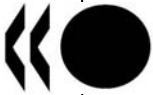


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SPAIN

-- 2006 --

This report is submitted by the Spanish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 17-18 October 2007.

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Executive Summary

1. 2006 has been again a year of intense activity for the Spanish Competition Authorities. Along with its ordinary functions of enforcing competition law, the activity has aimed at one central objective: to finish the drawing up of the new Spanish Competition Act which was approved unanimously by the Parliament and published last 4 July in the State Official Journal... The Competition Act 15/2007, of 3 July, entered into force the 1st September 2007 and replaced the Competition Act 16/1989, of 17 July.

2. 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, coordination with the Autonomous Communities – in accordance with the provisions of Act 1/2002, of 21 February 2002, coordinating the jurisdiction of the State and of the Autonomous Communities in matters of competition- and international relations and the collaboration with the Sectoral Regulators.

3. Concerning the enforcement activity, in the field of anti-competitive practices, the number of complaints has increased with regards 2005, but the number of cases on which the Competition Service (*Servicio de Defensa de la Competencia*, SDC) decided to proceed has decreased. Additionally, several proceedings were initiated *ex officio*. As for merger control, the number of notified transaction and referrals to the Competition Court (*Tribunal de Defensa de la Competencia*, TDC) for an in-depth investigation has increased as well, reaching to an absolute record figure. Additionally, the pace on prior consultations has increased while the number of preliminary inquiries was decreased with respect to the previous year.

4. The Spanish Competition Authorities have also maintained an active participation in the different international organisations and conferences.

5. Based on these grounds, 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 2006 the legislative production work has been oriented to draw up a new Competition Act in order to replace the Competition Act 16/1989, of 17 July, and modernise the Spanish Competition System. 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 on 20 January 2005 and followed of a public consultation process. Since then, the Competition Authorities have been working on the preparation of the Draft Competition Act that was submitted to the Parliament in September 2006. The new Competition Act 15/2007, of 3 July, has been approved by the Parliament 14th June 2007 and has entered into force last 1st September 2007.

1.2 Government proposals for new legislation

1.2.1 The Draft Competition Act.

7. The new Act is the outcome of a comprehensive public hearing procedure benefits from the experience accrued over the last fifteen years. In fact, the public consultation process of the Draft Competition Act showed a broad positive assessment and support to the reform proposal and its guidelines among the competition specialised community.

8. The main objectives of the reform are to modernise the competition legislation in order to align the available toolkit to the European recent evolutions and to increase the effectiveness of the fight against the most harmful anticompetitive practices, the hard core cartels. The aim of this new Act is the reform of the Spanish competition framework in order to strengthen its existing mechanisms and to incorporate the instruments and the optimal institutional structure to protect effective competition in markets, taking into account the new EU set of regulations and the jurisdiction of the Autonomous Communities for the application of the provisions relating to practices restricting competition.

9. The reform proposes various 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 the new Competition Authority –with the creation of a single entity, the National Competition Commission, the *Comisión Nacional de la Competencia*, merging both national competition authorities the *Servicio* and the *Tribunal de Defensa de la Competencia*-, 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 the direct application of national competition rules by courts. Also the advocacy role will be enhanced in order to adopt those measures which foster the competitiveness of the markets, different from the enforcement of the law, getting a more important role in the examination of public aids, by analysing the criteria of awarding aid from the point of view of competition with the aim of issuing reports and addressing recommendations to the public authorities, and will be empowered to challenge before the Courts any decision of any public institution, which is considered to have an anticompetitive effect.

10. The Competition Commission is responsible for applying this Act, promoting and protecting the maintenance of effective competition in all the production sectors and throughout the national territory, adopting all decisions with regard to the prosecution of anticompetitive practices and the whole merger procedure. The Act 15/2007 reserves a minor role for the Government, which might revise, under public interest grounds, second phase merger decisions of the Competition Commission, whenever they are conditional or prohibition decisions.

11. The Act is guided by five clear principles:

- guarantee of the legal certainty for economic operators,
- independence of decision-taking,
- transparency and accountability of the bodies responsible for the application of the Law,
- efficacy in the fight against conduct restricting competition,
- adequate consistency within the various institutions applying this Act.

1.2.2 The Royal Decree 602/2006, of 19 of May, which approves the Block Exemption Regulation concerning credit information exchange.

12. The aim of this regulation is the agreements to create “credit registers” which represent since 1989 a big percentage of the individual authorisation proceedings. This regulation is the first Block Exemption Regulation approved by the Spanish Government which allows exempting from the application of the Competition Act categories of agreements or restrictive practices, following consultation with the Tribunal de Defensa de la Competencia.

13. The Royal Decree follows the case law of the Tribunal de Defensa de la Competencia decisions.

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):

14. The number of cases opened in 2006 were 92 (86 in 2005), of which 80 in response to complaints (64 in 2006), 4 in 2006 were initiated ex officio (10 in 2005), 8 were individual authorisation proceedings (12 in 2005). During 2006, 92 cases were completed (93 in 2005). Most of them were shelved or dismissed (69) and one was a closed by an agreement. The *SDC* decided to proceed in 22 cases (26 in 2005) and were forwarded to the *Tribunal*, of which were 8 individual authorisations (6 in 2005) –one of them was filled- and 15 sanctioning files (20 in 2005). At the end of 2006, 67 cases remained open (the same at the end of 2005).

