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-- 2000 -

Executive Summary

1. During 2000, new competition legislation has entered into force in Spain: Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 and Royal Decree 6/2000 of June 23, on Urgent Measures for Intensification of Competition in Goods and Services Markets. They seek to improve the Spanish Competition System and adapt it to needs of economic liberalisation. The Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 improves the efficacy of the Spanish Competition System, gives both Competition bodies, the *Servicio* and the *Tribunal* more duties, and material and legal resources and simplifies procedure. Royal Decree 6/2000 of June 23, on Urgent Measures for Intensification of Competition in Goods and Services Markets reforms the Spanish merger control regime to adapt it to needs raised by the growing number and complexity of cases.

2. Competition Authorities have been very active in 2000. In conducts, legislative changes that have shortened procedure, have increased the workload of the *Servicio de Defensa de la Competencia*, although the number of cases started is lower than in 1999. The Competition Authorities have focused mainly on recently liberalised sectors, where most cases have arisen. Concerning mergers control, the number and the complexity of cases have sharply increased.

3. In addition, the Spanish Government kept on liberalising key economic sectors in order to promote growth and employment. A new package of liberalisation measures was passed in June 2000, focusing on strategic economic sectors.

4. Finally, concerning Competition Bodies, both the *Servicio* and the *Tribunal* have been strengthened and given new duties. Their competences have been clarified, especially regarding regulatory entities and their resources enlarged thanks to a new tariff levied on notifying firms.

Changes in competition laws and policies, proposed or adopted***Summary of new legal provisions of competition law and related legislation***

5. In 2000, two major changes have taken place in the Spanish Competition System. First, Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17, has come into force in March 29, 2000. Second, the government has passed the Royal Decree-Law 6/2000 of June 23, on Urgent Measures for Intensification of Competition in Goods and Services Markets.

Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17

6. The Spanish Authorities have undertaken a deep and ambitious process of economic liberalisation. Microeconomic reform is a key element of economic policy. In this context, the Spanish Competition System needs to be reinforced in order to guarantee that economic agents' behaviour do not prevent the benefits of economic liberalisation from taking place.

7. Accordingly, the new Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17, has the objective of increasing the efficacy of defence of competition instruments. In order to

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achieve this aim, Act 52/1999 reinforces the horizontal implementation of competition legislation and increases the material and legal resources of Spanish Competition bodies. Their competences are enlarged and the procedure is simplified. Although the institutional framework of the Spanish Competition System remains unchanged.

8. The Act 16/1989 of July 17, on Defence of Competition established a system based on two separate institutions. On the one hand, the Servicio de Defensa de la Competencia that conducts investigations and monitors markets and on the other hand, the Tribunal de Defensa de la Competencia, the independent body which is the cornerstone of the Spanish Competition System, with resolutive and advisory functions.

9. The Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17, was passed in December 28, 1999 (*B.O.E.* December 29, 1999). The main changes the new Act has introduced are the following:

10. Conducts:

- Defence of Competition bodies may decide not to start or dismiss proceedings in relation to minor importance agreements with no appreciable impact on competition.
- Competition Law provisions will apply to competition restrictions arising from the exercise of other administrative powers or from the action of public authorities or state-owned enterprises.
- Together with the abuse of a dominant position, the Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 prohibits the abuse of an economic dependence situation.
- It enlarges the concept of abuse of dominance to the breach of an established business relationship without previous written notice and to the threat to breach this relationship to obtain better conditions of commercial co-operation.
- It clarifies the role of the *Tribunal de Defensa de la Competencia* in unfair competition acts: the *Tribunal de Defensa de la Competencia* will be competent to hear acts of unfair competition when these acts seriously distort competition and this distortion affects public interest.

11. Sanctions:

- Co-ordination with the European Commission is improved. No fine will be imposed for anticompetitive conducts if an A/B notification is submitted to the Commission, before the sanctioning proceedings has started. However, if bad faith is appreciated, the *Tribunal* may impose a fine of up to 30.050,61 EUR.
- New coercive fines are introduced and their maximum level is increased: The *Tribunal* may impose coercive fines from 60,10 EUR to 3005,06 EUR per day to force undertakings to meet the commitments adopted under a consent settlement agreement, in addition to cases previously considered under the law. Maximum coercive fines per day are increased to 3005,06 EUR.
- Infringements and fines will expire after four years.

