

COMPETITION ACT 15/2007 of 3rd July

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(Non-official Text)

EXPLANATORY STATEMENT

I

Article 38 of the Constitution recognises the freedom of enterprise within the framework of a market economy and the guarantee and protection of it by the public authorities, in accordance with the demands of the economy in general and, as the case may be, of the planning. The existence of effective competition between businesses constitutes one of the defining elements of the market economy, disciplines the action of businesses and reallocates the productive resources in favour of the most efficient operators or techniques. This productive efficiency translates to the consumer in the form of lower prices or an increase in the quantity offered of the products, their variety and quality, with the subsequent increase in the welfare of society as a whole.

In this context, there is an overall agreement with regard to the growing importance of competition, which has become established as one of the principal elements of economic policy today. Within the supply policies, competition policy complements other actions regulating economic activity and is a first-rank instrument for fostering the factor productivity and the general competitiveness of the economy.

Consequently, it is necessary to have a system that, without intervening unnecessarily in the free business decision-making, allows for the adequate instruments to guarantee the good functioning of market processes.

With this aim, the Competition Act 16/1989, of 17th July, was passed, on the basis of which a system has been articulated based on the existence of two national specialist administrative bodies for the fight against practices restrictive of competition and the control of economic concentrations, the Competition Service and the Competition Court.

Since it came into force, there have been a number of amendments, some of them far-reaching, and various developing regulations have been enacted. Also, Act 1/2002, of 21st February, regarding Co-ordination of the State and Autonomous Communities' Competences on Competition Defence, was passed. Finally, in recent years, a significant reform of the Community competition framework has come about, which has led to the new Council Regulation (CE) No. 139/2004, of 20 January 2004, on the control of concentrations between undertakings, and, especially, to the modernisation of the fight against restrictive competition conduct focused on the Council Regulation (CE) No. 1/2003, of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

Within this framework, the object of this Act is the reform of the Spanish competition system in order to strengthen the existing mechanisms and provide it with the instruments and the optimum institutional structure to protect effective competition in the markets, taking into account the new Community system of regulation and the Autonomous Communities competences for the application of the provisions relating to restrictive competition practices pursuant to the Act 1/2002, of 21st February, regarding Co-ordination of the State and Autonomous Communities' Competences on Competition Defence.

For this, the Act starts on the basis of the experience acquired over the last fifteen years through the application of national and Community competition rules and is guided by five clear principles: guarantee of the legal certainty of economic operators, independence of decision-making, transparency and responsibility to society of the administrative bodies responsible for the application of the Act, efficacy in the fight against conduct restrictive of competition and the search for consistency of the whole system and, in particular, for the adequate interdependence of the various institutional planes that interact in this field.

II

The Act is structured in five titles that regulate, respectively, the substantive questions, the institutional aspects, the National Competition Commission, the procedural questions and the sanctioning system.

The first title includes the substantive aspects of the three types of principal instruments of this policy: system applicable to conduct restrictive of competition, principles of concentration control and system for monitoring and proposal in matters of public aid.

With regard to the first chapter, relating to conduct restrictive of competition, the Act primarily introduces changes in three lines. In the first place, the different types of infringement are clarified and simplified. Secondly, it goes from the system of individual authorisation of prohibited agreements to a system of legal exemption in line with the Community model. Thirdly, the effects of the legal exemption and the treatment of “de minimis” conduct are clarified.

In terms of the types of infringement, the prohibition is maintained of agreements between undertakings and of the abuse of a dominant position, as well as the misrepresentation of free competition through unfair acts, with the wording of this last type being clarified. However, the specific reference to the abuse of economic dependence is removed, which is already regulated in the Unfair Competition Act 3/1991 and may, therefore, be included in the misrepresentation of free competition through unfair acts.

In relation to going to the system of legal exemption, the Act excludes from the prohibition agreements that meet certain requirements, in line with the ones set out in the Community rules. In essence, it concerns the prohibitions not being applicable to those restrictions of competition proportional to the benefits that they generate in terms of efficiency in the allocation of resources and, therefore, of general welfare.

The change of system is completed with the disappearance of the individual authorisations by the competition authority and, therefore, the step towards self-assessment by undertakings of the legal fit of their own agreements.

With the aim of strengthening its legal certainty and despite the fact that reference to Community rules is consubstantial with the practice of competition defence in Spain, the Act refers expressly to the role of the EC block exemption Regulations in the application of the new legal exemption in the national sphere. Also maintained is the possibility of the government approving this type of exemptions for agreements that do not affect trade between Member States. Likewise, it contemplates a system in line with the Community one for findings of inapplicability of prohibitions to specific conduct.

Finally, extended to all the types of infringement set out in this chapter is the exemption of the conduct that results from the application of a rule at the level of an Act and of the “de minimis” conduct, understanding as such those that, due to their minor importance,

are not liable to affect competition significantly, the characteristics of which will be specified by means of the corresponding developing regulation.

As regards the second chapter, relating to the substantive aspects of the control of economic concentrations, the Act offers new features in three principal areas. In the first place, it clarifies and extends the concept of concentration for the purposes of control, establishing a “simplified” procedure for operations less likely to affect competition. Secondly, it makes more flexible the system of compulsory notification with suspending effect until a favourable ruling of the Administration is given. Finally, it strengthens the participation of the National Competition Commission in the control of concentrations, limits the government’s role in it and specifies the criteria of substantive assessment that will guide the decisions of both bodies.

In terms of the concept of concentration, the Act focuses its definition on the existence of a stable change in the control structure, *de jure* or *de facto*, of an undertaking, and includes all of the joint ventures with “full functions”, so unifying the treatment of those of a concentration and cooperative nature. Besides revising upwards the market share threshold and forecasting a mechanism for the update of turnover, a “simplified” notification system is introduced for operations less likely to hinder the maintenance of effective competition in markets, with a reduced rate.

In relation to the relaxation of the procedure, the Act maintains the system of mandatory notification with suspending effect but envisages the possible lifting of the obligation of suspending the execution of the concentration at any time in the course of proceedings. Also, the treatment of share takeover bids is aligned with Community treatment such that the obligation of suspension shall only affect the exercise of the voting rights inherent in their titles and not the possibility of launching the bid, providing the notification periods set out in the Act are fulfilled.

With regard to the criteria of substantive assessment, the Act clearly separates those that will guide decision-making by the National Competition Commission, focused on the maintenance of effective competition in the markets, from those on which government intervention may be based, related to the protection of the general interest of society.

Consequently, on the one hand, the elements that the National Competition Commission will assess are clarified, with systematisation of, among other possible ones, those that have been considered to date in the reports of the Competition Service and of the Competition Court, and with expression of the treatment of business efficiencies and maintenance of the assessment of the cooperative aspects or of the restrictions on competition accessory to the concentrations. On the other hand, the criteria of substantive assessment are indicated which will guide a decision of the Council of Ministers different from those of the National Competition Commission, including a non-exhaustive list of specific criteria.

The third chapter deals with public aid. In this area, the competences of the National Competition Commission are completed, which may analyse the criteria of awarding aid from the point of view of competition with the aim of issuing reports and addressing recommendations to the public authorities. For this, certain obligations of information to the National Competition Commission are established and the possible complementary participation of the competent bodies of the Autonomous Communities is expressly foreseen through the issuing of reports with regard to the aid awarded by the autonomous and local Administrations in the geographical area of their competence. All of this, evidently, is notwithstanding the system of control by the European Commission

laid down in the Community regulations.

The second title deals with the institutional scheme. The first chapter refers to the competent administrative bodies for the application of this Act, with a principal new feature, the creation in the State sphere of a single institution independent of the government, the National Competition Commission, which shall integrate the present Service Competition and Competition Court, which disappear. The National Competition Commission offers a pyramidal structure focused on the existence of two separate organs, the Directorate of Investigation and the Council, which independently carry out their respective functions of handling and resolving under the supervision and coordination of the Chairman, with the support of a range of common services. The second chapter sets out mechanisms for the coordination of all of the administrative bodies that intervene in the application of the Act and coordination with the sectorial regulators, with the object of safeguarding the consistency of the competition policy, efficiency in the allocation of public resources and the legal certainty of the economic operators.

In the last instance, guidelines are established to guide the relationships between the various bodies, which may naturally be complemented by the informal mechanisms that may be established with a view to achieving the adequate coordination in the daily exercise of their respective competences. In addition, mechanisms are established for cooperation with the jurisdictional bodies in the processes of application of competition rules.

The third title refers to the National Competition Commission, the body responsible for applying this Act, promoting and protecting the maintenance of effective competition in all the production sectors and throughout the national territory. In this sphere, the Act is structured in two chapters: the first regulates the general aspects of the National Competition Commission and the second its management organs.

As regards the general aspects, included in the first chapter, the Act first specifies the legal nature and functioning system of the new National Competition Commission, detailing its composition and economic resources. Secondly, the functions of the new National Competition Commission are included, both of handling, resolving and arbitration and of consultation and promotion and harmonisation of competition in the markets. Finally, a section is included on the transparency and social responsibility of the National Competition Commission, where it stresses the publicity of all of its actions and the special responsibility to society for its actions.

As regards the second chapter, relating to the management organs of the National Competition Commission, two fundamental principles govern its design: the independence of criterion of this institution with regard to the government and the separation between handling and resolution. These principles must also be combined with the need to coordinate adequately the actions of the organs responsible for the handling and resolution, and to ensure the efficacy of the competition policy as an instrument of economic policy.

Because of this, the Act specifies the system of appointment and ceasing of the management organs of the National Competition Commission, geared towards guaranteeing its independence in decision-making and, at the same time, responsibility to society.

Besides this, the Act establishes the independence in exercising the functions of handling or proposal and resolution by the Directorate of Investigation and the Council of the National Competition Commission. However, it preserves the unity of action and

coordination of all of the services and organs under the management of the Chairman of the National Competition Commission, who has broad functions, among others, the leadership of all of the personnel, the multi-annual inspection plans and chairing the Competition Council.

The task of resolving of the Council focuses on the adoption of decisions on the basis of the proposals of the Directorate of Investigation in relation to sanctioning or concentration control proceedings. In the field of restrictive competition conduct, the Council is competent both to decide the shelving or dismissal of the proceedings and resolve the conventional termination and to declare the prohibition and impose the corresponding penalties and decide the imposition of interim measures.

For its part, the handling task of the Directorate of Investigation focuses on the initiation and processing of proceedings, the referral of proposals to the Council of the National Competition Commission, the drafting of reports and the allocation of proceedings with other bodies.

The fourth title regulates the different procedures both for prohibited conduct and for concentration control. In this field, the reform is guided by the search for the balance between the principles of legal certainty and administrative efficacy. Consequently, procedures are considerably simplified and the handling and the pure resolution are clearly separated, so eliminating the possible duplication of actions and administrative appeals against acts that put an end to the procedure.

The first chapter includes the common provisions to the procedures of restrictive conduct, interim measures and concentration control. Specifically, it details the rules in terms of maximum periods for resolutions corresponding to the special procedures laid down in this Act and the powers of the National Competition Commission for gathering information, conducting inspections and monitoring fulfilment of the obligations derived from law and the appropriate appeals.

The second chapter regulates the sanctioning procedure for restrictive conduct, with a handling phase on the part of the Directorate of Investigation in which all the necessary acts for the clarification of the facts will be conducted and the cross-examination and the right of defence of the defendants shall be guaranteed. After the referral of the corresponding report-proposal, the Council shall adopt a resolution, having carried out the complementary actions for the handling that it deems necessary, the consultations set out by current regulations and, as the case may be, a hearing. In line with Community regulations, the Act introduces the possibility that structural conditions can be imposed in this resolution.

In this sphere, the relaxation of the system of conventional termination should be pointed out, focused on the proposal on commitments on the part of the alleged offender, the negotiation with the Directorate of Investigation and the referral to the Council of a proposal for resolution, always before the report-proposal, which may be adopted without the need to have the agreement of the rest of the interested parties in the proceedings.

As regards the interim measures, the Act relaxes and streamlines the system for its decision, at any time during the course of the proceedings and without a maximum duration period.

The third chapter refers to the concentration control procedure. In this sphere, the Act maintains the two phases of the procedure and the shortened periods that have characterised the system in Spain but allocates the competence for its handling and resolution to the National Competition Commission. In the first phase, which shall last a

maximum of one month, the operations that do not pose problems of competition shall be analysed and approved. In the second phase, a more detailed analysis of the operation will be made, with participation of interested third parties, with the aim of the Council of the National Competition Commission adopting the final resolution.

In the procedure before the National Competition Commission, together with the imposition of conditions, the submission of commitments by the notifying parties is foreseen to resolve the possible problems of competition derived from the concentration and the possible consultation of interested third parties about them.

In case the resolution of the Council is one of prohibition or subordination to commitments or conditions, the Minister of Economy and Finance will have a period of fifteen days in which to refer the concentration to the Council of Ministers for its intervention. The final decision of the Council of Ministers, duly motivated, that may authorise the concentration with or without conditions, must be adopted within a maximum period of one month after the referral of the proceedings, and a report may be requested of the National Competition Commission.

