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REPORT ON THE CONSULTATION REQUEST SUBMITTED BY THE SECRETARY OF STATE FOR THE ECONOMY AND SUPPORT FOR ENTERPRISES REGARDING THE AUTOMOTIVE FUEL MARKET IN SPAIN

CONTENTS

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EXECUTIVE SUMMARY

This report is prepared in response to the request made by the Secretary of State for the Economy and Support for Enterprises (Secretaría de Estado de Economía y Apoyo a la Empresa; hereinafter, SEEAE) to the National Competition Commission (Comisión Nacional de la Competencia; hereinafter, CNC) on 1 August 2012. The CNC has reviewed the functioning of the Spanish fuel market to determine the factors that influence price levels at service stations in Spain. This report contains the results of that review, along with a series of recommendations aimed at minimising the impact of the main factors which the CNC believes hinder effective competition in the market.

Retail distribution of fuel through service stations in Spain has, on average, some of the highest pre-tax prices (PTP) of the main European economies, as well as the type of short and medium-term behaviour of gross distribution margins that characterises uncompetitive markets. Based on data from the Spanish Energy Commission (Comisión Nacional de Energía; hereinafter, CNE) it has been found that, from the onset of the economic crisis in 2007 up to 2010, the gross distribution margin in Spain increased around 20%, both for petrol and automotive diesel. This increase in gross distribution margin has been recorded from a baseline of much higher previous levels than seen in comparable countries and despite the pronounced contraction of fuel demand seen since then.

In general, fuel supply displays certain characteristics that can facilitate situations of limited effective competition, such as consumer search and travel costs and high demandside rigidity to price variations. In this context, the Spanish market displays differential characteristics with respect to other EU countries that further heighten the above problems and restrict effective competition. Simultaneously and cumulatively with the entry barriers that still persist in the retail market, major obstacles to competition are also identified in the wholesale segment.

Spain's automotive fuel sector is highly concentrated in three major operators (Repsol, Cepsa and BP), who enjoy substantial advantages with respect to all other operators due to their weight and importance in the market, their vertical integration with refining activities in Spain, their structural ties to the transportation network monopolist, CLH, which allows them to influence its management and gain access to information on import, transport and storage

infrastructures, and due to their highly extensive and stable retail networks of service stations. Operators interested in entering and expanding in the Spanish retail distribution market confront difficulties to open new service stations, to expand their network by branding already existing service stations and to procure their fuel suppliers with comparable cost conditions to those of the operators who have refining capacity in Spain.

These structural features of the Spanish market may explain the stability of the relative positions of the main operators over the last 10 years and the diverse mergers that have been driving a gradual and scaled exit from Spain of the various international operators who entered the market after liberalisation.

In addition, so far Spain has not witnessed competition improvements seen in other neighbouring countries, such as France, by the opening of service stations in large and medium size commercial complexes. In France those service stations, which compete primarily on price, now account for more than 60% of the market. In Spain, even though some of the same commercial distributors that compete in France are also present here, such outlets barely account for 3% of service stations.

In short, the inadequate level of effective competition detected, both in the wholesale and the retail segments, means the Spanish economy is faced with higher relative fuel prices, with the consequent harm to consumers, to international competitiveness of our companies and to the economy in general.

This report analyses the different links of the value chain from a competition standpoint and indicates the factors that contribute to restricting the degree of competition actually achieved. Consequently, this report puts forward recommendations for improved regulation of the wholesale and retail segments of the market which must necessarily be applied simultaneously.

- **First, the study of the different phases of the value chain** (domestic production in refineries and imports, fuel reception, transport and storage logistics in Spain, wholesale distribution and retail distribution through service stations) **allows an identification of the diverse structural characteristics or obstacles to competition that hinder or block entry and expansion of operators, both upstream and downstream and, consequently, prevent effective competition from being achieved in the market.**

- **Second, the report focuses its analysis on those factors which, at the present time, the CNC considers as the main constraints on the existence of effective competition in the sector in Spain**:

  a) **Vertically integrated operators with refining operations in Spain**, contrary to what occurs in comparable economies in the European

Union, **show a high degree of corporate concentration, both in the wholesale and the retail segments of the market**.

b) **The access and capacity to influence CLH of those operators with interests in refining and fuel distribution in Spain, together with the scarce regulation and control of CLH's activity as transport network monopolist**. CLH owns and operates the national fuel transport and oil pipeline networks, which connect, albeit in a fragmentary fashion and without international pipeline connections, nearly all storage facilities. **The *ex-ante* regulation of the fuel sector**, markedly different from the regulation that exists in other sectors that feature grids with natural monopoly characteristics in transport, such as gas and electricity, **together with the structure of the Board of Directors and managing bodies of CLH**, on which the main operators active in the Spanish markets are present, **carry the risk of generating incentives for applying access conditions or prices that do not foster effective competition and of distorting investment decisions in oil pipelines and storage facilities**.

c) **The capacity of the main wholesale operators to hoard storage and transport infrastructure and lack of transparency in relation to that infrastructure**: Contrary to what occurs in other grid-based energy sectors, there is no system of control that efficiently limits contracting excess logistical services capacity. This can generate incentives for the major players in the sector to establish artificial bottlenecks that limit access to the market for other operators.

d) **The privileged access by the refinery owners to storage facilities**: The rules on obligatory access to storage and transport facilities regulated by article 41.1 LSH do not include the very important storage depots located in refineries. Therefore, those sites can only be used by the operators who own each refinery, being the latter fully integrated and also present in the wholesale and retail distribution markets.

e) **Difficulties for opening new service stations**: These barriers are numerous and varied and are mainly erected by municipal authorities. Disproportionate and at times blatantly *contra legem*, they can often stand out as insurmountable impediments for establishing and starting up a service station, both in large and medium commercial establishments and on land where comparable industrial activities are already carried on. The main effects of these restrictions are that a small number of licences are granted and an overly long wait until a service station can begin operating when all the necessary authorisations and licences are finally granted. These problems are also seen on roadside service stations.

f) **Long-term supply contract ties**: the existence of long-term contractual exclusivity in fuel supply to service stations can work to foreclose the market by making it difficult for operators to establish or expand their base of service stations. Some 80% of service stations in Spain are owned by or have very long-term ties with the entrenched wholesale operators. The existence of very long-term concession of public land and land-use rights contributes to the aforementioned problem.

g) **Ties between operators, pricing recommendations and asymmetry of information**: There are certain factors which can lessen the intensity of competition between operators and between service stations that operate under the same brand. First, there are **structural ties between operators** in the sector that reduce the intensity of competition between them. Second, **pricing recommendations and maximum prices imposed on service stations by suppliers** can weaken competition between service stations in their network, that is, intra-brand competition, as well as facilitating the alignment of prices across different operators, thereby diminishing inter-brand competition. The above effects may be heightened by **the asymmetry of information between consumers and companies**, so that the former are faced with high search costs and find it difficult to compare the prices charged by different stations in their area of interest before they make their fuel purchases, notwithstanding the important advances recently obtained by the use of information technologies and the efforts of the Ministry of Industry, Energy and Tourism in this area.

- Third, the report proposes that the national government, as the competent authority for basic planning and regulation of the hydrocarbons sector and economic planning in general, adopts specific measures to strengthen competition in this sector. All measures proposed to foster competition must be applied simultaneously in both segments of the market. Otherwise, if measures are implemented in only one segment of the market, there will be no assurances of success in achieving the entry of new operators and expansion of alternative operators to the incumbents, the key levers for strengthening competition in the sector. Consequently, **it is recommended that the Government adopt a comprehensive and simultaneous solution to competition problems in the sector, applying the recommendations set out in the last section of this report on the barriers affecting the wholesale and retail portions of the market**.

I. INTRODUCTION

1. On 1 August 2012 Spain's antitrust authority, the Comisión Nacional de la Competencia (CNC) received a document from the Secretary of State for the Economy and Support for Enterprises (SEEAE) indicating that the situations of reduced effective competition underscored by the CNC in its Report Monitoring the Automotive Fuel Distribution Market in Spain, published on 4 July 2012, were of concern to both the Secretary of State for Energy (SEE) and to the SEEAE and that the two offices were jointly studying the possible alternatives and measures that could be adopted by the Government to deal with said situation and with the recent rise in fuel prices. Against this backdrop, the SEEAE requested the CNC to prepare a detailed report on the factors that, in a competitive environment with geographical scope smaller than the national market, influence service station price levels, paying special attention to the relation between retail supplyside concentration and the pre-tax price of fuel.

2. This report explores more fully the factors cited in previous reports of the CNC which the latter believes contribute to limiting effective competition in the automotive fuel market in Spain, in order, pursuant to the request from the SEEAE, to propose certain regulatory measures aimed at fostering a more efficient and competitive functioning of the sector.

3. The report is structured into three main sections, apart from the introduction. **Section II** contains an **analysis of the structure of competition in the different phases of the distribution chain** (supply, logistics, wholesaling and retail distribution through service stations). Based on that analysis, **section III** pinpoints **factors that explain, in the CNC's judgment, the scarce competition observed in the sector** and which may contribute to the existence of higher prices and margins than are desirable and are observed in other countries. **Section IV** sets out a series of **recommendations to the Government and competent public authorities** for enhancing effective competition in Spain's automotive fuel sector.

4. This report was approved by the CNC Council at its extraordinary meeting of 2 October 2012, under the consultative powers established in article 25 of the Spanish Competition Act 15/2007 of 3 July 2007.

II. STRUCTURE OF THE AUTOMOTIVE FUEL SECTOR IN SPAIN

5. This Report is prepared at a time of special concern over fuel prices in Spain. By way of illustration it is noted that the Harmonised Consumer Price Index (HCPI) published by the Instituto Nacional de Estadística (Spanish Institute of Statistics; hereinafter INE) for August 2012 placed year-on-year inflation at 2.7% versus 2.2% one month earlier, mainly due to the rise in prices of "fuels and lubricants". The Household Budget Survey for 2010 contained a line for "fuels and lubricants" that represented 4.41% of household spending (average expenditure per household of more than €1,300 per year).