15. Concerning sanctioning proceedings, the *SDC* initiated 27 (35 in 2005) actions against anticompetitive practices, of which 10 (20 in 2005) were prohibited agreements (infringement of article 1 of Competition Act 16/1989), 12 (13 in 2005) were abuse of dominance (infringement of article 6 of Competition Act 16/1989) and 5 (2 in 2005) were unfair acts affecting competition (infringement of article 7 of Competition Act 16/1989).

16. Most cases have arisen in the service sector (22). In particular, the following are the most significant: transports and communications production and distribution of electricity, gas and water; wholesale and retail distribution; health and social assistance; and sports and cultural activities.

17. During 2006, *SDC* officials have carried out 15 inspections (2 in 2005) in premises of different companies related with the food sector, building materials and telecommunications services.

- Tribunal de Defensa de la Competencia (TDC):

18. During 2006, the Tribunal de Defensa de la Competencia issued 81 decisions, of which 20 corresponded to sanctioning cases, 12 to individual authorisations, 34 to appeals against decisions issued by the *SDC* and 13 to incidental decisions.

19. The TDC also produced a total of 116 reports, of which 8 were merger reports and 102 dealt with the opening of large retail outlets, and 6 to other reports. Amongst these reports it could be mentioned the report on entry barriers in the cement sector.

20. The fines imposed by the TDC in 2005 amounted up to 24.400.000 Euros.

Courts

- Application of national competition rules

21. During 2006, the National Court (Audiencia Nacional) has issued 67 judgements concerning appeals against resolutions of the TDC: among them 61 were rejected, 4 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 2006, the Supreme Court (Tribunal Supremo) has issued 39 judgements concerning appeals against judgements of the Audiencia Nacional against resolutions of the TDC: 3 of them were admitted and 36 judgements were dismissed.

- Application of EC competition rules

23. In 2006, ten judgments in which Articles 81 or 82 EC were applied have been transmitted to the Commission in accordance with Article 15(2) of Regulation 1/2003.

24. Eight judgments are related to proceedings brought by service stations against oil companies. The matters disputed in these proceedings are quite similar in object, focusing principally on the possible nullity of the exclusive supply agreement of their contracts under Article 81 EC. Another judgment deals for the first time in Spain with the Article 82 EC on the collecting societies market. Another ruling is on appeal against the judgment Conduit/Telefonica, which has been so far one of the first judgments in Europe to award damages for breaching EC competition rules.

25. Finally, a resolution (not a judgement) containing an interim measure on the energy sector was also forwarded to the Commission in conformity with Article 15(2) of Regulation 1/2003 by order of the Juzgado de lo Mercantil nº3 of Madrid. This measure of 21 March 2006 ordered the suspension of the public offer initiated by Gas Natural SDG SA for 100% of the capital stock of Endesa SA and of the implementation of the contract submitted between Gas Natural and Iberdrola SA. The proceeding dealt with a possible collusive agreement between these two energy operators. The decision was finally overruled by the appealing court.

26. Three of the proceedings have been appeals handed down by the “Audiencia Provincial” of Madrid, while the other eight resolutions were handed down by courts of first instance (“Juzgados de lo Mercantil”).

27. Finally, in 2006, 19 *pre-judicial questions* and 85 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*

28. The most significant cases that the TDC has issued in 2006 might be the following.

Distribuidores Cine

29. On 6 February 2003 the Spanish Federation of Cinema Operators brought proceedings against seven cinema distributors, the Association of Nation-wide Film Distributors and Importers (ADICAN) and three executives of one of those undertakings, for alleged conduct in breach of Competition Act, consisting of entering into an agreement on the wording of the standard contracts used in their commercial dealings with film exhibitors, in abuse of dominant position which was both absolute and relative in relation to those exhibitors, and against ADICAN for acting as intermediary in the exchange of information between the distributors.

30. After lengthy proceedings, the Service ruled that the four distributors The Walt Disney Company Iberia/Buenavista International Spain (BV), Columbia Tristar Films de España (Columbia), Hispano Foxfilm (Hispano), United International Pictures (UIP) and Warner Sogefilms (WS) had committed

practices prohibited consisting of colluding to standardise the terms for the screening of their films, causing both horizontal and vertical restraints on competition.

31. At the same time, it also found the Federation of Film Distributors (FEDICINE) liable for other conduct, for facilitating the exchange of information between competitors by means of its database. Lastly, the Service ordered that the investigation against ADICAN and the three respondent executives should not proceed.

32. Following a hearing of the case, on May 2006 the TDC held that FEDICINE was liable for a infringement penalised under Article 1 of Competition Act because it had created and maintained a database used by the distributors to exchange sensitive strategic data with the purpose of evading free competition, such as the expected dates of future launches more than a year ahead or revenue figures broken down by film, week of screening and cinema. In respect of this infringement the Tribunal imposed a fine of 900,000 euros.

33. The TDC also found that The Walt Disney Company Iberia/Buenavista International Spain, Sony Pictures Releasing de España S.A., Hispano Foxfilm S.A.E., United International Pictures S.L. and Warner Sogefilms A.I.E. had infringed Article 1 of Competition Act by colluding to standardise their commercial policies, sharing between them a substantial part of the Spanish film distribution market. Having regard for the fact that this was one of the most serious kinds of anticompetitive conduct which could be carried out, in that it constituted horizontal collusion between the biggest operators, with a market share of more than two thirds of the film distribution market, had the pernicious effect of completely eliminating any possibility of competition between them in the most significant segment of their business, major launches, produced vertical effects, since it limited the possibilities of competition between exhibitors, and prevented the benefits of effective competition in the sector from being passed on to consumers, the TDC imposed a fine of 2,400,000 euros on each undertaking.