Finally, the fifth title includes the sanctioning system. In this sphere, the Act is a significant advance in legal certainty insofar as it makes a graduation of the various infringements set out in it and clarifies the maximum penalties of each type, set in terms of a percentage of the total turnover of the offenders. Similarly, the criteria that shall determine the specific fine in each case are specified, in line with current trends in the European arena. It also envisages the publicity of all of the penalties imposed in application of the Act, which will strengthen the deterrent and exemplary power of the resolutions that are adopted.

A leniency procedure is also introduced, similar to the one in effect in the Community arena, whereby undertakings that, having been part of a cartel, denounce its existence and provide substantial evidence for the investigation shall be exonerated from payment of the fine, providing they cease their infringing conduct and have not been the instigators of the rest of the members of the prohibited agreement. Likewise, the amount of the fine may be reduced for undertakings that collaborate but do not meet the requirements for complete exemption.

The Act is completed by eleven additional provisions, two transitional provisions, one repeal provision and three final provisions. In particular, the Additional Provisions are used to introduce amendments to certain jurisdictional and procedural rules with the aim of adequately articulating the private enforcement of the competition rules by Mercantile courts, one of the principal contributions of this Act.

Consequently, the First additional provision, pursuant to the Judiciary Organic Act, establishes the competence of Mercantile Courts for the application of Articles 1 and 2 of the Competition Act, in line with the provisions of Community regulations in relation to Articles 81 and 82 of the Treaty of the European Community.

For its part, the Second additional provision amends the Civil Procedure Act with the aim of expressly envisaging the participation of the national and Community competition bodies as “amicus curiae” in the proceedings of application of the competition regulations by the competent jurisdiction and various information mechanisms to permit the adequate cooperation of the administrative bodies with the judicial ones. Finally, the possible stay of judicial proceedings is foreseen in certain circumstances when the competent judge considers necessary to hear the administrative pronouncement for issuing a final judgement in application of the national and EC competition rules.

Finally, the Seventh additional provision amends Administrative Jurisdiction Act 29/1998, of 13 July, to clarify the appeal system against the resolutions of the national and autonomous competition bodies and the judicial authorisation procedure in the event of there being opposition to an inspection conducted pursuant to this Act.

TITLE I
Competition
CHAPTER I
Prohibited conduct

Article 1. Collusive conduct.

All agreements, collective decisions or recommendations, or concerted or consciously parallel practices are prohibited, which have as their object, produce or may produce the effect of prevention, restriction or distortion of competition in all or part of the national market and, in particular, those which consist of:

- a) The direct or indirect fixing of prices or any other trading or service conditions.
- b) The limitation or control of production, distribution, technical development or investment.
- c) The share-out of the market or sources of supply.
- d) The application, in trading or service relationships, of dissimilar conditions to equivalent transactions, thereby placing some competitors at a disadvantage compared with others.
- e) The subordination of the conclusion of contracts to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of these contracts.

2. Any agreements, decisions and recommendations that, being prohibited by virtue of the provisions in Section 1, are not covered by the exemptions set out in this Act are automatically void.

3. The prohibition in Section 1 shall not apply to agreements, decisions, recommendations and practices that contribute to improving the production or the commercialisation and distribution of goods and services or to promoting technical or economic progress, without the need for any prior decision for this purpose, providing that:

- a) They allow consumers a fair share of its benefits.
- b) They do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and
- c) They do not afford participating undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

4. The prohibition in Section 1 shall not apply to agreements, collective decisions or recommendations, or concerted or consciously parallel practices that comply with the provisions set out in the Community Regulations on the application of Article 81(3) of the EC Treaty for certain categories of agreements, decisions by associations of undertakings and concerted practices, including when the corresponding conduct may

not affect trade between EU Member States.

5. The Government may also declare through Royal Decree the application of Section 3 of this article to certain categories of conduct, prior report by the Competition Council and the National Competition Commission.

Article 2. Abuse of a dominant position.

1. Any abuse by one or more undertakings of their dominant position in all or part of the national market is prohibited.

2. The abuse may, in particular, consist in:

a) The direct or indirect imposition of prices or other unfair trading or services conditions.

b) The limitation of production, distribution or technical development to the unjustified prejudice of undertakings or consumers.

c) The unjustified refusal to satisfy the demands of purchase of products or provision of services.

d) The application, in trading or service relationships, of dissimilar conditions to equivalent transactions, thereby placing some competitors at a disadvantage compared with others.

e) The subordination of the conclusion of contracts to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of these contracts.

3. The prohibition set out in this article shall apply in cases in which the dominant position in the market of one or more undertakings has been established by legal provisions.

Article 3. Distortion of free competition by unfair acts.

The National Competition Commission or the competent bodies of the Autonomous Communities shall hear under the terms that this Act establishes for prohibited conduct the acts of unfair competition which affect the public interest by the distortion of free competition.

Article 4. Conduct exempt by law.

1. Without prejudice to the eventual application of the Community provisions regarding competition, the prohibitions of this chapter shall not apply to conduct those results from the application of an Act.

2. The prohibitions of this chapter shall apply to situations restricting competition which are derived from the exercise of other administrative powers or are caused by the action of public authorities or public companies without this legal protection.

Article 5. Conduct of minor importance.

The prohibitions included in Articles 1 to 3 of this Act shall not apply to conduct which, due to their scant importance, are not capable of significantly affecting competition. The criteria for demarcating conduct of minor importance shall be determined according to regulations, taking into account, among others, the market share.

Article 6. Findings of inapplicability.

Where the public interest so requires, the National Competition Commission, by decision adopted *ex officio*, may find, prior report by the Competition Council, that Article 1 is not applicable to an agreement, decision or practice, either because the conditions of Section 1 are not fulfilled, or because the conditions of Section 3 of this article are satisfied. This finding of inapplicability may also be made with regard to Article 2 of this Act.

CHAPTER II

Economic concentrations

Article 7. Definition of economic concentration.

1. For the purposes set out in this Act, an economic concentration shall be deemed to arise when a stable change takes place of the whole or part of one or more undertakings results from:

- a) The merger of two or more previously independent undertakings, or
- b) The acquisition by an undertaking of control of the whole or part of one or more undertakings.
- c) The creation of a joint venture and, in general, the acquisition of the joint control of one or more undertakings, when they perform on a lasting basis the functions of an autonomous economic entity.

2. For the above purposes, control shall be constituted by contracts, rights or any other means which, having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking and, in particular by:

- a) ownership or the right to use all or part of the assets of an undertaking,
- b) contracts, rights or any other means which confer decisive influence on the composition, voting or decisions of the organs of the undertaking.

In any event, this control shall be considered to exist when the conditions set out in Article 4 of the Securities Market Act 24/1988, of 28 July, occur.

3. The following shall not be considered to be a concentration:

- a) The simple redistribution of equities or assets between undertakings from the same group.
- b) Holding on a temporary basis of securities which they have been acquired in an undertaking for resale by a credit institution or other financial institution or insurance company, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with

a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition. Exceptionally, the National Competition Commission may extend that period on request where such institutions or companies can show that the disposal was not reasonably possible within the period set.

c) The operations carried out by the financial holding companies referred to in Article 5(3) of Fourth Council Directive 78/660/EEC, of 25 July 1978, which acquire on a temporary basis securities in other undertakings, provided that the voting rights in respect of the holding are exercised only to maintain the full value of those investments and not to determine the competitive conduct of those undertakings.

d) The acquisition of control by an office-holder in accordance with insolvency regulations.

Article 8. Scope of application.

1. The control procedure set out in this Act shall apply to economic concentrations when at least one of the two following circumstances occurs:

a) That as a consequence of the concentration, a share equal or higher than 30 percent of the relevant product or service market at a national level or in a geographical market defined within the same, is acquired or increased.

b) That the global turnover in Spain for all the participants in the last accounting year exceeds the amount of 240 million euros, providing that at least two of the participants achieve an individual turnover in Spain of more than 60 million euros.

2. The obligations set out in this Act do not affect concentrations with a Community dimension as defined in Council Regulation (CE) No. 139/2004, of 20 January 2004, on the control of concentrations between undertakings, unless the concentration has been the object of a referral decision by the European Commission to Spain, in accordance with the provisions of the above Regulation.

Article 9. Obligation of notification and suspension.

1. Economic concentrations that fall under the scope of application of the article above shall be notified to the National Competition Commission prior to their implementation.

2. This economic concentration cannot be executed until the express or tacit authorisation of the Administration has been issued is executive under the terms set out in Article 38, except in case of lifting of the suspension.

3. The sections above shall not prevent from making a public takeover bid for shares admitted to negotiation in a stock market authorised by the National Securities Commission which is an economic concentration subject to control in accordance with the provisions of this Act, providing that:

a) the concentration is notified to the National Competition Commission within the period of five days as of the presentation of the application for authorisation of the bid to the National Securities Commission, if it has not been notified beforehand, and

b) the buyer does not exercise the voting rights inherent to the affected equities or exercise them only to safeguard the integral value of the investment based on a dispensation awarded by the National Competition Commission.

4. The notification must be submitted:

- a) Jointly by the parties participating in a merger, in the creation of a joint venture or in the acquisition of the joint control of the whole or part of one or more undertakings.
- b) Individually by the party that acquires the exclusive control of the whole or part of one or more undertakings.

5. In the event that the National Competition Commission has not been notified of a concentration subject to control pursuant to the provisions of this Act, it, *ex officio*, shall require the obliged parties to notify so that they make the corresponding notification within a period no longer than twenty days as of the reception of the requirement.

The positive silence set out in Article 38 shall not benefit concentrations notified on the requirement of the National Competition Commission.

After the notification period has elapsed without the notification having been made, the Directorate of Investigation may initiate *ex officio* concentration control proceedings, notwithstanding the application of the penalties and coercive fines set out in Articles 61 to 70.

6. The Council of the National Competition Commission may decide to lift the suspension of the concentration referred to in Section 2 of this article, on the proposal of the Directorate of Investigation and prior motivated request.

The resolution shall be issued prior appraisal, among other factors, of the damage that the suspension of the execution would cause to undertakings participating in the concentration and that executing the operation would cause to free competition.

Lifting the suspension of the execution may be subject to the fulfilment of conditions and obligations that guarantee the efficacy of the decision that is finally adopted.

Article 10. Criteria of substantive assessment.

1. The National Competition Commission shall assess the economic concentrations in light of the possible impediment to the maintenance of effective competition in all or part of the national market.

Specifically, the National Competition Commission shall adopt its decision taking into account, among others, the following elements:

- a) the structure of all the relevant markets,
- b) the market position of the undertakings affected, their economic and financial power
- c) the real or potential competition of undertakings located either within or out with the national territory,
- d) the alternatives available to suppliers and consumers, their access to supplies or markets,
- e) any barriers to entry in these markets,
- f) supply and demand trends for the relevant products and services,
- g) the negotiating power of the demand or of the supply and their capacity to offset the position in the market of the undertakings affected.
- h) the economic efficiencies derived from the concentration operation and, in particular, the contribution that the concentration may make to improving the production or

commercialisation systems and to business competitiveness, and the extent to which these efficiencies are transferred to the intermediate and ultimate consumers, specifically, in the form of a bigger or better supply and of lower prices.

2. Insofar as the creation of a joint venture subject to concentration control has the object or effect of coordinating the competitive behaviour of undertakings that continue to be independent, this coordination shall be assessed according to the provisions of Articles 1 and 2 of this Act.

3. Where appropriate, the assessment of an economic concentration may be understood to comprise certain accessory restrictions to competition, directly linked to the operation and necessary for it to be carried out.

4. For the purposes of the provisions of Article 60 of this Act, the Council of Ministers may assess economic concentrations in light of criteria of general interest other than protecting competition.

In particular, the following shall be understood as such:

- a) defence and national security,
- b) protection of public security or public health,
- c) free movement of goods and services within the national territory,
- d) environment protection,
- e) promotion of technological research and development,
- f) guarantee of adequate maintenance of the objectives of sectorial regulation.

CHAPTER III

Public aid

Article 11. Public aid.

1. The National Competition Commission, *ex officio* or at the instance of the Public Administrations, may analyse the criteria for awarding public aid in relation to its possible effects on the maintenance of effective competition in the markets with the aim of:

- a) Issuing reports with regard to the systems of aid and individual aid.
- b) Addressing to the Public Administrations proposals leading to the maintenance of competition.

2. In any event, the National Competition Commission shall issue an annual report on public aid awarded in Spain, which shall be public in nature in the terms set out in Article 27.3.b) of this Act.

3. For the purposes of the drafting of reports and proposals foreseen in Sections 1 and 2 of this article, the body responsible for notifying the European Commission must communicate the National Competition Commission:

- a) the public aid projects included in the scope of application of Articles 87 and 88 of the EC Treaty, at the time of their notification to the European Commission,
- b) the public aid awarded under the provisions of Community Block Exemption Regulations, and the annual reports included in Article 21 of Council Regulation (EC)

No. 659/1999, of 22 March 1999, at the time of their notification to the European Commission,

The National Competition Commission shall enable the information and communication mechanisms needed so that the information received is available to the competition bodies of the Autonomous Communities.