- In order to improve cooperation with Courts and to speed proceedings up, Courts may ask the *Tribunal* to study the effects of conducts on markets, sectors and agents and to examine the expediency and amount of a compensation for harm caused by the infringement.
- (In February 2001, **Royal Decree-law 2/2001** reformed some articles of Competition Act 16/1989 of July 17. Specifically, the *Servicio* may propose to the Government the establishment of coercive fines of up to 2.000.000 pesetas or 12.020 EUR per day of non-fulfilment of the contents of Council Ministers' Agreements).

12. Public aids:

- New regulation is set up for public aid, without prejudice to the Community legislation. The concept of public aids is defined. In addition to its advisory functions, the role of the *Tribunal* in public aids is strengthened. The *Tribunal* will examine *ex officio* the criteria for granting public aids according to their effects on competition in order to issue a report for the Council of Ministers which will decide to propose changes or the removal of criteria or measures to re-establish competition.

13. Institutional changes:

- Both Competition bodies, the *Servicio* and the *Tribunal*, are strengthened. They are given new duties and more resources through a new tariff that is imposed on firms that notify mergers. The Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 contains new provisions on their internal organisation, functioning and composition. In addition, their competences are clearly defined with regard to regulatory entities.
- The Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 reinforces the duty of collaboration and information to the *Servicio de Defensa de la Competencia*: undertakings have 10 days to provide the *Servicio* with all the information required. Non-fulfilments are sanctioned with fines of up to 3.005,60 euros.
- In addition, the Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 also reinforces the inspection function of the *Servicio*: during inspections, the *Servicio* may ask oral explanations. When there is a risk of opposition, on the part of the inspected undertaking, the Director of the *Servicio* will ask authorisation to enter premises to Administrative Litigation Courts.

14. Procedure concerning conducts:

- It has been reformed in order to enhance efficiency of Spanish Competition System. Specifically, bearing in mind that the *Tribunal* may ask the *Servicio* to start procedure, major changes have been introduced in procedure before the *Servicio*.
- The *Servicio* may also start procedure *ex officio* or upon request of parties. The Act 52/1999 of December 28, on Reform of the Competition Act 16/1989 of July 17 specifies the data that the complaint must at least contain.
- Faced with the possible existence of an infringement, the *Servicio* may carry out a preliminary investigation before starting sanctioning procedure, which may include investigation of the involved undertakings' premises. Where the *Servicio* considers there is no evidence of infringement, it may decide not to start and dismiss proceedings.

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- The *Servicio* is allowed not to start procedure when conducts, because of its minor importance, are not going to affect competition and when requirements to intervene in unfair competition cases are not met. In addition, the *Servicio* may end procedure by the means of a consent settlement. The *Servicio* will inform the *Tribunal* of the agreements of consent settlement that have been reached.
- In the report that the *Servicio* refers to the *Tribunal* along with the file, it has to include an analysis of the effects of the infringement on markets, its assessment of facts and responsibilities. The *Servicio* may decide to dismiss the case if there is no evidence of infringement and after notification to the interested parties.
- The maximum duration of procedure before the *Servicio* is reduced to 12 months. This period may be extended under some circumstances.

15. Royal Decree-Law 6/2000, of June 23, on Urgent Measures for Intensification of Competition in Goods and Services Markets.

16. The increase in the number and significance of merger cases demands the adoption of new mechanisms to reinforce the Spanish merger control regime and its efficacy. Thus, the Royal Decree-Law 6/2000, of June 23, reforms partially the system of merger control. The amendments introduced are the following:

- Implementation of merger is suspended until it is authorised. Specifically, the transaction may not be put into effect before notification or until the government has stated, expressly or tacitly, its no-opposition to the merger or subordinates the transaction to the observance of certain conditions. However, the Minister of Economy may allow the merger to be closed upon proposal of the *Servicio* and request of the parties. This measure is expected to reinforce the administrative control on mergers.
- In order to limit the waiting period, procedure is shortened. The *Tribunal* must issue its report on the transaction in two months (reduced from 3 months before) and the Council of Ministers must adopt the final decision in one month (reduced from 3 months before). Thus the whole procedure throughout its 3 phases is reduced to 4 months from 6 months previously.
- *Servicio ex officio* intervention is clarified. The *Servicio* may *ex officio* require undertakings to notify in 20 days time and in addition, it may *ex officio* also, start the merger file proceedings.
- In order not to block procedure, it may be initiated even when undertakings have not paid the tariff levied on the analysis and study of mergers.
- There is another measure that deserves to be mentioned, despite not concerning merger control. The Royal Decree-Law 6/2000 establishes a limit on cross holdings in more than one principal operator in electricity, gas, hydrocarbon sectors and telephony. Shareholders with a stake exceeding 3% of capital of more than one principal operator in these sectors are allowed to exercise the voting rights attached to their participation in only one of those of operators. Nevertheless, regulatory entities may allow exceptions to this rule upon request.