6. The retail price of fuel (RP) is normally broken down into three components:

   - Supply costs and margins, which include either the price of acquiring the crude plus the refining costs and margins if produced domestically, or the price of buying the fuel on the international markets plus insurance and freight costs until it is placed inside the country in the case of imported fuel.
   - The costs and margins of the logistics chain from the time the fuel leaves the refinery until it is made available to the end customers: mainly, transport, storage, additivation and marketing.
   - Taxes, which in Spain include Value Added Tax (VAT), the hydrocarbons excise tax and the tax on retail sales, which has a national tranche and a regional tranche. Taxes account for 42% of the RP of automotive diesel (hereinafter, GOA or type-A diesel) and 47% of the RP of 95 octane unleaded petrol (hereinafter, G95)[1].

7. Spain is one of the EU countries with the lowest taxes on automotive fuel[2]. In comparative terms, in 2011 Spain was the fifth least expensive country in the European Union in both G95 and GOA as measured by the retail selling price, but **stripping out taxes, Spain was the country with the third highest pre-tax prices (PTPs) in G95 and sixth highest in GOA**[3]. Taking into account that fuel is traded on international markets, and there are no *a priori* significant differences between import prices of different

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1 European Commission, *Oil Bulletin* and *Total Taxation Share in the end consumer price for Euro-Super 95 and Diesel Oil*, of 13 August 2012 (note that this is before the VAT increased in Spain as from 1 September 2012).

2 For that same date (13 August 2012), the average tax share of RPs was 48% for GOA (diesel) and 55% for G95 (Euro-Super).

3 Spanish Ministry of Industry, Energy and Tourism, *Precios de carburantes y combustibles. Comparación 2010-2011* (Fuel Prices. Comparison 2010-2011).

countries, the above suggests that the gross distribution margin (GDM)[4] in Spain is amongst the biggest in the EU, as was recently underscored in two CNC reports[5]. The reasons for these higher margins may come from higher costs or margins in Spain in refining, importing, logistics or marketing through service stations.

8. Even when these comparisons include data from countries with data collection methodologies that may display some differences[6], these do not significantly affect the comparisons made using EU averages or the comparisons with the countries that most resemble Spain in size (France, United Kingdom, Germany and Italy[7]), and in no event vitiate the validity of

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[4] The gross distribution margin (MBD) of fuel measures the part of the final pre-tax price (PTP) that is attributable to the specific production and commercial structure of each country. It is obtained by subtracting from the PTP the theoretical import cost of the fuel (Ci), which, in turn, is a measure of the fuel import spot price (in the case of Spain, Ci is a weighted average of the CIF prices formed in the Rotterdam and Genoa markets). Thus, a higher GDM in one country than in another may reflect that the former faces higher costs or margins in procuring supplies (refining or importing) than what is theoretically attributed by the Ci, or that the real costs or margins in logistics or marketing are higher. Hereinafter, the use of "margins" in this report refers to GDMs, unless specifically indicated otherwise.

[5] CNC, *Reports monitoring the automotive fuel sector*, March 2011 and July 2012.

[6] European Commission, *Oil bulletin data collection methodology (2008)*.

[7] According to AOP and Repsol, the main methodological differences between countries that hinder comparisons based on the Oil Bulletin data are due to the following factors: size of the sample, compulsory reporting of data by service stations, sampling of prices taken (with or without discounts), day of the week when sampling is done, mechanism for calculating the average. These factors, however, should not have so much influence as to invalidate the comparisons between Spain and the larger countries, and, in any event, do not invalidate comparisons between countries regarding how prices evolve over time. What is more, it should be taken into account that until 1996, the prices in the six European countries (United Kingdom, Italy, Germany, France, Belgium and Netherlands) were not just a reference, but were actually used to calculate the maximum selling prices of automotive fuel in Spain. There follows a more detailed explanation of the methodological differences, according to the explanations given in the Oil Bulletin itself (European Commission, *Oil bulletin data collection methodology, 2008)*:

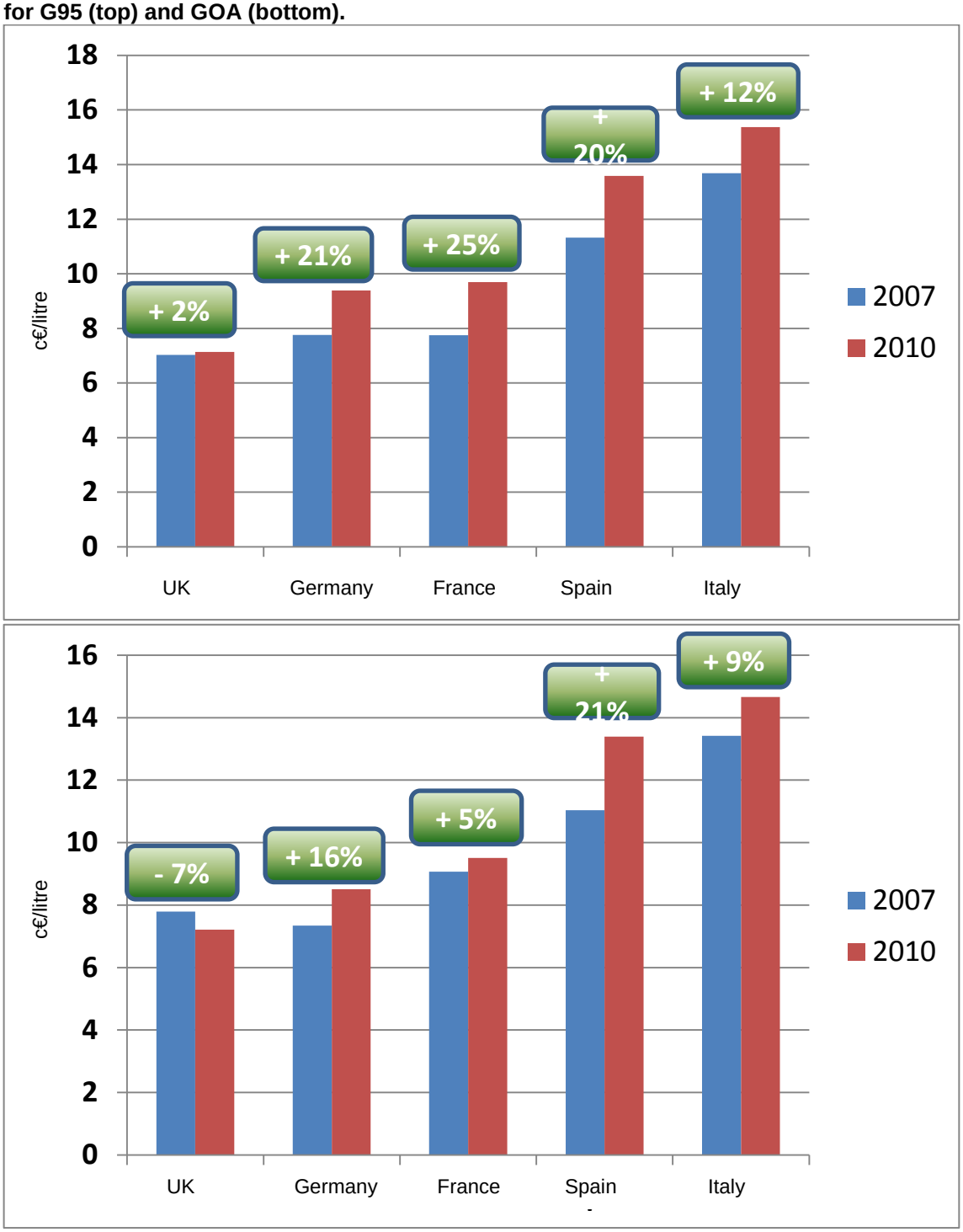
- Size of the sample: some countries calculate national averages based on a very small sample of petrol stations, while others take into account the prices of most service stations. Spain uses data from between 80% and 99% of its service stations, the same as France, Italy and United Kingdom. Germany is a step below, at between 60 and 79%. Only 3 countries (Belgium, Cyprus and Sweden) use data from fewer than 40% of their service stations.
- Mandatory reporting of price data: in some countries service stations have an obligation to report sale prices, while other countries impose no such requirement. Price reporting is compulsory in Spain, the same as in France and in Italy. In Germany and the United Kingdom, price reporting is voluntary. Now, it should be taken into account that if the size of the sample is similar between countries, the fact that the sample is composed of data submitted by service stations voluntarily or on a compulsory basis should not have an impact on the results.
- Day of week on which prices are reported: according to AOP, which day of the week price information is collected can have notable influence. In Spain, the average price is based on the prices reported by service stations on Mondays, the same as in 17 other Member

the comparisons of how margins evolve over time. Diverse studies show that, at least since 2007, gross distribution margins (GDMs) have grown in Spain more than in other countries, demonstrating weaker competition in the fuel sector in Spain. The following graphic figure depicts the trend from 2007 to 2010 of GDMs in several European countries based on a report by the Spanish Energy Commission (CNE). As can be seen, since the start of the crisis (2007) until 2010, the GDM in Spain grew 20% in G95 and 21% in GOA, even though it started the period at much higher levels than in other countries such as the United Kingdom, France and Germany. Spain is thus close to the countries with the fastest growing margins in G95 and is the country where the GDM has grown the most in GOA, much more than in the rest of the EU.

States, including Italy, the United Kingdom and Germany. Of the large countries, only France is an exception, as prices are reported on Fridays. Note that intra-week differences in prices may be rather sharp and be predictable, due to the workweek factor, that is, weekend prices may be higher than prices during the rest of the week. The Bundeskartellamt's *"Fuel Sector Inquiry"* (2011) found that prices are the highest on Fridays and lowest on Mondays, just the opposite to what occurs with GDMs.

- Price sample taken: in some countries, the averages are calculated using a small number of service stations, whereas in others this indicator is calculated based on all service stations that report prices. Adjustments of this kind are not made in Spain, and are only carried out in Finland, Ireland and Portugal.
- Mechanism for calculating the average: in some countries the national average of prices is an arithmetic average, and in others it is weighted by the sales of each service station. In Spain, the price is an arithmetic average of the prices of the service stations, unlike in France, Italy and United Kingdom, where the average is weighted by sales volumes. In any event, it should be noted that calculation of arithmetic averages in Spain could have the contrary effect of the average price reported by Spain to the Oil Bulletin being lower than if Spain weighted sales volumes. Indeed, the traditional operators in Spain have higher average prices than the rest of the operators, but at the same time they also sell higher quantities, so that by taking an arithmetic average of prices, the higher prices of traditional operators "weigh" less than they would in a weighted average.
- Application of discounts: some countries report prices net of discounts for fidelity, volume, use of cards, special promotions, etc. and others do not. In Spain the "monolith prices" are reported, that is, the price before discounts, the same as in France, Italy, Germany and the United Kingdom. In fact, only six countries of the 27 EU Member States report discounted prices: Denmark, Greece, Ireland, Poland, Sweden and Slovakia.