Televisiones

34. Antena 3 de Televisión S.A. brought proceedings against the Intellectual Property Rights Management Association (AGEDI) and the Spanish Phonographic and Videographic Association (AFYVE) and, in turn, Gestevisión Telecinco, S.A. brought proceedings against AGEDI, in both cases for conduct allegedly of abuse of a dominant position consisting of unilaterally setting abusive and discriminatory remuneration in comparison with that applied to Televisión Española (TVE or RTVE) for the use of phonograms, by means of tariffs not based on actual use of the phonograms.

35. The SDC concluded investigation of the case finding that AGEDI had abused its dominant position in the market by setting abusive general tariffs and concealing and not offering to the complainant television broadcasters terms equivalent to those of the 1986 agreement between AFYVE and RTVE, which governed relations between the two entities until 1989, and to those agreed from that year until 2002 by AGEDI and TVE, amounting to discrimination and a disadvantage to the private free-to-air broadcasters. However, it had to be taken into account that the SDC, after assessing AGEDI's submissions in response to the statement of objections, acknowledged that "it had not been made out in the case that AGEDI had imposed or attempted to impose its tariffs on T5-TV and A3-TV".

36. Following a hearing, on July 2006 the TDC found that the abuse of dominant position prohibited by Article 6 of Competition Act and Article 82 of the EC Treaty was proven, because AGEDI had abusively exploited its dominant position in management of the intellectual property rights entrusted to it by imposing for use of its repertoire unequal terms for equivalent benefits involving discrimination against Antena 3 de Televisión S. A. and Gestevisión Telecinco, S.A. as compared to their competitor the public body Televisión Española, from 1990 to 2002, and imposed a fine of 300,000 euros on AGEDI. The TDC,

however, did not find it conclusively proven that the general tariffs set in Spain by AGEDI were substantially higher than those in other European countries, although it observed, *obiter dictum*, that it was desirable in the interests of free competition that the basis for calculation of general tariffs should be set in relation to actual use of the phonograms.

Viesgo Generación

37. Pursuant to various submissions by the chairman of the Comisión Nacional de la Energía (National Energy Commission) forwarding resolutions on the matter adopted by its Board of Directors, the Service commenced enforcement proceedings against Viesgo Generación S.L (later ENEL Viesgo Generación S.L.), for alleged anticompetitive practices, consisting of abuses of its dominant position in the market as the result of certain power stations owned by that company participating in resolving technical restrictions in the central-south and south zones during a number of periods of 2002 and 2003.

38. On completion of its investigation, the Service proposed that the Tribunal should find that Viesgo Generación had infringed of Article 6 of the Competition Act by abusing its dominant position in the electricity supply markets in a situation of technical restrictions in the central-south and south zones during a number of days in 2002 and 2003, in the form of charging abusive prices.

39. The Tribunal found, by a majority, that it was established in this case that ENEL Viesgo Generación S.L. had abused of its dominant position in the electricity supply market in the context of technical restrictions in the central-south and south zones on different days, offering prices on the intra-day market higher than its revealed variable costs, in order not to match its offers on the intra-day market, in the knowledge that it would be called upon to resolve technical restrictions and would be paid at its offer price on the intra-day market, since its energy was needed to meet demand in the area, where it was the only energy available.

40. On December 2006 the Tribunal imposed a fine of 2,500,000 euros on the undertaking and ordered it to refrain from similar practices in the future. Judge Cuerdo Mir issued a dissenting opinion to the Resolution in the light of his doubts as to the reasoning of the majority that the prices offered by Viesgo on the daily market were inequitable with the purpose of resolving technical restrictions.

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

- Judgment of the Juzgado de lo Mercantil nº5 of Madrid. Date: 5 January 2006. Parties: Tramadi SA & La Povedilla SL against Shell España SA & Disa Península SLU.

42. The judge dismisses the claim of nullity of the contractual relationship (including an exclusive supply agreement) brought by the service station against the oil companies Shell and Disa under Article 81 EC. On one hand, it is ruled that the exclusive supply agreement does not fall under Article 81 as a consequence of the rule of *minimis*. The judge applies the *European Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81 (de minimis) of 22 December 2001*. Under point 8 of this Notice, in case of cumulative foreclosure effect of parallel networks of agreements which have similar effects on the market, the market share thresholds in point 7 are reduced to 5%. Considering the documental evidence of the defendant, the judge concludes that the exclusive supply agreement does not affect trade between Member States. On the other hand, no re-sale price fixing is proved even on the application of discounts.

- Judgment of the Juzgado de lo Mercantil nº5 of Madrid. Date: 25 January 2006. Parties: Canal Satélite Digital SL & DTS Distribuidora de Televisión Digital SA against Sociedad General de Autores y Editores (SGAE).

43. In this judgment Article 82 EC is invoked by an audiovisual operator against the biggest collecting society in Spain concerning the use of the general tariffs. After defining the relevant market, the judge recognises the dominant position of SGAE on the collecting societies market. Nevertheless, no abuse is recognised. First, the plaintiff does not prove that the tariffs are higher than in other Member States. Besides, the system of tariffs based on the incomes, and not on the intensive use of the works or audience, must be accepted. Secondly, there is no infringement of Article 82 as it is not sufficiently proved a negative to negotiate the application of the tariffs. In fact, the tariffs were agreed with the plaintiff and moreover they are applied to the rest of the paid TV services operators.

- Judgment of the Juzgado de lo Mercantil nº1 of Madrid. Date: 7 march 2006. Parties: Estaser El Mareny SL against Repsol Comercial de Productos Petroliferos.