17. Besides merger control's reform, the Royal Decree includes further measures that deepen the process of liberalisation of key economic sectors.

Government proposals for new legislation.

18. During 2000, three main proposals have been made:

19. Bill on Co-ordination of Competition Powers of the State and the *Comunidades Autónomas*.

20. It is the result of the 1999 Constitutional Court Decision that rejected part of the contents of Competition Act 16/1989 of July 17, related to some competences of the *Comunidades Autónomas*. This decision considers that the *Comunidades Autónomas* have some executive powers in competition and obliges the Government to modify competition legislation to take into account and coordinate their powers.

21. The text defines normative and executive powers of the State, which are implemented through the *Tribunal* and the *Servicio*, and executive powers of the *Comunidades Autónomas*. It establishes coordination mechanisms to guarantee a uniform application of the competition legislation and the set up of a *Consejo de Defensa de la Competencia*. It also defines a system to settle disputes that could arise among the different bodies when exercising their competences.

22. Projected reform of Royal Decree on Block Exemptions, Single Authorisation and the Register of Defence of Competition.

23. It will replace Royal Decree 157/1992 of February 21, on Defence of Competition. It established procedure for single authorisations, block exemptions and provisions on the Register of Defence of Competition.

24. The new Decree improves coherence between Spanish and Community legislation, since it incorporates new Community regulations on block exemptions. In addition, it modifies some elements of the Spanish single authorisation procedure.

25. Projected reform of Royal Decree on procedure in mergers.

26. It will replace Royal Decree 1080/1992 of September 11, of Defence of Competition. It established the procedure to be followed by Competition bodies on mergers. Its provisions needed to be revised to take into account changes in Competition Act 16/1989 of July 17.

Enforcement of competition law and policies***Action against anticompetitive practices, including agreements and abuses of dominant positions****Summary of activities of Competition Authorities*

Servicio de Defensa de la Competencia (SDC)

27. The number of cases started in 2000 were 127 (183 in 1999), 99 in response to complaints, 25 were single authorisation proceedings and 3 were initiated ex officio. During 2000, 166 cases were completed (206 in 1999). The SDC decided to proceed in 51 cases that were forwarded to the *Tribunal* (24 single authorisations and 27 sanctioning files). At the end of 2000, 119 cases remained open.

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28. The *SDC* initiated 124 actions against anticompetitive practices, of which 41 were agreements cases (infringement of article 1 of Competition Act 16/1989 of July 17), 37 were abuse of dominance (infringement of article 6 of Competition Act 16/1989 of July 17) and 19, unfair competition cases (infringement of article 7 of Competition Act 16/1989 of July 17). Most cases have arisen in the service sector.

29. During 2000, *SDC* officials have carried out 7 inspections in premises of undertakings (public works, beverages).

Tribunal de Defensa de la Competencia (TDC)

30. In 2000, the *TDC* had to make decisions on 31 conducts cases (36 in 1999). The *TDC* issued 29 sanctioning resolutions: there were 23 cases where the infringement was proven and the *TDC* imposed fines; 2, cases where the infringement was proven but the *TDC* did not impose any fine and 4 cases where the *TDC* did not appreciate infringement. Interim measures were decided in 2 cases.

31. The *TDC* decided on 38 single authorisations. Of them, 17 were renewed, 19 were new exemptions granted, 1 modified and 1 rejected.

32. The *TDC* issued 16 non-binding reports on notified mergers. In 4 of them, the *TDC* recommended authorisation, in 7, authorisation subject to conditions and in 4, rejection. Finally, complying with its advisory role in the opening of new hypermarkets in regions, the *TDC* issued 66 reports on this matter.

33. Description of significant cases.

34. Resolution 456/99 of March 8, 2000: *TELEFONICA*

35. The former monopolist, *TELEFONICA*, was accused by a new entrant in the market, *RETEVISION*, of hampering its entry and functioning in the market of basic telephone services by launching a heavy publicized campaign of discounts (“planes claros”) aimed at the only segment of the market where *RETEVISION* is active: the interprovince and international calls. *TELEFONICA*, was at that time the only provider of local calls. Documents found during a dawn raid showed no doubt as to the purpose of the campaign of *TELEFONICA*, because explicitly affirmed the objective of harming the image of *RETEVISION* by running down its offers, although in an internal document addressed to the advertising firm, *TELEFONICA* warned: “in the campaign, it should not be perceived that our discounts are a reaction to *RETEVISION*’s actions”.