4. Notwithstanding the above, the National Competition Commission may require any information in relation to the projects and aid granted by the Public Administrations and, specifically, the provisions whereby any public aid is established other than those contemplated in Sections a and b of the previous point.

5. The competition bodies of the Autonomous Communities may, likewise, draft reports on public aid awarded by the autonomous or local Administrations in their respective geographical areas, to the purposes laid down in Section 1 of this article. These reports shall be forwarded to the National Competition Commission for the purposes of their incorporation in the annual report. The above shall be understood without prejudice to the functions in this area of the National Competition Commission.

6. The provisions of this article shall be understood to be without prejudice to Articles 87 to 89 of the Treaty of the European Community and to Council Regulation (EC) No. 659/1999, of 22 March 1999, and to the competences of the European Commission and to the Community and national jurisdictional bodies in matters of public aid control.

TITLE II

Institutional scheme for the application of this Act

CHAPTER I

The competent bodies for the application of this Act

Article 12. The National Competition Commission.

1. The National Competition Commission is created as one of the public organisms set out in Tenth Additional Provision of the General State Administration Organisation and Functioning Act 6/1997, of 14th April, responsible for preserving, guaranteeing and promoting the existence of effective competition in national markets, and for ensuring the coherent application of this Act by exercising the functions attributed to it in this Act.

2. In accordance with the provisions of this Act and of the Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence, the National Competition Commission shall exercise its functions throughout the Spanish territory. It shall also exercise its functions in relation to all markets or productive sectors of the economy.

3. The National Competition Commission is legally authorised to bring actions before the competent jurisdiction against administrative acts and regulations from which obstacles to the maintenance of effective competition in the markets are derived.

Article 13. The competent bodies of the Autonomous Communities.

1. The competent bodies of the Autonomous Communities for the application of this Act shall exercise in their territory the corresponding executive competences in the proceedings, the object of which is the conduct set out in Articles 1, 2 and 3 of this Act in accordance with the provisions of this Act and of the Act 1/2002, of 21st February,

regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence.

2. Without prejudice to the competences of the National Competition Commission, the competent bodies of the Autonomous Communities are legally authorised to bring actions before the competent jurisdiction against administrative acts and regulations issued by the autonomous or local Public Administrations of their region from which obstacles to the maintenance of effective competition in the markets are derived.

Article 14. The Council of Ministers.

The Council of Ministers may intervene in the economic concentration control procedure in accordance with Article 60 of this Act.

CHAPTER II

Mechanisms for collaboration and cooperation

Article 15. Coordination of the National Competition Commission with the competent bodies of the Autonomous Communities.

1. Coordination of the National Competition Commission with the competent bodies of the Autonomous Communities shall be carried out in accordance with the Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence.

2. For the purpose of facilitating cooperation with the jurisdictional bodies and coordination with the regulators, the National Competition Commission and the competition bodies of the Autonomous Communities shall enable the information and communication mechanisms regarding actions, applications and reports set out in Articles 16 and 17 of this Act in respect of those proceedings initiated formally according to the Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence.

Article 16. Cooperation with jurisdictional bodies

1. The National Competition Commission, acting on their own initiative, may provide information or submit observations to the jurisdictional bodies on issues relating to the application of Articles 81 and 82 of the Treaty of the European Community or relating to Articles 1 and 2 of this Act, under the terms set out in the Civil Procedure Act.

2. The competent bodies of the Autonomous Communities, within the scope of their competences and acting on their own initiative, may provide information or submit observations to the jurisdictional bodies on issues regarding questions relating to the application of Articles 1 and 2 of this Act, under the terms set out in the Civil Procedure Act.

3. Court decisions giving leave to proceed with lawsuits and judgments deciding on the application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act shall be communicated to the National Competition Commission under the terms set out in the Civil Procedure Act. The National Competition Commission shall enable the necessary information mechanisms to communicate these judgments to the autonomous bodies.

4. The National Competition Commission shall forward to the European Commission a copy of the written judgments deciding on the application of Articles 81 and 82 of the Treaty of the European Community.

Article 17. Coordination with sectorial regulators.

1. The National Competition Commission and the sectorial regulators shall cooperate in exercising their functions in matters of common interest.

2. For the purpose of applying section above, information shall be transmitted mutually *ex officio* or at the request of the respective body regarding its respective actions, as well as non-binding opinions within the framework of the applicable procedures of sectorial regulation and of this Act. In any event:

a) The sectorial regulators shall inform the National Competition Commission about the acts, agreements, practices or conduct that they may know of while exercising their powers which present signs of being contrary to this Act, providing any matter of fact available to them and, as the case may be, attaching the corresponding opinion.

b) The sectorial regulators shall also request a report from the National Competition Commission, before its adoption, on the circulars, instructions or general decisions pursuant to the corresponding sectorial regulations that may significantly impact on the competition conditions in the markets.

c) The National Competition Commission shall request the sectorial regulators to issue the corresponding non-binding report within the framework of proceedings of concentration control between undertakings that carry out activities in the sector of its competence.

d) The National Competition Commission or the competent bodies of the Autonomous Communities shall request the sectorial regulators to issue the corresponding non-binding report within the framework of proceedings instituted due to conduct restrictive of competition pursuant to Articles 1 to 3 of this Act.

3. The Chairmen of the National Competition Commission and the respective sectorial regulators shall meet at least once a year to analyse the guidelines that shall guide the actions of the bodies that they chair and, as the case may be, establish formal and informal mechanisms for the coordination of their actions.

Article 18. Collaboration of the National Competition Commission with National Competition Authorities of other Member States and the European Commission.

For the purpose of applying Articles 81 and 82 of the Treaty of the European Community, the National Competition Commission may exchange with the European Commission and the National Competition Authorities of other Member States and use in evidence any matter of fact or of law, including confidential information, under the terms of Community law.

TITLE III

The National Competition Commission

CHAPTER I

Common provisions

Section 1

Legal nature and functioning system of the National Competition Commission

Article 19. Legal nature and system.

1. The National Competition Commission is a Public Law institution with its own legal personality and full public and private capacity, attached to the Ministry of Economy and Finance, which shall exercise efficacy control over its activity. The National Competition Commission shall develop its activity and fulfil its aims with organic and functional autonomy, fully independent of the Public Administrations, and subject to this Act and the rest of the legal system.

2. In default of the provisions of this Act and the rules that develop it, the National Competition Commission shall exercise its public functions in accordance with the provisions of the Act 30/1992, of 26th November, on the Legal Regime for the Public Administrations and the Common Administrative Procedure, of the General State Administration Organisation and Functioning Act 6/1997, of 14th April, pursuant to its Tenth Additional Provision, and to its own Statute.

Article 20. Composition of the National Competition Commission.

The organs of the National Competition Commission are:

- a) The Chairman of the National Competition Commission, who manages and represents the Commission and chairs the Council.
- b) The Council of the National Competition Commission, collegiate resolution organ, comprising the Chairman of the National Competition Commission and six Council Members, one of whom is the Vice Chairman.
- c) The Directorate of Investigation, which carries out the functions of case handling, investigation, study and drafting of reports of the National Competition Commission.

Article 21. National Competition Commission Personnel.

1. Personnel who work for the National Competition Commission shall be civil servants or employees under the terms established for the General State Administration, pursuant to its Statute.

2. The Statute of the National Competition Commission shall determine the managerial posts according to the special responsibility, technical competence and relevance of the tasks assigned to them. Managerial personnel shall preferably be civil servants, enabling managerial posts to be filled under the senior management contracts employment system, providing that the exercise of public powers is not attributed to them, in accordance with Article 9.2 of the Public Employee Basic Statute Act 7/2007, of 12 April.

3. Personnel who go on to provide services at the National Competition Commission through post provision procedures set out in this Act shall retain the condition of civil servant or employee, in accordance with the applicable legislation.

Career civil servants shall be in the active service situation, unless they need to remain in the special services situation.

4. Under the terms established in its Statute, the National Competition Commission may also hire temporary employees to carry out works of special technical content, in accordance with the applicable rules in matters of employment hiring by Public Administrations.

5. Processing the corresponding announcements for selection and provision of posts shall be carried out by the National Competition Commission under the terms established for the General State Administration.

Article 22. Economic resources of the National Competition Commission.

1. The National Competition Commission shall have the following assets and economic means with which to fulfil its aims:

a) The allocations established every year charged to the National Budget.

b) The assets and rights that constitute its equity, and the products and income from the equity.

c) Income obtained from the liquidation of rates accrued through the activities of service provision derived from exercising the competences and functions attributed by this Act. In particular, the rates regulated in Article 23 of this Act shall constitute income of the National Competition Commission.

d) Any others that may be legally attributed to it.

2. Every year, the National Competition Commission shall elaborate and approve a preliminary draft budget with the structure stipulated by the Ministry of Economy and Finance and it shall send it to this Ministry for its submission to a decision by the Government and subsequent referral to the Parliament, included in the National Budget.

3. The economic and financial control of the National Competition Commission shall be carried out in accordance with the provisions of the General Budget Act 47/2003, of 26 November, and of the Audit Office Organic Act 2/1982, of 12 May.

Article 23. Rate for analysis and study of concentration operations.

1. The rate for analysis and study of concentration operations shall be governed by the provisions of this Act and by the general regulations regarding rates. Rate management shall be carried out by the National Competition Commission under the terms established by regulations.

2. Conducting analysis of concentrations subject to control in accordance with Article 8 of this Act constitutes the taxable event of the rate.

3. Persons who are obliged to notify in accordance with Article 9 of this Act shall be the taxpayers of the rate.

4. The rate shall be accrued when the taxpayer submits the notification set out in Article 9 of this Act. If, at the time of the notification, self settlement without income is submitted, its levying shall be by the attachment procedure, without prejudice to the National Competition Commission handling the corresponding proceedings.

5. The rate quota shall be:

a) 3,000 euros when the global turnover in Spain for all the participants in the concentration operation is equal to or less than 240,000,000 euros.

b) 6,000 euros when the global turnover in Spain of the participating undertakings is in excess of 240,000,000 euros and equal to or less than 480,000,000 euros.

c) 12,000 euros when the global turnover in Spain of the participating undertakings is in excess of 480,000,000 euros and equal to or less than 3,000,000,000 euros.

d) A fixed sum of 24,000 euros when the turnover in Spain for all the participants is in excess of 3,000,000,000 euros, plus an additional 6,000 euros for every 3,000,000,000 euros in which the aforementioned turnover exceeds the above sum, up to a maximum limit of 60,000 euros.

6. For concentrations notified through the abbreviated form set out in Article 56 of this Act, a reduced rate of 1,500 euros shall apply. In the event that the National Competition Commission, in accordance with Article 56, decides that the parties should submit the ordinary form, they must pay off the corresponding additional settlement.

Section 2

Functions of the National Competition Commission

Article 24. Functions of handling, resolution and arbitration.

The National Competition Commission is the competent body to handle and resolve on matters attributed to it by this Act and, in particular:

a) To apply the provisions of this Act in terms of conduct restrictive of competition, without prejudice to the competences that correspond to the autonomous competition bodies within their respective region and those of the competent jurisdiction.

b) To apply the provisions of this Act in terms of economic concentration control.

c) To apply Articles 81 and 82 of the Treaty of the European Community and its secondary law in Spain, without prejudice to the corresponding competences in the sphere of the competent jurisdiction.

d) To adopt the measures and decisions to apply the mechanisms of cooperation and allocation of proceedings with the European Commission and other national competition authorities of the Member States laid down in the Community regulations and, in particular, in Council Regulation (EC) No. 1/2003, of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, and in Council Regulation (EC) No. 139/2004, of 20 January 2004, on the control of concentrations between undertakings and their developing rules.

e) To exercise the functions that correspond to the General State Administration in relation to the coordination mechanisms laid down in Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence.

f) To carry out the functions of arbitration, without prejudice to the competences that correspond to the competent bodies of the Autonomous Communities in their respective spheres, in law and in equity, to which they are subject by the economic operators pursuant to the Arbitration Act 60/2003, of 23 December, and also those entrusted to it by law.

Article 25. Consultative competences.

The National Competition Commission shall act as consultative body on questions relating to competition. In particular, it may be consulted in matters of competition by the Legislative Chambers, the Government, the various Ministerial Departments, the Autonomous Communities, the Local Corporations, the Professional Bodies, the Chambers of Commerce and the business or consumer organisations. In any event, the National Competition Commission shall issue an opinion on:

- a) Draft and proposal rules that affect competition and, in particular, those whereby this legal text or Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence, and the draft regulations that develop them, are amended or repealed, in full or in part.
- b) Projects for opening of large commercial establishments, as established by the Retail Trade Act 7/1996, of 15 January, when their installation in the area in question may alter free competition in a supra-autonomous sphere or in the national market as a whole, making evident the repercussion of the opening Projects on competition.
- c) Criteria for the quantification of compensations that the responsables for the conduct laid down in Articles 1, 2 and 3 of this Act must satisfy to claimants and to third parties that have suffered damages as a consequence of the former, when they are required to do so by the competent judicial body.
- d) All the questions referred to in Article 16 of this Act and Council Regulation (EC) No. 1/2003, of 16 December 2003, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, as regards the mechanisms of cooperation with national courts.
- e) Any other questions on which the National Competition Commission must report in accordance with the provisions of current regulations.