Figure 1. Gross distribution margin (GDM) for EU-6 countries and Spain. Annual values for G95 (top) and GOA (bottom).



Source: Prepared using the CNE report, *Cuantificación económica del indicador de margen bruto de comercialización en España y los países de la UE-6* (Economic quantification of the gross sale margin indicator in Spain and the EU-6 countries. Period 2005-2010), 2011.

9. In addition, these figures must be placed in context with the evolution of fuel demand, which in that same period fell in Spain more sharply than in the other countries according to the same CNE document: whereas for G95, as a result of the general trend toward changeover to diesel in all European countries, the decline in consumption in Spain between 2007 and 2010 (14%), was similar or even smaller than the one in France, Italy and the United Kingdom, for GOA consumption fell 8%, compared with 2% growth in France and declines of 1% and 2% in Italy and the United Kingdom, respectively. In Germany, however, there were strong rises in demand for G95 and GOA from 2007 to 2010 of 21% and 12%, respectively.

10. The data indicating that distribution margins in the fuel sector are higher in Spain with respect to other countries are corroborated by the comparison made by the CNE between real RPs and the theoretical RPs resulting from the former maximum price formula[8]. Indeed, that comparison, which shows that since February 2009 real RPs are above the maximum theoretical RPs, reveals that margins in Spain have grown faster than envisaged by the former maximum price formula, an arrangement which already takes into account the evolution of international crude prices and the behaviour of pre-tax prices in other countries, so that a higher RP than the maximum RP may be a symptom that PTPs in Spain are growing more than PTPs in the countries included in the formula's calculation. According to the aforesaid CNE report and to reports on previous months, no alternative explanations have been found as to why the real PTP remained

[8] CNE, *Informe mensual de los principales indicadores del sector del petróleo. Diciembre 2011* (Monthly report of main indicators of the petroleum sector. December 2011), calculated as follows:

$$PMax = \left\{ \begin{matrix} Ci + (Pe' - Ci') + MARGEN\_ADAPTADO + \\ + IMPUESTO\_HIDROCARBUROS \end{matrix} \right\} \times (1 + IVA)$$

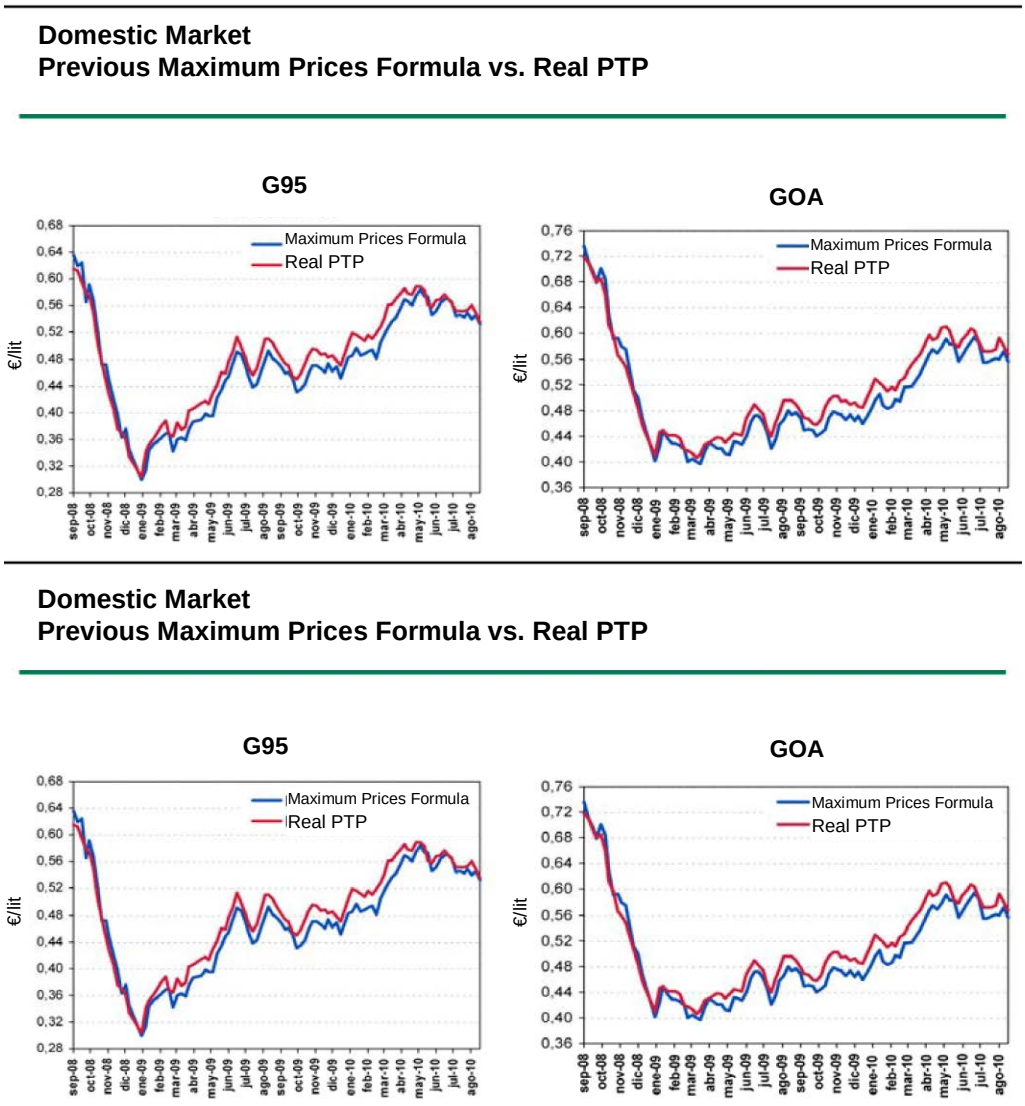
The report does not specify the methodology for calculating each of these terms, but from the last Ministerial Order that was in effect on calculating those maximum prices (Order of 28 December 1994 of the Ministry of Industry and Energy), they are determined as follows:

- PMax is the maximum price for the period of reference.
- Ci is the previous week's benchmark international quote for the fuel.
- Pe' is the European average price before taxes, calculated according to the average of prices before taxes of the EU-6 (France, Germany, Italy, Holland, Belgium and Luxembourg) from the 4 weeks preceding the period for which the maximum prices are calculated.
- Ci' is the benchmark international quote for the fuel for the 4 weeks preceding the period for which the maximum prices are calculated.
- MARGEN_ADAPTADO is the margin of adaptation to the Spanish market, fixed at 2 pesetas per litre (0.12 cents/litre).
- IMPUESTO_HIDROCARBUROS is the value of the hydrocarbons excise tax.
- VAT if the Value Added Tax.

below the theoretical maximum PTP until the end of 2008 and then surpassed and remained above the latter since then.

11. Figure 2 below reproduces two CNE graphics taken from the aforementioned publication. The upper portion shows the comparison between theoretical maximum PTPs of G95 and GOA between 2008 and 2010, and the lower portion between 2010 and 2012.

Figure 2. Former formula of maximum prices vs. real PTP. Periods 2008-2010 (top) and 2010-2012 (bottom)



Source: Composed from the CNE's *Informe Mensual sobre la Evolución del Precio de los Carburantes en España y la UE* (Monthly Report on the Evolution of Fuel Prices in Spain and the EU). Reports of July-August 2010 and August 2012.

12. Lastly, it should be taken into account that, as shown by a recent study of the CNC[9], the evolution of the margins recorded in the Spanish market for these products in the short term typifies that of a scarcely competitive market. In fact, the CNC study corroborates the existence of asymmetrical adjustments in the price (PTP) of petrol[10] in response to variations in international prices (Ci), such that when international prices rise, domestic retail prices (PTP) mirror that change more quickly than when the international prices come down, or what has been dubbed as the "rockets and feathers" phenomenon in the literature[11].

13. In summary, the evidence contained in the various reports issued thus far and in the sources consulted, call into question the existence of sufficient effective competition in the fuel market in Spain, giving rise to smaller economic efficiencies and lower consumer welfare. As indicated by the CNC on various past occasions, the structural characteristics of the Spanish fuel market facilitate the emergence of anti-competitive situations, independently of whether or not they constitute conducts punishable by the Spanish Competition Act 15/2007 of 3 July 2007 (Ley de Defensa de la Competencia; hereinafter, LDC). They can also give rise to higher costs as a result of the greater business inefficiency allowed by an environment of less effective competition. In order to limit behaviours of this kind and promote greater levels of effective competition, it is important to address these structural issues with the appropriate regulatory reforms. Toward this end, the section that follows contains a characterisation of the different phases of the value chain from the standpoint of competition[12].

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9 CNC, *Report monitoring the automotive fuel sector*, July 2012.

10 The study concludes that there are clear asymmetries in the adjustment of PTPs of G95. For GOA, asymmetries can only be confirmed in the adjustment of PTPs with an 80% probability, below the 95% required in this study.

11 That conclusion has been criticised by the Asociación de Operadores de Productos Petrolíferos (Association of Operators of Petroleum Products; hereinafter, AOP), composed of Repsol, Cepsa, BP, Galp and Saras, for alleged lack of methodological rigour. The core of AOP's critique focuses on the decision to use a weekly, and not a daily, frequency and on the claim that the asymmetries only exist for petrol 95, which accounts for 20% of automotive fuel sales. With respect to the choice of a weekly frequency, the CNC's own report already evaluated the alternative of a daily frequency and discarded it due to (i) statistical problems of heteroskedasticity, (ii) the workweek effect, (iii) the fact that most service stations in Spain report their prices every Monday, whereas the rest of the days of the week do not record many changes, such that, according to AOP's data, some 35% of the stations only change their prices once per week, and (iv) the circumstance that a great majority of academic articles on asymmetries in the fuel sector use a weekly frequency. As for the fact that the asymmetries only exist for G95, the CNC concludes that the best way to explain the behaviour of GOA prices are the asymmetries, but that this conclusion can only be reached with a confidence level of 80%, below the 95% threshold required to assure the absolute robustness of the conclusions. Also, the harmful effects of the existence of asymmetric behaviour in the pre-tax price of G95 cannot be belittled.