36. To add insult to injury, the prices promoted by the “planes claros” campaign had to be authorised by the state regulatory agency, the *Comisión del Mercado de Telecomunicaciones*. So, when the campaign was launched, *TELEFONICA* had no authorisation to set those special discounts. Moreover, the internal documents sized in *TELEFONICA*’s premises showed that the company knew that those discounts had very little chance of being approved. This was alleged as deceptive advertising.

37. The *TDC* considered that *TELEFONICA* had abused its dominant position by hindering *RETEVISION*’s access to the market through this advertising campaign and imposed to *TELEFONICA* a fine of 1.400.000.000 pesetas.

38. Resolution 465/99 of July 27, 2000: *EGEDA*

39. The Spanish Collecting Society for audiovisual rights, *EGEDA*, which represents and manages the intellectual property rights of audiovisual producers in Spain, sent a letter to the top class hotels in the country, threatening to start legal action to close, by obtaining the appropriate court decision, their satellite television system if they do not begin to pay the tariff that *EGEDA* set up unilaterally for the “public communication of audiovisual works”.

40. The hotels did not yield to such a demand because, firstly, they did not consider that the fact of allowing their customers to watch television in their rooms could be included into the concept of “public communication” but it is more akin to a private domestic use of audiovisual works, which, by Spanish law, is free of charge. And secondly, the amount of the tariff and the way *EGEDA* tried to exact its payment amounts, in their opinion, to an abuse of *EGEDA*'s dominant position, so they lodged a complaint to the competition authority.

41. After a long and complex investigation that included a deep study of comparable tariffs in Europe, the *Servicio de Defensa de la Competencia* came to the conclusion that the Spanish tariffs were much above the ones of the few other countries where hotels are charged, so they were in fact, abusive in quantity as well as in the way of enforcement.

42. The *TDC* supported that view and appreciated a violation of both, the Spanish Competition Law and Article 82 of the European Treaty for trying to enforce unfair tariffs without allowing the users of the audiovisual works to negotiate those tariffs. *EGEDA* was fined 45.000.000 pesetas and two other collecting societies whose rights were also managed by *EGEDA*, were fined as well, with 10.000.000 and 5.000.000 pesetas.

43. Resolution 476/99 of October 25, 2000: *AGENCIAS DE VIAJE*

44. The National Institute of Social Services (*INSERSO*), a public agency that takes care of the elderly people, opened a tender to implement a vacation programme for the 95/96 season. Four of the most important travel agencies in Spain agreed to present identical offers to that tender and, even more, they also agreed to manage the project together, no matter the outcome of the tender; that is, regardless it was awarded to one of the companies, to two, or three of them, all of them would share the profits of the programme.

45. These companies set up a joint venture under the form of an Economic Interest Group called *MUNDOSOCIAL*. This entity achieved a pact with 12 other travel agencies by which the latter agreed to refrain from participating in the said tender of the *INSERSO*.

46. The National Court of Auditors uncovered the hoax. It passed the information to the *SDC*, which started procedure *ex officio*. The *TDC* declared the violation of article 1 of the Spanish Competition Law for rig bidding and a non competition pact and imposed the following fines: *Viajes Iberia, S.A.* 1.226.064,693 euros, *Viajes Halcón S.A.* 829.396,704 euros, *Viajes Barceló S.L.* 829.396,704 euros, *Viajes Marsans S.A.* 721.214,525 euros and *MUNDOSOCIAL A.I.E.* 901.518, 156 euros.

47. Resolution 479/99 of December 1, 2000: *UNESPA*

48. The Spanish Union of Insurance Companies (*UNESPA*) made a collective recommendation to its members aiming at increasing the car insurance premium by between 7 and 10%. As the media released its recommendation, because the insurance sector wanted to prepare the public opinion for such an increase, the Competition Authority started an *ex officio* procedure.

The investigation came to the conclusion that the exchange of confidential information fostered by *UNESPA*, amounts to a collective recommendation to set the price level of the premium. The *TDC* imposed to *UNESPA* a fine of 80.000.000 pesetas.

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Mergers and acquisitions

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

49. During 2000, 93 mergers were notified to the *SDC*, compared to 51 in 1999. This increase is mainly due to changes in merger control system that made notification mandatory. One of the main characteristics of the notified transactions is their growing complexity.

