

I. GENERAL PROVISIONS

MINISTRY OF FINANCE AND PUBLIC AUTHORITIES

9212 *Royal Decree 657/2013 of 30 August 2013 approving the Organisational Charter of the National Markets and Competition Commission.*

Act 3/2013 of 4 June 2013 creating the National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia) makes provision for the reorganisation of the independent supervisory bodies hitherto responsible for safeguarding, preserving and promoting the proper functioning, transparency and existence of effective competition across the different production sectors and markets to the ultimate benefit of consumers and users.

To that end, it incorporates existing bodies into a single body, the National Markets and Competition Commission, which is created as a public body of the kind provided for in paragraph 1 of Additional Provision Ten of Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government, in order to properly address the functions of sectoral regulatory supervision and competition defence that had previously fallen within the remit of the seven pre-existing bodies.

Accordingly, as set out in the Act, the new body is a public law entity with separate legal personality and full public and private capacity attached the Ministry of the Economy and Competitiveness. It is granted special organisational and functional independence for the pursuit of its activities and the achievement of its objectives and it is recognised as being fully professional and completely independent from the public authorities. It is subject to that Act and to the rest of Spanish law.

Along those lines, Act 3/2013 of 4 June 2013 lays down the legal bases for the rules on the functioning of the National Markets and Competition Commission and provides that such bases shall be implemented, with respect to the structure and functions of the Commission, by Royal Decree, to which effect is given with the approval of this Organisational Charter of the National Markets and Competition Commission. Act 3/2013 also leaves the internal functioning of the Commission to the Regulations on internal functioning adopted by the Council of the National Markets and Competition Commission.

In light of the foregoing, the Organisational Charter is built around the objectives and principles which frame Act 3/2013 of 4 June 2013. As is apparent from the preamble to that Act, the reform of the regulatory bodies is underpinned by numerous factors. On the one hand, the reform aims to achieve more efficient supervision, from a more coherent and integrated perspective, with more flexible *ex ante* and *ex post* supervisory authorities, thus enabling knowledge and instruments to come together to improve supervision. On the other hand, the reform intends to avoid creating an overly complex institutional framework. In this regard, it seeks to achieve organisational simplification to remove overlaps and, therefore, avoid undermining legal and institutional certainty.

These factors sit alongside other factors of a more circumstantial nature which emphasise the need for a review of the existing institutional framework. On the one hand, the lack of resources and the austerity drive affecting public authorities, which has led to a structural review in order to take advantage of economies of scale. On the other hand, the existence of precedents at international level which demonstrate the beginnings of a trend in neighbouring countries towards structural simplification with a view to ensuring that the principles of efficacy and efficiency have real teeth, with the ultimate aim of improving the quality of supervision and legal certainty, which will enhance market efficiency.

Along those lines, in terms of the implementation of the aspects relating to the organisation of the National Markets and Competition Commission, the reform seeks, first, to preserve and strengthen independence in decision-making, which is of fundamental importance to the work of the body, and, as a corollary, preserve and strengthen the autonomy and sufficiency of the management of resources. All of this must be viewed against the background of the principle of economy, deriving from the pursuit of savings in the use of the funds allocated to the body, thereby ensuring that, in all cases, it has the funds it needs to exercise its functions properly. This is apparent from the new system for appointing members of the Council of the Commission, which involves the Parliament more closely, from the system for appointing Heads of the Investigations Divisions and other management staff, and from the budget rules based on the sufficiency of funds.

As regards functioning, the reform seeks to accommodate the principles of efficiency, rationalisation, dynamism, objectivity and transparency, alongside the principle of efficacy, which already characterised the work of the pre-existing bodies. Those principles were the inspiration behind the rules on the functioning of the Council in Plenum and in Chamber and the rules on the

distribution of cases, according to which the most complex cases are allocated to the Plenum if consensus is necessary in order to provide a balanced and comprehensive solution to market problems to the benefit of consumers. Those principles were also the inspiration behind the provisions on transparency and the budget and staff system.

It must be borne in mind that the functioning of the National Markets and Competition Commission shall be consistent with the applicable EU legislation, especially on the telecommunications and energy sectors, which seeks further integration of the EU single market. The Commission will also contribute to the achievement of those objectives by maintaining regular and periodic contact with other supervisory authorities of the European Union and with the cooperation agencies of European energy and electronic communications regulators.

This Royal Decree is structured as follows: a single article approving the Organisational Charter of the National Markets and Competition Commission; five additional provisions covering various matters, including the Commission's offices and the possibility open to it to propose structural changes to enhance efficiency on the basis of an operations report; seven transitional provisions on the continued existence of bodies and groups, the transitional validity of regulations, the continuity of substantive proceedings, the delegation of powers and procurement rules, and other transitional provisions for the exercise of specific functions by the Commission; a repealing provision; and three final provisions on the establishment of analytical accounting, the internet domain and the entry into force of the Royal Decree, subsequently inserting the Organisational Charter of the National Markets and Competition Commission.

The Organisational Charter is divided into five chapters. Chapter one includes general provisions on nature, legal regime, management autonomy and independence, purpose, and institutional coordination and cooperation. In particular, it is provided that, in accordance with Community and national legislation, the National Markets and Competition Commission shall have the status of National Competition Authority, National Regulation Authority and National Regulatory Authority.

Chapter two sets out the organisational structure of the National Markets and Competition Commission and defines the functions of the different bodies. In particular, it specifies the composition and functioning of the Council. It also states the functions of the Plenum and Chambers. In addition, this chapter lists the factors that have a bearing on the composition of each Chamber and the rules on the publicity of their actions, as well as the

circumstances in which a Chamber is bound to request a mandatory report from another Chamber.

Lastly, chapter two provides further detail on the functions and structure, to Unit level, of the four Investigations Divisions.

Chapter three deals with staff in the service of the Commission, distinguishing between civil service staff and non-civil service employees, and specifies which positions shall have the status of management positions.

Chapter four implements the provisions contained in Act 3/2013 on contracts, assets and oversight. Lastly, chapter five governing the Commission's arbitration functions.

The approval of this Organisational Charter, which is effected within two months from the entry into force, on 6 June 2013, of Act 3/2013 of 4 June 2013 creating the National Markets and Competition Commission, is a necessary prerequisite so that, in accordance with Additional Provision One of that Act, the Commission can enter into operation within the maximum period of four months stipulated by Additional Provision One thereof.

Wherefore, on the initiative of the Minister for the Economy and Competitiveness, the Minister for Public Works and Infrastructure and the Minister for Industry, Energy and Tourism, and on the motion of the Minister for Finance and Public Authorities, in accordance with the Council of State and following the deliberations of the Council of Ministers at its meeting of 30 August 2013,

I HEREBY PROVIDE:

Sole Article. Approval of the Organisational Charter of the National Markets and Competition Commission.

In accordance with Article 26(1) of Act 3/2013 of 4 June 2013 creating the National Markets and Competition Commission, the Organisational Charter of the National Markets and Competition Commission, the text of which is inserted below, is hereby approved.

Additional Provision One. Remuneration.

The provisions of Royal Decree 451/2012 of 5 March 2012 regulating the Remuneration Regime of Senior Managers and Executives in the Public Business Sector shall apply to the President, Vice-President, Council members and management staff of the National Markets and Competition Commission in matters relating to remuneration.

The Ministry of Finance and Public Authorities shall determine the remuneration of the President, Vice-President and Council members in their capacity as senior officials, in accordance with Article 6 of this Charter.

The remuneration of management staff holding the status of tenured civil servants in active service shall be that to which such staff are entitled under the applicable law.

Additional Provision Two. *Electronic communications.*

For the purposes of Article 27(6) of Act 11/2007 of 22 June 2007 on Electronic Access by Citizens to Public Services and Article 32 of Royal Decree 1671/2009 of 6 November 2009 partly implementing Act 11/2007 of 22 June 2007, the President of the National Markets and Competition Commission may, by decision, decide that electronic communications with the National Markets and Competition Commission shall be mandatory.

Additional Provision Three. *Headquarters of the National Markets and Competition Commission.*

1. The National Markets and Competition Commission shall have its headquarters in Madrid.

2. In accordance with Additional Provision Eighteen of Act 3/2013 of 4 June 2013, the National Markets and Competition Commission shall have a further office in Barcelona, which shall house the Telecommunications and Audiovisual Sector Division, as well as the groups and persons attached thereto which are considered to be necessary in order to maximise existing resources and infrastructure.