12 The description given in the paragraphs that follow takes into consideration that practically no crude is produced in Spanish territory.

II.1. Fuel supply

14. Supply procurement or first sale of refined products is the first domestic step in the distribution of fuel. It includes both refined fuel from refineries located in Spanish territory destined for the domestic market and imports through Spanish ports. For Spain, the international markets of reference are the NWE market (Rotterdam) and the MED market (Genoa), which are important trading centres with a great number of participants.

a) Domestic output

15. Spain is ranked 5th in the EU-15 in refining capacity (75.7 Mmt/year[13]), topped only by Germany, France, Italy and the United Kingdom. There are nine refineries that produce automotive fuel (there is a 10th refinery, owned by Asesa, a 50-50 joint venture of Repsol and Cepsa, that processes heavy crude): Repsol has five (Coruña, Bilbao (under the Petronor name[14]), Tarragona, Puertollano and Cartagena), Cepsa three (Huelva, Algeciras and Tenerife) and BP one (Castellón). Table 1 shows the current structure (2011) of refining capacity in Spain:

Table 1. Fuel refining capacity in Spain (2011)

Operator	Refinery	Capacity (Mmt/year)	% of total (refineries)	% of total (companies)	HHI[15]
Repsol	Cartagena	11.0	14.5%	58.8%	
	La Coruña	6.0	7.9%		
	Puertollano	7.5	9.9%		
	Tarragona	9.0	11.9%		
	Bilbao	11.0	14.5%		
Cepsa	Algeciras	12.0	15.9%	34.1%	
	Huelva	9.2	12.2%		
	Tenerife	4.6	6.1%		
BP	Castellón	5.4	7.1%	7.1%	
TOTAL		**75.7**	**100.0%**	**100.0%**	**4,668**

Source: prepared in house based on the AOP 2011 Annual Report.

16. Spain is one of the European countries with the highest concentration of refinery ownership: Repsol controls 58.8% of refining capacity in Spain,

[13] Millions of metric tonnes/year.

[14] Repsol controls 85.98% of Petronor.

[15] There are different measures of the degree of concentration in a market, the most usual one being the Herfindahl-Hirschman Index (HHI), which is calculated as sum of the squares of the market shares of the operators in the market. In this case, the market shares refer to the output of the operators. Normally, indices above 1,800 indicate highly concentrated markets, whereas indices of between 1,000 and 1,800 reflect a moderate degree of concentration.

Cepsa 34.1% and BP el 7.1%. It bears emphasis that not a single new refinery has come into operation inside Spain since the 1970s, even though some were projected[16]. Table 2 contains a comparison of the Spanish refining industry with several European countries (2009 data), in which the high level of concentration that exists in Spain can be clearly seen.

Table 2. Structure of the refining industry in Spain and selected EU countries (2009)

Country	Number of refineries	Number of operators	HHI
Spain	9	3	4,531
France	13	5	3,661
Germany	13	9	1,702
United Kingdom	10	9	1,313
Italy	17	10	1,749

Source: CNC, *Follow-up Report on the CNC's Automotive Fuel Report* (2011), prepared using sources from the CNE and European Commission, DG Energy and Transport.

17. The refining capacity utilisation rate in 2011 was 81.4%[17], a drop from 2010 and previous years, as a result of the drop in demand for refined products and the increased capacity at the Repsol refinery in Cartagena. Spain produced 7.2mn metric tonnes of petrol 95 (G95) and 20.1mn metric tonnes of automotive diesel (GOA). By operators, Repsol produced the most fuel in 2011 ([50-60]% of the G95, [50-60]% of the GOA), followed by Cepsa ([20-30]% of G95, [30-40]% of GOA) and BP ([10-20]% of G95, [0-10]% of GOA).

Table 3. Refining of automotive fuel in Spain (corrected domestic output 2011)

Company	G95		GOA	
	Mmt	%	Mmt	%
Repsol	[…]	[50-60]%	[…]	[50-60]%
Cepsa	[…]	[20-30]%	[…]	[30-40]%
BP	[…]	[10-20]%	[…]	[0-10]%
Others	[…]	<5%	[…]	<5%
TOTAL	**7.2**	**100%**	**20.1**	**100%**

Source: Information provided by the CNE.

[16] The most recent was the Balboa refinery project, an initiative promoted by the Gallardo group, with the support of the regional government of Extremadura, in the town of Santos de Maimona (Badajoz). The construction and commissioning of the refinery is subject to authorisation by the Ministry of Industry, Energy and Tourism (art. 39 of the Hydrocarbons Sector Law). In this case, the process has stretched out over several years.

[17] *Boletín estadístico de hidrocarburos 2011* (Hydrocarbons Statistical Bulleting 2011), CORES.

b) Imports

18. Although it is normally believed that **domestic output and imports form part of the same product market**, it should be taken into account that the national production does not bear the costs of international transport, insurance and freight charges, the costs of unloading at the terminal, storage until the product is consumed, etc. Furthermore, **the competitive pressure exerted by imports depends on the existence of adequate fuel reception, storage and transport infrastructure**. Finally, refinery production is more flexible, as it can be adjusted to short-term changes in fuel needs, whereas in import contracts the terms of supply are normally more rigid[18].

19. **Spain has surplus petrol and a diesel shortage**, mainly due to the changeover to diesel of the Spanish stock of automobiles and failure of Spanish production to adapt to this change, and is reflected in international fuel trade. In net terms, Spain exports petrol and imports diesel.

20. Specifically, in 2011 net exports of G95 were 1.4 Mmt (22% of apparent output) and net imports of GOA totalled 3.4 Mmt (15% of domestic consumption); gross imports of G95 in 2011 amounted to a mere 825 mt, that is, less than 0.1% of domestic consumption. Table 4 shows the main variables of foreign trade in G95 and GOA for the period 2009-2011.

Table 4. Foreign trade in automotive fuel (Mmt)

	G95			GOA		
	2009	**2010**	**2011**	**2009**	**2010**	**2011**
Output[19]	7.0	7.0	6.3	18.1	18.3	18.9
Consumption	5.6	5.5	4.9	24.6	24.6	22.4
Exports	1.6	1.5	1.4	0.5	0.5	1.7
Imports	0.2	<0.1	<0.1	7.0	6.8	5.2
Trade balance	1.4	1.5	1.4	-6.5	-6.3	-3.4

Source: Estadística de Productos Petrolíferos (Petroleum Product Statistics), September 2012. CNE.

[18] Another important structural element in the case of Spain is that the Cartagena and Puertollano refineries (both owned by Repsol) are connected to each other via crude and petroleum product pipelines, also property of Repsol, that afford greater flexibility in the refining operations of both complexes and relative more efficient transportation of refined products between Cartagena and inland areas of the Iberian peninsula, with access in Puertollano to the CLH pipeline network. The recent expansion of production capacity and conversion of the Cartagena refinery has been accompanied by the start-up in 2012 of a product pipeline designed to run both ways, allowing fuel produced in Cartagena more efficient access to the CLH pipeline network from Puertollano.

[19] In Table 4 "Output" is calculated as Consumption – Imports + Exports + Variation in stocks.

21. By operators, according to the information provided by the CNE, in 2011 Repsol accounted for [20-30]% of GOA imports into Spain[20], followed by Galp ([20-30]%) and Saras ([20-30]%), whereas only Meroil and BP imported petrol into Spain, although the figure is very small compared with consumption of G95, as can be seen in Table 4.

22. This means, taking into account the domestic output of automotive fuel (see Table 3), that **the three operators with refining capacity in Spain supplied [80-90] % of the GOA consumed in Spain[21] and practically all of the petrol** (in aggregate, Repsol, Cepsa and BP supplied [90-100]% of the petrol consumed in Spain in 2011). These percentages are higher than the market shares held by the networks of those operators in the service station retail distribution market, as will be seen further ahead[22].

23. Therefore, despite the potential competitive pressure that imports should theoretically exert on domestic production as a different supplier of the same market, **the analysis carried out does not show that imports are generating effective pressure of that kind on domestic output, due to the fact that supply is fundamentally carried on by operators with refining capacity in Spain**[23].

II.2. Logistics

24. Logistics activities comprise both “primary distribution” and “secondary distribution”.

25. Primary distribution consists of transporting the products from the production sites (refineries) to the storage terminals, normally in large quantities and using relatively more efficient means of transport (pipelines, ships or trains). **Primary distribution includes receiving fuel imports and transporting the fuel imported or refined in Spain to depots close to the points of consumption.**

26. **Secondary distribution is the transportation and delivery of products to the points of sale to end consumers**, using road tankers or small ships, particularly in the island territories. These means are used for short distances (no more than 100-150 km), as they are not efficient for longer hauls. In any event, secondary distribution may also be done fromimport

[20] Repsol, Cepsa and BP are diesel exporters, although less than [0-10]% of their production was exported in 2011.

[21] The fourth and fifth biggest suppliers of GOA to Spain in 2011 were, respectively, Galp ([0-10]% of consumption) and Saras ([0-10]%). Source: CNE.

[22] Source: CNE.

[23] This enters into contradiction with the fact that petrol PTPs remain higher than in neighbouring countries, as a competitive market would be expected to import cheaper petrol so that the domestic price would align with the import price.

storage facilities or directly from refineries, so that all storage sites may, in principle, be considered capable of "secondary" use[24].