	1996	1997	1998	1999	2000
Notifications	23	19	31	51	93
Referrals to the TDC	2	7	5	15	12

50. 81 notified mergers were tacitly authorised. The Minister of Economy, upon proposal of the *SDC*, referred 12 to the Tribunal. After the *TDC* issued its report, the Council of Ministers adopted its final decision, through an Agreement. 4 were authorised without conditions, 6 were authorised subject to conditions and 2 were declared contrary to Law.

Notifications: type of transactions in 2000			
Acquisition	Joint control	Merger	Takeover bid
74%	16%	5%	4%

b) Significant cases

PROMODES/CARREFOUR

51. On October 5, 1999 *CARREFOUR* notified to the European Commission a transaction by which *CARREFOUR* acquired control over *PROMODES*. On January 25, 2000, the European Commission adopted a Decision to refer the case to the Spanish Competition Authority, upon request of the Ministry of Economy and Finance of Spain. The Minister of Economy and Finance referred the case to the *Tribunal* on February 4, 2000.

52. In its non-binding report, the *Tribunal* recommended approving the transaction but subject to amendments. It argued that the transaction entailed the disappearance of one of the main competitors in the market and the reinforcement of the group created by the transaction. These effects are especially relevant

when there are legal barriers to entry that reinforce incumbents in relation to potential entrants. In addition, as a result of the transaction, competition would be severely curtailed in specific geographic areas. Consistently, the *Tribunal* recommended the Government to approve the transaction subject to the sale of commercial premises in certain areas.

53. The Agreement of the Council of Ministers of May 26, 2000 followed the *Tribunal* recommendation. It authorised the transaction but subordinated to the observance of certain conditions.

UNIÓN FENOSA / HIDROELÉCTRICA DEL CANTÁBRICO

54. On March 30, 2000 *UNION FENOSA* notified the *SDC* the acquisition of 100% of capital of *HIDROELECTRICA DEL CANTABRICO* by means of a takeover bid. The file was referred to the *Tribunal* on April 5, 2000. It issued its non-binding report on May 17, 2000.

55. Previously, the *Comisión Nacional de la Energía (CNE)* issued on April 26, 2000 its report on the transaction following the provisions of Law 34/1998 of October 7 on Hydrocarbon Sector. In this report, the *CNE* stated that despite increasing the degree of concentration in the generation market, the transaction would not change the structure of this market, as the dominant firm would retain its power to set prices.

56. On the other hand, the disappearance of *HIDROCANTABRICO* could have a certain effect on the distribution market, but its structure would remain the same, with two dominant firms. For all those reasons, the *CNE* came to the conclusion that the transaction would not distort competition in those markets.

57. The *TDC*, on its part, reached the opposite conclusion and recommended the Government not to approve the transaction. The *TDC* argued that the transaction would increase considerably the already high degree of concentration in the generation market and the strategic interdependence among the three main operators and thus, the incentives to exercise a joint dominant position. In addition, the low contestability of the generation market, due to high barriers to entry, would increase the risk of collusion among main operators.

58. In distribution, the transaction would have entailed the disappearance of the most dynamic operator in the market that had contributed the most to competition. In addition, also in this market there were high barriers to development of new operators, due among other things, to the concentration of regulated distribution activity in the three main operators, which are vertically integrated and have the largest share in distribution.

59. The Council of Ministers declared the transaction contrary to law, on May 26, 2000.

MAHOU/SAN MIGUEL

60. The transaction was notified to the *SDC* on July 11, 2000. It consisted of the acquisition by *MAHOU* of 100% of capital of *ENTERPRISE RESOURCE PLANNING B.V.*, which was controlled by *SAN MIGUEL S.A.* to its seller firm *GENERALE AGRO-ALIMENTAIRE DE PARTICIPATIONS S.A.* The file was referred to the *TDC* on August 10, 2000. The *TDC* issued its report on October 10, 2000.

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61. In its report, the *TDC* recommended the Government not to approve the transaction. The *TDC* argued that the transaction could provoke a structural change in the beer market that could restrict competition. As a result of the transaction, the *MAHOU-SAN MIGUEL* group would have a joint share of 30,2% in distribution in the channel “*horeca*” where the *HEINEKEN* group’s share is 42,3%. Thus the two main operators (*HEINEKEN-CRUZCAMPO* and *MAHOU-SAN MIGUEL*) joint share would have amounted to 72,5% of the market in 1999.