Article 26. Other functions of the National Competition Commission.

1. The National Competition Commission shall promote the existence of effective competition in the markets, in particular by means of the following actions:
 - a) promoting and conducting studies and research work in matters of competition,
 - b) drafting general reports on sectors, as the case may be, with proposals for liberalisation, deregulation or regulatory amendment,
 - c) drafting reports, periodically as the case may be, on the action of the public sector and, specifically, on the situations of hindrance to the maintenance of effective competition in the markets that result from the application of legal rules,
 - d) drafting general or specific reports on the impact of public aid on effective competition in the markets,
 - e) addressing proposals to the Public Administrations for the amendment or removal of restrictions to effective competition derived from their action and, as the case may be, the other measures leading to the maintenance or reestablishment of competition in the markets,
 - f) proposing to the Ministry of Economy and Finance, for its referral, as the case may be, to the Council of Ministers, the competition policy guidelines in the framework of the former's economic policy and, in particular, the corresponding regulatory drafting and reform proposals.

2. The National Competition Commission shall ensure the consistent application of the competition regulations at a national level, in particular through coordination of the actions of the sectorial regulators and of the competent bodies of the Autonomous Communities and cooperation with the competent jurisdictional bodies.

3. The National Competition Commission shall be the support body of the Ministry of Economy and Finance in representing Spain in the international arena in matters of competition.

Section 3

Transparency and social responsibility of the National Competition Commission

Article 27. Publicity of the actions of the National Competition Commission.

1. The National Competition Commission shall make public all the resolutions and decisions that are issued in application of this Act and, in particular:

- a) The resolutions that bring proceedings to an end in sanctioning proceedings.
- b) The resolutions that decide the imposition of interim measures.
- c) The resolutions that bring the first and second phase to an end in concentration control proceedings.

2. The fact of initiating concentration control proceedings shall be public.

3. The National Competition Commission shall make public the reports that it drafts in application of this Act. In particular:

a) The reports drafted in concentration control proceedings, once the resolutions corresponding to first and second phase have been adopted by the Council of the National Competition Commission.

b) The annual reports on public aid, once they have been sent to the Ministry of Economy and Finance and the Economy and Finance Commission of the Chamber of Deputies (lower house of the Spanish Parliament) and the reports written, either *ex officio* or at the request of the parties, on the criteria for granting public aid, after they have been communicated to the organs of the corresponding Public Administrations.

c) The reports drafted on draft regulations or public sector actions, after being sent to the Ministry of Economy and Finance and the organ of the corresponding Public Administrations.

d) The reports drafted on the competitive structure of productive markets or sectors.

4. The resolutions, decisions and reports shall be made public by IT and telematic media once the interested parties have been notified, after resolving, as the case may be, on the confidential aspects of their content and prior dissociation of the personal data referred to in Article 3.a. of the Personal Data Protection Act 15/1999, of 13 December, except with regard to the name of the offenders.

Article 28. Parliamentary control of the National Competition Commission.

1. The National Competition Commission shall publish its annual action report, which it shall send to the Ministry of Economy and Finance and to the Economy and Finance Commission of the Chamber of Deputies.

2. The Chairman of the National Competition Commission must periodically appear at least annually before the Economy and Finance Commission of the Chamber of Deputies to set out the basic lines of its action and its plans and priorities for the future. Likewise, the Chairman of the National Competition Commission shall send to the Ministry of Economy and Finance every year a schedule of its activities.

3. The National Competition Commission shall send to the Ministry of Economy and Finance and to the Economy and Finance Commission of the Chamber of Deputies its annual reports on the competitive situation of the markets and on the action of the public sector, as well as the sectorial reports that it approves pursuant to Article 26 of this Act.

4. The Chairman of the National Competition Commission and, as the case may be, its members, shall appear before the Chambers and their Commissions at the request of the same in the terms set out in their respective Regulations.

CHAPTER II

The management organs of the National Competition Commission

Section 1

Common Provisions

Article 29. Appointment and mandate of the management organs of the National Competition Commission.

1. The Chairman of the National Competition Commission, who shall also be Chairman of the Council, shall be appointed by the Government by Royal Decree on the proposal of the Ministry of Economy and Finance from among jurists, economists and other professionals of recognised prestige, prior appearance before the Economy and Finance Commission of the Chamber of Deputies, which shall deal with the capacity and technical knowledge of the proposed candidate.

2. The Council Members shall be appointed by the Government by Royal Decree on the proposal of the Ministry of Economy and Finance from among jurists, economists and other professionals of recognised prestige, prior appearance before the Economy and Finance Commission of the Chamber of Deputies, which shall deal with the capacity and technical knowledge of the proposed candidate. The Council shall elect a Vice Chairman from among the Council Members.

3. The mandate of the Chairman and the Council Members shall be six years without possibility of renewal.

4. The Director of Investigation is appointed by the Government by Royal Decree on the proposal of the Ministry of Economy and Finance, prior approval by simple majority of the Council of the National Competition Commission.

Article 30. Causes of ceasing.

1. The Chairman and the Council Members of the National Competition Commission shall cease:

- a) Due to resignation.
- b) Due to expiry of the term of their mandate.
- c) Due to unforeseen incompatibility.

- d) Due to having been convicted for an intentional offence.
 - e) Due to permanent disability.
 - f) By means of separation decided by the Government due to serious non-fulfilment of the duties of their post, on the proposal of three-fifths of the Council of the National Competition Commission.
2. The Director of Investigation shall cease by means of Royal Decree, on the proposal of the Ministry of Economy and Finance, prior approval by a simple majority of the Council of the National Competition Commission.

Article 31. Incompatibilities.

1. The Chairman, the Council Members and the Director of Investigation of the National Competition Commission, in their capacity as senior posts of the General State Administration, shall perform their function with absolute dedication and shall be subject to the system of incompatibility of activities established in general for senior posts of the General State Administration in Act 5/2006, of 10 April, on regulation of conflicts of interests of the members of the Government and of the Senior Posts of the General State Administration and in their developing provisions, and in the Decision of the Council of Ministers of 18 February 2005, approving the Code of Good Governance of the members of the Government and of the Senior Posts of the General State Administration.
2. On ceasing their employment and during the following two years, the Chairman and the Council Members of the National Competition Commission may not exercise any professional activity related to the activity of this Commission. By virtue of this limitation, on ceasing their employment due to resignation, expiry of the term of their mandate or permanent disability for the exercise of their functions, the Chairman and the Council Members shall have the right to receive as of the month following that in which their ceasing occurred and for a period equal to that for which they performed their duties up to a maximum of two years a monthly economic compensation equal to one-twelfth of 80% of the total remunerations allocated to the respective post in the Budget in effect during the indicated period.

This compensation may not be received in the event of performance, with remuneration, of any employment post or activity in the public or private sector.

Section 2

The Chairman of the National Competition Commission

Article 32. Functions of the Chairman of the National Competition Commission.

The Chairman of the National Competition Commission shall:

- a) Hold the legal representation of the organism.
- b) Safeguard the development of the activities of the organism, ensuring the fulfilment of this Act and their developing rules.
- c) Maintain the good order and government of the organs of the National Competition Commission.
- d) Promote the inspection activity of the National Competition Commission and the drafting of annual or multi-annual action plans in which objectives and priorities are defined.

- e) The management, coordination, evaluation and supervision of the organs of the National Competition Commission, in particular, the coordination of the Council with the Directorate of Investigation and the management of common services, without prejudice to the competences attributed to the Director of Investigation in Article 35.
- f) Report the vacancies that occur in the Council of the National Competition Commission to the Minister of Economy and Finance.
- g) Exercise leadership functions with regard to National Competition Commission personnel, in accordance with the competences attributed by specific legislation and notwithstanding the competences attributed to the Director of Investigation in Article 35.
- h) Approve expenses and order payments of the National Competition Commission, except for cases reserved for the competences of the Government, and carry out the rendering of accounts of the organism in conformity with the provisions of the General Budget Act.
- i) Be the contracting organ of the National Competition Commission.
- j) Chair the Competition Council.
- k) Resolve claims prior to the civil or labour judicial procedure, and those of liability lodged against the National Competition Commission.
- l) Resolve the questions not assigned to the Council or the Directorate of Investigation.

Section 3

The Council of the National Competition Commission

Article 33. Composition and functioning of the Council of the National Competition Commission.

1. The members of the Council of the National Competition Commission are the Chairman of the National Competition Commission, who chairs the Council, and six Council Members.
2. The Chairman of the National Competition Commission is responsible for the exercise of the following functions:
 - a) Exercise, in general, the competences attributed to the chairmen of administrative collegiate organs by the Act 30/1992, of 26th November, on the Legal Regime for the Public Administrations and the Common Administrative Procedure.
 - b) Summon the Council on his/her own initiative or at the request of, at least, half of the Council Members, and chair it.
 - c) Establish the criterion of distribution of subjects among the Council Members.
3. The Council of the National Competition Commission is understood to be validly constituted with the attendance of the Chairman and three Council Members.
4. The agreements shall be adopted by majority of votes of those present. In the event of a tie, the casting vote of the Chairman shall decide.
5. The Council shall appoint a Secretary, on the proposal of the Chairman of the Council, who shall carry out the functions laid down in Act 30/1992, of 26th November, on the Legal Regime for the Public Administrations and the Common Administrative Procedure.

6. The Statute of the National Competition Commission shall regulate the functioning of the Council and, in particular, the system of summons and sessions, in accordance with the provisions of Chapter II of Title II of Act 30/1992, of 26th November, on the Legal regime for the Public Administrations and the Common Administrative Procedure, and of Chapter IV of Title II of the General State Administration Organisation and Functioning Act 6/1997, of 14th April.

Article 34. Functions of the Council of the National Competition Commission.

The Council of the National Competition Commission is the decision organ in relation to the functions of resolution, consultation and promotion of competition set out in this Act. In particular, it is the competent organ to:

1. On the proposal of the Directorate of Investigation:
 - a) Resolve and issuing an opinion on the matters that are attributed to the National Competition Commission by this Act and, in particular, those foreseen in Articles 24 to 26 of this Act.
 - b) Resolve sanctioning proceedings laid down in this Act and their developing rules.
 - c) Request or decide the referral of concentration control proceedings that come into the scope of application of this Act to the European Commission in accordance with the provisions of Articles 9 and 22 of Council Regulation (EC) No. 139/2004, of 20 January 2004, on the control of concentrations between undertakings.
 - d) Decide the lifting of the obligation of suspension of the execution of an economic concentration in conformity with Article 9.6 of this Act.
 - e) Resolve on the fulfilment of resolutions and decisions regarding prohibited conduct and concentrations.
2. Adopt the communications foreseen in Third Additional Provision and the findings of inapplicability foreseen in Article 6.
3. Promote the handling of proceedings by the Directorate of Investigation.
4. Decide to bring actions against acts and provisions referred to in Article 12.3 of this Act.
5. Draft, as the case may be, its internal regulation, in which its administrative functioning and the organisation of its services shall be established.
6. Elect the Vice Chairman from among its members.
7. Resolve on the challenges, incompatibilities and disciplinary corrections and assess the incapacity and serious non-fulfilment of the functions of the Chairman, Vice Chairman and Council Members.
8. Appoint and decide the ceasing of the Secretary, on the proposal of the Chairman of the Council.
9. Approve the preliminary draft budget of the organism.
10. Draft the annual report of the organism and the annual or multi-annual action plans in which objectives and priorities are defined.

Section 4

Directorate of Investigation

Article 35. Structure and functions of the Directorate of Investigation.

1. The Directorate of Investigation is the organ of the National Competition Commission responsible for the handling of the proceedings laid down in this Act.

2. The functions of the Directorate of Investigation are:

a) Handle and refer the corresponding proposal for resolution in the proceedings on which the Council must resolve in application of this Act.

b) Resolve on incidental questions that may arise within the framework of the handling of proceedings.

c) Monitor the execution and fulfilment of the obligations set out in this Act and their developing rules as well as the resolutions and decisions made in application of this Act, both regarding restrictive conduct and concentration control.

d) Apply the competent body designation mechanisms, in accordance with the provisions of Act 1/2002, of 21st February, regarding Coordination of the State and the Autonomous Communities' Competences on Competition Defence.

e) Apply the mechanisms for referral of proceedings between the National Competition Commission and the European Commission according to the provisions of Article 4 of Council Regulation (EC) No. 139/2004, of 20 January 2004, regarding the control of concentrations between undertakings.

f) Call for, *ex officio*, the notification of a concentration in accordance with Article 9.5.

g) Call for the ordinary notification form in conformity with Article 56.2.