27. Oil product transport or storage facilities are not subject to mandatory planning (art. 4 Hydrocarbons Sector Law 34/1998; hereinafter, LSH), but the construction and operation of the infrastructure does require prior administrative authorisation (art. 40 LSH). Except for facilities located in the refineries, where there is no obligation to allow access to third parties, access to the transport and storage facilities to third parties is regulated, so that the owners of the facilities must allow third parties access through a negotiated procedure, on non-discriminatory, transparent and objective technical and economic conditions, charging prices that must be made public (art. 41 LSH). The LSH gives the Government power to establish access charges ("tolls") for island territories and for those parts of the national territory where alternative transport and storage infrastructures do not exist or are considered insufficient (art. 41 LSH), although this stipulation has not been applied.

a) *Import infrastructure*

28. **Most automotive fuel imports come into Spain by ship** and are unloaded at port terminals located on the coast. Although there are numerous storage facilities, only deposits of a certain size located in ports with sufficient docking and unloading capacity can be classified as import or primary storage sites[25]. Import storage facilities are usually defined as deposits that can receive large-capacity vessels (30,000 to 50,000 mt), and permit storage of all types of petroleum derivatives.

29. The information currently available in the CNE does not allow to identify which Spanish coastal storage sites have enough draft to be considered import depots. Table 5 below sets out an estimate of the terminals with sufficient storage capacity to be considered import depots, although we do not know if their drafts allow ships of 30,000 tonnes or more so that they can be considered import depots for all purposes[26]. Petrol and diesel are shown separately because each type of fuel must be stored in deposits with the right technical specifications and characteristics and their facilities

[24] See CNC Resolution C/0366/11 Cepsa/Chesa, Report of the Investigations Division, paragraph 55.

[25] See CNC Resolution C/0366/11 Cepsa/Chesa, Report of the Investigations Division, paragraph 50, and European Commission Decision COMP/M.1628 – TotalFina/Elf, according to which import depots are defined *"as those capable of accommodating large-capacity ships (between 30000 and 50000 tonnes). They can store all types of petroleum product and the largest ones are connected to at least two means of bulk transport"* (paragraph 103).

[26] The European Commission defines import depots as those that are "*capable of accommodating large-capacity ships (between 30000 and 50000 tonnes). They can store all types of petroleum product and the largest ones are connected to at least two means of bulk transport*" (see Case M.1628 TOTALFina/Elf). See also CNC Resolution C-0366/11 Cepsa/Chesa.

are subject to different municipal opening licences, so that investments must be made to convert one type of storage facility into a depot for another product[27].

[27] CNC, Resolution in C-0366/11 Cepsa/Chesa, paragraph 59 of the Report of the Investigations Division.

Table 5. Port storage sites in Spain that meet minimum storage capacity to qualify as import depots[28]

Operator	Location	Region	CLH connection	Petrol	Diesel
CLH	Coruña (Bens)	Galicia	Yes	[…]	[…]
Forestal	La Coruña (Mugardos)	Galicia	No	[…]	[…]
CLH	Gijón	Asturias	Yes	[…]	[…]
Galp	Gijón	Asturias	No	[…]	[…]
Petróleos Asturianos	Gijón	Asturias	No	[…]	[…]
CLH	Bilbao (El Calero)	Basque Country	Yes	[…]	[…]
Terminales Portuarios	Zierbena	Basque Country	Yes	[…]	[…]
Esergui	Zierbena	Basque Country	Yes	[…]	[…]
CLH	Barcelona	Catalonia	Yes	[…]	[…]
CLH	Tarragona	Catalonia	Yes	[…]	[…]
Decal	Barcelona	Catalonia	Yes	[…]	[…]
Terminales Portuarios	Barcelona	Catalonia	Yes	[…]	[…]
Terquimsa	Barcelona	Catalonia	Yes	-	[…]
Euroenergo	Tarragona	Catalonia	Yes	[…]	[…]
Meroil	Barcelona	Catalonia	Yes	[…]	[…]
CLH	Castellón	Valencia	Yes	[…]	[…]
Terminales Portuarios	Valencia	Valencia	Yes	-	[…]
Galp	Valencia	Valencia	No	[…]	[…]
CLH	Cartagena	Murcia	Yes	[…]	[…]
Saras	Cartagena	Murcia	Yes	[…]	[…]
Felguera	Cartagena	Murcia	No	-	[…]
CLH	Granada (Motril)	Andalusia	Yes	[…]	[…]
CLH	Huelva	Andalusia	Yes	[…]	[…]
Decal	Huelva	Andalusia	Yes	[…]	[…]
Secicar	Motril	Andalusia	No	[…]	[…]
CLH	Palma (Son Banya)	Balearic Isles	Yes	[…]	[…]
Dúcar	Dúcar I (Ceuta)	Ceuta	No	-	[…]
Atlas	Ceuta	Ceuta	No	[…]	[…]
Disa	G. Canaria (Salinetas)	Canary Is.	No	[…]	[…]
TC (50% Repsol-BP)	Sta. Cruz Tenerife	Canary Is.	No	[…]	[…]
TC (50% Repsol-BP)	LP Gran Canaria	Canary Is.	No	[…]	[…]
Chevron (Cepsa)	LP Gran Canaria	Canary Is.	No	-	[…]
Petrocan (Cepsa)	Tenerife	Canary Is.	No	-	[…]
Petrocan (Cepsa)	LP Gran Canaria	Canary Is.	No	-	[…]
Petrologis	LP Gran Canaria	Canary Is.	No	-	[…]
BP	LP Gran Canaria	Canary Is.	No	-	[…]
TOTAL: 36 terminals		**REGIONS**	**20 connect.**	**934,862**	**4,863,328**

Source: prepared in-house based on CNC Resolution C-0366/11 Cepsa/Chesa, information provided by the CNE, *Conditions for access to petroleum product storage facilities (according to article 41 of the Hydrocarbons Law)* and *Characteristics of the transport and storage facilities*, available at www.cne.es, website of CLH (www.clh.es) and websites of the private companies.

[28] Depots located in ports with total capacity of at least 30,000 tonnes and with storage capacity of at least 30,000 tonnes in petrol or in diesel.

30. According to the data in Table 5, **in Spain there are 36 terminals with sufficient storage capacity to qualify as import depots, some 25 of which are in mainland Spain, 1 in the Balearic Isles, 2 in Ceuta and 8 in the Canary Islands**[29].

- On the mainland, in Ceuta and the Balearic Isles, the CLH system predominates, as it has (including Terquimsa) [40-50] % of the petrol capacity and [40-50]% for diesel. It is followed at a distance by Meroil ([10-20]% in petrol, [10-20]% in diesel), Decal ([10-20]% in petrol, 10-20]% in diesel), Tepsa ([0-10]% in diesel), Euroenergo ([0-10]% in petrol, [0-10]% in diesel) and Forestal ([0-10]% in petrol, [0-10]% in diesel).
- In the Canary Islands, only Disa and Terminales Canarios (50-50 joint holding of BP and Repsol) have petrol storage capacity, although the Disa depot in Salinetas will not be used for imports until […][30], whereas in diesel Cepsa (through its wholly-owned subsidiary Petrocan, and Chevron, which it has just acquired) has [30-40]%, Terminales Canarios (50-50 holding of BP and Repsol) has [20-30]%, Disa [10-20]% (with the qualification indicated in the preceding point), BP [10-20]% and Petrologis the remaining [0-10]%.

31. **To the above there must be added the oil product storage capacity located in refineries**, which have unloading terminals and are used a depots for imported product. Table 6 below shows the storage capacity of each refinery by type of fuel.

[29] Most companies in the import depot business are not independent of other operators and display varying degrees of vertical integration. The following are either partly held or owned by operators with operations in refining or in retail distribution of automotive fuel in Spain: CLH, BP, Galp, Meroil, Saras, Disa, Terquimsa (50% CLH and 50% Royal Vorpak), Petrocan (99.5% Cepsa) and Terminales Canarios (50% Repsol and 50% BP). Similarly, the following storage operators are also active in wholesaling of petroleum products according to the CNE register: Forestal del Atlántico, Petrocan and Petrologis.

[30] CNC resolution C-0366/11 Cepsa/Chesa, Report of the Investigations Division, paragraph 179.

Table 6. Petrol and diesel storage capacity in Spanish refineries (2011)

Refinery	Owned by	Petrol		Diesel	
		Thousand m3	%	Thousand m3	%
La Coruña	Repsol	[…]	[10-20]%	[…]	[0-10]%
Bilbao	Repsol	[…]	[10-20]%	[…]	[10-20]%
Tarragona	Repsol	[…]	[10-20]%	[…]	[10-20]%
Puertollano	Repsol	[…]	[0-10]%	[…]	[10-20]%
Cartagena	Repsol	[…]	[10-20]%	[…]	[10-20]%
Huelva	Cepsa	[…]	[0-10]%	[…]	[10-20]%
Algeciras	Cepsa	[…]	[10-20]%	[…]	[0-10]%
Tenerife	Cepsa	[…]	[0-10]%	[…]	[0-10]%
Castellón	BP	[…]	[10-20]%	[…]	[0-10]%
TOTAL		**1,621**	**100%**	**3,473**	**100%**

Source: Information provided by the CNE.

32. As can be seen, the estimated total capacity of import depots in Spain, calculated as the sum of the port terminals that meet the threshold to qualify as import depot and refineries, is 2.632 million m3 for petrol and 7.830 million m3 for diesel. **Refineries account for 62% of import storage capacity in petrol and 55% in diesel**.

33. Theoretically, ownership of import facilities should not have any effect on import capacity of the different wholesale operators, because according to article 41 of the Hydrocarbons Sector Law 34/1998 (LSH), the owners of storage infrastructures are obliged to allow access to third parties on transparent, non-discriminatory and objective conditions. This does not apply to refineries, as their storage facilities are not subject to the rules on third-party network access (TNA). Thus, **more than half the theoretical import capacity**[31] **is at the exclusive disposal of the companies with refining capacity in Spain.**

34. Mainland Spain and the Canary Islands constitute geographically separately markets for purposes of fuel import infrastructure. But even on the mainland, the costs of transporting fuel inland can reduce the substitutability between coastal storage depots. Thus, even though it is physically possible to unload fuel imports at a given port on mainland Spain and transport it to another port, **the intra-peninsular transport costs can render that fuel uncompetitive in relation to fuel unloaded at that port of destination, which may lead to the establishment of import infrastructure markets smaller than mainland Spain**.

[31] Part of the refinery depots are used for operational storage of the products produced in the refinery itself. In addition, part of the total capacity (refinery and non-refinery) is needed so that CORES can store the minimum security stocks and strategic reserves.