3. When deciding on the specific location of the Units and lower groups that exercise the powers assumed by the National Markets and Competition Commission, account shall be taken of how best to maximise resources and the experience of the staff transferred to the Commission who have hitherto exercised such powers, encouraging their continuity.

Additional Provision Four. *Costs in relation to the provision of services and the performance of activities in the energy sector.*

1. Before 30 June of each year, the Ministry of Industry, Energy and Tourism shall publish a report containing the following information:

a) Expenditure incurred by the Commission during the previous financial year in the performance of its functions as National Regulatory Authority in the electricity and natural gas sectors.

b) Expenditure incurred by the Ministry of Industry, Energy and Tourism during the previous financial year as a result of the provision of services and the performance of activities in the electricity and natural gas sectors.

The information contained in that report for both bodies shall be used as a basis for establishing the fees applicable to the provision of services and the performance of activities in relation to the energy sector referred to in Schedule I.4 of Act 3/2013 of 4 June 2013.

It shall also be used to establish the annual allocation of funds to the National Markets and Competition Commission for the exercise of its functions in the energy sector and, thus, to determine what percentage of the amount collected in respect of the fees provided for in paragraphs two and three of Schedule I.4 is to be allocated to its funding. In all cases, the annual allocation of funds shall ensure that the Commission has sufficient finances for the provision of services and the performance of its functions.

2. For these purposes and notwithstanding Articles 44 and 45, the Commission shall, before 1 April of each year, send the Ministry of Industry, Energy and Tourism a report which shall form the basis for establishing the budget of the Commission with respect to the exercise of its supervisory functions in the energy area. That report shall include a breakdown of direct and indirect costs as well as internal costs and those relating to external hirings which have been incurred during the previous financial year as National Regulatory Authority in the performance of its functions in the energy area.

Additional Provision Five. *Structure of the Commission.*

The National Markets and Competition Commission may file a report with the Ministry of the Economy and Competitiveness, for submission to the Ministry of Finance and Public Authorities, on alterations to its organisational structure which it considers necessary for the efficient performance of the functions entrusted to it.

Transitional Provision One. *Continued existence of bodies and groups.*

1. In accordance with Transitional Provision Three of Act 3/2013 of 4 June 2013, the bodies subject to closure as well as their presidents and heads of the different managing bodies shall continue to exercise their functions until the National Markets and Competition Commission has entered into operation.

2. The groups and job positions at the organisational level of general Unit or similar and those at a lower level which exist in bodies subject to

closure shall continue and shall be remunerated out of the same budgetary appropriations until a list of job positions adapted to this Royal Decree has been approved.

Transitional Provision Two. *Validity of regulations.*

Notwithstanding the Sole Repealing Provision, the regulations necessary to enable the supervisory bodies subject to closure to continue to exercise their functions in accordance with Transitional Provision Three of Act 3/2013 of 4 June 2013 creating the National Markets and Competition Commission shall remain in force until that Commission has actually entered into operation.

Transitional Provision Three. *Transitional arrangements for ongoing proceedings.*

Proceedings relating to competition functions and supervisory functions in regulated sectors which were opened before the constitution of the Commission shall continue to be conducted by the bodies that existed previously until the Commission has actually entered into operation.

Transitional Provision Four. *Delegation of powers.*

Delegations of powers made before the National Markets and Competition Commission entered into operation shall remain valid unless they are expressly revoked. Delegations made in favour of the bodies subject to closure shall be deemed to be made in favour of the bodies that have assumed such powers.

Transitional Provision Five. *Procurement rules.*

Procurement procedures that began before the constitution of the National Markets and Competition Commission shall continue to be conducted by the existing contracting authorities until the Commission has actually entered into operation, and all acts performed until that time shall be valid and have effect.

Transitional Provision Six. *Transitional performance of functions by the National Markets and Competition Commission.*

1. The National Markets and Competition Commission may perform the functions conferred on ministerial departments by Act 3/2013 until such time as those departments have the necessary resources to exercise the functions effectively.

2. For that purpose, the necessary coordination mechanisms shall be established between staff, the Commission and the Ministries concerned in

order to carry out the transfer of human and material resources effectively and without impairing the exercise of the functions to be transferred which were hitherto performed. That transfer may take place in phases for the different functions referred to in the preceding paragraph.

3. On the motion of the ministerial department assuming the functions and the Ministries of the Economy and Competitiveness and of Finance and Public Authorities, a ministerial order of the Presidency shall lay down the date from which that ministerial department shall begin to effectively exercise the powers in question.

4. Until that date and under the oversight of the competent Division by reason of the subject-matter involved, the bodies, groups and job positions at the organisational level of general Unit or similar, and those at a lower level which have been performing the functions in question, shall continue to exercise those functions.

Transitional Provision Seven. Advisory bodies on energy matters.

In accordance with Transitional Provision Ten of Act 3/2013 of 4 June 2013, the Electricity Advisory Board and the Hydrocarbon Advisory Board shall continue to exercise their functions until the constitution of the Energy Advisory Board, and Section 3.a of Chapter III of Royal Decree 1339/1999 of 31 July 1999 approving the Regulations of the National Energy Commission shall remain in force until that time.

Sole Repealing Provision. Legislative repeal.

All provisions of an equal or lower ranking which contradict the provisions of this Royal Decree are hereby repealed, in particular: Royal Decree 331/2008 of 29 February 2008 approving the Charter of the National Competition Commission; Royal Decree 1994/1996 of 6 September 1996 approving the Regulations of the Telecommunications Market Commission; Royal Decree 1339/1999 of 31 July 1999 approving the Regulations of the National Energy Commission; Royal Decree 1920/2009 of 11 December 2009 approving the Regulations implementing Act 23/2007 of 8 October 2007 creating the National Postal Commission; Chapter IV of Title II of the Competition Regulations approved by Royal Decree 261/2008 of 22 February 2008; and Title VI of the Railway Sector Regulations approved by Royal Decree 2387/2004 of 30 December 2004.

Final Provision One. Establishment of analytical accounting.

The National Markets and Competition Commission, in cooperation with the State Auditing Agency, shall establish an analytical accounting system

which enables the cost of the activities carried out by the different bodies to be ascertained.

Final Provision Two. *Internet domain.*

The new body shall have the acronym CNMC as its identifiable institutional image, an aspect deemed to be of exceptional public interest. The acronym must appear in telematic communication methods and, in particular, the website, which shall be identified with the second level name to ensure accessibility.

Final Provision Three. *Entry into force.*

This Royal Decree shall enter into force on the day following its publication in the Official State Gazette.

Done in Madrid on 30 August 2013.

JUAN CARLOS R.

Minister for Finance and Public Authorities
CRISTÓBAL MONTORO ROMERO

**ORGANISATIONAL CHARTER OF THE NATIONAL MARKETS AND
COMPETITION COMMISSION****CHAPTER 1****General provisions****Article 1. *Nature and legal regime***

1. The National Markets and Competition Commission, created by Article 1 of Act 3/2013 of 4 June 2013, is a public body of the kind provided for by paragraph 1 of Additional Provision Ten of Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government. It has separate legal personality and full public and private capacity, and is attached to the Ministry of the Economy and Competitiveness through the Secretariat of State for the Economy and Business Support, notwithstanding its relationship with the competent Ministries by reason of the subject-matter involved in the exercise of the functions referred to in Articles 5 to 12 of Act 3/2013 of 4 June 2013 creating the National Markets and Competition Commission.

2. The National Markets and Competition Commission shall be governed by the provisions of Act 3/2013 of 4 June 2013, by this Charter and by the rest of the applicable Spanish law.

In particular, Competition Act 15/2007 of 3 July 2007 shall apply to it, as well as the specific legislation on the markets and sectors under its supervision. That legislation includes General Telecommunications Act 32/2003 of 3 November 2003, Electricity Sector Act 54/1997 of 27 November 1997, Hydrocarbons Sector Act 34/1998 of 7 October 1998, Act 43/2010 of 30 December 2010 on the Universal Postal Service, on the Rights of Users and on the Postal Market, General Audiovisual Communications Act 7/2010 of 31 March 2010, Air Safety Act 21/2003 of 7 July 2003, Railway Sector Act 39/2003 of 17 November 2003, and the provisions implementing those Acts. The National Markets and Competition Commission shall also be governed by the Revised Public Sector Contracts Act, approved by Legislative Royal Decree 3/2011 of 14 November 2011 and by Public Authority Assets Act 33/2003 of 3 November 2003.

