act and Article 82 EC by abusing its dominant position in the regulated postal services market through the signing of exclusive contracts with large rebates for the joint provision of postal services reserved by law to CORREOS and other deregulated services. The Tribunal ordered CORREOS to pay a fine of €15 million and to stop these practices.

30. *The second dossier was been closed in September 2005 by a commitments decision.* In this case, the alleged infringements were detected in agreements between CORREOS and entities such as banks for postal services and consisted of the granting of unfair discounts and the setting of predatory prices for big clients.

31. The market was defined as the market for the liberalised post services and for universal post services which are not reserved, and the market for reserved universal post services, both in the Spanish territory. The commitment decision sets conditions to ensure that discounted prices always cover costs.

T-S GRUPO GAS NATURAL

32. GRUPO GAS NATURAL (GGN), an integrated natural gas undertaking, has a dominant position in all of the Spanish natural gas markets. On June 2001, two of its subsidiaries, GNC and ENAGAS, signed a contract that reserved certain re-gasification capacity to GNC, the supply branch of GGN.

33. The Spanish Competition Court adopted a resolution concluding that GRUPO GAS NATURAL (GGN) infringed article 6 of Spanish Competition Act and Article 82 EC. The Court considered that GGN abused its dominant position in the Spanish natural gas markets, including the market consisting of the natural gas basic network to import natural gas to Spain by reserving, by contract, certain re-gasification capacity to GNC. It found that the re-gasification capacity reserved exclusively to GNC amounts to discrimination vis-à-vis the rest of the agents in the system and constitutes the imposition of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage within the meaning Art. 82(c) of the Treaty. ENAGAS is the owner of the majority of the facilities in the natural gas basic network, including re-gasification plants. It is legally obliged to give

access to these plants to all the agents of the system, dealing with requests in chronological order of receipt. The Court imposed a fine of EUR 8 million on GRUPO GAS NATURAL.

34. As for the activity of the Courts in which EC competition rules were applied, summary of five of the ten judgements is bellow.

Judgment No. 42/05 of 31 January 2005 handed down by Audiencia Provincial of Madrid Section 9. Parties: Melón, SA & Zarza SL against Repsol SA.

35. In the initial judgment, the complaint brought by the petrol stations Melón SA and Zarza SL was dismissed. The petrol stations appealed, but the Audiencia Provincial confirmed the ruling of the court of first instance that the contracts at issue were “commission agreements”, i.e. genuine agency agreements. The claimants were ordered to pay the costs incurred in first instance but then repealed in the appeal [do you mean that a further appeal was brought?] according to procedural laws in those cases when there are serious doubts about contradictory rulings of the Spanish Courts in similar proceedings.

Judgment No. 14/05 of 22 March 2005 handed down by Juzgado de lo Mercantil No. 2 of Madrid. Parties: confidential.

36. A petrol station brought proceedings against an oil company for allegedly setting final prices for customers and demanded damages. The court dismissed all claims. It classified the contract as a “non-genuine agency agreement” according to the Guidelines on vertical restrictions (Notice of the Commission of 13 October 2000). Secondly, it ruled against the existence of price fixing as the oil company fixed maximum prices leaving it to the petrol station to reduce final prices by cutting its margins in favour of the customers. Fiscal arguments of the claimant related to this matter were also dismissed.

Judgment No. 45/05 of 15 April 2005 handed down by Juzgado de lo Mercantil No. 5 of Madrid. Parties: Aloyas SL against Repsol SA.

37. A petrol station brought an action before this specialised court of first instance on the possible invalidity of a supply contract, its nullity and requested damages. After a review of the contract and the distribution of commercial, financial and product risks, the court ruled that the contracts cannot be considered as agency agreements but rather are re-sale agreements. Secondly, it ruled against the allegation of fixing of consumer prices by the oil company. The court found that the exclusive distribution clause at issue did not fall within the scope of the Block Exemption Regulations and that it had anticompetitive effects prohibited by Article 81 EC. The nullity of the exclusivity clause led to a finding of the nullity of the whole contract. Damages were not awarded.

Judgment No. 180/05 of 29 July 2005 handed down by Juzgado de Primera Instancia No. 3 of Madrid. Parties: LV Tobar e Hijos SL against Cepsa Estaciones de Servicio SA.

38. The judge admitted the action of a service station operator and declared that the service station operator is a re-saler of the oil products and that in view of the Block Exemption Regulations 1984/1983 and 2790/1999 the contract with the oil company is null in its entirety. Three aspects were taken into account by the judge. Firstly, the legal nature of the contract is a re-sale agreement, rather than a genuine agency, insofar as the complainant assumes the financial risk. Secondly, the agreement at stake cannot benefit from the Block Exemption Regulations, due to the restriction on resale price maintenance and the profit margins which are fixed by the oil company. Thirdly, the duration of the contract at stake exceeds the limit set by Article 12.1c) of Regulation (EC) 1984/1983. Finally, the judgment [contract?] included the fulfilment of the payment obligations in accordance with contracts with similar characteristics.

Judgment No. 85/05 of 11 November 2005 handed down by Juzgado de lo Mercantil No. 5 of Madrid. Parties: Conduit Europe SA against Telefonica de España SAU.

39. The judge awarded damages against Telefonica, based on the abuse of its dominant position in the sector of telephone information service. Conduit Europe brought an action against the refusal of Telefonica to negotiate the access to the database of telephone service subscribers and the illegal use of short numbers in order to compete in the information service. The judgment follows EC case-law (*Courage*) and Conduit was awarded total damages of 639.003 € plus the amount which may be proved during the execution of the judgment.