44. The judge ruled in this case in favour of the service station (partially). Firstly, the judgment classifies the contract between the petrol station and the supplier as “non-genuine agency agreement”, but not as a re-sale agreement, according to the Guidelines of the European Commission on vertical restraints (2000). Secondly, it considers that part of the contractual relationship is null, including the exclusive supply agreement. Application of the Block Exemption Regulation 2790/1999 is not accepted considering the market share of Repsol.

- Judgment of the Juzgado de lo Mercantil nº1 of Madrid. Date: 23 may 2006. Parties: Petropuerto SL & Petrogrado SL against Shell España SA.

45. The object of the claim is again the nullity of the contractual relationship (including exclusive supply agreement) brought by a petrol retail station against the oil company Shell and consequent damages. The judge applies case law British Sugar/Commission (2004) and the *European Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81 (de minimis) of 22 December 2001* in the same way as the judgment *Tramadi & La Povedilla/Shell & Disa*. The defendant shows that preliminary judgments of Juzgados de lo Mercantil determine that Shell does not reach the market share required in point 8 of the Notice. Moreover, the plaintiff (burden of proof) does not prove the contrary. Consequently, the complaint is dismissed.

- Judgment of the Audiencia Provincial of Madrid. Date: 25 may 2006. Parties: Conduit Europe SA against Telefónica de España SAU.

46. The appeal was lodged by both parties. The Audiencia Provincial confirmed entirely the grounds of the judgment of the Juzgado de lo Mercantil nº 5 of Madrid of 11 November 2005, which is the first one in Spain which grants damages for a breach of competition rules in the telecommunications market.

47. The Court of Appeal holds the application of EC case law *Courage*, and considers that this application based on the previous declaration of breach of competition rules by the national telecommunications regulator is well argued.

48. Regarding the facts of the case, when the directory enquiries market in Spain effectively opened and “118” services were launched, Telefónica, due to its monopoly position, was required to deliver accurate subscriber data to competitive providers in order to enable fair competition. However, the telecoms regulator declared in 2003, as a result of complaints filed by Conduit, that Telefónica had breached these obligations.

49. The Court of appeal confirms that Telefónica infringed Article 82 EC (and national Unfair Competition Law) by providing Conduit with inaccurate and incomplete subscriber data which caused this new entrant a competitive disadvantage and additional costs relating to the cost of sourcing alternative data and data cleansing. Direct loss were justified in the proceedings but not lost profits. Telefónica was ordered to pay 639,003 € damages plus the amount to be proved during the execution of the judgment.

- Judgment of the Juzgado de lo Mercantil nº1 of Madrid. Date: 12 June 2006. Parties: Estación de Servicio Talavera SA against Shell España SA.

50. Same decision as the one on judgment *Petropuerto & Petrogrado/ Shell* of 23 may 2006. The demandant brought documental evidence that proves a market share below 5%.

- Judgment of the Juzgado de lo Mercantil nº2 of Madrid. Date: 29 September 2006. Parties: Estación de Servicio Los Eucaliptos SL, Estagas SL, Estación de Servicio El Moro SL & Sogestin SL against Disa Península SLU.

51. The judgment contains the same decision as the previous one. According to the defendant's evidence the supplier Disa Peninsula only reaches 3.5% or 3.9% of the market share, while the plaintiff does not prove an appreciable restriction of competition on the trade between Member States,

- Judgment of the Audiencia Provincial of Madrid. Date: 27 October 2006. Parties: Petrouxo SL against Repsol Comercial de Productos Petrolíferos SA.

52. The court of appeal of Madrid upholds the judgment of the court of first instance. In the first instance a petrol station had brought an action on the nullity of the exclusive supply contractual relationship. After a review of the distribution of financial and commercial risks in conformity with the doctrine of the European Commission, the court of appeal ruled that the contracts cannot be considered as a re-sale agreement but a "non-genuine agency agreement". Secondly, although the market share of Repsol justifies the relevant effect on trade between Member States, it ruled against the allegation of fixing of consumer prices by Repsol. Thirdly, Article 12.2 of the Block Exemption Regulation 1984/1983 must be applied as an exception to the time limit indicated by Article 12.1c) because the agreement "relates to a petrol station which the supplier lets to the reseller or allows the reseller to occupy on some other basis". The court concludes that its judgement is compatible with the Decision of the Commission of 12 April 2006 containing the commitments submitted by Repsol for its long-term exclusive supply contracts with service stations.

- Judgment of the Juzgado de lo Mercantil nº1 of Madrid. Date: 30 October 2006. Parties: (plaintiff confidential) against Repsol Comercial de Productos Petrolíferos SA.

53. The judgment dismissed the complaint of a private agent, which claimed under article 81 EC the fulfilment of the contract and consequent damages. The judge affirms that Article 81 legitimates to invoke the nullity of the contract but not other different claims that the plaintiff files.

- Judgment of the Audiencia Provincial of Madrid. Date: 16 November 2006. Parties: Tramadi SA & La Povedilla SL against Shell España SA.

54. The court of appeal of Madrid rejected the appellant's arguments and upheld the grounds of the judgment of the Juzgado de lo Mercantil nº 5 of 5 January 2006. Nevertheless, as the legal questions are due to the obscurity of the contracts clauses predisposed by the demandant, the judgment accepts that legal costs in the first instance and on appeal do not have to be awarded by the plaintiff.