3. The Director of Investigation shall:

a) Hold the leadership and representation of the Directorate, and may exercise all the competences that this Act and the developing rules attribute to it.

b) Decide the appointment and ceasing of Directorate personnel, in accordance with the competences attributed by specific legislation, prior consultation with the Chairman of the National Competition Commission.

TITLE IV

Procedures

CHAPTER I

Common provisions

Section 1

Periods of proceedings

Article 36. Maximum period of proceedings.

1. The maximum period for issuing and notifying the resolution that brings an end to sanctioning proceedings for restrictive competition conduct shall be eighteen months as of the date of the institution decision and its distribution between the phases of handling and resolution shall be set by regulations.

2. The maximum period for issuing and notifying the resolutions of the Council of the National Competition Commission in concentration control proceedings shall be:

a) of one month in the first phase, pursuant to the provisions of Article 57 of this Act, as of the reception in due form of the notification by the National Competition Commission.

b) of two months in the second phase, pursuant to the provisions of Article 58 of this Act, as of the date on which the Council of the National Competition Commission decides of the opening of the second phase.

3. The maximum period for issuing and notifying the resolution of the Minister of Economy and Finance on the intervention of the Council of Ministers pursuant to the provisions of Article 60 of this Act shall be 15 days, as of the reception of the corresponding resolution issued in second phase by the Council of the National Competition Commission.

4. The maximum period for adopting and notifying a Decision of the Council of Ministers in concentration control proceedings shall be one month, as of the resolution of the Minister of Economy and Finance to refer the operation to the Council of Ministers.

5. The maximum period for the Council of the National Competition Commission to issue and notify the resolution on the appeal set out in Article 47 of this Act against the resolutions and acts of the Directorate of Investigation shall be three months.

The maximum period for the Council of the National Competition Commission to issue and notify the resolution relating to the adoption of interim measures at the request of the parties set out in Article 54 of this Act shall be three months. When the application for interim measures is submitted prior to the institution of proceedings, the maximum period of three months shall begin to be counted as of the date of the institution decision.

7. The maximum period for the Council of the National Competition Commission to issue and notify the resolution on the adoption of measures in the sphere of proceedings of monitoring of obligations, resolutions or decisions set out in Article 41 shall be three months as of the corresponding proposal of the Directorate of Investigation.

Article 37. Cases of extension of periods and suspension of their computation.

1. The course of the maximum periods legally foreseen to resolve proceedings may be suspended, by means of motivated resolution, in the following cases:

a) When any interested party has to be called for the rectification of deficiencies, the provision of documents and other necessary elements of judgment.

b) When third parties or other organs of the Public Administrations have to be requested to provide documents and other necessary trial elements.

c) When cooperation and coordination with the European Union or with the National Competition Authorities from other countries is necessary.

d) When the administrative appeal laid down in Article 47 is lodged or a judicial appeal is lodged.

e) When the Council of the National Competition Commission decides the examination of evidence or of complementary actions in accordance with Article 51.

f) When a change occurs in the legal assessment of the matter submitted to the Council of the National Competition Commission, in the terms established in Article 51.

g) When negotiations are initiated with a view to the conclusion of a conventional termination decision in the terms established in Article 52.

2. Notwithstanding the provisions of the above section, the suspension of the maximum period for resolving proceedings shall be decided:

a) When the European Commission has instituted proceedings for the application of Articles 81 and 82 of the Treaty of the European Community in relation to the same facts. The suspension shall be lifted when the European Commission adopts the corresponding decision.

b) When the National Competition Commission calls for the notifying parties to rectify deficiencies, provide documents and other necessary elements of judgment for the resolution of concentration control proceedings, pursuant to the provisions of Sections 4 and 5 of Article 55 of this Act.

c) When the European Commission is informed within the framework of the provisions of Article 11.4 of Council Regulation (EC) No. 1/2003, of 16 December 2003, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, with regard to a proposal for resolution in application of Articles 81 and 82 of the Treaty of the European Community.

d) When the report of the sectorial regulators is requested in accordance with the provisions of Article 17.2.c) and d) of this Act. This suspension period may not, under any circumstances, exceed three months.

3. The suspension of the maximum periods of resolution shall not necessarily suspend the processing of proceedings.

4. Exceptionally, the extension of the maximum period of resolution may be decided by means of clear motivation of the concurrent circumstances. In the event of deciding the extension of the maximum period, this may not be more than that established for the processing of proceedings.

5. No appeal by administrative procedure may be lodged against the decision that resolves on the suspension or on the extension of periods, of which the interested parties must be notified.

Article 38. Effects of administrative silence.

1. The course of the maximum period of eighteen months established in Section 1 of Article 36 to resolve sanctioning proceedings regarding agreements and prohibited practices shall determine the expiry of proceedings.

2. The course of the maximum period established in Article 36.2.a) of this Act for the resolution in first phase of concentration control shall determine the estimate of the corresponding application by administrative silence, except in the cases set out in Articles 9.5, 55.5 and 57.2.d) of this Act.

3. The course of the maximum period established in Article 36.2.b) of this Act for the resolution in second phase of concentration control shall determine the authorisation of the concentration by administrative silence, except in the cases set out in Articles 9.5, 55.5 and 57.2.d) of this Act.

4. The course of the periods set out in Article 36.3 and 4 of this Act for the resolution of the Minister of Economy and Finance on the intervention of the Council of Ministers and, as the case may be, for the adoption of the corresponding Decision of the latter, shall determine, in accordance with Article 60.4 of this Act, the immediate executivity of the corresponding resolution of the Council of the National Competition Commission.

5. The course of the period set out in Article 36.5 of this Act for the Council of the National Competition Commission to resolve the appeals against resolutions and acts of the Directorate of Investigation shall determine their rejection by administrative silence.

6. The course of the periods set out in Article 36.6 and 7 of this Act for the Council of the National Competition Commission to resolve as regards the adoption of interim measures or in the framework of monitoring proceedings shall determine their rejection by administrative silence.

Section 2

Powers of the National Competition Commission

Article 39. Duties of collaboration and information.

1. All natural or legal persons and the organs and bodies of any Public Administrations are subject to the duty of collaboration with the National Competition Commission and are obliged to provide, at the request of the latter and within the deadline, all kinds of data and information that they may have and that may be necessary for the application of this Act. This deadline shall be 10 days, unless given the nature of the request or the circumstances of the case a different justified deadline is set.

2. Collaboration, *ex officio* or at the request of the National Competition Commission, shall not imply the status of interested party in the corresponding proceedings.

Article 40. Powers of inspection.

1. National Competition Commission personnel duly authorised by the Director of Investigation shall have the capacity of agent of the authority and may conduct all necessary inspections of undertakings and associations of undertakings for the due application of this Act.

2. The personnel enabled for this purpose shall have the following powers of inspection:

a) to enter any premises, land and means of transport of the undertakings and associations of undertakings and the private homes of the entrepreneurs, managers and other members of staff of the undertakings,

b) to verify the books and other records relating to the business activity, irrespective of the medium on which they are stored,

c) to take or obtain in any form copies of or extracts from such books or records,

d) to retain the books or documents mentioned in letter b) for a maximum period of 10 days,

e) to seal all business premises, books or records and other business assets for the period and to the extent necessary for the inspection,

f) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents related to the subject-matter and

purpose of the inspection and record the answers.

Exercising the powers described in letters a) and e) shall require the prior express consent of the affected party or, failing this, the corresponding judicial authorisation.

3. The undertakings and associations of undertakings are obliged to submit to the inspections that the Director of Investigation has authorised.

4. If the undertaking or association of undertakings opposes an inspection ordered by the Director of Investigation or exists a risk of such opposition, they must request the corresponding judicial authorisation when this involves restriction of fundamental rights from the Administrative Court, which shall rule within a maximum period of 48 hours. The public authorities shall provide the necessary protection and aid to the National Competition Commission personnel for the exercising of the functions of inspection.

5. The data and information obtained shall only be used for the aims set out in this Act.

Article 41. Monitoring of the fulfilment of obligations, resolutions and decisions.

1. The National Competition Commission shall monitor the execution and the fulfilment of the obligations laid down in this Act and their developing regulations as well as the resolutions and decisions adopted in application of this Act, both regarding restrictive conduct and interim measures and concentration control.

Monitoring shall be carried out under the terms established by regulations and by the own resolution of the National Competition Commission or decision of the Council of Ministers that brings the procedure to an end.

The National Competition Commission may request the cooperation of the autonomous competition bodies and of the sectorial regulators in monitoring and fulfilling obligations, resolutions and decisions.

2. In case of non-fulfilment of obligations, resolutions or decisions of the National Competition Commission, the Council of the National Competition Commission shall resolve, on the proposal of the Directorate of Investigation, on the imposition of sanctioning and coercive fines, on the adoption of other compulsory execution measures set out by law and, as the case may be, on the demerger.

Section 3

General principles of the procedure

Article 42. Treatment of confidential information.

At any time during the procedure, it may be ordered, *ex officio* or at the request of the parties, that the data or documents considered confidential are kept secret, using them to create a separate proceeding, without prejudice to Article 18 of this Act and Council Regulation (EC) No. 1/2003, of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

In any event, a special confidential separate proceeding shall be created with the information forwarded by the European Commission in response to the forwarding of the draft decision of the National Competition Commission laid down in Article 11.4 of Regulation 1/2003.

Article 43. Duty of secrecy.

1. Anyone who takes part in the handling or resolution of proceedings laid down in this Act or becomes aware of the referred proceedings by reason of its profession, post or participation as a party, must keep secret the facts that they have learnt through them and the confidential information that they have learnt during the course of their employment, even after ceasing their functions.

2. Without prejudice to the criminal and civil liabilities that may apply, the infringement of the duty of secrecy is always considered a very serious disciplinary offence.

Article 44. Shelving of proceedings

The National Competition Commission may not initiate proceedings or decide the shelving of proceedings instituted due to lack or loss of competence or of object. In particular, it shall be considered that some of these circumstances occur in the following cases:

- a) When the National Competition Commission is not competent to prosecute the conduct detected or denounced in application of Council Regulation (EC) No. 1/2003, of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, or the circumstances set out in this for the rejection of complaints occur.
- b) When the notified transaction is not a concentration subject to the control procedure by the National Competition Commission laid down in this Act.
- c) When the notified concentration is referred to the European Commission in application of Article 22 of Council Regulation (EC) No. 139/2004, 20 January 2004, on the control of concentrations between undertakings.
- d) When the parties of a concentration relinquish their application for authorisation or the National Competition Commission has reliable information that they have no intention to go ahead with the concentration.

Article 45. Supplementary nature of Act 30/1992, of 26th November, on the Legal Regime for the Public Administrations and the Common Administrative Procedure.

The administrative procedures regarding competition shall be governed by the provisions of this Act and its developing regulations and, suppletorily, by the Act 30/1992, of 26th November, on the Legal Regime for the Public Administrations and the Common Administrative Procedure, without prejudice to Article 70 of this Act.

Article 46. Prejudicial nature of criminal proceedings.

The existence of a criminal prejudicial question that cannot be dispensed with for issuing the resolution or that directly conditions its content shall determine the suspension of the proceedings until it is ruled by the criminal bodies to which it corresponds.

Section 4

Appeals

Article 47. Administrative appeal against resolutions and acts issued by the Directorate of Investigation.

1. The resolutions and acts of the Directorate of Investigation that lead to defencelessness or irreparable damage to rights or legitimate interests may be appealed against before the Council of the National Competition Commission in the period of ten days.
2. The Council shall refuse leave to appeals lodged outside the deadline.
3. Once the appeal has been received, the Council shall notify the proceedings so that the parties can formulate allegations within the period of fifteen days.

Article 48. Appeals against resolutions and acts issued by the Chairman and by the Council of the National Competition Commission.

1. No appeal by administrative procedure may be lodged against the resolutions and acts of the Chairman and of the Council of the National Competition Commission, and judicial appeals may only be lodged in the terms in Administrative Jurisdiction Act 29/1998, of 13 July.
2. In the cases foreseen in Section 6 of Article 58 of this Act, the period for lodging the judicial appeal shall begin as of the day following that of the notification of the resolution of the Minister of Economy and Finance or of the Decision of the Council of Ministers or of the course of the periods established in Sections 3 or 4 of Article 36 of this Act, once the resolution of the Council of the National Competition Commission is effective, executive and has brought an end to the administrative procedure.

CHAPTER II

The sanctioning procedure regarding prohibited conduct

Section 1

The handling of proceedings

Article 49. Initiation of proceedings.

1. The proceedings are initiated *ex officio* by the Directorate of Investigation, be it on its own initiative or that of the Council of the National Competition Commission or by complaint. Any natural or legal person, interested or not, may submit a complaint of the conduct regulated by this Act, with the content that shall be determined by regulations. The Directorate of Investigation shall institute proceedings when rational signs are observed of the existence of prohibited conduct and it shall notify the interested parties of the decision to institute proceedings.
2. In light of news of the possible existence of an infringement, the Directorate of Investigation may investigate information confidentially, included with domicile investigations of the undertakings involved, with the aim of a preliminary determination of whether the circumstances that justify the institution of the sanctioning proceedings meet.