2.2 Mergers and acquisitions

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

40. Year 2005 has registered a relevant increase on the number and complexity of mergers assessed by the SDC, reaching to the record figure of 115 (94 in 2004). Along with this, the number of prior consultations (10) has decreased with respect to the previous years (16 in 2004). Similarly, preliminary inquiries (26) were also decreased (44 in 2004)

41. On the other hand, the enlargement of the scope of control, the dimension and the complexity of the notified transactions has been maintained since 1999 when the new system of compulsory notification entered into force.

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Notifications	19	31	51	93	76	100	79	94	115
Referrals to the TDC	7	7	14	11	6	9	6	5	6

42. Annualising the cases according to the notification date at the SDC, 103 notified mergers were authorised in first phase. The Minister of Economy, upon proposal of the SDC, referred in 2005 six concentrations to the Tribunal for further investigation. In the six cases after the *TDC* issued its report, the Council of Ministers adopted its final decision (authorisation in second phase) through an Agreement: three of them were authorised subject to conditions, two was cleared without conditions, and one case was filing. In all this cases, the Council of Ministers followed the advice of the *TDC*.

Notifications: type of transactions in 2004			
Acquisition	Joint control	Takeover bid	Others
88 %	5 %	7 %	-

43. In 2005 an important number of merger assessed were in the chemical and pharmacy industry, transport industry, machinery, electricity material and equipment sectors, but other traditional sectors remain its leading role as services, energy, food and beverages sectors.

2.2.2 *Summary of significant cases*

IGUALATORIOS MÉDICOS

44. On 20 June 2005 notification was made of the concentration operation by Grupo Igualmequisa S.A. (henceforth Igualmequisa), Adeslas, Imq Seguros and Iquimesa Seguros, which operate in the insurance and health assistance services markets, which consisted of the acquisition by Igualmequisa and Adeslas of joint control over the companies IMQ Seguros, a subsidiary of the first named company, and Iquimesa Seguros, a subsidiary of Adeslas.

45. Igualmequisa was constituted on 8 August 2003 and holds the shares of the companies IMQ Seguros, the object of the concentration operation, the corporate object of which is the provision health assistance and illness insurance in the province of Vizcaya (San Sebastian) and surrounding areas, and IMQ Servicios, which provides the clinics, medical centres and other health assistance services, but does not provide insurance services. Igualmequisa is controlled by Sociedad de Médicos del Igualatorio Médico Quirúrgico, S.A. (henceforth IMQ Médicos), the shareholders of which are, in a very large part, the doctors who are, or have been, part of the medical team of IMQ.

46. Adeslas is an insurance company operating at national level, particularly in the area of health insurance. The company is controlled by Aguas de Barcelona, S.A. (AGBAR), which holds 64.75% of the shares in the company, and it is listed on the stock exchange. It is the parent of a group of companies that are active in many sectors. Adeslas is the largest health insurance company in Spain, with around 2.3 million people being provided with health, dental and accident assistance through insurance with the company.

47. The company Iquimesa Seguros had belonged to Adeslas before the concentration operation, and now belongs to IMQ Seguros. From the moment of the concentration operation, Iquimesa Seguros has been the exclusive provider of private health insurance in the group. Its area of operation covers the whole of the Basque Country, although the majority of business up to the present has been generated in the province of Alava.

48. In the concentration operation being analysed, the Tribunal considered the market for products affected to be, in the first instance, the provision of private health assistance insurance services. Unlike illness insurance and reimbursement of costs, which consists of the coverage of a risk faced by the person in the case of the need for health assistance, this consists of providing health assistance services, not of making economic provision. The Tribunal distinguished three segments in the market for health assistance insurance: private health assistance insurance, non-public collective health assistance insurance and collective public health assistance assurance. In the second place, the Tribunal analysed the market for private health assistance services, which consists of a basket of services, such as diagnostics, the rights to surgery, costs of hospital stays and specialist assistance among other things.

49. From the geographic point of view, the Tribunal believed that the relevant market, both in the cases of health assistance insurance and the provision of health assistance services, was provincial, and affected in particular the provinces of Vizcaya and Alava, in the case of the former, and Vizcaya, in the case of the latter.

50. In its analysis of the structure of the relevant markets, the Tribunal decided that, despite the high degree of concentration in the market before the concentration operation notified, and due to the weakness of effective competition in geographic markets, there was no reinforcement of the position of the parties derived from a possible addition of market share. Additionally, in the opinion of the Tribunal, neither the economic barriers to entry to the market, nor the legal barriers derived from complying with the

requirements established by the respective regulators, were of fundamental importance when determining the competitive pressures that competitors, whether, actual or potential, could exercise in the relevant markets.

51. Nevertheless, the Tribunal appreciated the need to put conditions on the operation to avoid the high level of respective market shares resulting in a weakening of effective competition in the markets. The Tribunal based its opinion on factors that included: the structural nature of the new relationship between Adeslas and Igualemequisa; the presence of both operators in various private health service markets; the precedent of behaviour that restricted competition by Igualemequisa, by requiring exclusive relationships with doctors and hospitals; the detection by the Tribunal of indications of restrictions in the supply of private health services in the province of Vizcaya; the reduced capacity of the power of demand to act as a counterweight to the market power resulting from the concentration; and the probable existence of a sharing out of the market by Adeslas and Igualemequisa prior to the concentration operation.