Secondarily, it shall be governed by Act 30/1992 of 26 November 1992 on Public Authorities and Common Administrative Procedure, by Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government, by General Budget Act 47/2003 of 26 November 2003, and by other applicable laws.

3. Parliamentary and judicial oversight of the National Markets and Competition Commission shall be implemented on the terms provided for in Act 3/2013 of 4 June 2013.

Article 2. *Autonomy and independence.*

1. In the exercise of its functions and for the achievement of the objectives assigned to it, the National Markets and Competition Commission has organisational and functional autonomy and is fully independent of the Government, of public authorities and of all business or commercial interests.

2. Notwithstanding cooperation with other bodies and the powers of managing general policies of the Government through its legislative capacity, in the performance of its functions neither the staff of nor members of the bodies of the National Markets and Competition Commission may accept or seek instructions from any public or private entity.

Article 3. *Purpose*

The National Markets and Competition Commission is the body with responsibility for preserving, safeguarding and promoting the proper functioning, transparency and existence of effective competition across all markets and production sectors to the benefit of consumers and users.

Article 4. *Institutional coordination and cooperation.*

Where provided for by EU or national legislation, the National Markets and Competition Commission shall have the status of:

- a) National Competition Authority.
- b) National Regulation Authority in the electronic communications sector.
- c) National Regulatory Authority in the electricity and natural gas sectors.
- d) State Supervision Agency as regards airport charges.
- e) National Regulation Authority in the postal sector.

Article 5. *Functions.*

1. The National Markets and Competition Commission shall be responsible for the exercise of the functions set forth in Act 3/2013 of 4 June 2013, as well as any other functions that may be assigned to it by statute or regulations.

2. The National Markets and Competition Commission shall exercise its functions across the whole of Spain and in relation to all production sectors

and markets of the economy, and shall act with full independence in such exercise.

CHAPTER II

Structure of the National Markets and Competition Commission.

Section 1. The Council of the National Markets and Competition Commission

Article 6. The Council of the National Markets and Competition Commission.

1. In accordance with Article 13 of Act 3/2013 of 4 June 2013, the Council is the governing body of the National Markets and Competition Commission.

2. The members of the Council of the National Markets and Competition Commission, including the President and Vice-President, shall be appointed and shall vacate office in accordance with Articles 15 and 23 of Act 3/2013 of 4 June 2013.

3. In their capacity as senior officials of Central Government, they shall exercise their functions on an exclusive basis and shall be subject to the rules on incompatibilities in accordance with Article 22 of Act 3/2013 of 4 June 2013.

Article 7. Composition of the Council of the National Markets and Competition Commission.

1. The Council of the National Markets and Competition Commission shall be composed of the President, the Vice-President and eight Council members.

2. In accordance with Article 16 *et seq.* of Act 3/2013 of 4 June 2013, the Council shall act in Plenum or in Chamber, with one Chamber dedicated to competition issues and another dedicated to regulatory supervision. The rules on the functioning of the Council shall be determined in the Regulations on internal functioning of the National Markets and Competition Commission.

3. The Council shall be assisted by the Secretary of the Council of the National Markets and Competition Commission.

4. When tenured civil servants of Central Government are appointed as members of the Council of the National Markets and Competition Commission, they shall transfer to the administrative position of special services.

Article 8. *Functions of the Council of the National Markets and Competition Commission.*

1. The Council of the National Markets and Competition Commission is the collective decision-making body in relation to the resolution, consultation, competition advocacy, arbitration and conflict resolution functions provided for in Articles 5 to 12, both inclusive, of Act 3/2013 of 4 June 2013 as well as the other functions conferred by the legislation in force.

2. For the performance of those functions, the Council shall have the following powers, among others:

a) To appoint the Secretary of the Council, the Heads of the Investigations Divisions and other management staff of the National Markets and Competition Commission and to determine their remuneration in accordance with Article 31(6) of Act 3/2013.

b) To approve reports which, in accordance with the legislation in force, fall within the remit of the National Markets and Competition Commission.

c) To resolve on the extension of the maximum period for deciding on proceedings.

d) To resolve on appeals against acts and decisions adopted by other bodies on matters in respect of which the Council is responsible for taking decisions or handing down resolutions.

e) To adopt interim measures in accordance with Article 54 of Act 15/2007 of 3 July 2007 and Article 72 of Act 30/1992 of 26 November 1992.

f) On the proposal of the Secretary of the Council or other competent groups at the Commission, to allow the filing of appeals, appearances in judicial and administrative proceedings and interventions as *amicus curiae* in the proceedings referred to in Civil Procedure Act 1/2000 of 7 January 2000.

g) To approve circulars, information circulars where appropriate and communications.

h) To call on the Competition Advocacy Division to prepare reports, carry out studies and conduct research.

i) Where appropriate, to order the drawing up of circulars, information circulars and communications of the National Markets and Competition Commission in accordance with Article 30 of Act 3/2013 of 4 June 2013 and to order their publication.

j) To adopt final resolutions in proceedings conducted on matters falling within its powers.

k) To adopt, with respect to the electricity and natural gas sectors, legally binding decisions on matters falling within its powers.

l) To exercise other functions conferred on it by the Regulations on the internal functioning of the Commission.

m) To approve the preliminary draft budget and prepare and approve the annual accounts of the Commission.

3. The Council may delegate the exercise of its powers to the President and to other bodies of the Commission, subject to the restriction set forth in Article 14(1) of Act 3/2013 of 4 June 2013.

Article 9. *The Secretary of the Council.*

1. The Plenum of the Council may, on the proposal of the President, elect a non-member Secretary in accordance with Article 16(2) of Act 3/2013 of 4 June 2013.

2. The Secretary of the Council of the National Markets and Competition Commission shall be the Secretary of the Plenum and of the Chambers. In addition to the functions laid down in Article 25 of Act 30/1992 of 26 November 1992 on the Legal Framework of Public Administrations and Common Administrative Procedure, the Secretary shall also have the functions set out in the following article.

3. If the office of Secretary is vacant, or if the Secretary is absent or ill, or if any other statutory ground applies, he/she shall be replaced by the Vice-Secretary.

4. The Secretary of the Council may, following a report from the Plenum of the Council, delegate some of the secretariat functions to the Vice-Secretary.

Article 10. *Functions of the Secretariat of the Council.*

The Secretariat of the Council of the National Markets and Competition Commission is competent:

a) To provide legal advice to the National Markets and Competition Commission and to ensure that its acts, orders and decisions are lawful.

b) To support the President and Council members of the National Markets and Competition Commission in the exercise of their functions and in preparations for Council meetings, allocating the staff resources of the Secretariat to each Council member having regard to the specific needs of each case.

c) To attend meetings of the Council of the National Markets and Competition Commission with the right to speak but not to vote and to draw up the meeting minutes.

d) To provide advice on the lawfulness of the matters and issues referred to the National Markets and Competition Commission, ensuring that formalities and deadlines in proceedings are observed.

e) To store and handle the files, proceedings and documents of the Council.

f) To receive drafts of or proposals for decisions or reports on all matters referred by the Investigations Divisions and the other bodies of the Commission, deliberations and resolutions on which shall lie with the Council.

g) To issue certificates of resolutions, orders, requests for rulings and opinions approved by the Council.

h) To notify the acts, resolutions and reports of the Council.

i) To discharge the functions expressly delegated to him/her by the Council and President.

j) To discharge any other functions that may be conferred on him/her by this Charter, the Regulations on internal functioning or other provisions that may apply.

Article 11. *Structure of the Secretariat of the Council.*

1. The Vice-Secretariat of the Council shall report to the Secretary of the Council. The former shall have the organisational ranking of Unit and shall assist the latter in the secretariat functions of the Council, acting in Plenum and in Chamber, of the National Markets and Competition Commission, as well as in any matters that may be required of it by the latter. It shall also exercise the functions delegated to it.