2.2 *Mergers and acquisitions*

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

55. Year 2006 has registered again a relevant increase on the number and complexity of mergers assessed by the SDC, reaching to the record figure of 132 (115 in 2005). Additionally, the number of referrals to the TDC for an in-depth analysis has been increased as well. Along with this, the number of prior consultations (11) has increased with respect to the previous years (10 in 2005) while preliminary inquiries (14) were decreased (26 in 2005)

56. 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	2006
Notifications	19	31	51	93	76	100	79	94	115	132
Referrals to the TDC	7	7	14	11	6	9	6	5	6	9

57. Annualising the cases according to the notification date at the SDC, 117 notified mergers were authorised in first phase. The Minister of Economy, upon proposal of the SDC, referred in 2006 nine concentrations to the Tribunal for further investigation. In the nine cases, after the TDC issued its report, the Council of Ministers adopted its final decision (authorisation in second phase) through an Agreement: four of them were authorised subject to conditions and five was cleared without conditions. 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
82 %	9 %	7 %	2%

58. In 2006 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 played a relevant role as commercial distribution, real state and building, sanitary products, services, energy, food and beverages sectors.

2.2.2 *Summary of significant cases*

Miquel Alimentació/Punto Cash

59. The concentration operation, which consisted of the acquisition by Miquel Alimentació of the control over the company Puntocash, a subsidiary of the Carrefour Group who works in the wholesale distribution of everyday items, was notified to the Competition Service on 20 January 2006.

60. Miquel Alimentació, S.A. is a business group with a presence in the wholesale (cash & carry and conventional) and retail (in self-service stores, in its own and franchised supermarkets) distribution of all kinds of daily consumer goods in Spain. Puntocash, was a subsidiary of the Carrefour Group (the leading company in the Spanish distribution sector in terms of volume of sales), active in the wholesale distribution of all kinds of daily consumer goods via cash & carry outlets.

61. In this operation, the Tribunal analysed the market for wholesale distribution of everyday items (cash and carry sector) and the market for provisions and supplies of everyday items. With respect to the first of these, the Tribunal considered not included the traditional wholesale distribution, because of supply and demand reasons. Nevertheless, the Tribunal recognised that both markets were related and complementary.

62. The market for provisions and supplies was defined by the Tribunal as the sale of everyday items by the manufacturer to wholesale and retail clients and other types of companies. With regard to the geographical market, the Tribunal considered that the cash and carry wholesale distribution market has a regional scope. The market for supplies and provisions of goods for everyday consumption was considered national.

63. On analysing the structure of the cash and carry market, the Tribunal determined that the notified concentration did not represent an obstacle to maintaining effective competition in the market in the regional peninsula markets, taking into account the presence in Spain of international strong competitors, the freedom of establishment in the wholesale distribution sector and the professional nature of the clients. The Tribunal gave particular attention to the island of Ibiza, where the potential harm to effective competition as a result of an increase in the market power of Miquel Alimentació, and a reduction in the already small number of offerors would be particularly accentuated by Balearic Islands commercial legislation that impose particularly strict restrictions on the opening of cash and carry outlets. On the other side the Tribunal considered that the notified concentration did not affect the effective competition in the market for provisions and supplies.

64. As a result of the arguments outlined above, on 19 April 2006, the Tribunal issued a Decision that did not oppose the concentration referred to it. Member Judges Mr. Berenguer Fuster and Mr. Antonio Castañeda Boniche lodged individual dissenting votes, considering competition conditions in the Ibiza cash and carry market. The Decision by the Council of Ministers on 19 May 2006 agreed with the opinion of the Tribunal.

COFARES/HEFAME

65. On 7 April 2006 the Tribunal received the case file relating to concentration operation notified to the Service on 9 March 2006, consisted of a merger between the service cooperatives COFARES and HEFAME, creating a new service cooperative with the merging parties being wound up without liquidation.

66. COFARES and HEMAFE were service cooperatives operating essentially in Spain, with 8,572 and 3,267 cooperative members respectively, the majority of them pharmacists running pharmacies. The main activity of both cooperatives was the wholesale distribution of pharmaceutical and quasi-pharmaceutical products. Both undertakings also provided logistical and transport services directly related to pharmaceutical distribution.

67. In this operation the product market was the wholesale distribution of pharmaceutical products to pharmacies. The geographic market, for its part, was simultaneously national and regional. On the basis of

the location of warehouses and sales to pharmacies in the various provinces, the Tribunal, on a case by case basis, defined various relevant regional markets.

68. In national terms, the Tribunal took the view that the operation did not impede effective competition in the market, since there was room for increased economic and logistical efficiency in a highly fragmented market. Nor did the Tribunal find that at regional level the operation would give rise to competition problems in different Spanish provinces.

69. However, in the other provincial markets studied, the operation could be capable of impeding effective competition in the future. The increase in the market power of COFARES and HEFAME, suggested by the increase in market share to more than 50% in those regions, would be reinforced by a series of factors: the few operators active in the various regions; the low price elasticity of demand of the pharmacies; the precedents for anticompetitive practices in the sector of wholesale distribution to pharmacies and the insufficient competitive pressure then brought to bear by potential competitors in distribution such as CELESIO, LOGICEL or pharmaceutical companies by means of direct sales.

70. Further, barriers to entry were detected which hindered effective competition in the market, such as vertical integration (in Spain the majority of wholesale warehouses are owned by pharmacists with pharmacies) and the various, essentially legal, which facilitated captive custom by cooperative members.

