

FOLLOW-UP REPORT ON THE CNC'S AUTOMOTIVE FUEL REPORT

1. INTRODUCTION

The fuel sector has traditionally been a sector of particular concern for the economic authorities, given its impact on the daily activity of citizens, its importance in economic activity generally and the strategic nature of its supply. A properly operating sector is fundamental to the growth and competitiveness of the Spanish economy.

In 2008 the Spanish National Competition Commission (CNC), having noted a significant increase in fuel prices in a context of retail prices that were generally higher than those recorded in neighbouring countries, decided to carry out a detailed analysis of the way in which the automotive fuel sector operated. The result of that analysis showed the existence of a set of structural factors that could be burdening competition in the sector. The conclusions of the analysis were recorded in the *Report on competition within the automotive fuel sector* ("the Automotive Fuel Report") which was published on 3 September 2009.

The Report's main conclusion was that there were numerous barriers to the entry and expansion of new operators in the retail and wholesale segments of the fuel market, which could be taking away competitive intensity and could, in part, explain the differential in prices and margins compared with other European countries. The specific proposals to reduce the effect of such barriers and to facilitate a more efficient competitive dynamic in the sector were recorded in the following recommendations, directed principally to the public authorities and the legislative body, in relation to both the wholesale segment and the retail segment of the market:

- **One:** Fixing of the price for access to the hydrocarbons pipeline transport network by the Ministry of Industry, Tourism and Trade. During the transitional period until the preparation of the corresponding regulations, CLH should adopt a transparent methodology for determining the price for access to the network and should present the accounts of the activity subject to competition (storage) separately from the accounts of the activity carried out as a monopoly (pipeline transport).
- **Two:** Withdrawal of the wholesale operators from ownership and management of CLH, as is the case in other network monopolies.
- **Three:** Simplification of the process for processing applications to open new service stations and reduction of their terms.
- **Four:** Increase in the weighting of competition criteria in the processes for awarding or authorising service stations located on major roads. In particular, the

award of consecutive service stations as a block to the same operator should be avoided.

- **Five:** Facilitating the opening of service stations in large commercial establishments through a correct application of the administrative advantages provided for in these cases in Royal Decree-Law 6/2000.

The CNC has continued with its activity of checking and monitoring competition in the sector. Shortly before the publication of the Automotive Fuel Report, the CNC resolved two formal proceedings of particular importance. In case 652/08 Repsol/Cepsa/BP, resolved in July 2009, the CNC imposed sanctions on these three operators for the contractual system of branding and supply used by them with the service stations in their respective networks, because it considered that the system in question weakened competition on prices between them and between the service stations in the retail segment. In case 2697/06 Cepsa, also resolved in July 2009 by means of a termination by commitments, Cepsa undertook to arrange for the early termination of its exclusive supply arrangements with certain service stations in its network, whose lengthy terms could help to obstruct the entry and expansion of operators in the market¹. In February 2010 the CNC dismissed case 2575/04 Disa Canarias, relating to the long duration of its exclusive supply arrangements with service stations in the Canary Islands, although it did not do so without commenting on the “...*highly impregnable nature of the retail fuel sales market in the peninsula deriving from the fact that 80% of the service stations are linked to an operator ...*”. This all shows the CNC’s concern when it comes to the fuel market.

The Automotive Fuel Report’s recommendations were favourably received in various media in the months following its publication, but despite this support the specific measures to correct the problems detected have still not been approved, with the result that the concern expressed by the CNC in September 2009 regarding the functioning of the sector continues to this day. The need to apply the recommendations has become even more urgent with the increase in fuel prices in recent months and the recovery of the petroleum price as a result of the political tensions in the Maghreb and the Middle East.

All of the above points make it advisable to reflect on the proposals previously made, the degree to which they have been followed up and accepted and remain in force, as well as reflecting on whether it is appropriate, following a more detailed analysis which the CNC is carrying out, to include new proposals with the aim of achieving a more competitive operation of this sector. This follow-up report focuses first of all on the extent to which the CNC’s recommendations have been complied with; secondly it will

¹ In July 2009 it was also decided to open formal proceedings against GALP for practices similar to those of Cepsa. The case has yet to be resolved.

evaluate the recent trend in the market and, finally, it will evaluate the need to maintain the recommendations previously made and to reinforce them, as the case may be.

2. EXTENT OF COMPLIANCE WITH THE CNC'S RECOMMENDATIONS

Most of the recommendations proposed by the CNC in its Automotive Fuel Report involved the introduction of changes to the rules and regulations governing the sector in order to stimulate competition. Some of the proposals were aimed at facilitating access by wholesale distributors in the peninsula market, making it easier for them to access the principal transport network, that is to say gain access to CLH, on transparent, objective and non-discriminatory conditions. The rest of the proposals were aimed at facilitating the entry of new operators in the retail distribution segment and thereby increasing the number of suppliers, and with them the level of competition.

These proposals were supported by the main parliamentary groups. On 7 September 2009, the Partido Popular Parliamentary Group presented an *“early day motion relating to the immediate implementation of the recommendations of the National Competition Commission to the Government in its Report on the automotive fuel sector”* to the full house²:

“The Congress of Deputies urges the Government to put into effect the recommendations proposed by the National Competition Commission in its report on competition within the automotive fuel sector immediately, thereby encouraging lower prices for the consumer and the immediate transfer of the drop in raw materials prices to the end prices.” (underlining added)

For its part, on 18 March 2010 the Socialist Parliamentary Group presented an *“early day motion on measures to improve competition in the fuel sector”*, which was approved with amendments on 14 April 2010 by the Industry, Tourism and Trade Commission³ with the following contents:

“The Congress of Deputies urges the Government, in co-ordination with the autonomous communities and local authorities, to adopt specific actions to improve the competitiveness of undertakings throughout the value chain and to strengthen effective competition in the retail fuel distribution sector, and in particular:

- a) *To identify those regulatory aspects that could delay, prevent or unnecessarily increase the cost of the process of opening new facilities in order to simplify the procedure for processing this type of application.*
- b) *To give greater weight to competition criteria in the processes for awarding concessions or authorising them, in particular on motorways, major roads and industrial estates.*
- c) *To encourage, within their sphere of jurisdiction, the opening of new service stations in hypermarkets or large commercial establishments, given that it is these distribution facilities that have shown the greatest ability to compete on prices.*

² BOCG (Official Parliamentary Gazette) Congress of Deputies No. D-256 of 18.09.2009.

³ BOCG (Official Parliamentary Gazette) Congress of Deputies No. D-365 of 30.03.2010.

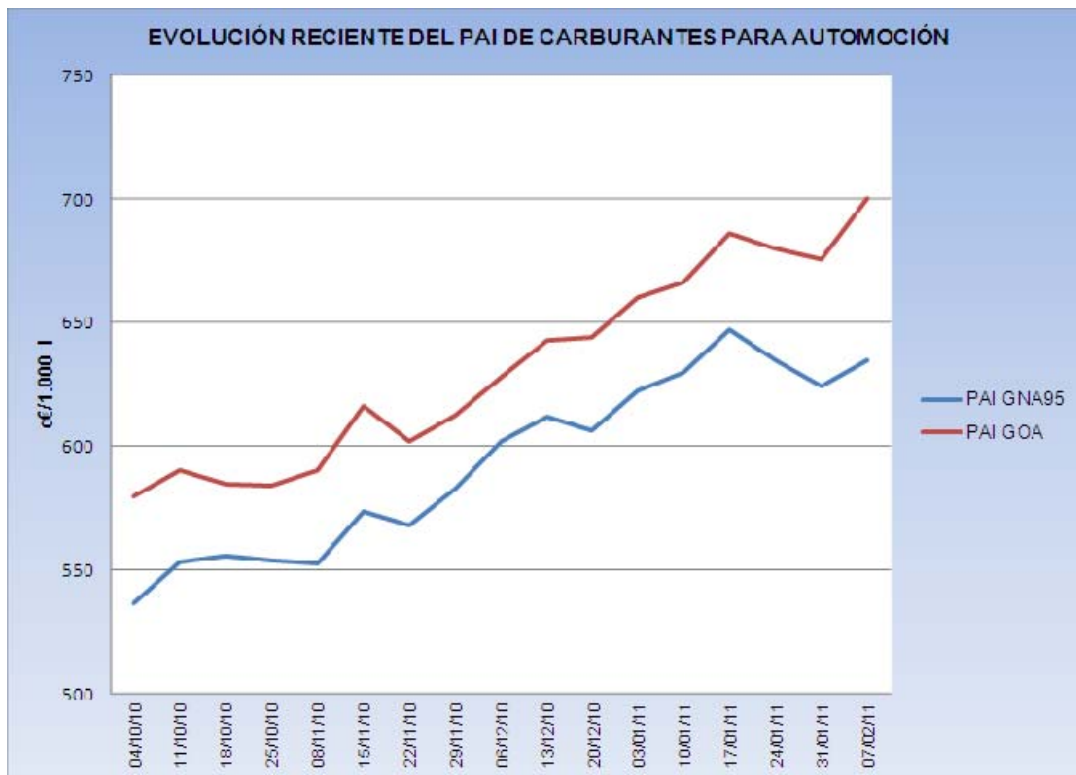
- d) *To simplify, update and revise the regulatory framework for the retail hydrocarbons distribution activity established in Act 34/1998 of 7 October 1998, the Hydrocarbons Sector Act, and its enabling rules and regulations, in order to prevent unnecessary bureaucratic burdens on undertakings.*
- e) *To propose to the Government that it urges the European Union to prepare a Community information procedure that establishes a methodology with common, concrete and defined criteria on the data which the different member states have to report in terms of consumer price level for petroleum products, specifying concisely the method for calculating the averaged values.*
- f) *That the Government, by agreement with the sector, should implement the recommendations proposed by the National Competition Commission in the automotive fuel sector aimed at achieving benefits for the consumer.*” (underlining added)

Aside from these parliamentary initiatives, measures aimed at reducing the formalities for opening new service stations have still not been adopted, nor have there been measures to change the shareholding structure of Corporación Logística de Hidrocarburos (CLH) or to check on its activity and make it more transparent, as recommended in the Automotive Fuel Report.