52. Taking into account the consideration listed, on 26 September 2005, the Tribunal declared the operation to be allowable, subject to the following conditions:

- The notifying companies must explicitly guarantee in their agreements the lack of exclusivity or clauses with an equivalent effect, when contracting with the providers of health and hospital assistance.
- The notifying companies, either directly or through the companies in their respective groups, are jointly obliged to contract with those insurance companies that request it, the provision of health assistance services in the health centres under their control, both now and in the future, in the provinces of Álava and Vizcaya, for a period of five years, starting from a date to be set by the Council of Ministers.
- The notifying companies, either directly or through the companies in their respective groups, are jointly obliged to contract with those insurance companies that request it, the subcontracting of the health assistance insurance provided with the mutual companies MUFACE, ISFAS and MUGEJU in the province of Vizcaya, for a period of three years, starting from a date to be set by the Council of Ministers.
- Independently of the behaviour of the notifying companies, the Tribunal instructed the Servicio to analyse the procedures for contracting health assistance by the State mutual companies, and the competitive characteristics of the process of selecting a health service provider by the civil service, with the intention of informing the mutual companies of possible measures for increasing competition at both levels.

53. The decision by the Council of Ministers on 21 October 2005 agreed with the Opinion given by the Tribunal.

CATELLI / COMACO / MANZINI

54. Catelli Food Technology, S.R.L. (Catelli) notified the Servicio on 1 July 2005 of a concentration operation that consisted of the acquisition by the aforementioned company of the exclusive control of the companies Sig Comaco S.P.A. (Comaco) and Sig Manzini S.P.A. (Manzini).

55. The notified operation is related to production and sale of machinery for the processing of primary food products.

56. The company Catelli is registered in Parma (Italy), and is the result of the partial excision without dissolution of the company Catelli Holding S.P.A. The companies in the group are involved in the production of machinery for the processing and production of various types of food (tomato purée, fruit, vegetables, dairy, etc).

57. Manzini, is registered in Parma (Italy), and is controlled by the company SIG Holding AG (SIG), parent company of the SIG Group. According to information provided by the notifying company, its corporate object is the production of machines and lines for the processing of tomatoes and fruit and for the preparation of drinks.

58. Comaco, is a company registered in Parma (Italy), and is controlled by the company Sig Holding AG (SIG), parent company of the SIG Group. Its main products are for production lines and units for filling and sealing rigid containers for cooking and lubrication oil, machinery for volume filling by piston and machinery for vacuum packing.

59. The contract for the acquisition of the shares was accompanied by a series of supplementary restrictions (a non-competition pact and a confidentiality clause), which the Tribunal considered to be directly linked to the operation, being necessary for it to be completed and, as a result, forming an integral part of it.

60. In the case of this operation, the Tribunal considered the relevant market to be the market for the production of machinery (complete production lines and individual machines) for the primary processing of tomatoes and fruit. This primary processing consists of obtaining natural fruit and tomato purées and concentrates, pulps and cubes etc from the raw material, using the appropriate machinery. The Tribunal considered the primary transformation of the tomato and fruit as being part of the same market, due to the great similarity between the primary production lines for both types of food, which means that the users of the machinery can change from processing one to processing the other using the same production lines or machines at a low cost without the need for any adaptation.

61. With respect to the geographic market of the operation being examined, the Tribunal believed that the market for machinery for processing tomatoes and fruit is international, with a minimum area of the European Economic Area. However, it was also recognised that some machines were produced by national manufacturers which do not normally have full production lines and focus their attention principally on the national market. The impact of the concentration should also be analysed at the level of national territory.

62. On studying the structure of the markets in question, the Tribunal noted that the market share of the participating companies in recent years had suffered a certain degree of volatility, as the market is characterised by relatively large but irregular orders. Based on the average joint market share for Catelli and Mndanzini over the period 2000-2004 in the European Economic Area and the information available for Spain for the year 2005, it is not foreseen that there will be a reduction in effective competition as a result of this operation being carried out. Having considered the supply side of the market at the same time, the Tribunal noted the full compatibility between the machines made by different manufacturers and the spare parts for these machines. It noted that this was a mitigating element of the market power of the producers, one of the effects being that the interoperability between the machines enables effective competition from local competitors, specifically in Spain.

63. At the same time, the Tribunal noted that, in the case analysed, the reductions in price in recent years, together with the degree of concentration of sales made to the principal clients of Catelli and Comaco showed that the negotiating power of the demand side could act as a counterweight to the

potential increase in market power resulting from the concentration. The Tribunal finally noted that at the time of the case there were no legal, economic or technological barriers to entry to the market analysed, particularly with regard to customer loyalty and the need for investment in research and development, which can limit the competitive pressure that both current and potential competitors can exercise in the relevant market.

64. As a result, on 3 November 2005, the Plenary session of the Tribunal decided to recommend not to oppose the decision in question, as it was considered that the operation did not place an obstacle to the maintenance of effective competition.

65. The decision by the Council of Ministers on 2 December 2005 agreed with the Opinion given by the Tribunal.

UNION RADIO/ANTENA 3 RADIO

66. On 5 September 2005, the Servicio received notification of a concentration operation consisting of the integration with complete and exclusive control of Antena 3 Radio by Sociedad de Servicios Radiofónicos Unión Radio (Unión Radio). The operation was executed via the contribution to this company by the shareholders of Union Radio of the totality of their shares in Sociedad Española de Radiodifusión, S.A. (SER), Paltrivia and Inversiones Godó in consideration of an increase in equity.