3. The Council of the National Competition Commission, on the proposal of the Directorate of Investigation, may decide not to institute proceedings resulting from the alleged performance of conduct prohibited by Articles 1, 2 and 3 of this Act and the shelving of proceedings when it considers that there are no signs of infringement of this Act.

Article 50. Handling of sanctioning proceedings.

1. Once the proceedings have been instituted, the Directorate of Investigation shall carry out the necessary handling acts for the clarification of the facts and the determination of responsibilities.

2. The undertaking or association of undertakings that refers to the provisions of Section 3 of Article 1 of this Act must provide with evidence that the conditions laid down in this section are fulfilled.

3. The facts that may constitute an infringement shall be included in a statement of objections, of which the interested parties shall be notified so that, within a period of fifteen days, they may reply it and, as the case may be, propose evidence that they deem pertinent.

4. When the necessary handling acts have been carried out, the Directorate of Investigation shall formulate a proposal for resolution, of which the interested parties shall be notified so that, within a period of fifteen days, they may submit the allegations that they deem appropriate.

5. After handling the proceedings, the Directorate of Investigation shall refer them to the Council of the National Competition Commission, attaching to it a report which shall include the proposal for resolution and, in the cases that are appropriate, a proposal relating to the exemption or reduction of the fine, in accordance with the provisions of Articles 65 and 66 of this Act.

Section 2

The resolution of sanctioning proceedings

Article 51. Resolution procedure before the Council of the National Competition Commission.

1. The Council of the National Competition Commission may order, ex officio or at the request of any interested party, the examination of evidence other than that already examined before the Directorate of Investigation in the handling phase and the performance of complementary actions with the aim of clarifying precise questions for the formation of its judgement. The interested parties shall be notified of the decision to examine evidence and to perform complementary actions, and they shall be granted a period of seven days in order to submit allegations that they deem pertinent. This decision shall set, whenever possible, the period for its performance.

2. The Directorate of Investigation shall examine evidence and perform complementary actions that they are ordered to do by the Council of the National Competition Commission.

3. On the proposal of the interested parties, the Council of the National Competition Commission may decide whether a hearing should take place.

4. When the Council of the National Competition Commission estimates that the matter may not have been duly qualified in the proposal of the Directorate of Investigation, it shall submit the new assessment to the interested parties and to the Directorate of Investigation so that they may submit the allegations that they deem appropriate within the period of fifteen days.

5. When the aforementioned actions have concluded and, as the case may be, the European Commission has been informed in accordance with Article 11.4 of Council Regulation (EC) No. 1/2003, of 16 December 2003, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the Council of the National Competition Commission shall issue a resolution.

Article 52. Conventional termination.

1. On the proposal of the Directorate of Investigation, the Council of the National Competition Commission may resolve the termination of the sanctioning proceedings in matters of agreements and prohibited practices when the alleged offenders propose commitments that resolve the effects on competition derived from the conduct covered by the proceedings and the public interest is sufficiently guaranteed.

2. The commitments shall be binding and shall have full effects once incorporated into the resolution that brings an end to the proceedings.

3. The termination of the proceedings in the terms established in this article may not be decided once the proposal report set out in Article 50.4 has been referred.

Article 53. Resolutions of the Council of the National Competition Commission.

1. The resolutions of the Council of the National Competition Commission may declare:

a) The existence of conduct prohibited by this Act or by Articles 81 and 82 of the EC Treaty.

b) The existence of conduct that, due to its scant importance, is not capable of significantly affecting competition.

c) The existence of prohibited practices not being accredited.

2. The resolutions of the Council of the National Competition Commission may contain:

a) The order of cessation of the prohibited conduct in a specific period.

b) The imposition of specific conditions or obligations, be they structural or of behaviour. The structural conditions may only be imposed in the absence of others of behaviour of equivalent efficacy or when, despite conditions of behaviour existing, these are more onerous for the undertaking in question than a structural condition.

c) The order of removal of the effects of the prohibited practices contrary to the public interest.

d) The imposition of fines.

e) The shelving of the proceedings in the cases foreseen in this Act.

f) And any other measures whose adoption is authorised by this Act.

3. The Council of the National Competition Commission may, on the proposal of the Directorate of Investigation, which shall act *ex officio* or at the request of the parties,

revise the conditions and obligations imposed in its resolution when a substantial and permanent modification of the circumstances taken into account when issuing them is accredited.

4. The Council of the National Competition Commission may, *ex officio* or at the request of the parties, clarify obscure concepts or make good any omission that its resolutions may contain.

The clarifications or additions may be made within five working days following the notification of the resolution or, as the case may be, the request for clarification or addition, which must be submitted within the non-extendable period of three days following that of the notification.

Material and arithmetical errors may be rectified at any time.

Section 3

Interim measures

Article 54. Adoption of interim measures.

Once proceedings have been initiated, the Council of the National Competition Commission may, *ex officio* or at the request of one of the parties, on the proposal or prior report of the Directorate of Investigation, adopt the necessary interim measures intended to ensure the efficacy of the resolution that may be later issued.

CHAPTER III

The economic concentration control procedure

Section 1

Notification

Article 55. Notification of economic concentration.

1. The economic concentration control procedure shall begin once notification of the concentration has been received in due form in accordance with the notification form established according to regulations.

2. Prior to the submission of the notification a consultation may be formulated to the National Competition Commission about:

a) whether a given operation is a concentration as set out in Article 7,

b) whether a certain concentration exceeds the minimum thresholds for mandatory notification foreseen in Article 8.

3. In light of the knowledge of the possible existence of a concentration subject to control, the Directorate of Investigation may carry out prior actions in order to determine preliminarily whether the circumstances for its mandatory notification occur in accordance with Article 9.

4. The National Competition Commission may require the notifying party to rectify any lack of information or of perceptive documents and complete the notification form within a period of 10 days.

In the event that the rectification does not occur within the period, the notifying party shall be considered to have relinquished its application, and the National Competition Commission can decide the shelving of the proceedings.

5. The National Competition Commission may, at any time during the procedure, require the notifying party to provide, within a period of ten days, documents or other necessary elements for resolving.

In the event that the notifying party does not fulfil the requirement or fulfils it outside the period established for it, it shall not benefit from the positive silence set out in Article 38.

6. At any moment during the procedure, the National Competition Commission may request third operators the information that it deems appropriate for the adequate assessment of the concentration. It may also request the reports that it deems necessary to resolve to any body of the same or different Administration.

Article 56. Abbreviated notification form.

1. An abbreviated notification form may be submitted, which shall be established according to regulations, to be used, among others, in the following cases:

a) When no horizontal or vertical overlapping exists between the parties of the operation because neither of them carries out economic activities in the same referred geographical and product market or in upstream or downstream related markets within the production and trading process.

b) When the participation by the parties in the markets, due to their scant importance, is not capable of affecting significantly competition, in accordance with the provisions established in regulations.

c) When a party acquires the exclusive control of one or more undertakings or parts of an undertaking over which it already has joint control.

d) When, given that it is a joint venture, it does not carry out nor does it plan to carry out activities in Spain or when these activities are marginal.

2. The National Competition Commission may call for the submission of the ordinary notification form when, even though the conditions for use of the abbreviated form are fulfilled, it determines it to be necessary for an adequate investigation of possible competition problems. In this case, the maximum period of resolution and notification of the proceedings shall start to be counted as of the date when the ordinary form is submitted.

Section 2

The handling and resolution of proceedings

Article 57. Handling and resolution in the first phase.

1. Having received the notification in due form, the Directorate of Investigation shall formalize the proceedings and draft a report in accordance with the assessment criteria of Article 10, together with a proposal for resolution.

2. On the basis of the report and of the proposal for resolution of the Directorate of Investigation, the Council of the National Competition Commission shall issue a resolution in first phase, in which it may:

- a) Authorize the concentration.
- b) Subordinate its authorisation to the fulfilment of certain commitments proposed by the notifying party.
- c) Decide to initiate the second phase of the procedure, when it considers that the concentration may hinder the maintenance of effective competition in all or part of the national market.
- d) Decide the referral of the concentration to the European Commission in accordance with Article 22 of Council Regulation (EC) No. 139/2004, of 20 January 2004, on the control of concentrations between undertakings, and the shelving of the corresponding notification. In this case, the notifying party shall be notified of this referral, indicating to it that the competence to adopt a decision on the matter lies with the European Commission in accordance with Community regulations and that, therefore, the operation cannot benefit from the positive silence set out in Article 38.
- e) Decide the shelving of the proceedings in the cases set out in this Act.

Article 58. Handling and resolution in the second phase.

1. Once the second phase of the procedure has been initiated, the Directorate of Investigation shall elaborate a succinct note on the concentration that, once the confidential aspects of it have been resolved, shall be made public and informed to the natural or legal persons that may be affected and to the Consumer Council, for them to submit their allegations within the period of 10 days.

In the event that the concentration has a significant impact on the territory of an Autonomous Community, the Directorate of Investigation shall request a preceptive, non-binding, report of the affected Autonomous Community, to which it shall forward, together with the succinct note, a copy of the notification filed, once the confidential aspects of it have been resolved, in order to issue the report within the period of twenty days.

2. The possible obstacles to competition resulting from the concentration shall be included in a statement of objections drafted by the Directorate of Investigation, which shall be notified to the interested parties so that they can file any allegations within a period of 10 days.

3. At the request of the notifying parties, a hearing shall be held before the Council of the National Competition Commission.

4. When the final proposal for resolution has been received from the Directorate of Investigation, the Council of the National Competition Commission shall adopt the final decision by means of a resolution, in which it may:

- a) Authorize the concentration.
- b) Subordinate the authorisation of the concentration to the fulfilment of certain commitments proposed by the notifying parties or conditions.
- c) Prohibit the concentration.
- d) Decide the shelving of the proceedings in the cases set out in this Act.

5. The resolutions adopted by the Council of the National Competition Commission shall be notified at the same time to the Minister of Economy and Finance and to the

interested parties.

6. The resolutions in second phase in which the Council of the National Competition Commission prohibits a concentration or makes it subject to the fulfilment of commitments or conditions shall not be effective or executive and shall not bring the administrative procedure to an end:

a) Until the Minister of Economy and Finance has resolved not to refer the concentration to the Council of Ministers or the legal period established for this in Article 36 of this Act has elapsed.

b) In the event that the Minister of Economy and Finance has decided to refer the concentration to the Council of Ministers, until the Council of Ministers has adopted a decision on the concentration that confirms the resolution of the Council of the National Competition Commission or the legal period established for this in Article 36 of this Act has elapsed.

Article 59. Submission of commitments.

1. When obstacles for the maintenance of effective competition may result from a concentration, the notifying parties, *ex officio* or at the request of the National Competition Commission, may propose commitments to resolve them

2. When commitments are proposed, the maximum period to resolve and notify the proceedings shall be extended by 10 days in the first phase and 15 days in the second phase.

3. The commitments proposed by the notifying parties may be communicated to the interested parties or to third parties with the aim of assessing their suitability for resolving the competition problems resulting from the concentration and its effects on the markets.

Article 60. Intervention of the Council of Ministers.

1. The Minister of Economy and Finance may refer the decision on the concentration to the Council of Ministers for reasons of general interest when, in the second phase, the Council of the National Competition Commission:

a) Has resolved to prohibit the concentration.

b) Has resolved to subordinate its authorisation to the fulfilment of certain commitments proposed by the notifying parties or conditions.

2. The resolution of the Minister of Economy and Finance shall be communicated to the National Competition Commission at the same time as its notification to the interested parties.

3. The Council of Ministers may:

a) Confirm the resolution issued by the Council of the National Competition Commission.

b) Decide to authorise the concentration, with or without conditions. This decision must be duly justified on reasons of general interest other than protecting competition, in accordance with the provisions of Article 10. Before adopting the corresponding Decision, the National Competition Commission may be requested to issue a report.

4. After the periods indicated in Article 36 have elapsed and neither the Minister of Economy and Finance nor the Council of Ministers have adopted a decision, the express resolution of the Council of the National Competition Commission in the second phase shall be effective, immediately executive and shall bring the administrative procedure to an end, with the understanding that it has decided to:

a) Subordinate the authorisation of the concentration to the commitments or conditions set out in the aforementioned resolution.

b) Prohibit the concentration, and in such circumstances the Council of the National Competition Commission may:

1. Order that the concentration is not carried through, when it has not already been executed.

2. Order that the necessary measures be taken to restore effective competition, including deconcentration, when the concentration has already been executed.

5. The Decision of the Council of Ministers shall be communicated to the National Competition Commission at the same time as its notification to the parties.

TITLE V

Sanctioning system

Article 61. Offenders.

1. Offenders shall be natural or legal persons who carry out actions or omissions typified as infringements by this Act.

2. For the purposes of the application of this Act, the action of an undertaking is also attributable to the undertakings or persons that control it, except when its economic behaviour is not determined by any of them.