3. TREND OF THE PRINCIPAL INDICATORS OF THE LEVEL OF COMPETITION IN THE SECTOR SINCE THE PUBLICATION OF THE PREVIOUS REPORT

The pre-tax price of automotive fuels in Spain has increased noticeably since October 2010, as reflected in Graph 1.

Graph 1: Recent trend in the pre-tax price of automotive fuels in Spain.



Source: Weekly data from the European Commission's Oil Bulletin

The Automotive Fuel Report analysed a set of indicators on the operation of the Spanish market that seems to point to the possible existence of less competition than in other European countries.

The updating of the main indicators to 2009 and 2010, presented below, shows that there has not been any significant improvement in the level of competition in the fuel distribution sector in Spain.

These conclusions are consistent with the conclusions expressed in different reports of the Spanish National Energy Commission⁴, which show the persistence of the positive differential in the pre-tax prices in Spain compared with other European averages, a significant increase in the gross selling margin indicator compared with previous periods and a significant widening of the differential of this indicator compared with the European averages EU-6 and EU-14. In its last monthly report on fuel prices in Spain and in the EU (January 2011), the National Energy Commission concluded as follows:-

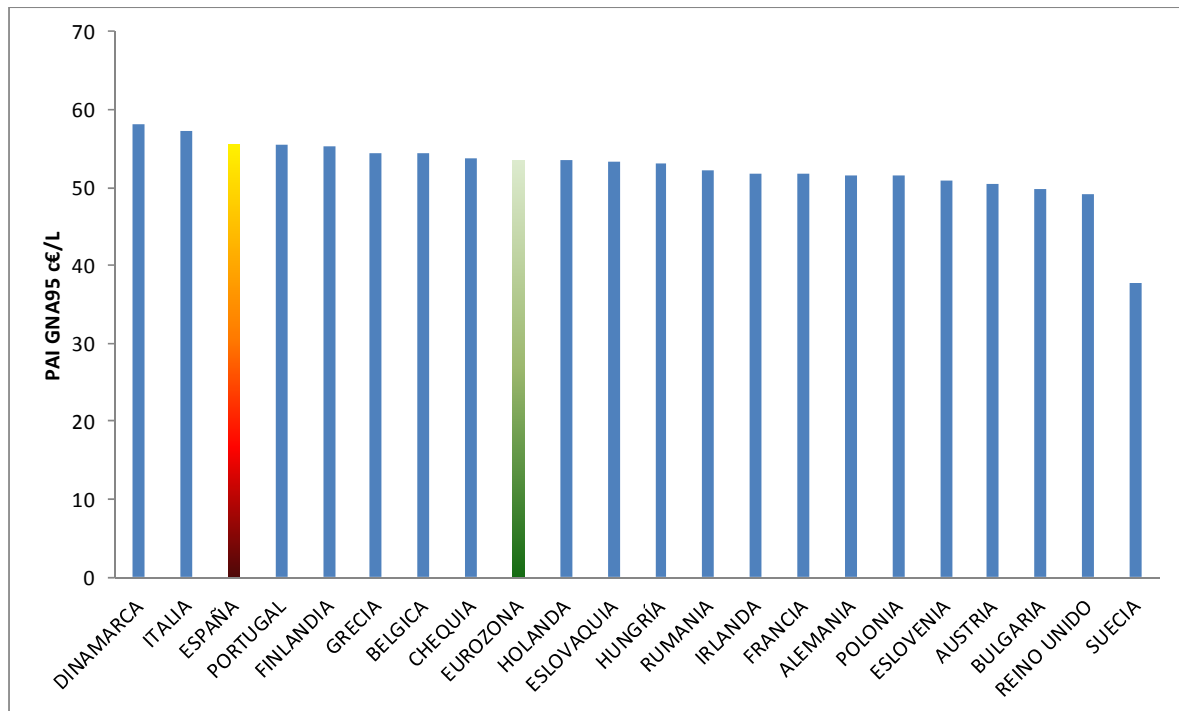
⁴ Investigation report by the National Energy Commission into the trend in prices and margins on the sale of automotive fuels in Spain (January 2008 - April 2009) dated 18 December 2009; Investigation report by the National Energy Commission into the trend in prices and margins on the sale of automotive fuels in Spain (January 2008 - April 2009) dated 18 December 2009; Macro Monitoring of Service Stations: Monthly Report on Fuel Prices in Spain and in the EU, various months.

“For 95 octane petrol, the price differentials in Spain compared with the European averages continue to be positive for the 38th month in a row, with the Spain-EU14 differential achieving its highest ever level. Similarly in the case of diesel fuel, the Spain-EU14 and Spain-EU6 differentials are positive for the 35th and 38th consecutive month respectively.”

3.1. Trend in pre-tax prices

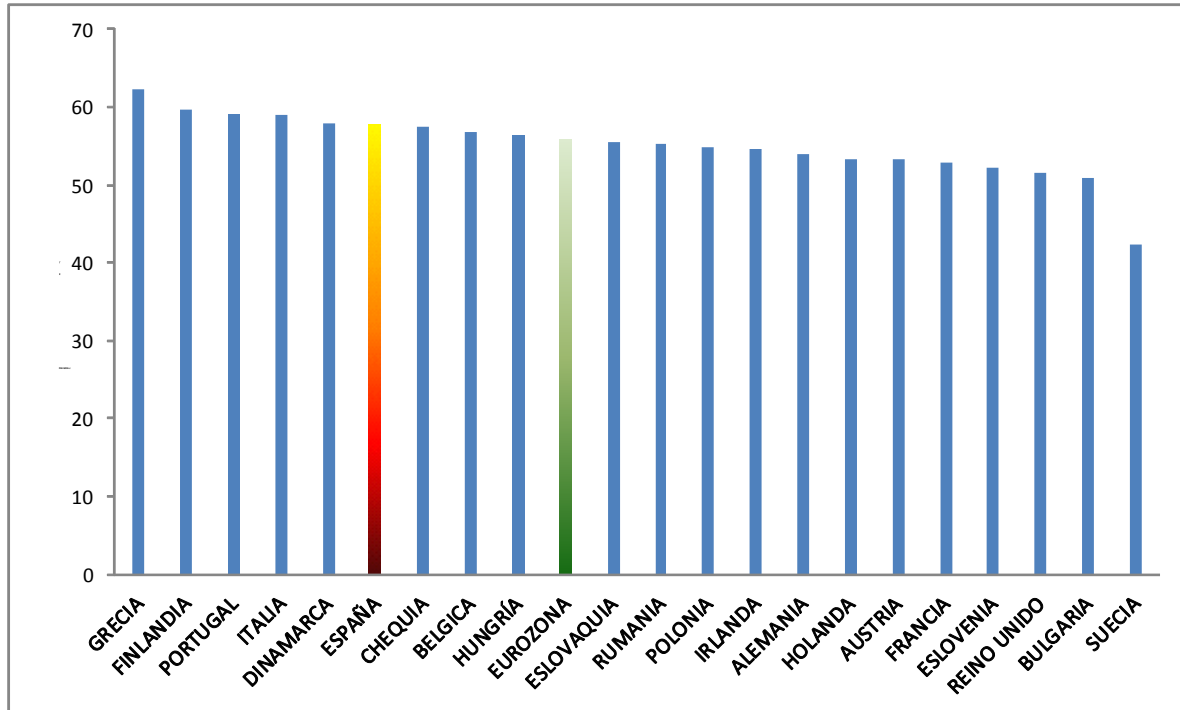
The pre-tax prices of 95 octane petrol and automotive diesel in Spain continue to be amongst the highest in the EU (Graphs 2 and 3).

Graph 2: Pre-tax price of 95 octane petrol in EU countries in 2010



Source: Ministry of Industry, Tourism and Trade, Annual Report on fuel prices. 2009-2010 comparison.

Graph 3: Pre-tax price of automotive diesel in EU countries in 2010



Source: Ministry of Industry, Tourism and Trade, Annual Report on fuel prices. 2009-2010 comparison.