67. This operation had a direct precedent in the concentration notified to the Servicio on 1 December 1993, which consisted of the management of SER and Antena 3 Radio being ceded to the newly created Sociedad de Servicios Radiofónicos Unión Radio, S.A. This concentration was approved by the Council of Ministers with conditions on 20 May 1994, agreeing with the Opinion given by the Tribunal.

68. This Decision by the Council of Ministers was appealed against to the Tribunal Supremo. On 9 June 2000, the Tribunal Supremo issued a sentence in which it partially accepted the appeal lodged and annulled the Decision, declaring that the Decision by the Council of Ministers was not in accord with the law. This judicial decision was followed by numerous administrative and jurisdictional actions related to the operation notified, some of which are still pending resolution at the time that this report into the concentration operation was being prepared.

69. With respect to the Parties involved in the operation, the corporate purpose of Union Radio is the management of radio services, excluding the programming and emission of programmes, which provides services to the company SER and its related companies. Unión Radio is controlled by the PRISA Group, which owns 80% of its capital. The remaining 20% is owned by Grupo Godó de Comunicación S.A.

70. Grupo PRISA is listed on the Madrid stock exchange. It is a media and communications group, with interests in sectors such as the press, publishing, audiovisual production, radio, advertising, Internet and new technology, local television and pay television. Grupo PRISA also has a major presence in the international media market, particularly in Latin America.

71. With respect to the radio market, Grupo PRISA owns 99.99% of the capital of SER, 80% of the capital of Unión Radio, S.L., 50.93% of the capital of Paltrivia, S.A. which, in turn, owns 34.78% of Antena 3 Radio and 48.95% of Inversiones Godó which, in turn, owns 64.64% of Antena 3 Radio .

72. The corporate object of Antena 3 Radio is the exploitation of radio broadcasts. It is controlled by the Grupo Godó de Comunicación, S.A., through the company Inversiones Godó, S.A., a company which owns 64.637% of the capital of Antena 3 Radio and 16.68% of Onda Musical, S.A. The other preferential shareholder is Paltrivia, S.A. which owns 34.782% of the share capital.

73. As a result of the operation being scrutinised, Unión Radio will obtain the exclusive control of SER, of which it directly owns 99% of the capital. It will own 99.419% of the shares in Antena 3 Radio as a result of its control of 100% of the shares in Inversiones Godó and Paltrieva.

74. The market for the product considered by the Tribunal as being affected by this concentration operation consists of the market for the sale of advertising space on private radio stations. In the opinion of the Tribunal, it was not possible to talk of a market in radio services, as these have the peculiarity that the consumer does not pay for them and, for the purposes of analysis of competition, the market for products affected by the operation can only be one in which a product or service is bought or sold. As a result, in this case, the object of the business in the advertising spots in the radio programmes. The Tribunal argued that these publicity spots had specific characteristics that were different to those in the other communication media.

75. The Tribunal did not consider it necessary to undertake segmentation by type of programming (generalist or radio formula). Nevertheless, in relation to the types of broadcasters (private or commercial public broadcasters), the Tribunal considered that it was possible to talk about a specific product market of sales of advertising spots by private broadcasters, as these had certain differentiating factors and defined precisely the market for the product affected by the operation.

76. Taking into account the peculiarities of the sale of advertising space on the radio, the Tribunal decided that it was possible to segment the geographic market affected by the operation into: the national market, understanding that this meant advertising space sold for distribution by all the broadcasters when they broadcast national programmes, and local markets, understanding that this refers to advertising space sold for diffusion in local programming by the broadcasters, or during those periods when the national programming is not connected. The segmentation follows the characteristics of the broadcasting capacity, the mechanism for negotiating publicity for each of them and the objective of the advertising. Nevertheless, the Tribunal also took into account when measuring the market power of the company its local geographical scope and, in any case, the autonomous region for those areas where there was only one single licence.

77. After undertaking the analysis of the structure of the market and finding that the provision of radio services is subject to significant barriers to entry, fundamentally deriving from the limits on the number of licences granted by the Administration, the Tribunal considered that the appropriate parameter for correctly analysing the impact of the concentration operation on effective competition is the broadcasting capacity of the companies involved, and not the levels of audience or the figures for advertising revenue. This broadcasting capacity should be measured not only taking into consideration the companies own stations, but also all those over which they can exert influence in the taking of strategic decisions related to business policy. In the Tribunal's opinion, this situation arises when: the resulting company shares directors with other stations; when the resulting company has a shareholding in the other company or when it shares with other stations a shareholding in a third company in the radio market. In addition, the existence of association agreements strengthens such influence.

78. As a result, the Tribunal believes that the analysis carried out from the perspective of competition is also sufficient to guarantee the pluralism of information, without prejudicing the conclusions that the competent bodies in this field might reach.

79. Given this information, the Tribunal decided that in order to guarantee the maintenance of effective competition in the market, the broadcasting capacity of the resulting company should not exceed the following limits: four stations in towns with eight or more licences, 50% in areas with fewer than eight and more than one concessions and 40% in areas with a single station in the whole of the autonomous

region, with the additional requirement of the breaking of certain links that ensure a decisive influence on decision making at the stations concerned.