2. The Legal Services Division shall also report to the Secretary of the Council. The former shall have the organisational ranking of Unit and shall be responsible for performing the following functions:

a) To provide legal advice, acting with full functional independence, to the bodies of the National Markets and Competition Commission.

b) To report, when called upon to do so, on draft circulars and communications.

c) To conduct the arbitration proceedings provided for in Article 5(1)(b) of Act 3/2013 of 4 June 2013.

d) To conduct appeals lodged against acts and decisions of the Commission and to draw up draft resolutions for submission to the Council, requesting, where appropriate, reports from other bodies of the National Markets and Competition Commission.

e) To conduct proceedings and prepare draft reports on claims for tortious liability filed against acts or decisions of the National Markets and Competition Commission.

f) To issue reports relating to the agreements and contracts executed by the National Markets and Competition Commission.

g) To participate in the contracts award panel as a member thereof.

h) To report on disciplinary proceedings against staff in the service of the National Markets and Competition Commission.

i) To report on the feasibility of proposed challenges to acts and provisions of public authorities submitted to the Council of the National Markets and Competition Commission and to draw up drafts of the prior demands referred to in Article 44 of Judicial Review Jurisdiction Act 29/1998 of 13 July 1998.

j) In cooperation with the Competition Advocacy Department, to submit draft reports to the Council on the criteria for quantifying the compensation referred to in Article 5(2)(b) of Act 3/2013 of 4 June 2013, following a report from the Competition Advocacy Department.

k) To coordinate and manage relations with the courts for the exercise of the court-related powers conferred by statute on the National Markets and Competition Commission, requesting, where appropriate, reports from other bodies of the National Markets and Competition Commission.

l) To cooperate with the Office of the State Attorney — Government Legal Service in the defence and representation in court of the National Markets and Competition Commission. In exceptional circumstances, when there may be a conflict of interest between the National Markets and Competition Commission and Central Government, such defence in court may be entrusted by the Council of the National Markets and Competition Commission to a lawyer designated for that purpose.

3. The Vice-Secretary of the Council and the Head of the Legal Services Division shall be appointed by the Council, on the proposal of the President and after hearing the Secretary of the Council.

Section 2. The Plenum and Chambers

Article 12. Functions of the Plenum.

1. In accordance with Articles 16(1) and 18(1) of Act 3/2013 of 4 June 2013, the Council may act in Plenum or in Chamber, with one Chamber dedicated to competition issues and another dedicated to regulatory supervision.

2. The Plenum of the Council of the National Markets and Competition Commission shall deal with the following matters.

a) Matters that, in accordance with Article 14(1) of Act 3/2013 of 4 June 2013, cannot be delegated by the Council, with the exception of challenging the acts and provisions as referred to in Article 5(4) of the Act.

b) Matters in respect of which there is a difference of opinion between the Competition Chamber and the Regulatory Supervision Chamber.

A difference of opinion shall exist where, *inter alia*, one of the Chambers has indicated that to be the case with respect to matters that must be resolved by the other Chamber, upon a request for a report referred to in Article 15(2) of this Charter.

c) Matters that, on account on their special impact on the competitive functioning of the markets or activities subject to supervision, are expressly claimed by the Plenum for itself, by a majority of six votes and on the proposal of the President or three Council members. In such cases, the reports referred to in Article 15(2) shall not be issued.

Article 13. *Composition of the Chambers of the Council of the National Markets and Competition Commission.*

1. The Council in Plenum shall approve, by a majority of six votes, the system of rotation of members between the Chambers, establishing the number of members subject to rotation and the periodicity of the rotations. In all cases, the system of rotation must ensure that the composition of each Chamber allows for the proper performance of the functions entrusted to the Council, stability in decision-making and proper compliance with the stipulated deadlines and proceedings.

Under no circumstances may a member be assigned to a Chamber on a permanent basis, may there be an *en bloc* rotation of members between Chambers, or may all members appointed as a result of the partial renewal of the Council be assigned to a single Chamber.

2. The system of rotation shall be published following approval by the Council. In December of each year, the Official State Gazette will publish the composition of each Chamber for the following year.

3. In accordance with Article 18(2) of Act 3/2013 of 4 June 2013, the Council may, when exceptional circumstances so warrant, adopt other measures on a transitional basis in order to ensure the proper functioning of the Chambers, measures which shall also be made public.

Article 14. *Functions and Reports of the Chambers of the Council of the National Markets and Competition Commission.*

1. In accordance with Article 21(2) of Act 3/2013 of 4 June 2013, the Chambers shall deal with matters which are not expressly assigned to the Plenum. In particular:

a) The Competition Chamber shall deal with matters relating to the application of Competition Act 15/2007 of 3 July 2007 and to competition advocacy activities in accordance with Article 5 of Act 3/2013 of 4 June 2013.

b) The Regulatory Supervision Chamber shall deal with matters relating to the application of Articles 6 to 12 of Act 3/2013 of 4 June 2013 and with the report provided for in paragraph 7 of Additional Provision Nine thereof.

2. In accordance with Article 21(2) of Law 3/2013 of 4 June 2013, a mandatory report shall be requested in relation to the following matters:

a) The matters provided for in Article 5(1)(b), (c), (d), (e), (f) and (h) and Article 5(2) of Act 3/2013 of 4 June 2013 when they affect sectors under supervision.

b) Infringement proceedings provided for in sectoral legislation and the rules implementing such legislation, in the context of the powers of the Commission, when the facts may constitute an infringement.

c) Procedures arising as a result of the application of Article 6(1) and (3) of Act 3/2013 of 4 June 2013 and of Article 13 bis of Act 32/2003.

d) With respect to the functions provided for in Article 7 of Act 3/2013 of 4 June 2013, the matters set out in Article 7(14), (15), (19), (21) and (30), as well applications for certification of the separation of activities under Article 7(3) of that Act.

e) The matters provided for in Article 8(4) of Act 3/2013 of 4 June 2013.

f) The matters provided for in Article 9(7) and (8) of Act 3/2013 of 4 June 2013.

g) With respect to the functions provided for in Article 10 of Act 3/2013 of 4 June 2013, the inadmissibility of proposals of the airport managing entity or the inapplicability of the revised modifications to charges established by the airport managing entity in accordance with Article 10(1), and the matters set forth in Article 10(2).

h) The matters provided for in Article 11(2) and (4) of Act 3/2013 of 4 June 2013.

i) With respect to Article 12(1) of Act 3/2013 of 4 June 2013, the matters provided for in sub-paragraphs (a)(i), (iii), (v), (vi) and (viii), (b)(i), (c), (d)(i) and (ii), (e) and (f)(v).

j) For the adoption of the report provided for in the procedure relating to the acquisition of holdings in the energy sector, on the terms provided for in Act 3/2013 of 4 June 2013.

Section 3. The Presidency and Vice-Presidency of the National Markets and Competition Commission

Article 15. The President of the National Markets and Competition Commission.

1. In accordance with Article 13 of Act 3/2013 of 4 June 2013, the President is the governing body of the National Markets and Competition Commission.

2. The President of the National Markets and Competition Commission, who shall also be the President of the Council in Plenum and the Competition Chamber, shall exercise the functions of management and representation of the Commission in accordance with Article 19 of Act 3/2013 of 4 June 2013. In the performance of his/her functions, the President is the competent body:

- a) To represent the National Markets and Competition Commission.
- b) To propose to the Plenum of the Council of the National Markets and Competition Commission the appointment and vacation of office of the Secretary of the Council, of the Heads of the Investigations Divisions and of the other management staff of the National Markets and Competition Commission.
- c) To call and chair the Council of the National Markets and Competition Commission in Plenum and the Competition Chamber, setting the agenda, and to direct discussions and suspend or adjourn them with just cause.
- d) To settle ties by casting vote.
- e) To endorse minutes and certificates of the decisions of the Plenum and the Competition Chamber.
- f) To coordinate, with the assistance of the Secretary of the Council, the proper functioning of the groups of the Commission.
- g) To present the preliminary draft budget of the National Markets and Competition Commission to the Council of the Commission for its approval.
- h) To act as the contracting authority of the Commission, to approve outgoings and to instruct payments and the appropriate movements of funds, and to submit the accounts of the Commission in accordance with Act 47/2003 of 26 November 2003.
- i) To enter into, within his/her powers, agreements with public and private entities.

j) To launch and decide on procedures for filling job positions making up the workforce of the National Markets and Competition Commission and to hire staff in the service of the National Markets and Competition Commission within its sphere of responsibilities.

k) To approve the appointment and vacation of office of non-management staff, proposed lists of job positions and the distribution of productivity bonuses and other performance bonuses, within the limits of the amount authorised for that purpose, to exercise disciplinary powers, to order separations from service and suspensions of functions, and to exercise the powers that, as regards staff, are conferred by civil service legislation on the sub-secretaries of ministerial departments, notwithstanding the powers conferred on the Heads of the Investigations Divisions under Article 19 of this Charter.

l) To propose the approval and amendment of the Regulations on the internal functioning of the National Markets and Competition Commission to the Council.

m) To inform the Minister for the Economy and Competitiveness and, where appropriate, the Ministers of other related Ministries, of decisions adopted by the Council which such bodies should be aware of.

n) To submit to the Ministry of the Economy and Competitiveness reports on claims for tortious liability arising from acts or resolutions of the Commission.