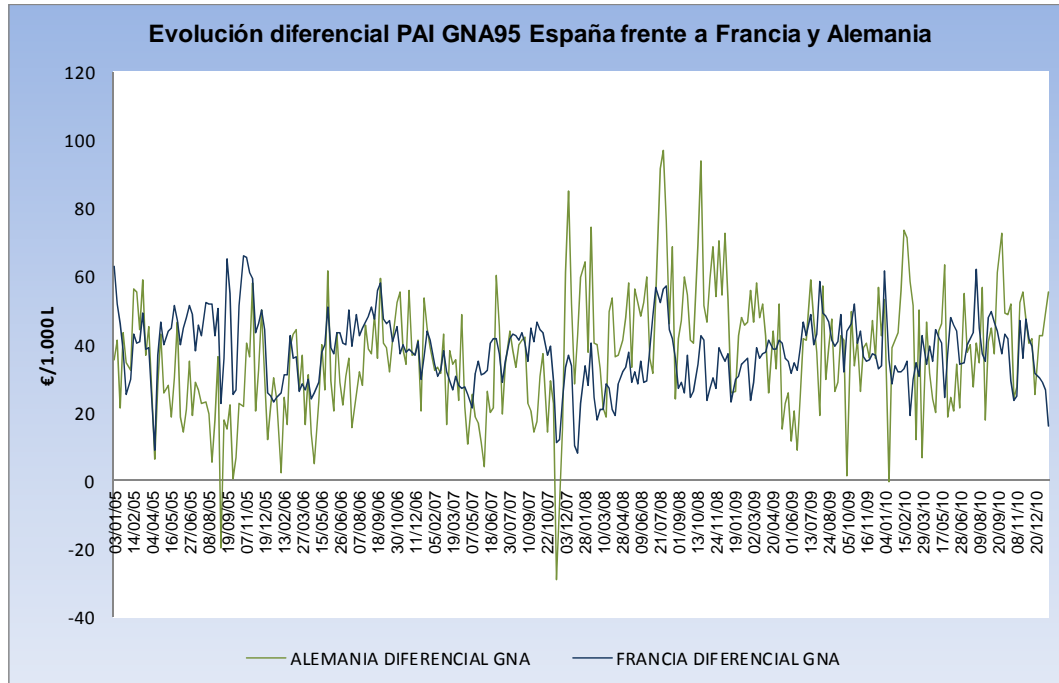
In addition, the Spanish price differential in 2009 compared with the countries in the eurozone and other European countries not only continues to be positive in average terms, but has also increased. The table below shows that compared with the €10.86 per thousand litres difference between the pre-tax price of 95 octane petrol in Spain and in the eurozone in 2008, in 2010 the difference amounted to €20.19 per thousand litres, that is to say it has doubled. In the case of automotive diesel, the trend is similar, with the differential going from €10.31 per thousand litres in 2008 to €19.16 per thousand litres in 2010.

Table 1: Average differential of the pre-tax price in Spain compared with the pre-tax price in Germany, France, the eurozone and the EU (2005-2010) in euros per thousand litres (a positive value indicates a higher pre-tax price in Spain).

	GERMANY	FRANCE	EUROZONE	EU
AVERAGE DIFFERENTIAL 95 OCTANE PETROL (€per 1,000 litres)				
2005	28.68	44.41	3.82	10.71
2006	33.13	38.66	5.08	12.77
2007	29.75	34.44	3.77	13.38
2008	51.76	32.17	10.86	20.01
2009	37.67	38.77	17.32	31.57
2010	26.59	40.25	20.19	30.11
AVERAGE DIFFERENTIAL AUTOMOTIVE DIESEL (€per 1,000 litres)				
2005	25.79	35.15	6.26	9.85
2006	36.13	37.69	9.21	11.30
2007	20.59	37.33	7.87	12.31
2008	35.31	40.51	10.31	15.76
2009	34.49	49.80	18.32	22.52
2010	34.97	37.27	19.16	23.93

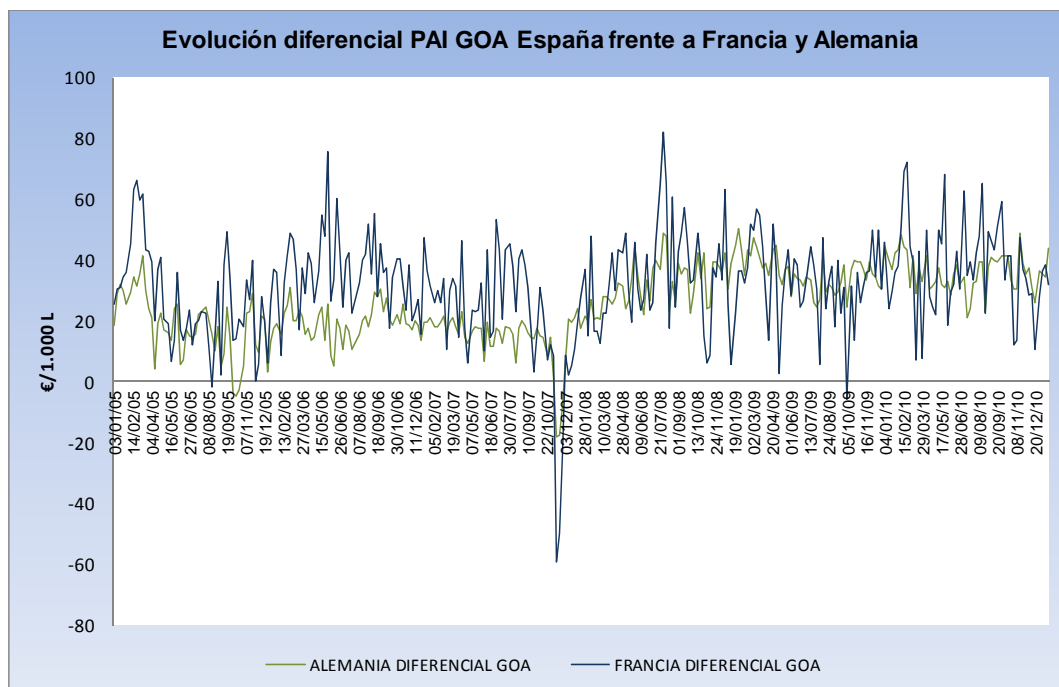
Source: prepared by the CNC from data from the European Commission Oil Bulletin

Graph 4: Trend in the pre-tax price differential of 95 octane petrol in Spain compared with France and Germany (2005-2010)



Source: European Commission Oil Bulletin

Graph 5: Trend in the pre-tax price differential of automotive diesel in Spain compared with France and Germany (2005-2010)



Source: European Commission Oil Bulletin

3.2. Gross distribution margins

The differential in the gross distribution margin compared with the EU⁵ continues to be positive. In the last six months of 2010 this differential increased in the case of 95 octane petrol, after the decrease registered in the second quarter. The differential in the gross margin of automotive diesel has been reducing since the third quarter of 2010, but its average level for the year as a whole continues to be higher than in 2009.

Table 2: Trend in the gross distribution margin

PRE-TAX PRICE- Ci MARGIN						
	95 OCTANE PETROL			AUTOMOTIVE DIESEL		
c€/litre	SPAIN	EU	DIFF.	SPAIN	EU	DIFF.
3 Q 2009	13.90	11.57	2.33	13.38	12.05	1.33
4 Q 2009	13.00	10.6	2.40	12.88	11.04	1.84
1 Q 2010	12.82	10.09	2.73	13.07	11.22	1.85
2 Q 2010	14.08	12.06	2.02	13.85	12.01	1.84
3 Q 2010	13.65	11.47	2.18	13.81	12.28	1.53
4 Q 2010	13.04	10.59	2.45	13.23	11.75	1.48
AV. 2009	12.58	10.22	2.36	13.33	11.87	1.46
AV. 2010	13.51	11.28	2.23	13.49	11.75	1.74

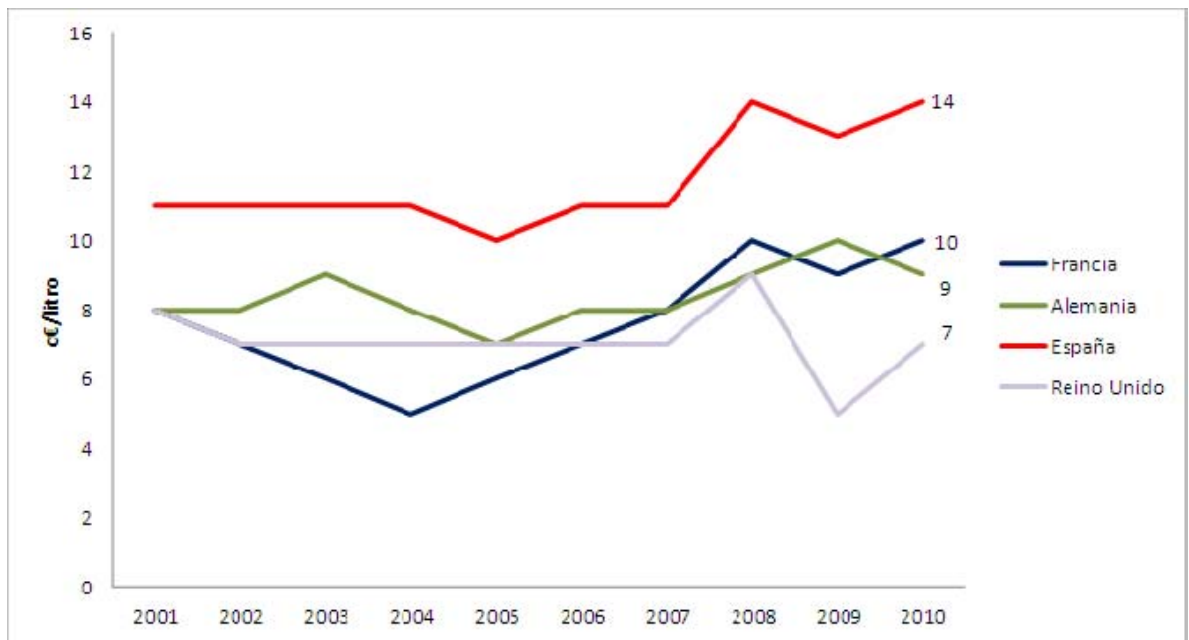
Source: National Energy Commission, Weekly monitoring reports on the hydrocarbons market

These prices do not reflect other elements that may be relevant for the analysis and that are not strictly taxes, such as subsequent discounts for loyalty cards. Nevertheless, the comparison between countries, for the purposes of evaluating the intensity of competition between operators, is more appropriate, in terms of the pre-tax price, given that not all consumers access the discounts (indeed, even those that can access them cannot always use them because the purchase of fuel is not always an act that is planned by the consumer) and we are dealing with price levels that the operators use as a benchmark to compare themselves with their competitors. Furthermore, the analysis of discounts has different implications on the analysis of the competitive environment, like the impact of the level of loyalty to a brand, or the effects on other markets or products that do not form part of the offer of all service stations to the same extent, such as services in a shop, lubricants, repair services or the hypermarkets themselves, as the case may be.