80. As a result of the foregoing, the Tribunal decided that the operation should only be authorised if it was subject to the following conditions:

- The resulting company should proceed to dispose of some of its stations (and corresponding licences), in some cases in specific areas mentioned in the Opinion, and in others at the choice of the notifying company from among a range of areas also listed.
- The process of disposal of radio stations (and their corresponding licences) and the other conditions stipulated have to be implemented within a maximum time limit from the date of the decision being taken by the Council of Ministers, as set by the Council of Ministers.
- The Commission for the Telecommunications Market (Comisión del Mercado de las Telecomunicaciones) and the Servicio de Defensa de la Competencia will have to guarantee that the disposal process specified in the Decision and all other conditions stipulated are carried out in conditions of transparency and that they respect the levels of competition in the markets affected.
- Finally, the Tribunal stated that failure by the company to comply with the conditions stipulated in the Decision, and any other conditions, should there be any, stipulated by the Decision of the Council of Ministers, should lead to the concentration of companies being broken up.

81. The Council of Ministers took a Decision on 27 January 2006, which authorised the operation, agreeing with the Opinion of the Tribunal, and specified which stations had to be disposed of.

DINOSOL/MERCACENTRO

82. On 16 September 2005, Dinosol Supermercados, S.L. notified the Servicio of a concentration operation, which consisted of the acquisition by Dinosol of the assets corresponding to eleven retail establishments for everyday items belonging to Mercacentro in the province of Las Palmas, on the island of Gran Canaria. This project was referred to the Tribunal to be examined, as it was considered that it could place an obstacle to the maintenance of effective competition in the market.

83. Dinosol is a company registered in Spain which has belonged to the investment fund Grupo Permira Europe since December 2004. This company is indirectly controlled by the company Permira Europe III G.P.L.P., subsidiary of the parent company, Permira Holdings Limited. Dinosol is the seventh largest retail distributor of food in Spain in terms of volume of sales, and has 591 sales outlets and a total floorspace of sales of around 503,000 m². The majority of these outlets (the majority of which are supermarkets) are in Barcelona, Madrid, Andalusia, Ceuta, Melilla and the Canary Islands.

84. Mercacentro is a Spanish company, the share capital of which is, directly or indirectly, in the control of the Sánchez López family. Mercacentro works in the wholesale and retail distribution of everyday items sector on the island of Gran Canaria, and has 29 retail establishments and a “cash and carry” centre.

85. In this operation, the Tribunal analysed the markets for retail distribution of everyday items, provisions and supplies. With respect to the first of these, the market consists of the retail distribution of food products and non-food items for current consumption in the home offered in self-service establishments (hypermarkets, supermarkets and self-service shops, including discount stores in this final

category). The market for provisions and supplies is defined as the sale of everyday items by the manufacturer to wholesale and retail clients and other types of companies.

86. With regard to the geographical market, the Tribunal considered that, in the case of retail distribution, this should be delimited by an isochrone (an imaginary line joining towns that are a certain distance in terms of travelling time from a shopping centre) of 15 minutes by car approximately from those towns where the activities of both companies overlap. As a result, the proposed concentration operation affects four areas: 1: Gáldar; 2: Las Palmas de Gran Canaria-Telde-Santa Brígida; 3: Santa Lucía de Tirajana-Ingenio-Agüimes; y 4: San Fernando-El Tablero. With regard to the market for supplies and provisions of goods for everyday consumption, it was understood that, as this market is supplied with products by wholesale and retail distribution companies at national level, whether through a central purchasing body or through the group to which the entity belongs (Dinosol and Mercacentro are principally supplied by IFA and Euromadi respectively), the ambit was national.

87. On analysing the structure of the market and the effects on effective competition that this operation could have, the Tribunal determined that in the retail distribution market for items for daily consumption formed by the towns of Las Palmas de Gran Canaria-Telde-Santa Brígida where Dinosol already enjoyed considerable market share, the addition of Mercacentro's market share would enable Dinosol to strengthen its current pre-eminent position and emphasise the asymmetry with its competitors. In addition, the regulations governing retail trade in the Canary Islands impose particularly strict restrictions on the opening of particularly aggressive formats, such as discount stores or stores with a wider range of services, such as large supermarkets and hypermarkets. However, leaving aside the regulatory context, the negligible quantity of the addition to the company's market share in Las Palmas-Telde-Santa Brígida, together with the economic and financial power of the main competitor would, in the opinion of the Tribunal, make it possible to rule out this operation representing an obstacle to maintaining effective competition in the market in question.

88. As a result of the arguments outlined above, on 14 December 2005, the Tribunal issued a Decision that did not oppose the concentration referred to it.

89. The Decision by the Council of Ministers on 13 January 2006 agreed with the opinion of the Tribunal.

TELEFÓNICA/IBERBANDA

90. On 10 October 2005, the Servicio received notification of the economic concentration operation consisting of the taking of exclusive control of Iberbanda, S.A. (Iberbanda) by Telefónica de España, S.A.U. (TESAU). The operation consisted of the acquisition by TESAU of the exclusive control of Iberbanda. The operation was taken to the Tribunal for a decision on its effect on effective competition on 7 November 2005.