3. When an association, union or business grouping is sanctioned and the grouping is not solvent, the association shall be obliged to collect contributions from its members until the amount of the fine has been covered.

In the event that these contributions are not paid to the association within the period set by the National Competition Commission, the payment of the fine can be exacted from any of the undertakings whose representatives are members of the governing bodies of the aforementioned association.

Once the National Competition Commission has required the payment in accordance with the above paragraph, it may exact payment of the amount from any member of the association which operates in the market where the infringement has occurred when this is necessary to guarantee the full payment of the fine.

However, the payment contemplated in Paragraphs Two and Three shall not be exacted from the undertakings that demonstrate that they have not applied the decision or recommendation of the association constituting the infringement and that they either did not know of its existence or actively distanced themselves from it before the investigation into the case began.

The financial liability of each undertaking with regard to the payment of the fine may not exceed 10% of its total turnover in the immediately preceding business year.

Article 62. Infringements.

1. The infringements established in this Act are classified as minor, serious and very serious.

2. The following are minor infringements:

a) Having submitted to the National Competition Commission the notification of the economic concentration outside the periods laid down in Articles 9.3.a) and 9.5.

b) Not having notified a concentration required *ex officio* by the National Competition Commission pursuant to Article 9.5.

c) Not having supplied the information required by the National Competition Commission or having supplied incomplete, incorrect, misleading or false information.

d) Not having submitted to an inspection ordered in accordance with the provisions of Article 40.

e) Obstruction by any means of the inspection task of the National Competition Commission. The following conduct may constitute obstruction of the inspection task:

1. Not submitting the books or documents requested by the National Competition Commission, or submitting them in an incomplete, incorrect or misleading manner in the course of the inspection.

2. Not answering the questions formulated by the National Competition Commission or answering them in an incomplete, inexact or misleading manner.

3. Breaking the seals put in place by the National Competition Commission.

3. The following are serious infringements:

a) The collusive conduct under the terms set out in Article 1 of the Act, when the conduct consists of agreements, decisions or collective recommendations, concerted or consciously parallel practices between undertakings that are actual or potential non-competitors.

b) The abuse of a dominant position typified in Article 2 that is not considered to be very serious.

c) The distortion of free competition through unfair acts in the terms set out in Article 3 of this Act.

d) The execution of a concentration subject to control in accordance with the provisions of this Act before it is notified to the National Competition Commission or before an express or tacit resolution authorising it has been issued and has become executive, without the lifting of the suspension having been decided.

4. The following are very serious infringements:

a) The collusive conduct typified in Article 1 of the Act which consists of cartels or other agreements, decisions or collective recommendations, concerted or consciously parallel practices between actual or potential competing undertakings.

b) The abuse of a dominant position typified in Article 2 when it is committed by an undertaking that operates in a recently liberalised market, has a market share near monopoly or which enjoys special or exclusive rights.

c) Not complying with or contravening a resolution, decision or commitment adopted in application of this Act, regarding both restrictive conduct and concentration control.

Article 63. Sanctions.

1. The competent bodies may impose the following fines on the economic agents, undertakings, associations, unions or groupings of them that, intentionally or by negligence, infringe the provisions of this Act:

a) Minor infringements with a fine of up to 1% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine.

b) Serious infringements with a fine of up to 5% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine.

c) Very serious infringements with a fine of up to 10% of the total turnover of the infringing undertaking in the business year immediately preceding to that of the imposition of the fine.

The total turnover of associations, unions or groupings of undertakings shall be determined taking into consideration the turnover of their members.

2. Besides the sanction set out in the previous section, when the offender is a legal person, a fine of up to 60,000 euros may be imposed on each of its legal representatives or on the persons that comprise the management bodies that have participated in the agreement or decision.

Excluded from the sanction are those persons who, forming part of the collegiate administrative bodies, have not attended the meetings or who have voted against or saved their vote.

3. In the event that it is not possible to delimit the turnover referred to in Section 1 of this article, the infringements typified in this Act shall be sanctioned on the following terms:

a) Minor infringements with a fine of between 100,000 and 500,000 euros.

b) Serious infringements with a fine of between 500,001 and 10 million euros.

c) Very serious infringements with a fine of more than 10 million euros.

Article 64. Criteria for the determination of the amount of the fines.

1. The amount of the fines shall be set in light, among others, of the following criteria:

a) The dimension and characteristics of the market affected by the infringement.

b) The market share of the undertaking or undertakings responsible.

c) The scope of the infringement.

d) The duration of the infringement.

e) The effect of the infringement on the rights and legitimate interests of consumers or on other economic operators.

f) The illicit benefits obtained as a consequence of the infringement.

g) The aggravating and mitigating circumstances that exist in relation to each of the responsible undertakings.

2. To set the amount of the fines, the following aggravating circumstances, among others, shall be taken into account:

- a) The repeated commission of infringements typified in this Act.
- b) The position of leader in or instigator of the infringement.
- c) The adoption of measures to impose or guarantee the enforcement of the conduct constituting the infringement.
- d) The lack of collaboration or obstruction of the inspection task, notwithstanding the possible consideration as independent infringement pursuant to Article 62.

3. To set the amount of the penalty, the following mitigating circumstances, among others, shall be taken into account:

- a) The performance of actions that terminate the infringement.
- b) The effective non-application of the prohibited conduct.
- c) The performance of actions intended to repair the damage caused.
- d) The active and effective collaboration with the National Competition Commission carried out outside the cases of exemption and of reduction of the amount of the fine regulated by Articles 65 and 66 of this Act.

Article 65. Exemption from payment of the fine.

1. Notwithstanding the provisions of the above articles, the National Competition Commission shall exempt an undertaking or a natural person from the payment of any fine that it may have imposed on them when:

- a) It is the first to provide with evidence that, in the National Competition Commission view, enables it to order an inspection in the terms set out in Article 40 in relation to a cartel, providing that at the time of its provision there is not sufficient evidence to order the inspection, or
- b) It is the first to provide with evidence that, in the National Competition Commission view, enables it to verify an infringement of Article 1 in connection with a cartel, providing that, at the time of its provision, the National Competition Commission does not have sufficient evidence to find the infringement and an exemption has not been granted to an undertaking or natural person by virtue of letter a).

2. For the National Competition Commission to grant the exemption set out in the previous section, the undertaking or, as the case may be, the natural person that has submitted the corresponding application must meet the following requirements:

- a) Cooperate fully, continuously and expeditiously with the National Competition Commission, under the terms that are established according to regulations, throughout the administrative investigation procedure.
- b) Bring an end to its participation in the alleged infringement at the time that it submits evidence referred to in this article, except in those cases where the National Competition Commission deems it necessary for this participation to continue with the aim of preserving the efficacy of an inspection.
- c) Not have destroyed evidence related to the application for exemption nor to have disclosed, directly or indirectly, to third parties other than the European Commission or other Competent Authorities, the fact of its contemplated application or any of the

content.

d) Not have adopted measures to oblige other undertakings to participate in the infringement.

3. The exemption from payment of the fine granted to an undertaking shall also benefit its legal representatives, or the persons comprising the management bodies and who have taken part in the agreement or decision, providing they have collaborated with the National Competition Commission.

Article 66. Reduction of the amount of the fine.

1. The National Competition Commission may reduce the amount of the corresponding fine in relation to undertakings or natural persons that, without meeting the requirements set out in Section 1 of the previous article:

a) provide with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the National Competition Commission's possession, and

b) meet the requirements set out in letters a), b) and c) of Section 2 of the previous article.

2. The level of reduction of the amount of the fine shall be calculated in line with the following rule:

a) The first undertaking or natural person that fulfils the provisions of the previous section may benefit from a reduction of between 30% and 50%.

b) The second undertaking or natural person may benefit from a reduction of between 20% and 30%.

c) The successive undertakings or natural persons may benefit from a reduction of up to 20% of the amount of the fine.

3. The provision by an undertaking or natural person with evidence that enables to establish additional facts with a direct repercussion on the amount of the fine shall be taken into account by the National Competition Commission when determining the amount of the fine corresponding to that undertaking or natural person.

4. The reduction of the amount of the fine corresponding to an undertaking shall be applicable, in the same percentage, to the fine that may be imposed on its representatives or on the persons that comprise the management bodies that have taken part in the agreement or decision, providing they have collaborated with the National Competition Commission.

Article 67. Coercive fines.

Irrespective of penalty fines and notwithstanding the adoption of other measures of compulsory execution permitted by law, the National Competition Commission may impose, prior compliance request for the undertakings, associations, unions or groupings of these, and economic agents in general, coercive fines up to 12,000 euros a day with the aim of obliging them:

a) To cease the conduct that has been declared prohibited in accordance with the provisions of the Act.

- b) To undo a concentration operation that has been declared prohibited in accordance with the provisions of the Act.
- c) To the removal of the effects caused by conduct restrictive of competition.
- d) To the fulfilment of the commitments or conditions adopted in the resolutions of the National Competition Commission or in the Decisions of the Council of Ministers pursuant to the provisions of this Act.
- e) To the fulfilment of the orders of a resolution, request or decision of the National Competition Commission or of the Council of Ministers.
- f) To the fulfilment of the duty of collaboration laid down in Article 39.
- g) To the fulfilment of the interim measures.

Article 68. Lapse of infringements and of sanctions.

1. Very serious infringements shall lapse after four years, serious ones after two years and minor ones after one year. The term of the lapse shall be counted as of the day when the infringement has been committed or, in the case of continued infringements, as of when they have ceased.
2. The sanctions imposed for the commission of very serious infringements shall lapse after four years, those imposed for the commission of serious infringements after two years and those imposed for minor infringements after one year.
3. The lapse is interrupted by any act of the Administration with formal learning of the interested party intending the compliance with the Act and by the acts carried out by the interested parties with the aim of ensuring, complying with or executing the corresponding resolutions.

Article 69. Publicity of sanctions.

The sanctions imposed pursuant to this Act, their amount, the name of the offenders and the infringement committed shall be public, in the form and on the conditions that are set out according to regulations.

Article 70. Applicable regulations and competent organs.

1. With the exception of the infringements set out in Article 62 corresponding to Articles 1, 2 and 3, all of this Act, the procedure for imposition of the penalties laid down in this Title shall be governed by the provisions of the Act 30/1992, of 26th November, on the Legal Regime for the Public Administrations and the Common Administrative Procedure, and of the developing regulations. However, the maximum period of resolution may be suspended in the cases set out in Article 37 of this Act.
2. The Directorate of Investigation shall be the competent organ for the initiation and handling of the sanctioning proceedings and the Council of the National Competition Commission for its resolution.

ADDITIONAL PROVISIONS

First Additional Provision. Mercantile Courts.

Pursuant to Article 86 *ter* 2. letter f of the Judiciary Act 6/1985, of 1 July, the Mercantile Courts shall have jurisdiction in civil actions concerning the application of Articles 1 and 2 of this Act.

Second Additional Provision. Amendment of Civil Procedure Act 1/2000, of 7 January.

One. Article 15b of Civil Procedure Act 1/2000, of 7 January, is introduced in the following terms:

“Article 15b. Intervention in competition proceedings.

1. The European Commission, the National Competition Commission and the competent bodies of the Autonomous Communities within the sphere of their competences may intervene, without being considered a party, *ex officio* or at the request of the judicial body, by providing information or submitting written observations on issues relating to the application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act. With the permission of the court in question, they may also make verbal observations. For these purposes, they may request the competent court to transmit or ensure the transmission to them of any documents necessary for the assessment of the case.

The provision of information shall not include data or documents obtained within the sphere of the circumstances of application of exemption or reduction of the amount of the fines set out in Articles 65 and 66 of the Competition Act.

2. The European Commission, the National Competition Commission and the competent bodies of the Autonomous Communities shall provide the information or submit the observations set out in the above section ten days before the hearing referred to in Article 433 of this Act, or within the time for opposition or objection to the appeal lodged”.

Two. Article 212 of Civil Procedure Act 1/2000, of 7 January, is amended, adding a new section, which shall be 3, in the following terms:

“3. The judgements issued in the proceedings regarding the application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act shall be communicated by the Judicial Secretary to the National Competition Commission.”

Three. Article 249 of Civil Procedure Act 1/2000, of 7 January, is amended, adding a new subsection, in its Section 4, in the following terms:

“4. Lawsuits concerning unfair competition, competition, in application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act, industrial property, intellectual property and publicity, providing that they do not deal exclusively with claims on quantity, in which case they shall be processed by the procedure that corresponds to them depending on the amount being claimed. However, Point 12 of Section 1 of Article 250 of this Act shall be observed in the case of actions for cessation in defence of collective interests and of diffuse interests of consumers in matters of publicity.”

Four. Article 404 of Civil Procedure Act 1/2000, of 7 January, is amended, adding a new paragraph in the following terms:

“In the proceedings in which Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act apply, the Judicial Secretary shall forward to the National Competition Commission the court decision admitting the lawsuit within the period set out in the paragraph above.”