⁵ The gross distribution margin is the difference between the pre-tax price and the cost of supply.

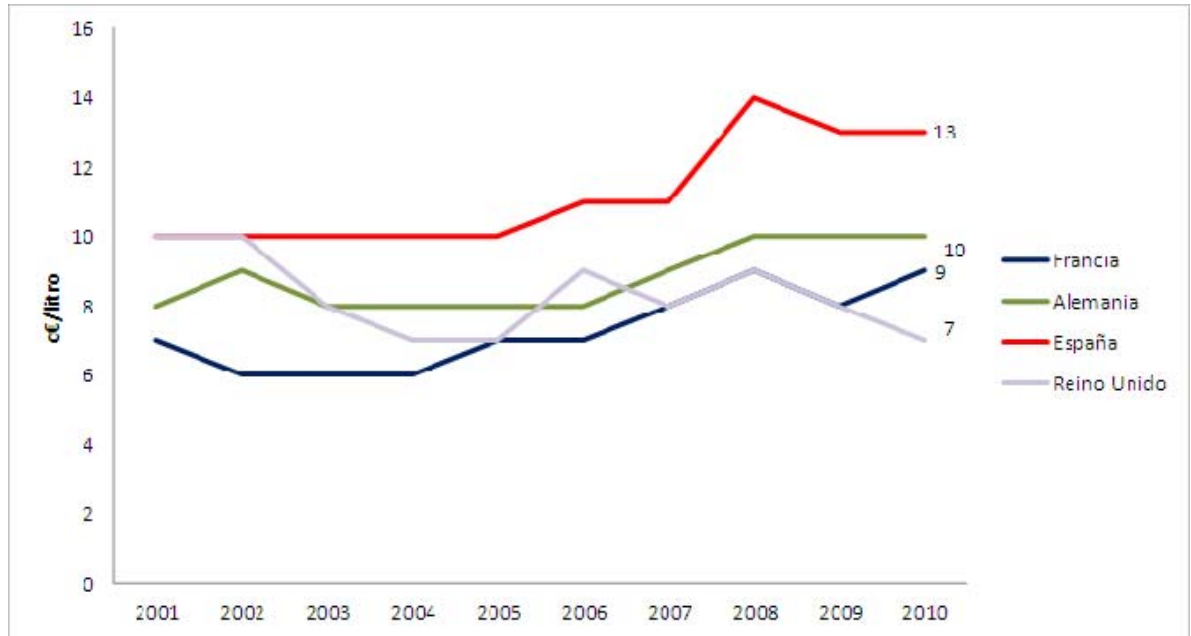
Official sources from other countries confirm the existence of a positive differential in the distribution margin in Spain compared with neighbouring countries. The French Ministry of Ecology, Sustainable Development, Transport and Housing publishes the trend in the transport-distribution margin in France and other European countries on its website, with similar results:

Graph 6: Trend in the transport-distribution margin of 95 octane petrol in Spain and other neighbouring countries



Source: French Ministry of Ecology, Sustainable Development, Transport and Housing

Graph 7: Trend in the transport-distribution margin of automotive diesel in Spain and other neighbouring countries



Source: French Ministry of Ecology, Sustainable Development, Transport and Housing

These international comparisons, whilst not definitive, reflect margins that are consistently higher in Spain than the ones obtained in France (40%), Germany (50%) and the United Kingdom (100%). In addition, the trend shows a persistent upward increase in Spanish margins, in contrast to the other countries. In the case of petrol, it is noteworthy that the margin in Spain was maintained until 2005, when a more severe drop was taking place in France and in Germany, and the prompt recovery from then onwards, which was quicker than in the other countries. In the case of automotive diesel, the margins have always remained stable or have tended to increase, unlike what has happened in all the other countries, which have experienced reductions at one time or another.

The gross distribution margins include: cost of insurance and freight on imports, unloading in port, primary storage, transport to secondary storage facilities and secondary storage, distribution of fuels to consumption centres and wholesale and retail margins.

Compañía Logística de Hidrocarburos (CLH) has a particular impact on the trend of these margins. It is the owner and manager of the pipeline network⁶, because in Spain,

⁶ CLH owns and manages all of the pipeline network in Spain, save for a stretch which connects the refineries of Puertollano and Cartagena, which belongs to Repsol.

unlike other countries, 90% of the transport is by pipeline⁷; CLH is also the owner of a large part of the storage facilities and provides a comprehensive minimum service which includes collection, transport and storage of fuels⁸.

In light of this it would be a good idea to analyse CLH's tariffs in greater detail, given that there is evidence that they may be contributing to the upward pressure on margins. CLH itself recognises in its presentation to the Annual General Meeting in 2010 that "it is one of the most profitable businesses in the logistics sector", with an "EBITDA/asset ratio in CLH in 2009 of 36%, much higher than comparable companies"⁹.

3.3. Price differences between provinces

In the previous Automotive Fuel Report, we indicated that prices on a provincial level did not appear to be influenced by the distance from the places of production and import of fuels, a situation which could reflect the existence of a policy of uniform prices, regardless of the cost of the transport, which is certainly inconsistent with a competitive market.

When interpreting these results it is necessary in any case to take into account that the provincial averages may include specific geographical areas, such as certain stretches of motorway for example, in which the competition conditions and, as a result, the prices differ greatly between themselves. Nevertheless, the phenomenon identified in the earlier Report continues to be evident, to a large extent, in the Spanish market, although the price dispersion has increased slightly, as can be seen in the table below.

Table 3: Measures of dispersion of average annual pre-tax fuel prices in the provinces (€/litre)

	AUTOMOTIVE DIESEL 2008	AUTOMOTIVE DIESEL 2010	95 OCTANE PETROL 2008	95 OCTANE PETROL 2010
Average*	67.23	57.64	56.02	55.51
Typical deviation	0.37	0.47	0.32	0.36
Variance in the sample	0.14	0.22	0.11	0.13
Range	2.13	3.08	1.89	2.67
Minimum	65.62	55.51	54.67	53.81
Maximum	67.75	58.59	56.56	56.48
Variation coefficient	0.55%	0.82%	0.58%	0.65%

⁷ From the operating point of view, the vast majority of the primary transport of liquid hydrocarbons in Spain is done by means of product pipelines, with an approximate share of 90% (compared with 11% in Germany, 40% in the United Kingdom or 53% in France) and other methods of transport such as sea, rail or road tanker are only marginally used.

⁸ CLH also provides other additional services such as the mixing of bio-fuels.

⁹ <http://www.clh.es/NR/rdonlyres/7E7D1DEC-1DA1-4E2B-A745-3CB5D700DC79/0/DOSSIERDEPRENSAJuntageneral2010.pdf>.

* After a strong correction in 2009 due to the drop in worldwide demand for petrol, average prices in 2011 have returned to levels that are higher than those of 2010. There are no available up-to-date provincial values for pre-tax prices in 2011.

Source: Ministry of Industry, Tourism and Trade, Annual Report on fuel prices. 2009-2010 comparison

3.4. The transfer of the variations in the price of crude to fuel prices. The “rockets and feathers” problem

The Automotive Fuel Report analysed the transfer of the variations in the price of crude to fuel prices as an element that could highlight problems with competition in the market. A study of this phenomenon by the Spanish central bank, Banco de España¹⁰, associated the low intensity and speed of transfer of variations in the price of crude to fuel prices with an environment in which there is little competition. This relative inertia may be indicative of problems with an incomplete price adjustment, which might not occur in competitive markets, as highlighted in the CNC’s previous Automotive Fuel Report.

The lower levels of intensity and speed in transferring variations in the price of crude to the national price of fuels does not necessarily imply the existence of an asymmetric price adjustment, that is to say a greater speed in transferring increases in the price of crude to fuel prices than in the subsequent transfer of reductions in the price of crude to the fuel prices, the phenomenon known as “rockets and feathers”.

This phenomenon, when it occurs in a context in which average prices are at levels that are higher than in the surrounding area, is undesirable from the perspective of the end consumer, as it represents a rapid transfer of increases in costs and a slow repercussion when raw material prices go down. If reductions in the cost of the raw material are passed on more quickly in other countries, this also represents a competitive disadvantage for products that use fuel as an input in times of lower international raw material prices.

This phenomenon is more likely to appear in situations where the markets have little dynamism in terms of competition and where there are barriers to entry and expansion. The academic literature on this phenomenon highlights the fact that the use of focal prices in oligopolistic markets in order strategically to coordinate the commercial policies of competitors, or the adaptation of the stocks of undertakings in environments with little competition where there are variations in demand could explain this case of asymmetry when it comes to the transfer of variations¹¹. Although “rockets and feathers” produce

¹⁰ Banco de España (2008), Monthly Economic Bulletin, November 2008.

¹¹ There is considerable literature on the phenomenon such as: Galeotti, M., Lanza, A., Manera, M. (2002) “Rockets and Feathers Revisited: An International Comparison on European Gasoline Markets” Fondazione Eni Enrico Mattei. Bacon, R.; Kojima, M. (2010) “Asymmetric Petroleum Product Pricing in Developing Countries”. World Bank. Extractive Industries for Development Series #18. Brown, S.; Yücel, M. (2000) “Gasoline and crude oil prices: why the asymmetry?” *Economic and financial review*. 3Q 2000 (authors from the research department of the Federal Reserve in Dallas).

an extraordinary income for the operators, by increasing the average prices received along the chain by the producers, the existence of such entry and expansion barriers may prevent the market from self-correcting.