91. TESAU is a subsidiary company of Telefónica S.A. (Telefónica), a company which is listed on various stock exchanges. The most important shareholders in Telefónica, parent company of the Grupo Telefónica, are: Chase Manhattan Nominees Ltd (10.028%), State Street Bank & Co (7.61%), Banco Bilbao Vizcaya Argentaria (5.621%), La Caixa (5.37%) and Citibank (4.66%). Telefónica has shareholdings of varying degrees of magnitude in a wide range of companies with varying corporate objectives; the shareholdings that are particularly relevant in the case of this operation are: Telefónica Móviles España, Telefónica Data España, TPI (directory service), Terra Lycos (Internet portal), Telefónica Contenidos, Atento (customer service) and Energía (wholesale provision of international broadband infrastructure).

92. TESAU provides basic fixed line telephone services, internet access using ADSL technology, access to broadband network services, data transmission services, disaggregated access services, rental and sale of equipment and value added services for its clients.

93. Iberbanda was founded on 3 March 1999 with the name FirstMark Communications Spain, S.L. At the moment it was founded, the shareholders of Iberbanda were: PRISA (25.98%), Informática El Corte Inglés (25.98%), Teléfonos de México, through Sercotel (17.83%), Omega Capital (8.80%), Caja Duero (7.03%), Ibercaja (4.40%), Caja San Fernando (4.40%), El Monte de Huelva y Sevilla (4.07%) and the Diario de Burgos (1.52%). Following TESAU taking a share in the company, the distribution of shares is foreseen to be: TESAU (45%), other shareholders 55% (in principle, with the following distribution of shareholdings between them: PRISA (24.59%), Informática El Corte Inglés (24.59%) and Omega (5.82%)).

94. Iberbanda is a global broadband internet service provider, which provides high speed access to the internet, data transmission, telephone services and online value added services through technology enabling wireless local loop access, radio linkage and fibre optics.

95. The operation was accompanied by a number of agreements that were considered necessary and directly linked to the concentration, such as the contracts for provision of electronic communications; a commitment to remain shareholders on the part of certain shareholders in Iberbanda; a non-competition clause among the present and future shareholders that have more than a certain level of shareholding or which have a seat on the board of the company; and a series of agreements for the transitory period up to TESAU taking its shareholding in Iberbanda.

96. In its analysis of the market relevant to this concentration, the Tribunal established that the markets for products affected, within the market for broadband internet access from a fixed line: the market for broadband internet access (that which enables a final user, using a specific terminal or a fixed location, to enjoy a generally permanent connection to internet services with a high capacity for the transmission of data), considering the different technologies for access to these services as being part of the same market, as they are substitutes in terms of the demand for services and meet the same needs. At the same time, the wholesale market for broadband internet access, where access to the infrastructure of an operator is provided to another operator in order to provide broadband services to their clients, was also considered relevant.

97. With respect to the geographic reference market, this was defined in the present case as being national for both markets, given the linguistic characteristics, the need to access local infrastructures and the sector being governed by national regulations.

98. In its study of the structure of the relevant markets and its evaluation of the effects of the proposed concentration on effective competition in the markets, the Tribunal took into account, in addition to the structural data on the market share of the parties, the possible evolution of technological innovations and specific aspects of the regulations governing the sector. As a result, the Tribunal determined that the operation would result in the control by TESAU of one of the three independent operators that received licences for radio access in 2000 – a tender from which TESAU was excluded. As a result, TESAU would gain access, through Iberbanda, to LMDS technology, which provides a range of advantages, particularly for access to broadband services in rural zones and for the future development of Wimax technology. At the same time, TESAU acquired the portfolio of clients belonging to Iberbanda in which TESAU's market share is particularly high.

99. The provision of access to this technology, together with the fact that TESAU has a dominant position both in the reference markets and in practically all telecommunications markets in Spain (fixed

line, mobile, internet access, etc), would contribute to reinforcing the position of TESAU in the medium term, even though Iberbanda had not itself provided significant market share in any of the markets analysed. At the same time, the Tribunal considered that access by TESAU to the range of radio-frequencies necessary for the use of Wimax technology at precisely the time that it is developing, could provide an obstacle to effective competition in the market.

100. In addition, the Tribunal added to this the fact that the reference market had very high barriers to entry, both in relation to the radio-frequency spectrum and in relation to the eventual roll out of an alternative access network to that of TESAU. TESAU's domination of the terrestrial and mobile networks makes competing very difficult for other operators, putting the expansion and development of Wimax technology and, as a result, the benefits of competition between alternative technologies at risk.

101. Based on these reasons, the Tribunal considered that the proposed operation could constitute an obstacle to the maintenance of effective competition in the market and, as a result, recommended in its Opinion that the operation should not be authorised.

102. The Decision by the Council of Ministers on 13 January 2006 agreed with the Opinion given by the Tribunal.

GAS NATURAL / ENDESA

103. On 7 September 2005, the Servicio received notification from Gas Natural SDG, S.A. (henceforth, Gas Natural) of a concentration operation consisting of the acquisition by Gas Natural of Endesa, S.A. (henceforth, Endesa) through a takeover bid.

104. Together with the notification, Gas Natural presented a plan of commitments that consisted of: an agreement with Iberdrola, S.A. (Iberdrola), conditioning the taking of effective control of Endesa by Gas Natural, through which Iberdrola would acquire a series of assets and shares; and additional commitments of a diverse nature with Gas Natural.