ñ) To resolve on appeals against acts and decisions adopted in areas falling within his/her powers.

o) To exercise the powers delegated to him/her by the Council of the National Markets and Competition Commission.

p) To exercise functions that are not expressly assigned to other bodies of the National Markets and Competition Commission and the powers conferred on him/her by the Regulations on internal functioning.

q) To exercise the other functions assigned to the President of the National Markets and Competition Commission by the legislation in force.

3. The President of the National Markets and Competition Commission may delegate his/her functions in accordance with Article 13 of Act 30/1992 of 26 November 1992.

4. In his/her capacity as President of the Competition Chamber, the President of the National Markets and Competition Commission shall be replaced, if that office is vacant, or if the President is absent or ill, by the member of the Chamber with the longest length of service and, if there are identical lengths of service, by the eldest member.

5. A Cabinet and its immediate response unit, of which the advisers referred to in Article 35 form part, shall report to the President.

Article 16. *The Vice-President of the National Markets and Competition Commission.*

1. The Vice-President of the National Markets and Competition Commission shall exercise the following functions:

- a) To cooperate with the President in as many tasks as may be required of him/her.
- b) To replace the President if the office of President is vacant, or if the President is absent or ill.
- c) To call and chair the Regulatory Supervision Chamber and to direct discussions and suspend or adjourn them with just cause.
- d) To settle ties by casting vote in the Regulatory Supervision Chamber.
- e) To endorse minutes and certificates of the decisions of the Regulatory Supervision Chamber.
- f) To exercise the functions delegated to him/her by the President or Council of the National Markets and Competition Commission.
- g) To exercise other functions forming an integral part of his/her status as Vice-President and the functions conferred on him/her by the Regulations on the internal functioning of the Commission.

2. If no appointment is made to the office of Vice-President of the National Markets and Competition Commission, and if the office of President is vacant, or if the President is absent or ill, or if any other statutory ground applies, he/she shall be replaced in the exercise of his/her functions as Chamber President by the member of the Regulatory Supervision Chamber with the longest length of service and, if there are identical lengths of service, by the eldest member.

3. A Cabinet and its immediate response unit, of which the adviser referred to in Article 35 forms part, shall report to the Vice-President.

Section 4. *The Investigations Divisions of the National Markets and Competition Commission*

Article 17. *The Investigations Divisions.*

1. In accordance with Article 25 of Act 3/2013 of 4 June 2013, the Investigations Divisions are managing bodies of the National Markets and Competition Commission:

- a) The Competition Division.
- b) The Telecommunications and Audiovisual Sector Division.

- c) The Energy Division.
- d) The Transport and Postal Sector Division.

2. The Heads of the Investigations Divisions shall be appointed and shall vacate office in accordance with Article 26(3) of Act 3/2013 of 4 June 2013.

Article 18. *The Heads of the Investigations Divisions.*

1. The Heads of the Investigations Divisions shall lead the appropriate Investigations Divisions, shall be responsible for presenting and explaining to the Council of the National Markets and Competition Commission, acting in Plenum or the appropriate Chamber, the proposed acts and decisions relating to proceedings conducted in their Division, shall advise the governing bodies from a technical and sectoral perspective, and shall exercise all of the powers conferred on their respective Divisions by Act 3/2013 of 4 June 2013 and the rest of the applicable law.

2. The Heads of the Investigations Divisions shall exercise the management functions relating to the staff in their Divisions. In particular, they shall:

- a) Direct, promote and supervise the activities of the groups in their respective Divisions.
- b) Allow the redistribution of functions within the relevant Divisions, between groups below Unit level, on account of service needs and having regard to the balanced division of workload, the accumulation of tasks and the increase in efficiency, seeking to ensure the highest level of coordination with the other services of the National Markets and Competition Commission.
- c) Propose the redistribution of resources within their Divisions to the President of the National Markets and Competition Commission as well as the appointment and vacation of office of non-management staff in their Divisions in positions subject to discretionary appointment.
- d) Inform the President of the National Markets and Competition Commission of the staff needs of their respective Divisions with a view to preparing a draft Public Employment Offer.
- e) Propose the draft list of divisional job positions to the President of the National Markets and Competition Commission.
- f) Submit preliminary reports, within the scope of their responsibilities, on the need, appropriateness and relevance of commencing the procedure for the preparation of circulars, information circulars and communications.

3. The staff in charge of the Units of the Investigations Divisions shall be appointed and removed from office by the Council, on the proposal of the President and after hearing the Head of the Investigations Division.

4. The Heads of the Investigations Divisions may delegate their functions, in accordance with Article 13 of Act 30/1992 of 26 November 1992.

5. On account of service needs, the Heads of the Investigations Divisions may reassign investigations into proceedings and other functions to the different Units of the Investigations Division in question.

6. Responsibility for coordinating the Investigations Divisions so that they function properly shall lie with the President of the National Markets and Competition Commission.

Subsection 1 *The Competition Division*

Article 19. *Functions of the Competition Division*

In accordance with Act 3/2013 of 4 June 2013, the Competition Division is the body entrusted with the functions of case investigation, research, studies and report preparation at the National Markets and Competition Commission as regards competition proceedings, anti-competitive conduct proceedings and concentration control proceedings as governed by Act 15/2007 of 3 July 2007. In particular, it is competent:

a) To handle complaints, submissions or requests for rulings sent to the CNMC which fall within the scope of application of Act 15/2007 of 3 July 2007.

b) To open investigations and initiate infringement proceedings *ex officio*.

c) To require notification of a concentration *ex officio* and to deem it inadmissible, where appropriate.

d) To require full-form notification of a concentration.

e) To carry out, on the terms and within the scope provided for in Article 27 of Act 3/2013 of 4 June 2013 and in Royal Decree 261/2008 of 22 February 2008, the necessary inspections for the proper application of competition legislation.

f) To issue, bring and prepare the appropriate draft resolutions in proceedings to be settled by the Council.

g) To submit proposed dismissals to the Council under Act 15/2007 of 3 July 2007.

h) To assess applications for exemption and to grant, where appropriate, conditional exemptions from payment of the fine. To submit to

the Council, where appropriate, the corresponding proposed exemption in the cases provided for in Article 65 of Act 15/2007 of 3 July 2007.

i) To assess applications for reduction of the fine, to draw up the ranking of applicants and to submit to the Council, where appropriate, the corresponding proposed reduction in payment of the fine in the cases provided for in Article 66 of Act 15/2007 of 3 July 2007.

j) To order the opening of termination by commitments proceedings and to submit the proposed termination by commitments to the Council.

k) To order the joinder, division or extension of proceedings.

l) To propose the adoption of interim measures to the Council.

m) To resolve on ancillary issues that may arise during investigations into cases, in particular, the taking of evidence, the taking of statements from interested parties during the investigations phase, the suspension of deadlines and declarations of confidentiality.

n) To take additional steps when requested by the Council with respect to proceedings that have already been submitted to the Council for resolution.