The empirical evidence of the rockets and feathers phenomenon in Spain is not decisive. In its study Banco de España did not find significant evidence that this phenomenon was occurring in Spain, although other studies highlighted in the CNC's Automotive Fuel Report supported the existence of these asymmetries. Given the non-conclusive nature of the studies on the existence of the rockets and feathers phenomenon, and its evident effect on the efficiency of the market, it could be a good idea for the CNC to carry out a more in-depth analysis of this phenomenon in order to detect the point in the chain at which the principal causes may be found, in order to reinforce the recommendations that are appropriate to the case or propose new solutions, as the case may be.

4. EVALUATION AND REVIEW OF THE RECOMMENDATIONS

The earlier Automotive Fuel Report highlighted the role played by barriers to entry and expansion in the retail market, principally relating to the difficulties in opening new service stations and branding the existing service stations, when it comes to maintaining pre-tax prices in Spain that are higher than those of the majority of European countries. The ability of these barriers to hinder competition is reinforced by the advantages that the operators with refining capacity in Spain have as a result of their size, their implantation in national territory, the vertical integration of their distribution with the refining activity and their ability to influence decision-making within CLH as a result of their membership of its Board of Directors. These structural factors, which have already been highlighted in the earlier Report, weaken the competitive pressure between undertakings even further, and may even facilitate anti-competitive practices that affect the evolution of the market, as detailed below.

4.1. Competitive situation in the wholesale market

The following segments can be basically distinguished in the value chain of the hydrocarbons sector: (i) mining and extraction of petroleum, (ii) refining of petroleum, (iii) supply or first sale of refined products, (iv) transport¹² and storage, and (v) distribution of refined products¹³. For practical purposes it is useful to distinguish between the international or provisioning wholesale segment and the national or secondary segment.

¹² Transport includes both the transport of refined products – by means of oil tankers or pipelines – from the refineries to the storage terminals and transport - by tankers or pipelines – from the storage facilities to the points of sale or final consumption.

¹³ See CNC case C/0005/07 DISA/TOTAL.

- *International wholesale segment (provisioning)*

Different national and community competition precedents, particularly in the area of control of business concentrations, have examined these markets¹⁴. The refiners supply themselves with crude from the international market and there are multiple “hubs” or trading centres that provide liquidity and transparency to the market. The crude that is supplied to the Mediterranean region (MED), where there is hardly any production, comes principally from the Persian Gulf, Russia and countries in Central Asia and North Africa¹⁵.

In terms of petroleum refining activity, there are numerous refineries in Europe located in the member states and there do not appear to be any particular difficulties when it comes to these refineries accessing the crude (raw material) or the sales and export channels, given that they are generally located close to the ports and given the number of reception and dispatch terminals that exist.

The provisioning or first sale of refined products makes reference both to sales of fuel that has already been refined “on exit from the refinery” and which is destined for the national market, and to fuel imports. This type of provisioning generally involves large volume operations, which means that the buyers are of a significant size and the product travels long distances. Operations in this market are normally undertaken by means of long-term contracts, which tend to be referable to spot prices¹⁶. There are certain international trading centres with a high degree of liquidity, such as Rotterdam (NWE market) or Genoa (MED market), all of which contributes to the fact that competition on this level takes place in the pan-European arena.

The price of each refined product in each member state is determined by the benchmark price in the international markets plus the cost of transport to the state in question (insurance and freight, costs of unloading at the terminal, costs of storage until consumption), provided that there are no restrictions on fuel import capacity. In the case of Portugal, whose entry logistics structure may be comparable to that of Spain, the

¹⁴ See Decisions of the European Commission M.727 BP/MOBIL, M.1383 EXXON/MOBIL, M. 1628 Totalfina/Elf, M.1859 ENI/GALP, M.5005 GALP Energia/EXXONMOBIL IBERIA, M.5169 GALP Energia España/AGIP España and COMP/38,348 Repsol CPP, amongst others. In Spain see CNC cases C/0005/07 DISA/TOTAL, 490/00 Repsol, 2697/06 CEPSA, Competition Service case N-04073 DISA/SHELL PENINSULAR/SHELL ATLÁNTICA, Competition Tribunal Reports C86/04 DISA/SHELL and C88/05 SHELL ESPAÑA/CEPSA, amongst others.

¹⁵ There are two other petroleum regions in Europe: NWE which covers the north of Europe, and CEE, which extends to the countries of Eastern Europe and Russia. In NWE the mix of crudes utilised is lighter and has a lower sulphur content than in MED, whilst the mix of crudes in CEE is heavier and has a higher sulphur content. See European Commission, DG Energy and Transport, *Survey of the Competitive Aspects of Oil and Oil Product Markets in the EU* (December 2009).

¹⁶ See European Commission, DG Energy and Transport, *Survey of the Competitive Aspects of Oil and Oil Product Markets in the EU* (December 2009).

European Commission estimates that transport costs would account for around 3% of the pre-tax price¹⁷.

Spain is one of the countries with the highest level of concentration in terms of ownership of refineries. There are nine refineries suitable for fuel production, which belong to three operators: Repsol (5 refineries, 59% of production capacity), Cepsa (3 refineries, 34% of production capacity) and BP (1 refinery, 8% of production capacity)¹⁸. Spain, with an HHI¹⁹ of 4,531 points, has a level of concentration of production capacity by operators that is much higher than that of the United Kingdom (1,313 points), Germany (1,702), Italy (1,749) and also higher than that of France (3,661)²⁰.

¹⁷ Decision of 19.11.2009 in the case of State Aid C 34/2009 PT-LIP-PETROGAL, S.A., based on *Autoridade da Concorrência, Relatório Final sobre os Sectores dos Combustíveis Líquidos e do Gás Engarrafado em Portugal*, Lisbon, 31 March 2009.

¹⁸ The refining capacity in Spain is 1,304 kb/d, compared with 2,380 kb/d in Germany (82% more than in Spain), 2,181 kb/d in Italy (67% more), 1,951 kb/d in France (50% more) and 1,883 kb/d in the United Kingdom (44% more). See National Energy Commission, Second Annual Monitoring Report on the Liquid Hydrocarbons Market, 2009.

¹⁹ The Herfindahl-Hirschman Index (HHI) is an indicator of the level of concentration of a market. It is the sum of the squares of the operators' market shares (in %).

²⁰ National Energy Commission, Second Annual Monitoring Report on the Liquid Hydrocarbons Market, 2009.

Table 4: Structure of the refining industry in Spain and selected EU countries

Country	Refineries	Production Capacity (%)	HHI
Spain	5 Repsol 3 Cepsa 1 BP	58% Repsol 34% Cepsa 8% BP	4,531
France	6 Total 3 ExxonMobil 2 Petroplus 1 Ineos 1 Lyondell	55% Total 18% ExxonMobil 12% Petroplus 10% Ineos 5% Lyondell	3,661
Germany	3 Shell 2 BP 1 ConocoPhillips 1 Total 1 OMV 1 Petroplus 1 Tamoil 3 Various operators	29% Shell 20% BP 13% ConocoPhillips 11% Total 8% OMV 5% PDSVA 5% Petroplus 3% Tamoil 3% ENI	1,702
United Kingdom	1 ExxonMobil 1 Shell 1 Total 1 ConocoPhillips 1 Chevron 1 Ineos 1 Petroplus 1 Murco 2 Neste-PDVSA	19% ExxonMobil 15% Shell 13% Total 13% ConocoPhillips 12% Chevron 11% Ineos 10% Petroplus 6% Murco 2% Neste-PDVSA	1,313
Italy	6 ENI 2 ERG 2 ExxonMobil 1 Saras 1 Tamoil 1 Total 1 API 1 MOL 1 Iplom 1 ALMA	34% ENI 20% ERG 16% ExxonMobil 13% Saras 4% Tamoil 4% Total 4% API 3% MOL 2% Iplom 1% ALMA	1,749

Source: Prepared by the CNC from National Energy Commission, *Second Annual Monitoring Report on the Liquid Hydrocarbons Market, 2009* and European Commission, DG Energy and Transport, *Survey of the Competitive Aspects of Oil and Oil Product Markets in the EU* (December 2009).

Spain has the fifth highest refining capacity in the EU-15, exceeded only by Germany, Italy, France and the United Kingdom, although the refining capacity of these countries

is much higher than that of Spain²¹. The utilisation rate of the refining capacity in Spain is 90.1%, a similar ratio to that of other Community countries such as Germany (91.2%), but higher than France (85.9%), Italy (80%) and United Kingdom (84%)²².

In net terms, Spain exports petrol (3,254,000 metric tonnes in 2010, 38% of apparent national production) and imports automotive diesel (9,653,000 metric tonnes in 2010, 29% of national consumption)²³. The Spanish refineries have committed to significant investments in order to adapt to the growing needs for “dieselisation” of the automotive park in Spain²⁴.

The previous Automotive Fuel Report did not analyse the operation of the refining market in detail, nor did it detect particular problems with congestion of the infrastructure for importing refined fuels in Spain that could affect the competitive dynamic of the downstream markets.

The Banco de España study mentioned earlier found a high level of intensity and a high speed of adjustment to variations in the price of fuels in the international wholesale market²⁵ in response to variations in the price of crude.

In 2010, the Spanish Petroleum Operators Association (AOP) prepared a study on “*The refining industry in Spain*” in which it makes reference to growing competition in the wholesale markets from petroleum products originating from the expansion of refining in Asia, the Middle East and Russia. It considers that the international markets are very liquid and adjust rapidly. Despite the EU’s stringent environmental rules and regulations, the analysis of the trend in fuel imports by place of origin indicates that there is competitive pressure on the supply side, due to the rapid transformation of the geographical origin of these imports.