Five. Article 434 of Civil Procedure Act 1/2000, of 7 January, is amended, adding a new section, which shall be 3, in the following terms:

“3. The period for issuing a judgement in the proceedings regarding the application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act may be suspended when the court knows of the existence of administrative proceedings before the European Commission, the National Competition Commission or the competent bodies of the Autonomous Communities and the pronouncement of the administrative body needs to be known. This suspension shall be adopted duly motivated, with a prior hearing of the parties, and it shall be notified to the administrative body. This, in turn, must forward its resolution to the court.

Only an appeal for reversal may be lodged against the court decision on the suspension of proceedings.”

Six. Article 461 of Civil Procedure Act 1/2000, of 7 January, is amended, adding a new section, which shall be 5, in the following terms:

“5. In the proceedings in which Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act apply, the Judicial Secretary shall forward to the National Competition Commission the notice of appeal.”

Seven. Article 465 of Civil Procedure Act 1/2000, of 7 January, is amended, adding a new section, which shall be 5, in the following terms:

“5. The period for issuing a judgement in the proceedings regarding the application of Articles 81 and 82 of the Treaty of the European Community or Articles 1 and 2 of the Competition Act may be suspended when the court knows of the existence of administrative proceedings before the European Commission, the National Competition Commission or the competent bodies of the Autonomous Communities and the pronouncement of the administrative body needs to be known. This suspension shall be adopted duly motivated, with a prior hearing of the parties, and it shall be notified to the administrative body. This, in turn, must forward its resolution to the court.

Only an appeal for reversal may be lodged against the court decision on the suspension of proceedings.”

Third Additional Provision. Communications of the National Competition Commission.

The National Competition Commission may publish Communications clarifying the principles that guide its action pursuant to this Act. In particular, the Communications referring to Articles 1 to 3 of this Act shall be published after the Competition Council has been heard.

Fourth Additional Provision. Definitions.

1. For the purposes of this Act, undertaking is taken to be any person or entity that carries out an economic activity, irrespective of the legal statute of the organisation and its form of financing.

2. For the purposes of this Act, cartel is taken to be any secret agreement between two or more competitors which has as their object prices fixing, production or sales quotas, market sharing, including bid rigging, or import or export restrictions.

Fifth Additional Provision. References to the national competition bodies existing in other rules.

1. The National Competition Commission shall be the National Competition Authority for the purposes of applying the Council Regulation (EC) No. 1/2003, of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

2. The references of the current rules to the Competition Court and to the Competition Service shall be understood to be made to the National Competition Commission.

3. However, the references of the Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence, to the Competition Court and to the Competition Service shall be understood to be made to the Council of the National Competition Commission and to the Directorate of Investigation, respectively. Notwithstanding the above, the Council of the National Competition Commission shall be chaired by the Chairman of the National Competition Commission.

Sixth Additional Provision. Extinction of the Competition Court and of the Competition Service.

1. The Autonomous Organisation Competition Court and the Competition Service are extinguished.

2. The material means of the Competition Court and of the Competition Service shall be transferred to the National Competition Commission, which shall be subrogated in the rights and obligations of which the former are the holders in such a way as to guarantee the maximum economy of resources.

3. Civil servants and personnel who, at the time of entry into force of this Act, provide their services at the Competition Court and at the Competition Service shall become part of the National Competition Commission.

Seventh Additional Provision. Amendment of Administrative Jurisdiction Act 29/1998, of 13 July.

One. New wording is given to Article 8.6 of Administrative Jurisdiction Act 29/1998, of 13 July, in the following terms:

“6. The Administrative Courts shall also hear the authorisations for the entrance into homes and other places whose access requires the consent of their owner, providing this is appropriate for the compulsory execution of acts of the Public Administration.

The Administrative Courts shall, similarly, be competent for the authorisation or judicial ratification of the measures that the health authorities consider to be urgent and necessary for public health and which involve privation or restriction of freedom or of another fundamental right.

Also, the Administrative Courts shall hear the authorisations for the entrance and inspection of homes, premises, land and means of transport that have been decided by the National Competition Commission, when, with this access and inspection requiring the consent of their owner, the latter opposes it or there is a risk of such opposition.”

Two. New wording is given to Article 10.1 of Administrative Jurisdiction Act 29/1998, of 13 July, in the following terms:

“Article 10. Competences of the Administrative Courtrooms of the High Courts of Justice.

1. The Administrative Courtrooms of the High Courts of Justice shall hear in a single instance the appeals that are brought in relation to:

a) The acts of the Local Entities and of the Autonomous Communities Administrations, the hearing of which is not attributed to the Administrative Courts.

b) The regulations emanated from the Autonomous Communities and from the Local Entities.

c) The acts and provisions of the governing organs of the legislative assemblies of the Autonomous Communities, and of the autonomous institutions analogous to the Audit Office and the Ombudsman, in matters of personnel, administration and equity management.

d) The acts and resolutions issued by the Regional and Local Economic-Administrative Courts that bring an end to the economic-administrative procedure.

e) The resolutions issued by the Central Economic-Administrative Court in matters of transferred taxes.

f) The acts and provisions of the Provincial and Autonomous Community Electoral Committees, and the appeals against decisions of the Electoral Committees on proclamation of elects and election and proclamation of Chairmen of Local Corporations, in the terms of the electoral legislation.

g) The agreements between Public Administrations whose competences are exercised in the geographical area of the corresponding Autonomous Community.

h) The prohibition or the proposal for modification of meetings set out in Organic Law 9/1983, of 15 July, Regulating the Right of Assembly.

i) The acts and resolutions issued by organs of the General State Administration whose competence extends to the whole of the national territory and whose organic level is below that of the Minister or Secretary of State in matters of personnel, special properties and expropriation.

j) The acts and resolutions of the competent bodies of the Autonomous Communities for the application of the Competition Act.

k) Any other administrative actions not expressly attributed to the competence of other bodies of this jurisdictional nature.”

Three. Section 3 of Fourth Additional Provision of Administrative Jurisdiction Act 29/1998, of 13 July, is amended, with the following wording:

“3. The resolutions and acts of the Chairman and of the Council of the National Competition Commission, directly, in a single instance, before the Administrative Courtroom of the National Audience.”

Eighth Additional Provision. References to the National Competition Commission and to its management organs.

The references contained in this Act to the National Competition Commission and to its management organs relating to functions, administrative powers and procedures shall also be understood to be made to the corresponding competent handling and resolution organs of the Autonomous Communities when they refer to the corresponding competences laid down in Article 13 of this Act.

Ninth Additional Provision. Legal assistance to the National Competition Commission.

Legal assistance, consisting of the advice, representation and defence at trial, to the National Competition Commission shall be conducted in accordance with the Act 52/1997, of 27 November, on Legal Assistance to the State and Public Institutions.

Tenth Additional Provision. Amendment of Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence.

One. Article 5.One.3 of Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence, is amended in the following terms:

"3. The Competition Council, as the body in charge of participation and collaboration between the General State Administration and the Autonomous Communities, shall be responsible for the following functions:

- a) To follow up on the competition policy implemented by the various public Administrations on a regular basis.
- b) To promote information exchange, carry out and publish studies that show the criteria followed by the various Administrations in applying the regulations on competition defence and, as the case may be, the need for uniformity.
- c) To inform on the drafts of general provisions affecting competition issues over which the Autonomous Communities have implementing powers.
- d) To draft guidelines on the interpretation of Section 2 of Article 1 of this Act."

Two. Article 5.Two, letter b) of Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence, is amended in the following terms:

"b) The National Competition Commission shall forward to the autonomous bodies a succinct of the actions carried out *ex officio* and a copy of all of the complaints, about which there are reasonable indications of infringement, when they refer to conduct affecting the respective Autonomous Community."

Three. Article 5 Section Four of Act 1/2002, of 21st February, regarding Co-ordination of the State and the Autonomous Communities' Competences on Competition Defence, is amended in the following terms:

"The National Competition Commission, in exercising their pertinent duties, shall obtain from the competent autonomous body a mandatory, non-binding report, to be issued within a term of twenty days, in relation to the conduct set out in Articles 1, 2 and 3 of the

Competition Act or Articles 81 and 82 of the Treaty of the European Community, that, affecting a supra-autonomous sphere or the national market as a whole, have a significant effect in the territory of the respective Autonomous Community.

For this, the National Competition Commission shall forward to the autonomous body of the respective Autonomous Community a copy of the statement of objections and, as the case may be, of the complaint and of the documents and evidence that appear in the proceedings, indicating this fact in the notification to the interested parties of the above statement.

The National Competition Commission shall inform the autonomous body of the respective Autonomous Community of the decisions and resolutions adopted, both in the handling phase and in the resolution phase, that bring an end to the proceedings, with regard to this conduct.”

Eleventh Additional Provision. Amendment of General State Administration Organisation and Functioning Act 6/1997, of 14th April.

Tenth Additional Provision of the General State Administration Organisation and Functioning Act 6/1997, of 14th April, shall include, among the organisations listed in Section 1: “... the National Competition Commission.”

TRANSITIONAL PROVISIONS

First Transitional Provision. Proceedings initiated formally.

1. Antitrust proceedings instituted prior to the entry into force of this Act shall be dealt and resolved in accordance with the provisions in effect at the time when they were initiated. In any event, applications submitted under Article 4 of the Competition Act 16/1989, of 17th July, shall be considered expired.
2. Concentration control proceedings initiated prior to the entry into force of this Act shall be dealt and resolved in accordance with the provisions in effect at the time when they were initiated.
3. In proceedings indicated in the sections above, references to the Competition Court and the Competition Service shall be considered made, respectively, to the Council of the National Competition Commission and to the Directorate of Investigation.

Second Transitional Provision. Constitution of the National Competition Commission.

1. Without prejudice to Sixth Additional Provision of this Act, the Chairman of the Competition Court and the Members shall exercise their functions as Chairman and Council Members of the National Competition Commission until their mandate expires, without the possibility of another subsequent appointment for the same post.
2. In order to adapt the composition of the number of members of the Council of the National Competition Commission to Articles 20.b) and 33.1 of this Act, the reduction to six Council Members shall occur gradually according to the expiry of the mandate of the Chairman and the Members of the Competition Court under the terms set out in the section above.

3. The appointment of the new Council Members shall take place as of the time when the number of Council Members is fewer than six.
4. The Director of Investigation shall be appointed within three months as of the entry into force of this Act. Up to the appointment, the Director General of Investigation shall continue to exercise his functions.

REPEAL PROVISION

Repeal Provision.

1. Competition Act 16/1989, of 17th July, and such provisions of equal or lower level that oppose the provisions of this Act are repealed.
2. Without prejudice to section above, Royal Decree 1443/2001, of 21 December, implementing the Competition Act 16/1989, of 17th July, regarding the control of economic concentrations, and Articles 2 and 3 of Chapter I, Articles 14 and 15, Sections 1 to 4, of Chapter II and Chapter III of Royal Decree 378/2003, of 8 March, implementing the Competition Act 16/1989, of 17th July, concerning block exemptions, individual authorisations and competition register, shall continue to be in effect until the Government approves, as the case may be, new regulatory texts, where this does not oppose the provisions of this Act.

FINAL PROVISIONS

First Final Provision. Competence titles.

This Act is issued under Article 149.1.13^o of the Constitution.

The following precepts are exceptions to the above:

First Additional Provision, which is issued under Article 149.1.5^o of the Constitution.

Article 12, Section 3, Article 16, and Second, Seventh and Ninth Additional Provisions, which are issued under Article 149.1. 6^o of the Constitution.

Article 23, which is issued under Article 149.1.14^o of the Constitution

Second Final Provision. Empowerment to regulate.

1. In accordance with the provisions of this Act and in the sphere of their respective competences, the Government and the Minister of Economy and Finance may issue the regulations necessary for the development and application of this Act.
2. In particular, the Government is authorised, in the period of 6 months, to issue the regulations that develop this Act in respect of the procedures, the treatment of conduct of minor importance and the system of leniency or exemption and reduction of fines to undertakings that collaborate in the fight against cartels.
3. Likewise, the Government is authorised, prior report of the National Competition Commission, to amend by Royal Decree the thresholds set out in Article 8 of this Act. In any event, every three years the National Competition Commission shall assess the application of these thresholds for the purpose of proposing, as the case may be, their amendment to the Government.

4. Within the period of three months after the constitution of the Council of the National Competition Commission, the Council of Ministers shall approve by Royal Decree, prior report of the National Competition Commission, its Statute, in which shall be established such questions relating to the functioning and action of the National Competition Commission as are necessary in accordance with the provisions of this Act and, in particular, the following ones:

- a) the organic structure of the National Competition Commission;
- b) the distribution of competences among the various organs;
- c) the personnel system.

5. Likewise, the Government is authorised to amend by Royal Decree the regulation of the organisational structure of the Ministry of Economy and Finance in accordance with the new institutional organisation provided in this Act.

Third Final Provision. Entry into force.

- 1. This Act shall enter into force on 1 September 2007.
- 2. Without prejudice to the section above, Articles 65 and 66 of this Act shall enter into force at the same time as its developing regulation.