62. The *TDC* contended that contestability in this market is low. Thus, the entry into the market takes place through acquisitions of incumbents given the importance of brands and the barriers created by the control of the “*horeca*” channel of distribution. The transaction would increase the already high degree of concentration in this market and create complementarities at a local level that would grant the new group a dominant position in most provinces. In addition, the *MAHOU-SAN MIGUEL* group would have a wide brand portfolio and an extensive network of distributors, which would have fewer incentives to operate without establishing exclusivity relationships.

63. However, prohibition was considered to be a too extreme measure. Instead, conditions to restore competition would be defined. According to conditions imposed in the *HEINEKEN-CRUZCAMPO* case, divestiture of brands and assets did not seem appropriate, due to the lower market share of the *MAHOU-SAN MIGUEL* group. Thus, the Council of Ministers decided on November 3, 2000 to approve the transaction subject to conditions. These conditions sought to:

- Improve access to “*horeca*” distribution networks preventing the establishment of exclusivity relationships between beer producers and distributors.
- Counterweight market powers of the new group and ease the entry and consolidation of alternative operators by not allowing agreements of production or distribution licence, except those concerning the brand *CARLSBERG*.
- Cut structural links among competitors by forcing *MAHOU-SAN MIGUEL* to dispose of its equity holding in *DAMM* and other firms.

MOVILPAGO

64. The transaction was notified to the *SDC* on July 26, 2000. It consisted of the creation of a joint enterprise (*MOVILPAGO*) in order to develop and commercialise an electronic mean of payment through mobile telephones. *TELEFONICA MOVILES S.A.* and *BANCO BILBAO VIZCAYA ARGENTARIA S.A.* participate in the new firm at equal stakes. The *TDC* issued its report on December 26, 2000.

65. In its report, the *TDC* recommended the government to approve the transaction subject to conditions.

66. The *TDC* contended that the transaction would affect electronic means of payment market and mobile telephone market. The relevant market is the national market. There are no significant barriers to entry in the electronic means of payment market, but there are significant barriers to entry for new mobile telephone operators:

- There are no national or international technological standards that are accessible to every operator of means of payments through mobile telephone.
- A firm participated at 50% for the main Spanish operator in the market of mobile telephone would own the patent for development and application of *MOVILPAGO* technology. This patent would be licensed to operators that pay the corresponding canon. But this system

would have an initial competitive advantage, as it is the first-mover, the first to use that technology.

- Thanks to their own position in their respective markets, both partners of *MOVILPAGO* would have a privileged position due to their large number of clients.
- The strength of both partners would attract new clients for *MOVILPAGO*. It could become the most popular means of payment through mobile telephone.
- In addition, they had enough resources to launch and publicize the new product, which needs large investments in advertising, and to take advantage of their wide network of distribution and branches, without incurring high costs.

67. The fact that *TELEFONICA* starts the system alone could provoke a decline in the number of other operators' clients, as they cannot offer this service. This loss could be irrecoverable even when those operators adhere to the system. For this reason, it is necessary to establish conditions to guarantee equal opportunities for all operators and free competition in this key sector.

68. The *TDC* included in its report previous partners' arguments, by which they declared that the system is open to all operators of mobile telephone and financial institutions in transparent and non-discriminatory terms. In addition, they contended they would not impose exclusivity relationships so that operators would be free to decide how to make the use of this system compatible with other means of payment, electronic or not.

69. The *TDC* recommended approving the transaction subject to the following conditions:

- Forbid *MOVILPAGO HOLDING* to commercialise the system *MOVILPAGO* until it provides operators of mobile telephone that want to adhere to the system, the technical protocols and specifications. The *SDC* and the *Comisión del Mercado de Telecomunicaciones* would monitor the fulfilment of this condition.
- No specific mobile telephone operator or financial institution can appear in advertising during the first year after the first launch of commercial operation of the service.
- Forbid *MOVILPAGO* to establish exclusivity relationships in distribution.
- Forbid *MOVILPAGO* to establish, in its contracts with consumers, clauses that could limit their capacity to sign contracts with other financial institutions (adhered to the system).
- Forbid volume discounts offered to operators that adhere to the system after the first year of functioning.
- Subject the system of multilateral interchange fees (MIF) to *TDC* single authorisation.