²¹ See European Commission, DG Energy and Transport, *Survey of the Competitive Aspects of Oil and Oil Product Markets in the EU* (December 2009).

²² National Energy Commission, *Second Annual Monitoring Report on the Liquid Hydrocarbons Market, 2009*.

²³ Cores, *Statistical Hydrocarbons Bulletin*, December 2010.

²⁴ Repsol, Cepsa and BP have invested more than 6,000 million euros in the modernisation of their refineries in the period 2008-2011. See AOP, *Annual Report 2009*.

²⁵ In its analysis Banco de España does not distinguish between national wholesale markets, assuming that the wholesale fuel market is international.

Table 5: Trend in the market share of automotive diesel imports²⁶ by place of origin

	2004	2005	2006	2007	2008	2009
Share of imports originating from the EU	70.46%	71.54%	66.68%	61.65%	61.70%	56.29%
Share of imports originating from non-EU countries	29.54%	28.46%	33.32%	38.35%	38.30%	43.71%

Source: Prepared by the CNC from Cores data

Everything that is said above reflects without doubt a high level of impact of foreign trade on the fuel sector in Spain. Nevertheless, given the high degree of concentration of the refining industry and the high utilisation rates of its capacity, it would be helpful to carry out an in-depth study of the evolution and composition of imports in order to analyse whether they sufficiently discipline the price of refined fuels on leaving the factory. This analysis will also evaluate possible difficulties with access to entry capacity and to the primary storage of fuels in Spain.

- *National (secondary) wholesale segment*

Once the fuel has been refined or introduced into the system via one of the entry ports, it is transported to the retail sales points (or to the reception centres of large customers, as the case may be): the fuel is destined either for use by the wholesale operator itself in the downstream retail market (intra-network), for sale to third parties who operate in the downstream market or for sale to large customers, such as hospitals or military centres (extra-network). The distribution to these sales points is made in smaller volumes than with international provisioning, normally by road tankers or by small pipelines in certain cases. In this case the cost of transport does play an important role, as it is not normally competitive to transport on a small scale over distances in excess of 100-150 kilometres²⁷. In principle the geographical dimension of this market from the perspective of competition would be local or regional²⁸. Each point of provisioning, refinery or deposit may serve a particular area of influence, whose size is a function of the costs of transport to the final destination. This means that in order for an operator to be competitive in the extra-network wholesale sale of fuels, or in order for its intra-network auto-supply to be competitive, it must have fuel stored in a centre that is close (100-150 kilometres) to the point of consumption.

The earlier Automotive Fuel Report quantified the available storage capacity in Spain at around 18 million cubic metres, which would be distributed between CLH (33.8% of the total), operators with refining capacity in Spain (Repsol 26.5%, Cepsa 11%, BP 4.4%)

²⁶ Spain is a net exporter of petrol and a net importer of automotive diesels.

²⁷ See European Commission, M.1383 EXXON/MOBIL.

²⁸ See European Commission, M.1383 EXXON/MOBIL and Competition Tribunal Report C86/04 DISA/SHELL.

and operators with no refining capacity and independent wholesalers (24.4%). The storage centres of operators with no refining capacity and independent wholesalers are all located on the Spanish peninsula coast and in the island territories. As well as having facilities on the coast, CLH has various storage centres in the interior of the country which are connected to its pipeline network. The storage facilities of Repsol, Cepsa and BP are the facilities belonging to its refineries. The available figures and data do not enable us to identify the extent and configuration of the geographical areas corresponding to the storage centres in Spanish territory. It is not therefore possible to determine for certain whether there are geographical areas that are to a greater or lesser extent under the control of a single operator.

In fact, it is possible that there may be an overlapping effect of the geographical areas covered by each storage centre, which would result in the linking of the various areas of influence, that is to say the existence of a national market²⁹. Nevertheless, it is also necessary to bear in mind the statement of the Competition Tribunal to the effect that in Spain it is possible to find regional nuances which, if they are sufficiently significant, may give rise to the existence of regional geographical markets within the Spanish peninsula. However, the Constitutional Tribunal left this question open³⁰. In any event, the Competition Tribunal took the view that it was necessary to analyse the non-peninsula territories, namely the Canary Islands, Ceuta and Melilla, separately.

The question of whether there may be regional markets is important for the competitive dynamic for various reasons. First of all, according to the Automotive Fuel Report, only CLH's facilities and the facilities of operators without any refining capacity and independent wholesalers are subject to obligations in relation to third-party access on transparent and non-discriminatory conditions, whereas the storage facilities of Repsol, Cepsa and BP, which are located in their respective refineries, are not subject to such obligations. Thus, in areas in which there are no other types of storage facilities or there is saturation, the absence of any obligation to provide storage for third parties may prevent operators that are not vertically integrated from supplying themselves or from making extra-network sales in those territories without depending on operators with refining capacity in Spain.

Secondly, CLH offers a minimum comprehensive service which includes receipt at the point of delivery (refinery or import centre), operative storage, transport and delivery to the point of destination. This package of services, which combines regulated activities with the characteristics of a natural monopoly (transport) with activities operated in competition, limits the ability of third parties to compete with CLH in relation to storage or in relation to the delivery to destination from a storage facility (road tanker service), which may detract from the efficiency of the system.

²⁹ See Report of the Competition Tribunal C86/04 DISA/SHELL.

³⁰ See Report of the Competition Tribunal C86/04 DISA/SHELL.

Thirdly, CLH's integral tariff is not postal³¹, unlike what happens in other network energy sectors, such as gas or electricity: this gives cost advantages to operators with an entry point for the fuel into the system that is closer to its final destination and may also make the entry of wholesale operators more difficult in certain territories. Furthermore, this form of charging incentivises wholesale operators with no refining capacity to locate their service stations (for which their auto-consumption is destined) and the points of destination to which their extra-network sales are made, in locations which are close to one another and close to the point at which the fuel enters the system, which may restrict the ability of these operators to expand their territory. A solution to this restriction could come in the form of swaps between operators³², but as there is no centralised market for the trading of these swaps, only occasional bilateral agreements are possible. Another solution could come from the reform of the single tariff structure and of CLH's contracts. This measure has already been referred to in the earlier Automotive Fuel Report.

Finally, the method of managing CLH's network of pipelines can be criticised for two reasons. First of all due to CLH's ability to fix the price for access to the network unilaterally. The pipeline is often the most efficient form of transport and constitutes a natural monopoly in which there are strong incentives to fix non-competitive prices. Secondly the fact that operators with refining capacity are shareholders in CLH may give them access to sensitive information and in any event enables them to recover part of the higher transport cost deriving from a possible exploitation of the monopoly in the form of dividends. This practice would be comparable with a narrowing of margins, due to its effects on competition.

Despite the changes that have taken place in CLH's shareholding structure since the publication of the previous Automotive Fuel Report, the presence of the operators with refining capacity continues to be relevant:

- Repsol, Petronor and BBK signed an agreement on 25 March 2010 by which BBK was to acquire a shareholding of 5% in Compañía Logística de Hidrocarburos (CLH), which Repsol owned indirectly through Petronor. It must be borne in mind that BBK, along with Repsol, is the main shareholder in Petronor, with a 14% share in its capital.

³¹ A postal tariff means a tariff in which the price applied is independent of the distance between the point of entry and the point of exit. However, a non-postal tariff depends on the distance travelled by the goods or service transported.

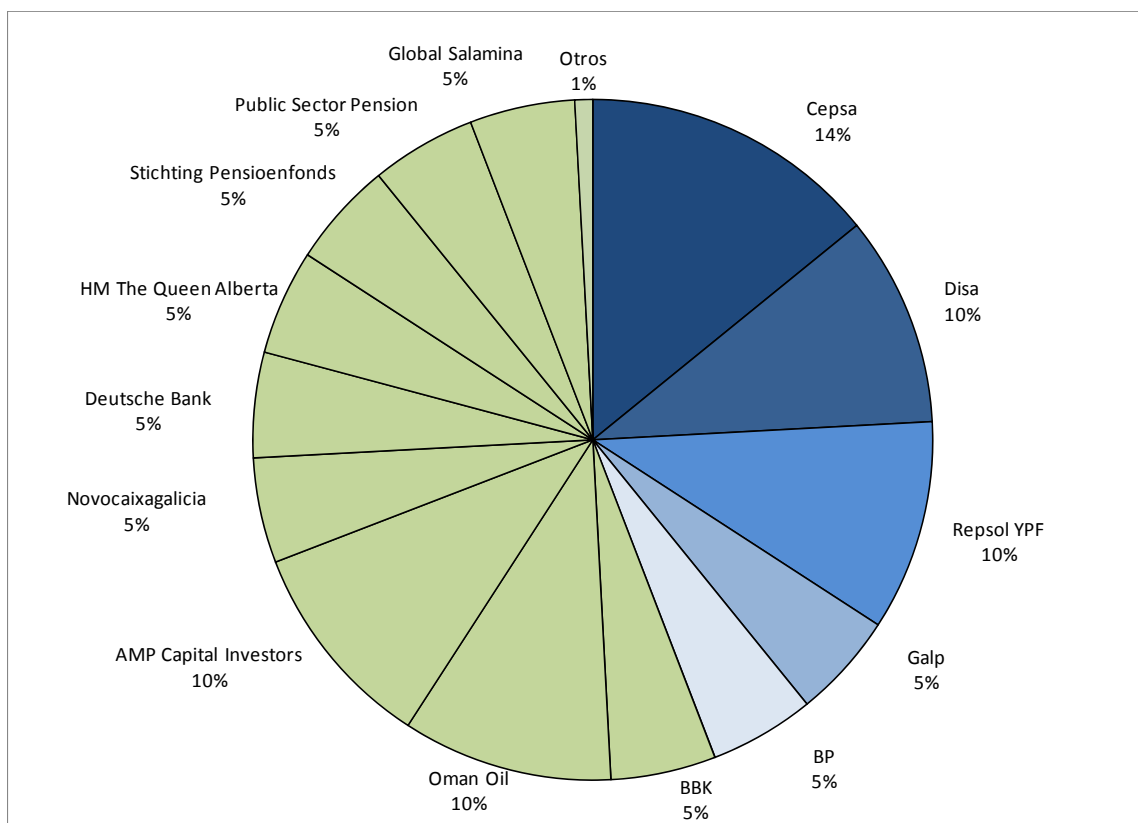
³² Notional temporary exchanges of ownership of fuel between wholesale operators without any physical exchange taking place.