35. This issue is illustrated in Table 7 below. The column “Ship(a)” sets out the[32] price of unloading fuel at the fuel import facility of reference. The “Other CLH plant(b)” column gives the price charged by CLH to unload at another alternative terminal and take it to the terminal of reference; given that there may be various alternative ports at which the fuel could be unloaded, the Table only indicates the price of the lowest-cost alternative, along with the point of origin and the price per m3. The column “Refinery(c)” contains the price charged by CLH to take the fuel to the terminal of reference from a refinery; once again, as various alternatives are possible, the column only gives the cheapest, and indicates the refinery of origin and price. Lastly, the column “3rd Facility(d)” contains the prices charged by CLH for bringing fuel to the terminal of reference from a third party's facility connected to CLH; similarly, it only indicates the best alternative and the price.

Table 7. Prices for unloading petrol and diesel and for transport between CLH import facilities on mainland Spain (in €/m3)

Plant	Region	Ship(a)	Other CLH plant(b)	Refinery(c)	3rd Facility(d)
Huelva	Andalusia	4.40 €	Tarragona: 13.16 €	Huelva: 2.82 €	Huelva(e): 3.96 €
Motril	Andalusia	4.40 €	Huelva: 12.21 €	Algeciras: 9.86 €	-
Gijón	Asturias	4.40 €	Bilbao: 13 €	Coruña/Bilbao: 11.77 €	-
Castellón	Valencia	4.40 €	Tarragona: 11.02 €	Castellón: 2.82 €	-
Barcelona	Catalonia	3.66 €	Tarragona: 7.15 €	Tarragona: 6.13 €	Barcelona(i): 3.22 €
Tarragona	Catalonia	4.40 €	Barcelona(e): 7.87 €	Tarragona: 2.82 €	Tarragona(f): 3.96 €
Cartagena	Murcia	4.40 €	Alicante: 12.08 €	Cartagena(d): 2.82 €	Cartagena(h): 3.96 €
Vizcaya	Basque Ctry.	4.40 €	Huelva: 14.03 €	Bilbao: 2.82 €	Bilbao(g): 3.96 €

Notes: (a) price of unloading at terminal; (b) price of the cheapest unloading option at an alternative CLH terminal and transport to the plant; (c) price of the cheapest option for transporting fuel from a refinery; (d) price of the cheapest option for transporting fuel from a facility of a third party connected to the CLH system; (e) Decal facility in Huelva; (f) Euroenergo and Terquimsa facilities in Tarragona; (g) Esergui and Tepsa facilities in Bilbao; (h) Saras facility in Cartagena; (i) Tepsa and Decal facilities in Barcelona.
Source: Prepared in-house using information from the CNE (*Conditions for access to petroleum product storage facilities (according to article 41 of the Hydrocarbons Law)*), at www.cne.es) and the CLH website (www.clh.es).

36. Table 7 is quite revealing in relation to the minimum cost of substitution of terminals on the demand side. For example, to import fuel and place it at the port of Bilbao (Vizcaya), the best option is to unload it at the port itself, at a price of 4.40 €/m3. The least expensive alternative with CLH prices

[32] All prices include basic logistics: unloading, operational storage (15 days) and placement on road tanker.

would be to unload the fuel at the port of Huelva[33] and bring it in from there, but this would cost 14.03 €/m3, some 220% more. If access to the Petronor refinery is available (Bilbao), the price is 2.82 €/m3, but bringing it in from any other refinery is much more expensive. Lastly, if the product is unloaded at the Esergui or Tepsa terminals in Bilbao, CLH charges 3.96€/m3, to which there has to be added the price charged by the storage operators. Therefore, demandside substitutability between the port of Castellón and any other port for fuel imports is quite limited.

37. **In this context, the current rules on TNA do not avoid the existence of access problems,** because the fact that the number of depots with demandside substitutability is small makes the lack of available capacity in a depot more likely to generate bottlenecks. This points to a potential competition problem, as lack of available capacity to be contracted in a given depot may arise either because of the actual absence of physical capacity or because the capacity is reserved to certain operators, even if not used.

38. This issue was recently referred to by the CNC in its analysis of concentration operation C/0366/11 Cepsa/Chesa when it identified a potential barrier to entry in the lack of available capacity for importing fuel: "…*there are arguments to conclude that access to petroleum product import capacity may condition access to the supply market and hence, indirectly, the competitive functioning of the downstream markets. In short, primary depots are not substitutable by secondary or coastal depots for purposes of obtaining supplies from abroad....*" (Report of the Investigations Division, paragraph 52).

b) *Transport infrastructure inside Spain*

39. In Spain, **there are several civilian-use pipeline networks, owned by Compañía Logística de Hidrocarburos (CLH), which in aggregate constitute the most extensive civilian network managed by a single operator in Western Europe**. Nevertheless, it bears emphasis that, **unlike most EU countries, none of these CLH networks is connected to a foreign pipeline network**. In addition, **these CLH networks provide fragmented coverage of nearly all of mainland Spain** (they comprise several networks that are not physically interconnected with each other) and, though not inter-linked, **are connected to part of the depots and to all the refineries in Spain except for Cepsa's plant in Tenerife** (the CLH transport system does not cover Canary Islands, Ceuta or Melilla).

40. **Access to the pipelines and storage terminals is subject to regulation** under the applicable Spanish industrial legislation, so that the owners of

[33] Bringing the fuel from Huelva is more economical than bringing it from Catalonia, one of the biggest import centres along with Bilbao.

those logistical assets are obliged to allow access, up to the limit of the available capacity, to the marketed refined products to any operator who so requests **in objective, transparent and non-discriminatory conditions**, according to article 41 of the Hydrocarbons Sector Law 34/1998 of 7 October 1998 (LSH).

41. Pipelines are the most efficient means of transporting fuel at the national level as they allow important economies of scale and of network to be achieved[34].

42. Figure 3 below depicts the CLH pipelines in Spain together with the depots owned by CLH.

[34] In various EU countries, including France, Germany, Belgium and the Netherlands and others, there coexist different pipeline networks with different owners, civilian and military, and in some cases managed by specialised companies that do not own the grid. For example, in France, to mention just the pipelines connected to refineries, we can name:

- S.P.M.R. (*Société du Pipeline Mediterranée Rhône*)
- The networks managed by Trapil Complex, which operates three pipeline networks, one of which it owns and the other two include a civilian use network owned by another company and a military network, the *Oléoducs de Défense Commune,* the French portion of the CEPS (*Central Europe Pipeline System*, NATO).
- S.F.D.M. (90% owned by Bolloré Energie, a wholesaler not integrated downstream).
- SPSE (*Société du Pipeline Sud Européen*) and
- Pipeline d'Ile-de-France

Figure 3. CLH pipeline network

Source: CLH

43. As can be observed, although CLH does not have international connections or a single interconnected network of pipelines, there is a main network that runs through central mainland Spain linking the Basque Country, Navarre, La Rioja, Castilla la Mancha, Madrid, Castilla y León, Aragón, Catalonia, Extremadura and Andalusia regions, and several smaller networks in Galicia, the Valencian Community–Murcia and Balearic Isles. It should be borne in mind, on the one hand, that the Alicante–Murcia network is physically connected to the main CLH network via a private pipeline between Cartagena and Puertollano that is owned by Repsol and which is not indicated in the map[35]. The Canary Islands, Ceuta and Melilla have no pipeline network.

44. Due to the problem of not being able to duplicate the pipeline networks in an economically efficient manner at the present time, **the CLH pipeline**

[35] This pipeline has capacity to carry crude to Puertollano and fuel in both directions. It is not subject to the third-party network access obligations (TNA) established in article 41 of the LSH.

networks constitute a natural monopoly in economic terms. However, **CLH is completely free to set the prices it charges for use of its transport network**, and only needs to comply with the criteria laid down in art. 41 LSH, that is, *"there must be notified to the Spanish Energy Commission the contracts that are signed, the list of prices for using the said facilities, as well as the any modifications made therein within a maximum of three months"*. As mentioned above, third-party access must be provided through a negotiated procedure, on technical and economic conditions that are non-discriminatory, transparent and objective. This situation contrasts with the natural gas[36] and electricity industries[37], sectors whose grids constitute natural monopolies but whose prices for use of the network are fixed by negotiation.

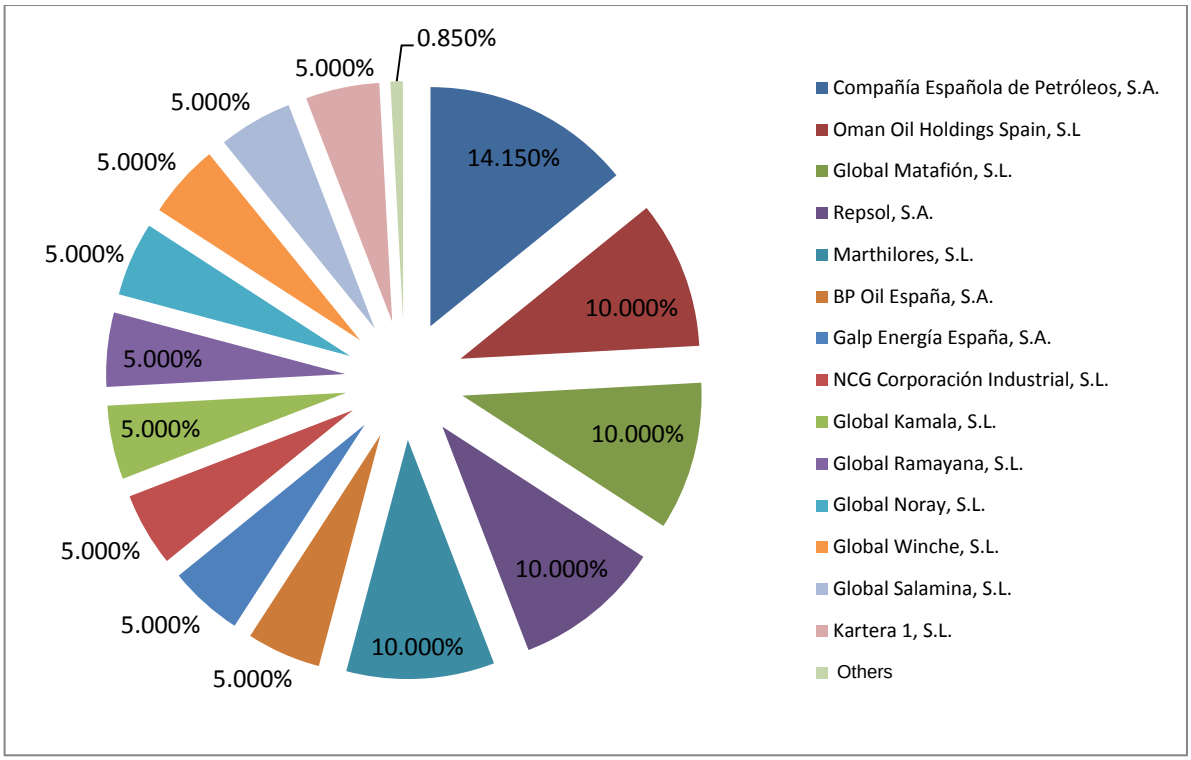
45. **Given the CLH's singular position** in the Spanish oil industry, as owner of the networks of pipelines and of a significant part of the storage capacity, **entry into its shareholder base is subject to certain regulatory limits set out in the sector's regulations**. Royal Decree Law 6/2000 of 23 June 2000 on Urgent Measures for Intensification of Competition in Markets for Goods and Services provides in art. 1.1 that *"no natural or legal person may directly or indirectly hold more than 25% of the capital or voting rights of CLH. The aggregate direct and indirect equity holdings of shareholders who have refining capacity in Spain shall not exceed 45%"*.