105. Gas Natural is an integrated energy company, primarily active in the distribution and supply of natural gas and which also has a presence in the generation, distribution and supply of electricity. The company's main activity is undertaken in the gas sector in Spain, where it is the major company, although it is also an important gas operator in Latin America, with a presence in Argentina, Brazil, Columbia and Mexico. The main shareholders of the company are Repsol and La Caixa (through Caixaholding, S.A.), which hold 30.8% and 30.03% of the share capital respectively. Both partners exercise joint over Gas Natural through a shareholder's agreement. Gas Natural holds 15.96% of the shares of Enagas (provider of technical management of the gas system in Spain) and has a 5.143% holding in Omel (Spanish energy market operator). In addition, the group has minority interests in the services, communications, e-commerce and new economy sectors, through various subsidiaries and companies in which it has a shareholding.

106. Endesa is the main electricity company in Spain, and the largest private electricity company in Latin America, in addition to operating in various European countries and in Morocco. Endesa has a growing presence in the natural gas market through the companies Endesa Gas, Endesa Energía and Carboex. In addition, it has shareholdings in companies in the telecommunications sector and increasingly provides telecommunications services through the electricity network (Power Line Communications or PLC). However, its principal activity is the development of the generation, distribution and sale of electrical energy in Spain. Endesa is also active in the field of renewable energy through Endesa Cogeneración y Renovables. Endesa holds a 3% shareholding in the Spanish Electricity Network (Red

Eléctrica de España or REE) and, at the time of the notification of the operation, jointly controlled the company Auna Operadores de Telecomunicaciones, S.A. through a 32.92% shareholding.

107. When analysing the relevant markets for the operation, the Tribunal studied the impact on effective competition in the following market areas: with respect to natural gas, the supply market; and the transport market, differentiating it from the infrastructure for importation; the distribution and supply to the end user market (large consumers, domestic consumers and small and medium enterprises, and combined cycle power stations). In the electricity sector, the markets considered were the market for generation, distinguished from the market for the solving technical problems; and the distribution and supply to large clients (high tension) and domestic clients and SMEs (low tension).

108. With regard to the geographic markets affected, the Tribunal considered that the relevant geographical market for supply of gas was greater than the national level. The markets for transportation of gas, infrastructure for importing gas and electrical generation were restricted to Spanish territory on the Peninsula, whilst the market for supply of gas and electricity were national. The distribution of gas and electricity and the market for solving technical problems have a regional and local scope. Finally, when analysing competition in the supply market and in the distribution markets, the Tribunal considered, for some aspects, the whole of Spanish national territory.

109. The Tribunal believed that the structure of the markets affected at the time of the notification had certain weaknesses from the point of view of competition, namely: the market for supply of natural gas has one dominant operator, Gas Natural, which has almost exclusive access to the international gaseoducs and seats on the board of Enagas; the market for electricity generation is highly concentrated, and the dominant companies have market power to set prices; both sectors are vertically integrated; there are problems of asymmetry of information, both on the part of Gas Natural, as a provider of competing combined cycle power stations, and on the part of the distributors.

110. The Tribunal, taking as the starting point the concentration in the markets affected and the weakness of effective competition analysed the consequences that the operation would have on these areas. It considered that it was likely that it would result in a strengthening of the position of the parties owing, directly, to the additional market share in supply, transport, importing infrastructure for gas and electricity generation and, in particular, the market for solving technical problems and in the distribution and supply of both products.

111. The following were highlighted as possible horizontal effects of the operation:

- Following the operation, the position of the resulting Group in Enagas would be strengthened, as both companies are already represented on the board. This would increase vertical integration, and would act as a barrier to entry to new players in the market.
- In the gas distribution market, the resulting company would see an increase in the range of its activities, which would be particularly concerning in some Autonomous Regions.
- With respect to electricity generation capacity, the Tribunal considered that the concentration operation would reinforce the market power of the current dominant players in the market for generation, as it would represent a disincentive for investment projects in new combined cycle power station capacity, both on the part of the company resulting from the operation and its competitors. On the other hand, in the market for electricity generation, the position of dominance of the resulting company would be reinforced as a consequence of the new structure of generation technologies that would result from the incorporation of combined cycle power stations.

- In the case of the market for resolving technical restrictions, the Tribunal considered that the position of the group resulting from the operation would be reinforced due to the overlap of various power stations belonging to Endesa and Gas Natural in the Autonomous Regions of Andalusia and Catalonia which are constantly required in order to resolve technical restrictions.
- In the market for electricity distribution, the Tribunal's analysis revealed that the increase that would result in the distribution network was incremental. Nevertheless, the operation would make competition more difficult in various geographical areas.
- In addition, the horizontal effects would be aggravated, in the opinion of the Tribunal, by the disappearance of Endesa and Gas Natural in those gas and electricity markets, respectively, which they had begun to enter and expand into.

112. With respect to the principal vertical effects, the Tribunal noted that:

- The operation analysed would result in the vertical integration of the Gas Natural group, strengthening its market power in the gas and electricity sectors, with its position in the market for the supply of gas being particularly important.
- This strengthening could lead to a restriction in competition in the markets for the supply of natural gas, both for electricity generation and for industrial and domestic clients.
- In addition, the operation would create incentives for the exploitation of the asymmetric information which the distributors of gas and electricity in the group count on in the face of their external competitors for sales. These effects are all foreseeable, even taking into account that distribution is an activity that is regulated given its character as a natural monopoly.