- Disa has recently reached an agreement for the sale of its shareholding in CLH to certain investment funds advised by the venture capital firm AXA Private Equity. The sale has not yet taken place.

After the operation between Repsol and BBK referred to above, 29% of CLH's capital continues to be controlled directly by operators with refining capacity in Spain; this percentage would increase to 34% if Galp, whose refineries are in Portugal, were taken into account. In addition, the shareholding changes referred to above do not alter the fact that there continues to be very little representation of operators without refining capacity in CLH's shareholding structure: DISA, with 10% that it may sell to AXA, and Galp, with 5% and with refining capacity in Portugal, are the only operators amongst the shareholders of CLH that do not have any refining capacity in Spain.

The current composition of CLH's shareholding structure is as follows:

Graph 8: Composition of CLH shareholding structure



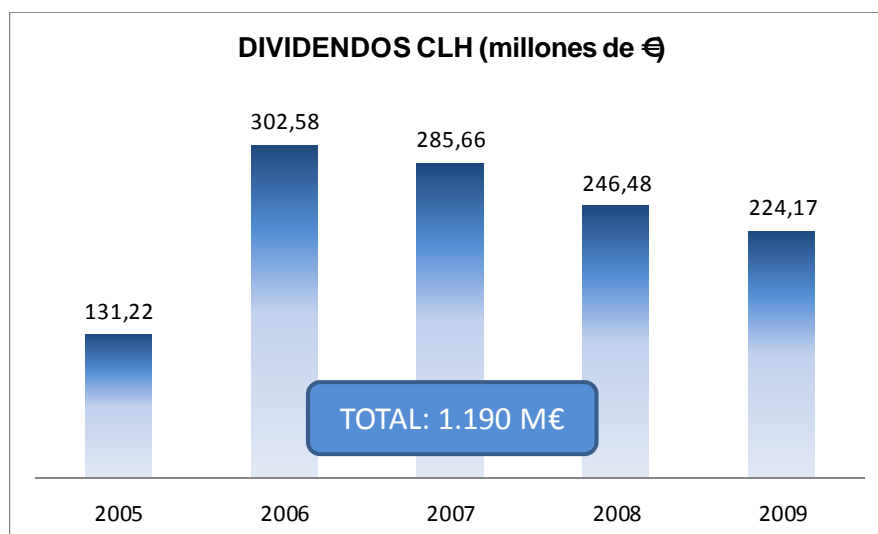
Source: CLH³³

³³ The DISA operation is not yet incorporated into CLH's shareholding structure, because the available information indicates that it has not yet been finalised.

According to the information provided by CLH in its corporate presentation for the 2010 Annual General Meeting³⁴, CLH's profitability is higher than that of the sector. This profitability and the attractiveness of CLH for different financial investors are consistent with the conclusions of the earlier CNC Report and its recommendations:

“The position of CLH as the only company offering the pipeline transport service means that it can charge the price at the level of a monopoly. This price would be paid by all the wholesale operators demanding the service and would generate high dividends for CLH's shareholders.”

Graph 9: Profitability of CLH for its shareholders



Source: Prepared by the CNC

It is not only the CNC that is concerned about the problems that the current pipeline management system may generate for competition in the fuel distribution market. The European Commission, in its Decision on the Totalfina/Elf merger³⁵ analysed the effects for competition as a result of the presence of this new operator following the merger of the undertakings managing the French pipelines. The Commission took the view that the presence of Totalfina/Elf in the capital of these undertakings, making it at the same time a shareholder and the main customer, would give rise to the following effects:

³⁴ The presentation is available on the CLH website (viewed on 4 March 2011): <http://www.clh.es/NR/rdonlyres/7E7D1DEC-1DA1-4E2B-A745-3CB5D700DC79/0/DOSSIERDEPRENSAJuntageneral2010.pdf>. Slides 27, 29 and 35 are of particular interest.

³⁵ Commission Decision of 9 February 2000 by which a concentration operation is declared compatible with the common market (Case COMP/M.1628 — TotalFina/Elf) Regulation (EEC) no. 4064/89 of the Council [notified with number C(2000) 363].

- It would provide important information on the commercial activity of the competitors.
- It could give the pipeline operators sufficient room to manoeuvre to allow them to exercise their market power, despite the French regulation of these facilities³⁶.
- It would give rise to fears amongst competitors, who were afraid that Totalfina/Elf “*could use these pipelines as an economic weapon to destabilise them in their retail activities*”.

The Commission demanded certain commitments to disinvest and limited the presence of Totalfina/Elf on the Boards of Directors of the companies managing the three main French pipelines.

Finally, there are common obligations imposed on all the operators, such as the maintenance of minimum security stocks, which may seriously affect operators with no refining capacity, although the Automotive Fuel Report already noted that following the regulatory changes in 2007, which gave these operators more favourable treatment in terms of maintaining minimum security stocks with CLH, the main source of discrimination deriving from these minimum security stocks had reduced.

Another regulation of obligations common to all the operators that favours the vertically integrated operators with refining capacity is the requirement regarding bio-fuel sales. These minimum sales may represent a significant barrier to the entry and expansion of the other operators. The operators with refining capacity in Spain have the resources to supply themselves, directly or indirectly, with the bio-ethanol (petrol) and bio-diesel (automotive diesel) that they need and they can obtain the product already mixed in their refineries. In contrast, in order to meet their obligations in respect of minimum sales of bio-fuels, the other operators have to charter smaller vessels, which are therefore less efficient, to import these products and, once they are in Spain, have to carry out the mixing of the bio-ethanol and bio-diesel with the respective fuels in the proportions required by the rules and regulations, which may again represent a higher cost than the one borne by the vertically integrated operators.

4.2. Competitive situation in the retail segment

The available information shows that the problem of relaxing the competitive pressure between participating undertakings that is derived from the high level of concentration in this segment, coupled with the barriers to the entry and expansion of operators in the distribution markets, remains unchanged.

³⁶ The French rules and regulations provide for the presence of government delegates on the Board of Directors of the undertakings that manage the pipelines.

The updating of the number of sales points of the wholesale operators shows an important stability in the market shares of the main operators. The concentration in this area and the stability of the market shares, two traits that have already been highlighted in the previous Report as indicators of a lack of competition, have not experienced any significant change compared with the situation that existed when the study was prepared.

Table 6: Trend in the number of service stations per operator and market share by number of service stations

	2005	2006	2007	2008	2009	Share 2009
Repsol YPF	3,618	3,606	3,568	3,590	3,603	39.1%
Cepsa	1,521	1,525	1,527	1,528	1,483	16.1%
BP	635	637	638	666	657	7.1%
Galp	223	222	222	624	618	6.7%
Disa	485	492	496	498	516	5.6%
Meroil	200	199	204	193	189	2.0%
Saras	0	38	37	53	123	1.3%
Esergui	92	100	105	105	113	1.2%
Chevron-Texaco	60	61	61	60	62	0.7%
Q-8	37	40	45	45	43	0.5%
Tamoil	43	43	41	35	35	0.4%
Petromiralles	0	0	0	0	13	0.1%
Dyneff	0	0	0	0	6	0.1%
Agip	313	310	326	0	0	-
Erg	124	118	114	99	0	-
Esso	86	87	85	0	0	-
Total	14	5	0	0	0	-
Shell	0	0	0	0	0	-
Hyper/supermarkets	187	185	205	250	265	2.9%
Own brand	1,000	1,000	1,300	1,500	1,500	16.3%
Total	8.638	8.668	8.974	9.246	9.226	100%
C1	41.9%	41.6%	39.8%	38.8%	39.1%	
C2	59.5%	59.2%	56.8%	55.3%	55.1%	
C3	66.8%	66.5%	63.9%	62.6%	62.3%	
Large superstores	2.2%	2.1%	2.3%	2.7%	2.9%	

- The increase of 200 own-brand service stations in 2008 is due to a better estimate of their number and not to an increase in the network of this type of service station.

Source: AOP, Annual report 2009

The elements of the trend in the number of service stations per operator that most stand out are as follows:

- The level of concentration continues to be very high.
- Galp has significantly expanded its network, becoming the fourth largest operator, and currently has a similar number of service stations to BP. Similarly, although with less intensity, Saras has expanded its presence in the Spanish market after acquiring the ERG network in 2008³⁷. The expansion of the networks of these two operators has to be viewed positively from the point of view of competition.
- Nevertheless, this development has occurred to a large extent at the cost of the departure of other operators, such as ERG, Agip, Esso and, probably, Chevron³⁸. 2010 also saw the acquisition by DISA of BP's service stations in Ceuta³⁹.
- Although 60 service stations have been opened in large commercial centres since 2007, the market share of this type of establishment continues to be far smaller than in other European countries. The development of this type of network is highly desirable as it introduces an important competitive pressure into the market in terms of prices. In its investigation report into trends in prices and margins in the sale of automotive fuels in Spain (January 2008 – April 2009) dated 18 December 2009, the National Energy Commission took the view that the differences compared with the European averages had to be put down, amongst other reasons, to the lesser weight of the sale of fuels through hypermarkets in Spain.
- The opening of new service stations is concentrated in urban centres. On major roads, successive (micro) reports of the National Energy Commission show highly significant levels of concentration.