71. The Tribunal took the view that the prevailing structure of the market, the asymmetries in the provision of information inherent to the sector and the economic incentives of the private suppliers made it unlikely, to a large degree, which the probable efficiencies generated by this operation would be passed on, without intervention by the regulator, to final consumers and taxpayers. To ensure such a transfer of benefits, the Tribunal found it desirable that additional measures be adopted by the public sector designed to increase the levels of effective competition in the sector. The extent of such reforms was beyond the scope of a concentration report.

72. The Tribunal found that it was appropriate to approve the operation subject to a condition that in the articles of association of the new cooperative the notifying parties should reduce the minimum membership period to one year and the minimum volume of purchases to 25%. The Tribunal took the view that this would restrict the potentially captive nature of the cooperative member.

73. The decision of the Council of Ministers of 7 July 2006 concurred with the Tribunal's report.

Transmediterránea/Europa Ferrys/Viajes Eurotras

74. On 15 March 2006 Compañía Transmediterránea, S.A. notified to the Service a business concentration consisted of the acquisition of 100% of the shares representing the share capital of Europa Ferrys, S.A. and Viajes Eurotras. The Service referred the operation to the Tribunal on 21 April 2006.

75. Trasméditerránea was a subsidiary of the Acciona Group, a diversified business group with interests in various sectors. Trasméditerránea's activity centred essentially on maritime passenger and cargo transport in the Mediterranean, Canary Islands and the South-Straits area. Trasméditerránea also exploited various routes of public interest between the peninsular ports and the Balearic Islands, the Canary Islands, Ceuta and Melilla.

76. Euroferrys was a company incorporated by a group of shareholders in the travel agency sector in the Strait of Gibraltar area, operating the Algeciras-Ceuta and Algeciras-Tangiers routes with two vessels. Eurotras' activity centred on wholesale and retail travel agency activities.

77. The Tribunal considered the product markets affected by this operation to be the regular maritime general cargo transport market (including both regular container maritime transport and regular conventional maritime transport, also known as roll-on/roll-off cargo) and the regular maritime passenger transport market, with inherent characteristics of the demand on the maritime routes affected by the operation (southern Europe — northern Africa), such as the mainly North African origin of the users and the transportation as a rule of passengers' own vehicles. For these reasons, amongst others, it ruled out any substitutability between this form of transport and other alternatives such as air transport.

78. The Tribunal defined the relevant geographic market as that of the route consisting of lines which sailed between the south of the Spanish peninsula and Morocco and the autonomous cities of Ceuta and Melilla. On the basis of the available data, the lines sailing to and from the autonomous cities were not substitutable by those linking peninsular Spanish territory and Morocco. However, for passengers with origin in Morocco and goods of Moroccan origin or destination, all the lines analysed, including those with origin or destination in Ceuta or Melilla, were substitutable. The Tribunal left open the possibility that the markets analysed could be segmented on a time basis, in view of the seasonal nature of demand and the different competition conditions in the various time bands.

79. Notwithstanding the low levels of competition prior to the concentration in the regular maritime passenger transport market on all the lines examined, the Tribunal found that the number of active shipping companies, the existence of credible potential entrants and the substitutability between lines meant that the operation did not represent a deterioration in effective competition.

80. However, as regards lines related to Ceuta, the Tribunal's analysis of the markets revealed a structural increase in the level of concentration. As the result of the foregoing, the Tribunal in its Opinion considered it appropriate to make approval subject to a series of conditions. Lastly, the Tribunal requested the Service to propose adoption of measures to remove obstacles to the entry of new operators in the affected markets and, where necessary, to commence ex officio an investigation into anticompetitive practices.

81. The decision of the Council of Ministers, adopted by decision of 14 July 2006, concurred with the Tribunal's Opinion of 20 June 2006, and included in addition the requirement on Trasmediterránea to submit to the Service a detailed plan of action and time-limits giving effect to the above-referred conditions.

ÁBACOCINE/CINEBOX

82. On 21 July 2006 the Tribunal received the case file on concentration operation notified to the Service on 20 June 2006. The notified concentration operation consisted of the direct acquisition by ÁBACO of 100% of the share capital in CINEBOX and CIECI, and indirect acquisition of LANOCA. The terms of the operation were set out in a Sale Agreement under which the ÁBACO Group would acquire control of 27 multiscreen cinemas exploited by GMR. The acquirer would also take over the programming of 16 screens in three cinemas owned by third parties, which were previously carried out by the companies being acquired. GMR, for its part, would retain ownership of three cinema complexes

83. The principal activity of ÁBACO consisted of the production, screening, marketing, distribution, programming and exploitation of films, on its own behalf or on behalf of third parties. It was part of the ÁBACO Group, whose principal activity was the exploitation of cinema, restaurant, bar and café businesses. The ÁBACO Group's exhibition circuit included 171 cinema screens in Spain, in 17 cinemas located in 14 provinces. The group also programmed a further 23 screens owned by third parties. Film screening (net box office receipts) represented 63% of the Group's total turnover whilst ancillary activities represented the remaining 37%.

84. CIECI, CINEBOX and its subsidiary LANOCA (CINEBOX GROUP) were companies present in the promotion, screening and management of cinemas, in restaurant and catering businesses complementary to cinemas and in the provision of advisory services to third parties in connection with those activities. The CINEBOX Group ran and managed 27 cinemas in Spain, spread over 17 provinces, involving a total of 294 screens. In 2005 its income from film screening (net box office receipts) represented 65% of its total turnover.

85. The sale agreement on which the notified concentration was based contained three additional clauses or covenants: an undertaking not to engage former executives dismissed by CINEBOX, a no-compete agreement and a programming agreement.