ñ) To initiate proceedings and submit proposals to the Council in relation to declarations of non-application, in accordance with Royal Decree 261/2008 of 22 February 2008.

o) To monitor performance of and compliance with the obligations, resolutions and decisions referred to in Article 41 of Act 15/2007 of 3 July 2007.

p) To apply the competent authority designation mechanisms in accordance with Act 1/2002 of 21 February 2002 and to monitor the uniform compliance with Act 15/2007 of 3 June 2007.

q) To apply the mechanisms for the referral of cases between the National Competition Commission and the European Commission as provided for in Article 4 of Council Regulation (EC) No 139/2004 of 20 January 2004.

r) To cooperate and provide the technical assistance required of it by the Council, preparing reports for submission to the Council.

s) To participate, where appropriate, in the preparation of the Commission's reports and proposals in the area of participation and cooperation with the public authorities and with the courts, notwithstanding the functions of other bodies of the Commission.

t) To cooperate with the European Commission and the competition authorities of the Member States of the European Union and to attend the different committees, working groups and expert meetings that may be arranged in accordance with Council Regulation (EC) No 139/2004 of 20

January 2004 on the control of concentrations between undertakings and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty on the Functioning of the European Union.

u) To support the President and the Council in the area of relations with other bodies and institutions in Spain, in the European Union (in particular the Competition Network), in other Member States and in third countries.

v) To perform any other functions that may be conferred on it by law or delegated to it by the Council.

Article 20. *Structure of the Competition Division*

The Competition Division shall be divided into the following Units:

- a) Industry and Energy Unit.
- b) Information Society Unit.
- c) Services Unit.
- d) Cartels and Leniency Unit.
- e) Surveillance Unit.

Subsection 2. *The Telecommunications and Audiovisual Sector Division.*

Article 21. *Functions of the Telecommunications and Audiovisual Sector Division.*

The Telecommunications and Audiovisual Sector Division is the body entrusted with the functions of case investigation at the National Markets and Competition Commission as regards electronic communications and the audiovisual sector under General Telecommunications Act 32/2003 of 3 November 2003 and General Audiovisual Communications Act 7/2010 of 31 March 2010. In particular, it is competent:

a) To submit draft resolutions to the Council concerning the supervision and oversight of the electronic communications market, and especially concerning the powers provided for in Article 6 of Act 3/2013 of 4 June 2013.

b) To submit draft resolutions to the Council concerning the supervision and oversight of the audiovisual communications market, and especially concerning the powers provided for in Article 9 of Act 3/2013 of 4 June 2013.

c) To submit proposals to the Council for the resolution of disputes in the following cases:

i) Disputes in the electronic communications markets, in accordance with Article 12(1)(a) of Act 3/2013 of 4 June 2013.

ii) Disputes in the audiovisual communications markets, in accordance with Article 12(1)(e) of Act 3/2013 of 4 June 2013.

d) To support the President in the area of relations with other bodies and institutions in Spain, in the European Union (in particular the European Commission) and in other Member States and with the Body of European Regulators for Electronic Communications, and to exercise the contact point and participation functions in the working groups of that Body.

e) To cooperate and provide the technical assistance required of it by the Council of the Commission, preparing reports for submission to the Council.

f) To issue reports in arbitration proceedings prior to the arbitral award in the cases provided for in General Telecommunications Act 32/2003 of 3 November 2003 and its implementing legislation.

g) To perform any other functions that may be conferred on it by law or delegated to it by the Council.

Article 22. Structure of the Telecommunications and Audiovisual Sector Division.

The Telecommunications and Audiovisual Sector Division shall be divided into the following Units:

- a) Electronic Communications Regulation Unit.
- b) Market Analysis and Electronic Communications Unit.
- c) Electronic Communications Technical Unit.
- d) Audiovisual Unit.

Subsection 3 The Energy Division

Article 23. Functions of the Energy Division

The Energy Division, as the body entrusted with the functions of case investigation at the National Markets and Competition Commission under Electricity Sector Act 54/1997 of 27 November 1997 and Hydrocarbon Sector Act 34/1998 of 7 October 1998 is the competent body, in particular:

a) To submit draft resolutions to the Council drawn up in exercise of the powers provided for in Article 7 of Act 3/2013 of 4 July 2013, and especially as regards supervision and oversight in the electricity and natural gas sectors.

b) To submit proposals to the Council for the resolution of disputes in the electricity and gas markets, in accordance with Article 12(1)(b) of Act 3/2013 of 4 June 2013.

c) To support the President and the Council in the area of relations with other bodies and institutions in Spain, in the European Union, in other Member States and in third countries and with the Agency for the Cooperation of Energy Regulators, and to exercise the functions of substitute

representative for the purpose of contact with and representation on the Board of Regulators of the Agency for the Cooperation of Energy Regulators.

d) To cooperate and provide the technical assistance required of it by the Council, preparing reports for submission to the Council.

e) To intervene in the conduct of arbitration proceedings in the cases provided for in Act 54/1997 of 24 November 1997 and Act 34/1998 of 7 October 1998 in the electricity and natural gas sectors, as well as in the legislation implementing those Acts, in the manner determined by the Arbitration Regulations of the Council of the Commission.

f) To initiate *ex officio* infringement proceedings falling within its powers in accordance with Act 34/1998 of 7 October 1998 and Act 54/1997 of 28 November 1997.

g) To request information and to carry out the inspections necessary for the proper supervision of the electricity and natural gas sectors in the cases provided for in Article 7 of Act 3/2013 of 4 June 2013.

h) To issue the appropriate reports in the exercise of the supervision functions falling within its powers and the other functions provided for in Article 7 of Act 3/2013 of 4 June 2013 or such reports as may be requested in relation to the gas and electricity sectors.

i) To open and conduct proceedings for the adoption of legally binding decisions for electricity and natural gas undertakings and to submit proposals to the Council for approval.

j) To submit proposed dismissals to the Council.

k) To order the joinder, division or extension of proceedings.

l) To propose the adoption of interim measures to the Council of the Commission.

m) To resolve on ancillary issues that may arise during investigations into cases, in particular, the taking of evidence, the taking of statements from interested parties during the investigations phase, the suspension of deadlines and declarations of confidentiality.

n) To participate, where appropriate, in the preparation of the Commission's reports and proposals in the area of participation and cooperation with the public authorities and with the courts, notwithstanding the functions of other bodies of the Commission.

ñ) To perform any other functions that may be conferred on it by law in the electricity and natural gas sectors or delegated to it by the Council of the Commission or assigned to it by the Regulations on internal functioning.

Article 24. *Structure of the Energy Division.*

The Energy Division shall be divided into the following Units:

- a) Electricity Unit.
- b) Natural Gas Unit.
- c) Economic / Financial Regulation and Regulated Prices Unit.
- d) Energy Derivatives Markets Unit.

Subsection 4. The Transport and Postal Sector Division

Article 25. *Functions of the Transport and Postal Sector Division.*

The Transport and Postal Sector Division is the body entrusted with the functions of case investigation at the National Markets and Competition Commission in relation to the transport and postal sectors under Air Safety Act 21/2003 of 7 July 2003, Railway Sector Act 39/2003 of 17 November 2003 and Act 43/2010 of 30 December 2010 on the Universal Postal Service, on the Rights of Users and on the Postal Market. In particular, it is competent:

a) To submit draft resolutions to the Council concerning the supervision and oversight of the postal market with respect to the functions and powers conferred on it by Act 3/2013 of 4 June 2013, and especially concerning the powers provided for in Article 8 of that Act.

b) To submit draft resolutions to the Council concerning supervision and oversight as regards airport charges, and especially concerning the powers provided for in Article 10 of Act 3/2013 of 4 June 2013.

c) To submit draft resolutions to the Council concerning supervision and oversight of the railway sector, and especially concerning the powers provided for in Article 11 of Act 3/2013 of 4 June 2013.

d) To submit proposals to the Council for the resolution of disputes, after the appropriate formalities, in the following cases:

i) Disputes in the postal market, in accordance with Article 12(1)(d) of Act 3/2013 of 4 June 2013.

ii) Disputes in airport charges, in accordance with Article 12(1)(c) of Act 3/2013 of 4 June 2013.

iii) Disputes in the railway sector, in accordance with Article 12(1)(f) of Act 3/2013 of 4 June 2013.

e) To request information and to carry out the necessary inspections for the proper supervision of the postal and railway sectors and of airport charges.

f) To open and conduct infringement proceedings on matters falling within its powers.

g) To cooperate with other regulatory bodies from other Member States of the European Union on postal and railway matters and the supervision of airport charges, to attend different committees, working groups and meetings

as required, and to support the President and the Council in the area of relations with other bodies and institutions in Spain and in other Member States of the European Union and with the cooperation bodies of regulators in the area of postal and railway matters and the supervision of airport charges.

h) To cooperate and provide the technical assistance required of it by the Council of the Commission, preparing reports for submission to the Council.

i) To perform any other functions that may be conferred on it by law or delegated to it by the Council.