46. **At present, the CLH shareholder base is 29.15% composed of operators with refining capacity in Spain (14.15% Cepsa, 10% Repsol, 5% BP) and 5% Galp, one of the main operators in Spanish market, with refining capacity in mainland Spain, and leader in Portuguese market**, where some Spanish companies operate. The most significant recent change in the CLH ownership structure involved the sale by DISA of its 10% stake in 2011. DISA mainly operates in the Canary Islands archipelago, with more than 300 service stations on mainland Spain that operate under the Shell brand.

[36] Art. 70.1 LSH: "*The owners of the facilities must allow their use* […] *by means of the separate or joint contracting of transport, regasification and storage services, on the basis of the principles of non-discrimination, transparency and objectivity. The price for use of the transport networks will be determined by the prevailing rates*".

[37] Art. Electricity Sector Act 38.1/1997: "*The transport facilities may be used by qualified consumers and subjects* […] *The price for use of the transport networks will be determined by the rate approved by the Government*".

Figure 4. CLH shareholder base



Source: CLH (www.clh.es)

47. The Board of Directors of CLH is composed of a Chairman, 19 Directors and a General Secretary. Of the 19 Directors, three hold executive offices in Cepsa, one in Repsol, one in BP and one in Galp. In addition, since 2005 the office of Chairman has been occupied by persons with ties to the most important company in the sector, given the lack of regulation on conflicts of interest of CLH's managers.

c) Secondary storage

48. Storage is done both at origin, also called primary storage (refinery or port of entry), and at destination, secondary storage (storage facilities from which fuel is distributed to the service stations in the area); it is possible for the same depot to be used to receive imports or refined products and to directly supply service stations in its zone. **Therefore, primary storage sites are those located at refineries and the import depots of the various Spanish ports, and all storage facilities may be considered secondary as they can be used to supply service stations directly**.

49. Although all depots can supply the service stations in their area, a distinction should be made between those located at refineries and all other depots, given that **art. 41 of the Hydrocarbons Sector Law 34/1998 of 7 October 1998 (LSH) stipulates that refinery-based depots**

are exempt from the general obligation of all other storage sites to allow access to third parties by means of a negotiated procedure, on that are non-discriminatory, transparent and objective technical and economic conditions.

50. Similarly, operators with refining capacity present another differential regulatory element. **Article 50 of the LSH stipulates that** "*All operators authorised to carry out wholesale distribution of oil products in Spanish territory and all companies involved in the retail distribution of petroleum derived fuel not purchased from operators regulated under this Law must maintain minimum security stocks of the products at all times"*, and from this it may be inferred **that the reserves must be maintained both by wholesalers with refining capacity and the rest of the operators**. But **for a wholesaler with refining capacity, maintaining the minimum security stocks (MMS) is a natural by-product of the refining process and operational storage of the refined products, whereas for all other wholesalers it entails a separate permanent cost**. Furthermore, **it is possible to compute crude reserves as MMS and, once again, the crude storage depots intrinsic in the refining process can be used to comply with the MMS requirements**[38].

51. **In Spain**, apart from the depots at refineries, **there are depots for secondary distribution of fuel that are owned by several companies**. Including depots at refineries and secondary storage terminals[39], the total storage capacity in Spain for G95 was 2.841 million m3 (43% storage sites, 57% refineries), and for GOA this capacity was 9.550 million m3 (64% storage sites, 36% refineries).

52. Table 8 shows the total capacity for G95 and GOA of secondary storage depots, without counting refineries (the storage capacity at refineries can be seen in Table 6 further above).

[38] In the recent past there were additional elements of discrimination in favour of the operators with refining capacity which were corrected by certain regulatory changes introduced by Royal Decree 1766/2007 of 28 December 2007, which amended Royal Decree 1716/2004 of 23 July 2004 regulating the obligation to maintain minimum security stocks, the diversification of natural gas supply and the Corporación de Reservas Estratégicas de Productos Petrolíferos (Petroleum Product Strategic Reserves Corporation — CORES).

[39] It should be recalled that all primary storage facilities also qualify as secondary facilities.

Table 8. Storage capacity in Spain by operators (excluding refineries) (2011)

Company	Petrol		Diesel		Scope
	000 m3	%	000 m3	%	
CLH	[…]	[50-60]%	[…]	[50-60]%	Mainland + Balear. Is.
BCTank	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Biogal	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Decal	[…]	[10-20]%	[…]	[0-10]%	Mainland + Balear. Is.
Ecocentros	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Esergui	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Euroenergo	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Felguera	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Foresa	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Forestal	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Galp	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Gasteco	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
GoilRent	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Huidobro	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Juntdos	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Meroil	[…]	[0-10]%	[…]	[10-20]%	Mainland + Balear. Is.
Petróleos Asturianos	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Saras	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Secicar	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Simonoil	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Tepsa	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Terquimsa	[…]	[0-10]%	[…]	[0-10]%	Mainland + Balear. Is.
Total Mainland + Balear.	**1,113**	**100%**	**5,673**	**100%**	**Mainland + Balear. Is.**
Cepsa (Atlas)	[…]	[90-100]%	41	[50-60]%	Ceuta and Melilla
Dúcar	[…]	[0-10]%	33	[40-50]%	Ceuta and Melilla
Total Ceuta and Melilla	**6**	**100%**	**74**	**100%**	**Ceuta and Melilla**
Aegean	[…]	[0-10]%	[…]	[0-10]%	Canary Islands
BP (incl. Terminales Can.)	[…]	[20-30]%	[…]	[10-20]%	Canary Islands
Cepsa (incl. Petrocan)	[…]	[0-10]%	[…]	[40-50]%	Canary Islands
DISA	[…]	[40-50]%	[…]	[20-30]%	Canary Islands
Petrologis	[…]	[0-10]%	[…]	[0-10]%	Canary Islands
Repsol (incl. Termin. Can.)	[…]	[20-30]%	[…]	[10-20]%	Canary Islands
Total Canary Islands	**101**	**100%**	**374**	**100%**	**Canary Islands**
NATIONAL TOTAL	**1,220**	**-**	**6,077**	**-**	**National**

Source: Prepared in-house using information provided by the CNE

53. As can be seen in Table 8, **the ownership of storage capacity subject to the TNA rules is highly concentrated**. On mainland Spain and the Balearic Isles, **CLH is the main operator, with [50-60]% of the TNA-rules capacity**, both for petrol and diesel; the other companies trail far behind and have a much smaller number of depots (amongst the largest, Tepsa has 3 depots, Decal 2 and Meroil 1). In Ceuta and Melilla the capacity is concentrated in two companies, Cepsa and Dúcar. And in the Canary Islands, only Disa and Terminales Canarios (owned 50-50 by BP and Repsol) have capacity for petrol, and in diesel the lion's share of the capacity is split up between ([40-50]%), Disa ([20-30]%) and Repsol-BP ([20-30]%).

54. All the same, **CLH's position in storage is stronger than indicated by the above figures and by what might be inferred from the TNA rules**.

55. First, because as in the case of import depots, **substitutability between secondary storage sites is limited on the demand side**. This can be demonstrated by the structure of CLH prices. **The basic logistics prices of CLH**[40] **are not unique per unit of energy transported, as occurs with gas and electricity transport, but varies depending on the fuel's point of entry and point of dispatch**. And the price differences according to specific points of origin and destination are very large, which means that certain CLH origin-destination pairs are not entirely substitutable from the standpoint of demand. Table 9, similar to Table 7 further above, shows a summary of the price of transporting fuel to CLH facilities from other CLH plants, from refineries and from one facility of a third-party with connection to the CLH network, in comparison with the price of unloading the fuel at the terminal itself, where possible (column “Ship(a)”). As can be observed, **each terminal has one or at most two points of origin that may be considered substitutable with each other because they are similarly priced; the rest of the alternatives are less competitive due to their higher price**.

[40] CLH publishes the prices of all of its services on its website, and reports them to the CNE, which in turn also posts them on its website.