113. With respect to the effects of the grouping resulting from the operation, the Tribunal considered that it would seriously alter the existing competitive dynamics in the markets for gas and electricity. This change would be negative for competition as it would reduce the incentives for the main supplier of gas to act in the electricity market, and would also modify those factors that make possible an increase in sales. In addition, the Tribunal identified other effects, such as the risk that a dominant position in both gas and electricity would open an additional route for the transfer of earnings between these energy activities, and would result in the possibility of establishing arbitrage among the various energy sources.

114. The Tribunal detected the following barriers to entry in these markets: In the electricity sector: vertical integration, the existence of strategic assets that are difficult to duplicate, the limited international interconnections, the costs of installation and diversification in the generating pool, the way the wholesale market functions, and the costs associated with the transition to competition. In the gas markets, in addition to the vertical integration, the Tribunal highlighted, among other barriers to entry, the access to sources of supply and the importing infrastructure, the level of investment required by the new infrastructures and the current structure of retail prices.

115. Having examined the consequences of the proposed concentration on effective competition in the markets concerned, the Tribunal highlighted that the efficiencies claimed by the companies would not be substantial, and nor is it forecast that they would be produced quickly; indeed, these efficiencies basically affect the fixed costs of the new company and increase neither the capacity nor the incentives for the merged companies to act in a way that favours competition. As a result, the Tribunal considered that the

efficiencies claimed were not sufficient to compensate the restrictive effects on competition that would arise as a result of this operation.

116. Finally, with regard to the sale of assets proposed by Gas Natural, the Tribunal considered that these would not re-establish competition and would therefore not resolve the vertical or horizontal problems or those arising from the new conglomeration. In addition, it was considered that the designation of Iberdrola as the forced purchaser of the assets would reinforce the restrictive effects that the operation would have.

117. As a result of the foregoing, on 5 January 2006 the Tribunal decided to advise the Government to declare that the concentration operation notified should not be approved and should not be allowed to proceed.

118. As a result of this Opinion, a dissenting vote was signed by Mr. Berenguer Fuster, Castañeda Boniche and Ms. Sánchez Núñez.

119. The Decision by the Council of Ministers on 3 February 2006 did not agree with the Opinion of the Tribunal. The Council of Ministers approved the operation, subject to conditions.

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

120. As in the past years, the SDC has developed an important activity in the field of advocacy by means of the participation in the legislative process. Thus, the SDC issues reports concerning the draft versions of regulations affecting the conditions of competition in the markets. It has been analysed draft regulations from the Ministry of Economy or other ministerial departments. Additionally, reports concerning regulations approved by the regional governments have been issued.

121. Special attention was paid to these regulations which have the effect of market foreclosure by means of establishing entry barriers in different activities. During 2005, the analysis has been focused notably on energy, audiovisual sector, insurance, consumers, intellectual propriety rights, budgetary and taxes issues, medicaments and sanitary products and economic policy.

122. One of the most interesting draft regulation subject to report by the SDC, was the Draft Royal Decree that regulate the impact memory which should include every legislative project. The SDC has made a contribution in order to assess the competition impact of different regulations or laws in line with the European Commission documents "Better regulation: a Guide to Competition Screening" and of the Office of Fair Trading "Guidelines for Competition Assessment".

123. Finally, it has been developed a relevant activity concerning the professional services sector in coordination with the European Commission. A meeting with different Ministries related with the professional associations and the European Commission, in order to debate about Spanish legislation and the Community policy in that sector, was held in Madrid.

124. The Tribunal de Defensa de la Competencia also has an important role to play in this field. During 2005, the Tribunal addressed the Government its recommendations to improve the competition conditions in certain fields. It may be mentioned the report on Road Transport. In this Report the Tribunal de Defensa de la Competencia analysed the legal restraints to competition in Road Transport Services in Spain and proposed its deletion.

4. Resources of competition authorities

125. Over the last years, the Spanish agencies, in a framework of public budget balance, have increased its resources substantially. Concerning the **SDC**, and in accordance with the Royal Decree 777/2002, of 26 Of July, a new General Directorate –the *Dirección General de Defensa de la Competencia*- has been created with the incorporation of a Director, exclusively dedicated to competition, which also has an additional support unit.

126. This General Directorate, which exerts all the functions that the Competition Act 16/1989, of 17th July, have entrusted to the Servicio de Defensa de la Competencia (SDC), is organised in three units that configures the SDC: the Deputy General Directorate for Mergers, the Deputy General Directorate for Anticompetitive Conducts and the Deputy General Directorate for Legal Affairs and Institutional Relations, created in 2001.

127. The SDC has at present a staff of 81 people: of which 21 economist, 25 lawyers and 21 other professionals, and the rest support staff.

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

129. The Annual budget in 2005 has been 2.883.360 euros; 89% of this amount is devoted to human resources expenses.

130. As for the TDC, its annual budget for 2005 reached the amount of 5,25 million euros. Concerning the staff, 44 people work on the Competition Authority (9 Lawyers, 10 Economists, 2 Both Economists and Lawyers, 23 Other).

5. References to new reports and studies on competition policy issues

131. The SDC issues also reports required in the field of other administrative procedures. It can be highlighted its intervention in the regulation of the telecommunications after the reform of the Community legislative framework included in the Framework Directive 2002/21/CE.

132. Finally, complying with its advisory role in the opening of new hypermarkets, the TDC issued 126 reports on this subject and 14 reports (among them one related to Payment Cards and another to Road Transport) requested by the Government or other public or private competent bodies (according to articles 2 and 26 of the Competition Act).