70. The Council of Ministers decided on November 17, 2000 to approve the transaction subject to amendments. It followed the majority of the *TDC's* recommendations. However, the Council of Ministers modified conditions 1 and 6. Concerning the first one, the Council of Ministers specified a period for *MOVILPAGO* to provide operators with technical specifications. During this period, commercialisation of the system is not allowed. Once this period passed, *MOVILPAGO* partners may launch the system according to the other conditions. Concerning last condition, the Council of Ministers argued that it is not

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necessary to impose the obligation to notify the system of multilateral interchange fees, provided that this requirement is already contained in the Competition Act 16/1989 of July 17.

The role of competition authorities in the formulation and implementation of other policies

71. Spanish Competition Authorities are among the most activist in OECD countries in promoting reform. They have played a key role in the process of liberalisation by ensuring that consumers benefit from it through effective competition.

72. Spanish Competition Authorities have focused mainly on economic sectors that have been recently liberalised. In fact, most cases related to anticompetitive conducts have arisen in these sectors. In addition, recent reforms of competition legislation have enlarged its scope. First by limiting exemptions from the application of competition legislation only to those anticompetitive conducts stemming from the application of a law. Concerning mergers, the scope of Competition Act 16/1989 of July 17 provisions, has been also extended by mandatory notification of all those transactions that reach the thresholds specified in the Law.

73. On the other hand, Spanish Competition bodies have advisory functions concerning new legislation that relates to competition. They may also issue reports on competition upon request. Concerning exemptions from the application of competition legislation, the *Tribunal* may issue a report to propose amendments of those provisions that allow anticompetitive conducts.

74. Concerning Competition Policy, in addition to the amendments introduced in the competition legislation, the Spanish Government has approved new liberalisation measures in 2000.

75. In June 23, 2000, the Council of Ministers passed **five Royal Decrees** that contain a broad package of measures so as to promote economic growth and employment creation. These measures increase competition and adjustment capacity of the Spanish economy. They focus on key sectors such as electricity, gas and telephony and on other areas such as land, health, professional services, retail distribution and savings taxation. The Royal Decrees are: Royal Decree-Law 3/2000, of June 23, on Urgent Fiscal Measures on Incentives to Household Savings and Small and Medium Firms; Royal Decree-Law 4/2000, of June 23, on Urgent Measures on Liberalisation of Real-State Sector and Transports; Royal Decree-Law 5/2000, of June 23, on Urgent Measures on Restraint of Pharmaceutical Public Expenditure and Rationalisation of Medicine Use; Royal Decree-Law 6/2000 of June 23 on Urgent Measures on Intensification of Competition in Goods and Services Markets; Royal Decree-Law 7/2000 of June 23 on Urgent Measures in Telecommunications Sector.

76. In network sectors, vertical separation between infrastructure owners and distributors is increased and access to networks is improved. In addition, dominant operators expansion is restricted. Competition is increased by improving access to information and extending provider choice to households. The most important measures, which are contained in Royal Decree 6/2000 and Royal Decree 7/2000 of June 23, are the following:

Liquid Hydrocarbons:

77. Measures aim at achieving more competition, enhancing transparency, improving consumers' access to information and ensuring a non-discriminatory operators access to storage and distribution networks.

78. The maximum stake any individual or undertaking may hold in the *Compañía Logística de Hidrocarburos (CLH)*, which is the company that owns the pipeline network and storage facilities, is restricted to 25% and for Spanish refining companies as a whole to 45%.

79. To enhance transparency in access to logistics facilities, owners must inform the *Comisión Nacional de la Energía* of terms of their contracts on access to networks. This information will be released.

80. At least one petrol station will be authorised in every hypermarket. The petrol station will not be allowed to sign exclusivity contracts with refiners.

81. Any company with a distribution share over 30% (15%) will not be able to expand its distribution capacity over the next 5 years (3 years).

82. Owners of petrol stations and wholesale distributors must provide periodically the Ministry of Economy with information on offered prices, products and brands.

Natural Gas

83. This sector is reshaped in depth. Measures aim at ensuring non discriminatory access to distribution facilities, encouraging entry of independent operators, achieving a more pro-competitive market structure, improving transparency of access prices, making them more cost-based, reducing time period to enter the market and the time period to introduce competition.

84. The maximum stake any individual or undertaking may hold in *Enagas*, which has been declared *Gestor Técnico* of the Natural Gas System, is 35%.

85. 25% of the long-term supply contract of *Gas Natural* with Algeria will be auctioned among new participants in the market, to sell natural gas to qualified consumers.

86. From January 2003 on, the maximum share market for any natural gas distribution operator is restricted to 70%.

87. A new wholesale network access regulation will be issued before January 2001. Before July 25, 2000 and until the new regulation is approved access prices will be reduced by 8%.