Article 26. Structure of the Transport and Postal Sector Division.

The Transport and Postal Sector Division shall be divided into the following Units:

- a) Airport Charges Unit.
- b) Railway Sector Unit.
- c) Postal Sector Unit.
- d) Markets Analysis Unit.

Section 5. Other bodies

Article 27. The General Secretariat of the National Markets and Competition Commission.

1. The National Markets and Competition Commission shall have a General Secretariat, which shall act under the direct supervision of the President of the National Markets and Competition Commission. The General Secretariat shall be responsible for providing common services to the Commission.

2. The General Secretariat of the National Markets and Competition Commission shall have the following functions:

a) Management and planning of the human resources of the National Markets and Competition Commission, on the proposal of the managing bodies on which Act 3/2013 of 4 June 2013 and this Charter confer powers in relation to staff.

b) Establishment of staff training plans and management of community outreach initiatives and occupational risk prevention programmes.

c) Maintenance of relations with staff participation and representation bodies.

d) Conservation, maintenance and ongoing review of assets.

e) Management and organisation of security services, monitoring, communications, conservation, maintenance and other common services of the offices of the National Markets and Competition Commission.

f) Conduct and processing of procurement procedures.

g) Cooperation in the preparation of conferences, seminars and any other similar activities organised by the National Markets and Competition Commission.

h) Economic / financial and asset management of the Commission; preparation of the preliminary draft budget of income and expenditure and arranging modifications thereto; supervision and monitoring of the implementation thereof; accounting, financial and asset management; management of services relating to the accounts office, cashier's department and collection; and preparation of calculations and submission of the accounts of the Commission.

i) Management and collection, during the voluntary period, of fees for the analysis and examination of concentration operations and in respect of the postal levy in accordance with Additional Provision Fourteen of Act 3/2013 of 4 June 2013.

j) Management and organisation of filing and registration services at the National Markets and Competition Commission.

k) Development of the IT services of the e-administration systems' common services; design and implementation of plans as well as coordination of actions and provision of services in relation to information and communication technologies; management and maintenance of the electronic headquarters and websites; management of the internal communications network; management of IT and telematic resources and the allocation thereof to the different organisational groups; advice; technical assistance, including that provided during inspections carried out by the competent body in accordance with Article 27 of Act 3/2013 of 4 June 2013; and training of users of the National Markets and Competition Commission. The foregoing is without prejudice to the inspection powers of the Competition Division.

In the exercise of these functions, the General Secretariat may opt for the use and maximisation of common e-administration services and modules, on the terms agreed to with the bodes in charge of that matter in Central Government.

l) Drafting, proposing and processing agreements with public and private entities to be entered into by the President of the Commission.

m) Exercise of powers in relation to document management, statistics, documentary resources, library services and publications of the National Markets and Competition Commission.

n) Design and implementation of a professional career system as well as a performance evaluation system for staff in the context of the legislation in force.

Article 28. *The General Secretary.*

1. The General Secretary of the National Markets and Competition Commission shall be appointed and removed from office by the Plenum of the Council of the National Markets and Competition Commission, on the proposal of the President of the National Markets and Competition Commission. The General Secretary must be a tenured civil servant belonging to a corps in the A1 subgroup in the service of Central Government.

2. The General Secretary of the National Markets and Competition Commission shall exercise all of the powers conferred on the General Secretariat of the National Markets and Competition Commission, in accordance with Article 28 of this Charter.

Article 29. *Structure*

1. The following Units shall report to the General Secretariat of the National Markets and Competition Commission:

- a) Human Resources and Economic and Asset Management Unit.
- b) Statistics and Documentary Resources Unit.
- c) Information and Communication Technologies Unit.

2. The Heads of the Units of the General Secretariat shall be appointed by the Council, on the proposal of the President and after hearing the General Secretary.

Article 30. *Competition Advocacy Division.*

1. The Competition Advocacy Division, which shall report directly to the President, shall be responsible for coordinating the proposals to be submitted to the Council relating to competition advocacy, sectoral reports that include proposals to amend the regulatory framework, State aid and reports on legislative initiatives.

2. The Competition Advocacy Division shall be divided into the following Units:

- a) Studies and Reports Unit.

- b) State Aid and Legislative Initiative Reports Unit.
- c) Economic Analysis Unit.

3. The Heads of the Units of the Competition Advocacy Division shall be appointed by the Council, on the proposal of the President and after hearing the Head of the Competition Advocacy Division.

Article 31. *Internal Oversight Division.*

1. The Internal Oversight Division shall report directly to the President. It shall be responsible for ensuring that all actions taken within the National Markets and Competition Commission are carried out in such a way as to ensure an appropriate level of compliance, efficacy and efficiency in the achievement of its objectives and that its functions and powers are exercised in accordance with the principles of impartiality, objectivity and independence.

2. The actual constitution of the Internal Oversight Division shall take effect once the Council has approved the rules under which it is required to operate.

3. The Internal Oversight Division must inform the Council of the outcome of the work undertaken to implement audit plans and internal oversight actions. It shall also carry out as many internal oversight actions as may be assigned to it by the Council on a permanent or *ad hoc* basis.

4. The Internal Oversight Division shall also be responsible for preparing the specific report of the internal body on the compatibility of the decisions taken by the bodies of the National Markets and Competition Commission with the procedural legislation that applies in each case, in accordance with Additional Provision Two of Act 44/2002 of 22 November 2002 on Measures to Reform the Financial System. That report must be approved by the Council and shall be submitted to the relevant Committee of the Congress of Deputies and to the Government.

CHAPTER III

Staff in the service of the National Markets and Competition Commission

Article 32. *Staff rules.*

1. Staff in the service of the National Markets and Competition Commission shall be composed of:

- a) Tenured civil servants.
- b) Non-civil service employees.

c) *Ad hoc* staff.

2. Each year, the President of the National Markets and Competition Commission shall submit the Commission's draft Public Employment Offer to the Ministry of Finance and Public Authorities, through the Ministry of the Economy and Competitiveness. That draft shall take account of the human resource needs for the work of the National Markets and Competition Commission so that it can properly exercise its functions.

Article 33. *Civil servants.*

1. In accordance with Article 31(2) of Act 3/2013 of 4 June 2013, civil service staff of the National Markets and Competition Commission shall be governed by the rules governing civil service staff in Central Government.

2. The President of the National Markets and Competition Commission shall announce and decide on the procedures for filling job positions. The announcements and decisions shall be published in the Official State Gazette.

Article 34. *Non-civil service employees.*

1. In accordance with Article 31(3) of Act 3/2013 of 4 June 2013, non-civil service employees of the National Markets and Competition Commission shall be governed by the Revised Workers' Statute, approved by Legislative Royal Decree 1/1995 of 24 March 1995, the applicable contractual provisions, where appropriate, and the provisions of Act 7/2007 of 12 April 2007 on the Public Employment Basic Statute which may expressly apply.

2. The President shall be responsible for executing the employment contracts of the non-civil service employees who are recruited, in accordance with the Public Employment Offer of Central Government, by public announcement, which shall be subject to the principles of equality, merit and ability, as well as the principle of access to public employment for persons with disability.

Article 35. *Ad hoc* staff.

1. The President of the National Markets and Competition Commission may appoint up to two advisers to perform trust-based and special advisory functions which are not reserved to tenured civil servants. Such appointments shall be charged to the budgetary appropriations allocated for that purpose. The Vice-President may appoint one adviser for the same purpose.

2. The appointment and removal of *ad hoc* staff shall be open to persons with demonstrated professional experience and training. In all cases, removal shall take place upon removal of, respectively, the President and Vice-President.

Article 36. *Management staff.*

1. Pursuant to Article 31 of Act 3/2013 of 4 June 2013, the Heads of the Investigations Divisions and the Secretary of the Council shall have the status of management staff. 2. The following shall also be regarded as management staff:

- a) The Head of the Competition Advocacy Division and the Heads of Unit reporting to him/her.
- b) The Head of the Legal Services Division.
- c) The Secretary of the Council.
- d) The General Secretary and the Heads of Unit reporting to him/her.
- e) The Head of the Internal Oversight Division.
- f) The Heads of Unit of the Investigations Divisions.