86. There were three relevant product markets: the distribution and screening markets for commercial films in cinemas and the market in the sale of advertising space in those cinemas. As regards the relevant geographic market, the Tribunal was of the view that in the cases of the distribution of commercial films for screening in cinemas and the sale of advertising space, the relevant geographic market was national, whilst in the case of the screening of commercial films in cinemas, the relevant geographic market was local in scope.

87. The Tribunal found that the operation did not impede effective competition in the market for the distribution of commercial films nor in the market for the sale of advertising space in cinemas. In relation to the screening of commercial films in cinemas, the operation only gave rise to an addition of shares in local markets in several provinces. Nevertheless the Tribunal found that the rivalry between operators to access blockbuster films would not be substantially affected by the operation, in view of the characteristics of the upstream market in which those rights were contracted. The Tribunal found that the economic and the legal barriers to access to these local markets were not significant and did not constitute an impediment to the competitive pressure which actual or potential competitors could exert on those market.

88. Accordingly, the Tribunal, having ascertained the effects on competition, concluded in its report that the economic concentration in question did not impede effective competition in the affected markets and, therefore, there were no grounds to oppose it.

89. However, in relation to certain side agreements to the sale agreement (no-compete and programming terms), the Tribunal took the view that they should be modified. The Council of Ministers decision of 20 October 2006 resolved that the concentration operation should not be opposed and that the no-compete agreement and the programming agreement should be treated as restrictions related to the operation and, accordingly, as part of it, provided that the conditions imposed by the Tribunal were complied with. Should they not be, it ruled that they would not form part of the concentration operation and would, in such a case, be subject to the rules on agreements between undertakings.

Universal Music/Vale Music

90. Universal Music Spain S.L notified the Servicio on 22 June 2006 of a concentration that consists in the buying of the whole of share capital of Vale Music Spain S.L. and Ticket Media Superventas, S.L. The operation contained a no-compete clause under which the sole director of Vale Music undertook not to compete with the activities of the acquired undertaking for a given period from completion of the operation.

91. Universal Music is a Spanish company, subsidiary of Universal Music Group (UMG), the world's largest music company. Vale Music is a Spanish music company and largest independent label in Spain, whose main success was the distribution of CD and phonographs related to reality-TV show "Operación Triunfo".

92. In this operation, the Tribunal identified two relevant product markets: the market for music production and the wholesale licensing for the distribution of music products through digital channels. The Tribunal considered that the scope of the market was national in both cases.

93. In its analysis of the structure of the relevant markets, the Tribunal decided that there was no significant effect in the reinforcement of the market power derived from a possible addition of market share. Additionally the Tribunal clarifies the importance of the entry barriers in the concerned markets and considered that demand power and the innovative nature of the music sector could act as a counterweight to hypothetical prices increases derived from the increased market power resulting from the concentration.

94. Two possible anticompetitive effects were deeply analysed by the Tribunal: first, the possible disappearance of a maverick firm derived from the buying of Vale Music; second, the risk of coordination in an oligopolistic market derived from that disappearance. The Tribunal considered that, taking into account the behaviour of Vale Music in the market, this disappearance would not produce significant anticompetitive effects. As a result of the arguments outlined above, on 20 September 2006, the Tribunal issued a Decision not to oppose to the concentration referred to it, but only if the envisaged non-competition pact was not signed.

95. The Council of Ministers decision of 20 October 2006 concurred with the Tribunal's Opinion and stated, with reference to the no-compete agreement in question, that it was not a restriction related to the operation and therefore was not covered by it.

Grupo Carrefour/Dinosol

96. The Carrefour Group notified the Servicio on 7 August 2006 of a concentration that consists in the acquisition by Carrefour of the assets corresponding to 30 retail establishments for everyday items belonging to Dinosol Supermercados S.L. 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.

97. The Carrefour Group notified the Service on 7 August 2006 of an operation consisting of the acquisition of the assets comprising thirty retail distribution outlets owned by Dinosol Supermercados, S.L. The concentration was referred to the Tribunal taking the view that the notified operation could impede effective competition in the market.

98. The Carrefour Group was active primarily in the retail distribution of foodstuffs and other goods in the self-service format. Most of the Group's activities centred on the retail sale of daily consumer goods under different logos and formats: "Carrefour" (hypermarkets); "Champion" and "Carrefour Express" (supermarkets) and "Dia" and "Maxi-Dia" (discount stores).

99. Dinosol was also present in the self-service distribution of foodstuffs and other goods, with more than 500 outlets nationally, in varying formats (hypermarkets, supermarkets, convenience stores and *cash & carry* stores).

100. In its analysis the Tribunal, in line with precedent, found the affected product markets to be the self-service retail distribution market for daily consumer goods and the market in the supply of daily consumer goods or groceries. The Tribunal found that the relevant geographic markets for the retail distribution and supply of daily consumer goods were local and national in scope, respectively. In the retail distribution market, the operation involved an addition to Carrefour of outlets in a series of municipalities in Andalusia and the Canary Islands. As the result of this operation, the market share resulting from the operation in some of the affected municipalities would, immediately or in the short term, be more than 30%. So the Tribunal, after examining the position of the concerned markets at national, regional and provincial level, analysed in detail the retail distribution markets in these municipalities.

101. In that analysis the Tribunal found to be of particular significance the variety of operators, in varying formats, in the retail distribution sector, the frequency with which operators entered and left the market, and the substantial presence of significant competitors, as factors conducive to strengthening the dynamism of the sector.

102. As regards the upstream market in the supply of groceries, the Tribunal found that the size, in national terms, of the assets acquired as a result of the operation did not involve an increase in demand-side bargaining power.