The data above continue to reflect a market with a rate of penetration of service stations in large commercial centres that is very low compared with other countries such as France, where the operators in this segment of the market have a market share of around 60%⁴⁰.

The micro reports published since September 2009 by the National Energy Commission confirm that the service stations located in large commercial centres are the cheapest in practically all the urban centres in which they are present. The report relating to the Mediterranean motorway AP-7 is of particular interest, given that:

³⁷ See CNC case C/0116/08 SARAS/ERG.

³⁸ In 2011 Cepsa and Chevron have reached an agreement by which Chevron will sell its business in the fuel sector in Spain to Cepsa, including its network of service stations. That operation has not yet been authorised by the competition authorities.

³⁹ See CNC case C/0301/10 DISA/BP (Assets).

⁴⁰ French Ministry of Ecology, Sustainable Development, Transport and Housing.

- It reflects the existence of a pre-tax price that is higher than that of the provincial averages in the service stations located on the toll motorway.
- It shows how on toll motorways the concession holders have awarded a high number of consecutive service stations to a single undertaking. In the Tarragona-Valencia stretch, which is 225 kilometres, all the service stations (6 in each direction) belong to Cepsa. In the Valencia-Alicante stretch, 148 kilometres, with 3 service stations in each direction, all the stations also belong to Cepsa. In the Málaga-Estepona stretch, 82 kilometres, the 3 service stations in each direction belong to Repsol.
- It highlights the existence of a long stretch, 77 kilometres (Cartagena-Vera), in which there is no service station.
- It makes reference to two public tenders for the construction and operation of service areas in which positive weight is given to bids where the service stations immediately before and after the one in question are not managed by the same operator. However, the weight of this criterion is very limited (between 5% and 10% of the points).
- It considers that the measures adopted in the past in order to increase competition in service stations located in service areas on major state roads have been limited in scope.

In addition, and in contrast to other micro reports, the report on the AP-7 motorway includes a series of recommendations. Some proposals are consistent with the CNC's proposals in its Report:

- Limiting the level of concentration of the operators in concessions for the operation of service areas on newly built motorways and limiting the possibility of granting the concession for two consecutive service stations to the same operator.
- Establishing a transparent and objective methodology for calculating the optimum number of service stations on newly built motorways and re-sizing the density of service stations on existing stretches where, by reference to those rules, there is a lack of sales points.
- Limiting the duration of the concession for the operation of service areas with service stations and breaking the link between the granting of the concession to operate service areas and the concession to operate the motorway.

Furthermore, the trend in market shares reflected in Table 5 must be set in the context of two recent actions of the competition authorities. In April 2006 the European Commission agreed to the termination by commitments of case 38,348 Repsol CPP, making almost 500 service stations branded and supplied exclusively by this operator over a long period liable to capture by operators other than Repsol. In July 2009 the

termination by commitments adopted by the CNC in relation to Cepsa (case 2697/06 CEPSA) added a further 90 service stations which up to that point had had an exclusive long-term relationship with Cepsa to the service stations liable to be “attacked” by third party wholesalers. Both terminations by commitments are moving in the direction recommended in the 2009 Automotive Fuel Report, as they give third-party operators the ability to expand their network until the end of 2012. Nevertheless, the small variation in market shares shows that these actions are not enough in themselves to stimulate the market to the extent desired, which increases the relevance of repeating the recommendations of the 2009 Report in this respect.

In any event, the absence of variations in the market shares of Repsol and Cepsa indicates that the difficulties that third-party operators have when it comes to expanding their networks may be greater than estimated in the earlier Automotive Fuel Report. This not only makes it appropriate to repeat the earlier recommendations, but also raises the need for a more in-depth study in order to identify the origins of such difficulties.

It is possible that this under-estimation is due in part to the fact that the calculation of the level of concentration in this area has been done in terms of number of sales points, and not in terms of fuel sales in service stations, a parameter which would probably reflect the existence of a greater degree of concentration. This volume of sales could be estimated through the distribution of the financial contributions of members of CORES⁴¹. The available data, which relate to 2007, would place the estimated market share of the three main operators at 70.8%, which is clearly higher than the 63.9% obtained from the sales points in that year.

The higher concentration in Spain than in other European countries is also shown in the data of the EC Directorate General for Energy and Transport, which are prepared using a different methodology. According to these data, the three main operators in France, Germany, Italy and the United Kingdom jointly hold shares that are less than those of the three main operators in Spain, as shown in the table below.

⁴¹ The financial contributions are determined by reference to the quantity of fuel sold or consumed. See paragraph 101 of the CNC Report.

Table 7: Indicators of concentration in the retail market in Spain and in selected EU countries

	Sales points (service stations)		Sales (volume)	
	C3*	HHI**	C3*	HHI**
Spain	66%	2,233	69%	2,219
France	57%	1,868	56%	1,514
Germany	42%	1,217	56%	1,420
United Kingdom	51%	835	55%	999
Italy	36%	1,258	41%	1,460

* Sum of the shares of the three main operators

** Herfindahl–Hirschman Index: calculated here as the sum of the square of the market shares (as a %) of the operators with more than 5% of the market share.

Source: European Commission, DG Energy and Transport, Survey of the Competitive Aspects of Oil and Oil Product Markets in the EU (December 2009).

5. CONCLUSIONS

In light of the recent trend in the relevant indicators of the fuel market in Spain, we can confirm that there continue to be serious problems with competition, which explain to a large extent the maintenance of pre-tax prices that are higher than those of the majority of neighbouring countries. These problems are due in particular to the existence of structural barriers to the entry and expansion of third-party operators, which contribute to the consolidation of the position of the operators already installed and vertically integrated and to a relaxation of the competitive pressure between them.

In the Automotive Fuel Report issued in September 2009, various measures aimed at mitigating the effects of that situation were recommended. However, almost two years after its publication and following the parliamentary initiatives undertaken in accordance with it, effective measures to comply with the recommendations have still not been adopted.

The National Energy Commission, in its annual monitoring report on the liquid hydrocarbons market in 2009, published in October 2010, made a series of recommendations to eliminate or mitigate these barriers which, in some cases, coincide with the CNC's recommendations, particularly in relation to making it easier, by means of regulations, to open new facilities for the supply of automotive fuels and encouraging the enabling regulations which are still pending in relation to Act 34/1998, the Hydrocarbons Sector Act.

However, along with the problems detected in the 2009 Automotive Fuel Report, there may be other factors that may aggravate the problems of competition in the market, associated with the functioning of the wholesale market and the level of vertical integration of the main operators in the sector.

In the current circumstances of tensions and a possible worsening of the conditions in the crude market, not only is it appropriate to repeat the recommendations made, but it

could also be a good idea to complement them with measures that would encourage additional competition. The persistence of barriers to accessing the market, both in the wholesale and in the retail area, in an environment such as we have at present, may result in higher prices than in neighbouring countries. Equally, in a market with little competitive pressure, the likelihood of asymmetries appearing in the speed of adjustment of retail prices to variations in the cost of the raw material, depending on whether these variations are upward or downward (the “rockets and feathers” phenomenon) is greater. This all affects the competitiveness of the Spanish economy as a whole, seriously threatening its recovery.

A preliminary conclusion of this follow-up report is that the greatest problems of access to the market and expansion of the activity of third-party operators derive not only from the restrictions on the opening of new service stations, but also from the market power of certain operators in the wholesale market and from the maintenance of the hegemony of these positions, which permits the current regulation of the market.

Notwithstanding the need to carry out a more in-depth analysis in order to define with precision the scope of these obstacles to competition and the most appropriate actions to overcome them, certain obstacles can be pointed to which it has already been possible to identify on a preliminary basis and which it would be appropriate to study in more detail in order to determine how serious they are. These include:

- The level of concentration of the refining activity, the configuration of the import infrastructure, the characteristics of the storage and primary transport of fuels for the purposes of the competitive pressure imposed by foreign trade in fuels and the degree of concentration in retail distribution, which configure a sector that is also characterised by a high level of concentration of vertically integrated undertakings,
- The regulation of private storage facilities, and specifically the lack of extension of the ATR regime to storage facilities located in refineries,
- The advantages of the availability of fuel refining capacity in national territory for competition in the retail market,
- The inadequacy of the regulation and control of CLH’s ability to determine the prices of fuel transport,
- The non-postal nature of the transport service supplied by CLH⁴² and the provision by CLH of various packaged services in a comprehensive tariff,
- The local entry barriers in the wholesale segment of the market, related to the economic and physical difficulties of access to the storage facilities located in

⁴² CLH’s transport price depends on the distance between the points at which the fuel enters and exits the CLH network.

different areas of Spanish territory and to the economies of scale of the secondary logistics,

- The obstacles encountered by operators when it comes to extending their retail network to certain geographical areas, as a consequence of their difficulty in accessing nearby storage facilities, the economies of scale existing in transport and secondary logistics and the administrative barriers already identified in the 2009 Automotive Fuel Report,
- The lack of restrictions on the ability of the vertically integrated operators and operators with refining capacity to influence CLH's decisions,
- The lack of a liquid secondary market that facilitates access by the wholesale operators to fuels, and
- The lack of proportionality between the restrictions on competition deriving from certain "horizontal" regulatory measures and their contribution to the general interest objective being pursued, for example the restrictions relating to the obligations to sell bio-fuels.