2. In accordance with Articles 26(3) and 31(5) of Act 3/2013 of 4 June 2013, non-civil service management positions shall be filled using senior management employment contracts.

3. The list of job positions shall determine which management positions must be filled by tenured civil servants belonging to corps from the subgroup A1 and which may be filled either by such civil servants or non-civil service employees.

Article 37. *List of job positions.*

The National Markets and Competition Commission shall have a list of job positions, proposed by the President to the competent bodies, which shall contain the following information:

a) The positions that must be filled exclusively by civil servants, as they entail the exercise of functions involving direct or indirect participation in the exercise of public powers and the protection of the general interests of the State and public authorities, as well as the title of the positions, the professional classification groups, corps or scales, if any, to which they are attached, the systems for filling positions and additional remuneration, notwithstanding Transitional Provision Six of Act 3/2013 of 4 June 2013.

b) The remaining job positions, which shall, as a general rule, be filled by civil servants. However, reference shall be made to which of those

positions may also be filled by non-civil service employees, in accordance with the legislation on the civil service applicable to Central Government.

Article 38. *Filling of civil servant positions and recruitment of non civil service employees.*

1. The filling of civil servant positions shall be carried out in accordance with the procedures governing same set forth in the legislation on the civil service applicable to civil servants of Central Government. The appropriate announcements shall be published in the Official State Gazette.

2. Announcements for the recruitment of non-civil service employees shall be published in the Official State Gazette.

3. The recruitment of non-civil service employees to the Commission shall be by external competitive examination or internal competition.

Article 39. *Incompatibilities of staff of the National Markets and Competition Commission.*

The staff of the National Markets and Competition Commission shall be subject to Act 53/1984 of 26 December 1984 on Incompatibilities of Staff of Public Authorities.

Article 40. *Duty of secrecy.*

1. Staff in the service of the National Markets and Competition Commission shall uphold the secrecy of any information of a confidential nature that may have come into their knowledge in the exercise of their functions, even after leaving those functions.

2. The Council of the National Markets and Competition Commission, at the proposal of the President, may approve the Code of Conduct for staff of the National Markets and Competition Commission, which shall be published in the Official State Gazette.

CHAPTER IV

Procurement, assets, budget and oversight

Article 41. *Procurement.*

1. The contractual activity of the National Markets and Competition Commission shall be subject to the Revised Public Sector Contracts Act, approved by Legislative Royal Decree 3/2011 of 14 November 2011, and to its implementing legislation. The contracting authority shall be the President of the National Markets and Competition Commission.

2. The President of the National Markets and Competition Commission, as contracting authority of the Commission, shall be assisted by a contracts award panel, which is the competent body for evaluating bids under Article 320 of the Revised Public Sector Contracts Act.

Article 42. *Assets.*

1. For the achievement of its aims, the National Markets and Competition Commission shall have its own assets which shall be independent of the assets of Central Government. Those assets shall comprise all of the property and rights owned by the Commission.

2. The management and administration of such property and rights, as well as the property and rights of the State assigned to the Commission for the achievement of its aims, shall be carried out in accordance with the provisions of this Charter and the provisions on public bodies set out in Public Authority Assets Act 33/2003 of 3 November 2003.

3. The President of the National Markets and Competition Commission shall be responsible for sanctioning the acquisition, by any means, of the immovable property and rights which are necessary for the aims of the Commission, as well as the use and lease thereof, in accordance with the procedure set forth in Public Authority Assets Act 33/2003 of 3 November 2003.

4. The National Markets and Competition Commission shall draw up and update its inventory of property and rights, which shall include property and rights both owned by it and owned by the State but assigned to the Commission. That inventory shall be reviewed annually, with reference to 31 December, and shall be submitted to the President of the National Markets and Competition Commission for approval. The inventory and any amendments thereto shall be sent to the Ministry of Finance and Public Authorities annually during the first month of each calendar year.

Article 43. *Budget.*

1. Every year, the Council of the National Markets and Competition Commission shall approve the relevant preliminary draft budget, following the structure indicated by the Ministry of Finance and Public Authorities, and shall send it to the Ministry of the Economy and Competitiveness for subsequent processing in accordance with General Budget Act 47/2003 of 26 November 2003.

2. In the Commission's expenditure budget, appropriations shall be restricted and binding at the level of specification established by budget

legislation for independent bodies. Variations entailing an overall increase in the appropriations that were initially approved shall be adjusted as follows:

a) The President of the Commission shall be responsible for authorising budgetary variations entailing an increase of up to three percent of the initial figure of the Commission's overall budget for expenditure, provided that there is no increase in appropriations for staff expenditure.

b) The Minister of Finance and Public Authorities shall be responsible for authorising variations entailing an increase of more than three percent of the initial figure of the Commission's budget. He/she shall also be responsible for authorising variations which increase appropriations for staff expenditure. Variations which affect staff expenditure shall not be taken into account for the purpose of the percentage set out in letter (a).

c) Should the variation affect State contributions set out in the State budget, the power to authorise both modifications shall lie with the authority to which the modification was assigned in the State budget. These variations shall not be taken into account for the purpose of the percentages set out in letters (a) and (b) above.

Internal variations between the different budgetary items, which do not increase the overall budget, shall be approved by the President of the Commission unless they affect appropriations for staff expenditure, in which case the power to authorise shall lie with the Minister of Finance and Public Authorities.

Variations to the budget, once authorised by the President of the Commission, shall be notified to the Directorate-General of Budgets of the Ministry of Finance and Public Authorities.

Article 44. *Applicable accounting rules.*

1. In order to ensure that the operations, costs and outcomes of its work are properly recorded, and to provide data and information of economic importance, the National Markets and Competition Commission shall draw up and submit its accounts in accordance with Act 47/2003 of 26 November 2003 and with the accounting rules and principles set forth in the National Chart of Public Accounts and its implementing legislation.

2. In order to comply with the previous paragraph, the National Markets and Competition Commission shall have an accounting information system which gives, through statements and reports, a true picture of the assets, financial situation, results and implementation of the budget.

The Commission shall also have an analytical accounting system that provides cost information on its activities which is sufficient for the proper and

efficient adoption of decisions and for the determination of the different fees designed to defray the expenses arising from supervising the relevant sectors, particularly the general operator fee under paragraph 1 of Schedule 1 to General Telecommunications Act 32/2003 of 3 November 2003 and the fees applicable to the provision of services and performance of activities relating to the electricity and natural gas sectors under paragraph I.4 of the Schedule to Act 3/2013 of 4 June 2013.

3. In accordance with Article 125 of Act 47/2003 of 26 November 2003, the National Markets and Competition Commission shall satisfy the functional requirements and, where appropriate, comply with the IT procedures laid down by the State Audit Agency in relation to the accounting information system.

Article 45. *Economic and financial oversight.*

1. Responsibility for external oversight of the economic / financial management of the National Markets and Competition Commission shall lie with the Court of Auditors, in accordance with the specific legislation thereon.

2. Responsibility for internal oversight of the economic / financial management of the National Markets and Competition Commission shall lie with the State Audit Agency, in accordance with Act 47/2003 of 26 November 2003. Ongoing financial oversight shall be carried out by the Audit Branch at the Commission, which shall report to the State Audit Agency.

CHAPTER V

Arbitration functions

Article 46. *Arbitration functions*

1. The National Markets and Competition Commission may perform the functions of institutional arbitration, at law and in equity, that are conferred on it by statute as well as the functions submitted to it voluntarily by economic operators under Arbitration Act 60/2003 of 23 December 2003.

2. The arbitration proceedings shall observe the principles of fair hearing, evidence, adversarial process and equal treatment and shall be subject to the rules of the United Nations Commission on International Trade Law or, where appropriate, the rules laid down by the Council of the National Markets and Competition Commission. Provision may also be made for an abbreviated procedure having regard to the degree of complexity of the claim and its low amount.

3. The Council of the National Markets and Competition Commission shall be responsible for administering the arbitration, and each Chamber may, depending on the subject-matter of the claim, appoint arbitrators and determine the fees in accordance with the fee scales approved by the Council.