103. Likewise, in respect of the barriers to entry in the markets in question, the Tribunal stated that they were fundamentally legal barriers, deriving from regional legislation on retail distribution. Specifically, the Tribunal highlighted requirements such as the need to apply for a specific commercial licence prior to the grant of the requisite planning permission to open, extend, modify or transfer large-scale retail outlets and hard discounters.

104. In view of the foregoing analysis, the Tribunal found that the operation in question did not hinder effective competition in the markets concerned and, therefore, on 2 November 2006, reported to the Government that it should not be opposed. The Council of Ministers decision, adopted on 1 December 2006, concurred with the Tribunal's report.

Adeslas/Global Consulting/Lince

105. On 8 September 2006 the Tribunal received the case file relating to concentration operation notified by the insurance company ADESLAS, S.A. and GLOBAL CONSULTING PARTNERS, S.A. consisting of the joint acquisition of control of LINCE SERVICIOS SANITARIOS, S.A. The operation was notified to the Service on 19 July 2006. The operation consisted of ADESLAS and GLOBAL acquiring joint control of LINCE SERVICIOS and of its subsidiaries. To that time, LINCE SERVICIOS had been controlled exclusively by GLOBAL CONSULTING.

106. ADESLAS, controlled by Aguas de Barcelona, S.A., was an insurance company which operated, essentially, in health insurance. ADESLAS provided insurance services to clients who could be individuals, private groups (such as the employees of a company) or public sector groups (the public employees and their families of a particular authority).

107. GLOBAL CONSULTING was a company whose objects were the holding, sale and purchase and exploitation of movable and real property. It was a holding company present in various sectors including renewable energy, advertising and healthcare. In the latter sector, it operated via LINCE SERVICIOS, which in turn operated via two subsidiaries. One of these was SEGURO COLEGIAL whose objects consisted of the performance of health insurance operations in the Spanish province of Ciudad Real. The other subsidiary was LINCE ASISTENCIA, which provided health services and leased, ran and managed hospitals, which it did by owning the Clínica Coreysa hospital in Ciudad Real. It also managed various medical centres (outpatient-only general hospitals) in various parts of the province.

108. The service markets affected by the concentration operation were the market in non-preferred provider private health insurance and that for health insurance for public groups. The vertically-related healthcare markets were also examined. The relevant geographic market was the province of Ciudad Real.

109. ADESLAS had no direct presence in that province, where it operated under various agreements with SEGURO COLEGIAL. The latter recorded a total share of less than 20% of premiums in the non-preferred provider insurance market and of between 60% and 70% in health insurance for public groups. There would be no addition of shares in that province as the result of the concentration operation.

110. In the healthcare services markets in Ciudad Real, vertically related to the foregoing markets, as a result of the concentration ADESLAS would acquire joint control of the hospital that represents nearly 95% of private hospital beds in the province, and of five outpatient-only general clinics, representing approximately half the private specialised medical and diagnostic testing centres in the province. Once again, there was no addition of shares as the result of the notified operation.

111. The Tribunal found that neither the economic nor the legal barriers to access to the various markets were, in this case, of fundamental importance in determining the competitive pressure which actual or potential competitors could exert on the relevant markets. Further, it was of the view that lasting modification of the structure of control of LINCE SERVICIOS and of the management of its business and the resulting permanent elimination of a potential competitor were not factors which would significantly detract from effective competition in the markets and could even entail improvements in the provision of its services.

112. However, because the affected markets were vertically related and because LINCE SERVICIOS had a dominant position in the healthcare services market, the Tribunal found that, unless conditions were imposed, the notified operation could impede effective competition in the health insurance market which needed those services in order to perform its activity normally.

113. Accordingly, in its report the Tribunal subjected approval to compliance with three conditions. Both the healthcare services would have take place under market conditions, ensuring objectivity, transparency and non-discrimination in the contracting and provision of the service.

114. The decision of the Council of Ministers of 1 December made approval of the operation conditional on compliance with these conditions.

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

115. 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 44 draft regulations prepared by the Ministry of Economy and Finance or other ministerial departments. Additionally, reports concerning regulations approved by the regional governments have been issued.

116. Special attention was paid to these regulations which had the effect of market foreclosure by means of establishing entry barriers in different activities. During 2006, the analysis has been focused notably on consumers, energy, audiovisual sector, postal service, insurance, public procurement and liberal professions.

117. The SDC issues also reports required in the field of other administrative procedures. It can be highlighted two reports issued upon request of the Oficina Española de Cambio Climático (Ministry of Environment) Additionally, the SDC' task of issuing reports concerning telecommunication markets in accordance with the Telecommunication Act (Act 32/2003) has been pursued.

118. Finally, it has been pursued a relevant activity concerning the professional services sector in coordination with the European Commission. A new meeting was held in Madrid with different Ministries related with that sector, the professional associations and the European Commission, in order to review the Spanish regulation of several professions and its compliance with the Community legislation.

119. The Tribunal de Defensa de la Competencia also has an important role to play in this field. During 2006, the Tribunal addressed the Government its recommendations to improve the competition

conditions in certain fields. It may be mentioned the report on the concrete sector. In this Report the Tribunal de Defensa de la Competencia analysed the entry barriers in the cement sector and proposed some measures to increase competition.

120. Finally, complying with its advisory role in the opening of new hypermarkets, the TDC issued 102 reports on this subject and 6 reports (among them the mentioned on entry barriers in the concrete sector) requested by the Government or other public or private competent bodies.