88. Full liberalisation deadline is brought forward from 2008 to 2003.

89. The ending of the moratorium on building new distribution networks for companies other than *Gas Natural* is brought forward to 2005 from 2008.

Electricity

90. In recent years, the Spanish government has made important efforts to open the electricity markets. Liberalisation has benefited consumers through lower prices. The measures contained in the Royal Decree of June, 2000 aim at improving competition in this sector.

91. Expansion of electricity producers with set up power share higher than 40% is restricted during a period of 5 years. This period is reduced to 3 years for those producers with a share ranging from 20% to 40%.

92. Full liberalisation is brought forward to 2003 from 2007. Before January 2001, access prices will be revised.

93. Bilateral electricity purchases by retailers (or traders) from the special regime national producers and from abroad are now allowed. From 2003 on, retailers will be allowed to buy electricity from national

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producers in the regular regime. Some special regime producers will have to participate in the wholesale market. The participation of the special regime as a whole will be encouraged.

94. Tariffs for high voltage consumers will be phased out by 2007.
95. Electricity tariffs for households will be reduced at most by 9% in the next 3 years.
96. A regulation to allow future contracts in the wholesale market will be used.

Telecommunications

97. Measures contained in the Royal Decree tackle with the main problems of this sector in order to increase competition.
98. The Government will set the conditions for main operators to provide access to the local loop from January 2001 on.
99. Before November 15, 2000 *Telefonica* must facilitate carrier pre-selection for local calls.
100. A flat rate for Internet users in non-peak hours is introduced.
101. Main operators must submit its cost accountancy before July 31, 2000.
102. The Ministry of Science and Technology will carry out a study on alternative means to increase competition in mobile telephony sector.
103. The *Comisión del Mercado de las Telecomunicaciones* will submit its proposals of reform of the *Oferta de Interconexión* of *Telefónica*.
104. New tariffs for local calls are established.
105. Other measures
106. The package passed in June 2000 contains further measures. Concerning taxation, fiscal policy is a key element of economic policy in Spain. New measures are passed in order to encourage savings, promote Spanish firms internationalisation and support small and medium firms.
107. Other measures concern land policy. The purpose here is to promote flexibility in land market in order to reduce housing prices and to increase the offer of building land.
108. A new plan is introduced to reduce pharmaceutical public expenditure and to rationalise medicine consumption. The purpose here is to ensure budget balance and the quality of health benefits.
109. In order to promote competition and lower prices, the package of June 2000 liberalise retail shopping hours.
110. Retailers are allowed to offer discounts, without limits, on schoolbook prices fixed by publishers and importers.
111. Road passenger transport: the time period for concessions in regular road passenger transport is reduced from a period ranging from 8 to 20 years to a period ranging from 6 to 15 years.

112. Financial sector: maximum fees charged for the management of UCITS have been reduced. More transparency is introduced in mortgages: credit institutions are forced to inform consumers about their right to choose notary, insurance company and other brokers that may take part in the transaction.

113. Tobacco distribution is liberalised. Previous requirements to distribution licences and wholesale distribution have been eased.

114. For Notaries, fixed tariffs are maintained but with the possibility of discounts of up to 10%. Tariff will be free for documents whose amount exceeds one billion pesetas.

115. Real State brokers' tariffs are reduced. Technical Inspection of Vehicles is liberalised.

5. Further measures adopted in 2000

Electricity

116. In December 2000, Royal Decree 3487/2000 of December 29, on reform of Regulation of the *Comisión Nacional de la Energía* was passed.

117. In December 2000, Royal Decree 1955/2000 of December 1, on regulation of transport, distribution, commercialisation, supply and procedure of authorisation of electricity facilities was passed. It develops provisions on these matters of Law 54/1997, of November 27, of Electricity Sector.

118. In December 2000, Royal Decree 3490/2000 of December 29 was passed. It regulates tariffs for 2001.

Telecommunications

119. Fulfilling provisions of article 2 of Royal Decree-Law 7/2000 of June 23, on Urgent Measures in Telecommunications Sector, Royal Decree 3456/2000, of December 22, approves regulation that establishes conditions for the unbundling the local loop by the dominant operators.

120. A Resolution of the Secretary of State of Telecommunications and Information Society of the Ministry of Science and Technology of December 28, 2000 modifies the first offer of *Telefonica* to unbundle the local loop, whose prices were approved by a disposition of December 29, 2000.