Table 9. Transport prices between CLH facilities (2010)

Plant	Region	Ship(a)	Other CLH plant(b)	Refinery(c)	3rd Facility(d)
San Roque	Andalusia	-	Huelva: 12.81€	Algeciras: 2.82 €	-
Córdoba	Andalusia	-	Huelva: 10.96 €	Puertollano: 8.18 €	Huelva(e): 10.52 €
Huelva	Andalusia	4.40 €	Tarragona: 13.16 €	Huelva: 2.82 €	Huelva(e): 3.96 €
Málaga	Andalusia	-	Huelva: 11.59 €	Algeciras: 8.65 €	Huelva(e): 11.15 €
Motril	Andalusia	4.40 €	Huelva: 12.21 €	Algeciras: 9.86 €	-
Rota	Andalusia	-	Huelva: 10.96 €	Algeciras: 7.01 €	-
Seville	Andalusia	-	Huelva: 7.91 €	Huelva: 6.63 €	Huelva(e): 7.49 €
Zaragoza	Aragón	-	Tarragona: 10.9 €	Tarragona: 9.61 €	Tarragona(f): 10.46 €
Gijón	Asturias	4.40 €	Bilbao: 13 €	Coruña/Bilbao: 11.77 €	-
Ibiza	Balearic Isles	13.13 €	Barcelona(e): 20.32 €	Castellón: 18.84 €	-
Mahón	Balearic Isles	13.13 €	Barcelona(e): 21.43 €	Castellón: 21.5 €	-
Porto Pí	Balearic Isles	13.13 €	-	-	-
Son Banya	Balearic Isles	-	Barcelona(e): 19.49 €	Castellón: 18.16 €	-
Alcázar S. Juan	C. La Mancha	-	Huelva: 16.32 €	Puertollano: 8.28 €	Huelva(e): 15.89 €
Burgos	C. La Mancha	-	Bilbao: 10.05 €	Bilbao: 8.76 €	Bilbao(g): 9.63 €
León	C. La Mancha	-	Bilbao: 13.55 €	Bilbao: 12.26 €	Bilbao(g): 13.12 €
Salamanca	C. La Mancha	-	Bilbao: 14.26 €	Bilbao: 12.98 €	Bilbao(g): 13.82 €
Santovenia	C. La Mancha	-	Bilbao: 12.23 €	Bilbao: 10.94 €	Bilbao(g): 11.8 €
Albuixech	Valencia	-	Castellón: 5.74 €	Castellón: 4.85 €	-
Alicante	Valencia	-	Cartagena(d): 8.31 €	Cartagena(d): 7.04 €	Cartagena(h): 7.88 €
Castellón	Valencia	4.40 €	Tarragona: 11.02 €	Castellón: 2.82 €	-
Barcelona	Catalonia	3.66 €	Tarragona: 7.15 €	Tarragona: 6.13 €	Barcelona(i): 3.22 €
Gerona	Catalonia	-	Barcelona(e): 7.94 €	Tarragona: 8.92 €	Barcelona(i): 7.51 €
Lérida	Catalonia	-	Tarragona: 7.44 €	Tarragona: 6.15 €	Tarragona(f): 7 €
Tarragona	Catalonia	4.40 €	Barcelona(e): 7.87 €	Tarragona: 2.82 €	Tarragona(f): 3.96 €
Mérida	Extremadura	-	Huelva: 13.24 €	Puertollano: 9.65 €	Huelva(e): 12.77 €
Coruña	Galicia	-	Coruña: 4.4 €	Coruña: 2.35 €	-
Puxeiros	Galicia	-	Coruña: 9.67 €	Coruña: 8.35 €	-
Torrejón	Madrid	-	Tarragona: 15.17 €	Puertollano: 8.99 €	Tarragona(f): 14.74 €
Villaverde	Madrid	-	Tarragona: 15.65 €	Puertollano: 9.47 €	Tarragona(f): 15.23 €
Cartagena	Murcia	4.40 €	Alicante: 12.08 €	Cartagena(d): 2.82 €	Cartagena(h): 3.96 €
Navarre	Navarre	-	Bilbao: 11.06 €	Bilbao: 10.09 €	Bilbao(g): 10.61 €
Vizcaya	Basque Country	4.40 €	Huelva: 14.03 €	Bilbao: 2.82 €	Bilbao(g): 3.96 €
Rivabellosa	Basque Ctry.	-	Bilbao: 7.84 €	Bilbao: 6.55 €	Bilbao(g): 7.4 €

Notes: (a) price of unloading at terminal; (b) price of the cheapest unloading option at an alternative CLH terminal and transport to the plant; (c) price of the cheapest option for transporting fuel from a refinery; (d) price of the cheapest option for transporting fuel from a facility of a third party connected to the CLH system; (e) Decal facility in Huelva; (f) Euroenergo and Terquimsa facilities in Tarragona; (g) Esergui and Tepsa facilities in Bilbao; (h) Saras facility in Cartagena; (i) Tepsa and Decal facilities in Barcelona.
Source: Prepared in-house using information from the CNE (*Conditions for access to petroleum product storage facilities (according to article 41 of the Hydrocarbons Law)*), at www.cne.es) and the CLH website (www.clh.es).

56. Second, because **not all private storage facilities are connected to the CLH transport network**, so that their geographical area of competitive influence is limited: only the Decal depots in Huelva and in Barcelona, Euroenergo and Terquimsa in Tarragona, Tepsa in Bilbao and in Barcelona, Esergui in Bilbao, GOIL Rent Park in Madrid, Saras in Cartagena and Meroil in Barcelona have a link with a CLH pipeline network.

57. Third, **although not all of CLH's depots are physically interconnected to each other, the company offers the end customer an integrated service, so that the client can deposit fuel at any de CLH facility and withdraw it at any other, and, moreover, do so simultaneously through its "accreditation**" system[41]. This service cannot be replicated by any other operator and strengthens CLH's position vis-à-vis other storage operators, and carries an obligation that it be neutral for the system.

58. In addition, **CLH offers a basic logistics service and value added services** (additivation, non-operational storage, etc.). The basic logistics service package includes unloading the fuel, transport from the point of origin to the point of destination and operational storage during 15 days. **Given the CLH network's incontestable[42] position in the system, the fact that it bundles together both the transport and storage services,** with no possibility of offering them separately, **give it a competitive advantage over all other private storage facilities**, a question we will return to further ahead.

II.3. Wholesale distribution of automotive fuel

59. Wholesalers are operators who market oil products for their subsequent retail distribution[43], and therefore occupy an intermediate position between refining and retail distribution.

60. **Once the fuel is refined or enters the system through one of the refineries or ports of entry, it is transported to the points of retail sale**, or to the reception facilities of large customers, where applicable. The fuel is destined either for own use by the wholesale operators in the downstream retail market (intra-network), or to sale to third parties operating in the downstream market or to large customers such as, for example, industrial customers, transportation companies, hospitals or military centres (extra-network).

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[41] This service does not avoid the need for transporting fuel between facilities, which must be done in any event.

[42] "Incontestable" in the economic sense (W. J. Baumol, J.C. Panzar and R.D. Wilig: *Contestable Markets and the Theory of Industry Structure*, 1982).

[43] Art. 42 LSH.

61. **The distribution to these points of sale is normally done using road tankers or smaller pipelines** in certain cases. The cost of transport is an important factor and it is generally not competitive to carry fuel by this means over distances beyond 100-150 Km. Therefore, it is generally considered that **the dynamics of competition are markedly regional or local**[44].

62. **The companies authorised** to carry on this activity, according to art. 42 of the LSH, **must notify the start or end of activity to the Ministry of Industry, Energy and Tourism (MINETUR), which passes on the notification to the CNE, with the notice being accompanied by a sworn statement certifying** [45] fulfilment of the requisite conditions for engaging in this activity. The CNE posts on its website a list of wholesalers of petroleum products.

63. The CNE estimates that the service station networks of the operators account for 83% of service stations in Spain, a much higher percentage than in other European countries[46]. Therefore, the weight of the extra-network wholesale market is small in relation to national consumption of automotive fuel. Furthermore, the greater part of supplies between operators and service stations are carried out under long-term branding contracts that normally entail fuel supply in exclusivity[47] (according to CNC Resolution 2575/04 DISA CANARIAS, 80% of service stations on mainland Spain are owned by wholesale operators or tied to them under long-term arrangements, that is, over five years), which reduces competition in this market enormously.

64. Table 10 below shows the shares of the extra-network wholesale market in the service station channel. It shows how the biggest operators re Repsol, Cepsa and BP, followed by Galp and Disa, with **the top-5 operators having a combined market share of 85.7%**.

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44 See European Commission M.1383 Exxon/Mobil and TDC Report C86/04 Disa/Shell.

45 The Omnibus Law (25/2009), in article 19, modified the previous system to one based on a sworn certification. This arrangement is also extended to wholesalers and retailers of GLP (butane and propane).

46 *"Segundo Informe Annual de Supervisión del Mercado de Hidrocarburos Líquidos" (Second Annual Report on Supervision of the Liquid Hydrocarbons Market)* (2009), CNE.

47 Although there are operators in the market who offer branding contracts without exclusive supply obligations.

Table 10. Extra-network wholesale market shares in the service station channel (2011).

Operator	2011
REPSOL	[40-45]%
CEPSA	[15-20]%
BP	[10-15]%
GALP	[5-10]%
DISA	[5-10]%
SARAS ENERGIA	[0-5]%
MEROIL	[0-5]%
ESERGUI	[0-5]%
PETROMIRALLES3	[0-5]%
DYNEFF ESPAÑA	[0-5]%
CHEVRON ESPAÑA (Cepsa)	[0-5]%
VÍA	[0-5]%
KUWAIT	[0-5]%
CARBURANTS AXOIL	[0-5]%
TAMOIL	[0-5]%
PETROLÍFERA CANARIA	[0-5]%
PETROMAR	[0-5]%
Rest	[5-10]%

Source: Information provided by the CNE

II.4. Retail distribution through service stations.

65. **The last link in the automotive fuel distribution chain consists of sale to end users at service stations**. Demand for G95 at service stations mainly comes from passenger cars, whereas most demand for GOA is from professional vehicles. Thus, this **demand is very fragmented, more so in the case of petrol than diesel, which renders the coordination of purchasing strategies to counteract the suppliers' position of strength unlikely**. To this we must add that the **price elasticity of fuel demand is low**, given that fuel has practically no substitutes for over-the-road transport vehicles[48].

66. A key trait of this **fragmented demand** is the **limited capacity to know and compare prices of fuel sold at all service stations** before a purchase decision is made, or what economists refer to as “search costs”. Precisely in order to reduce these search costs initiatives are being pursued to facilitate *ex ante* knowledge of service station fuel retail prices, such as the **geoportal of the Ministry of Industry, Energy and**

[48] CNC, *Report on competition within the automotive fuel sector* (2009).

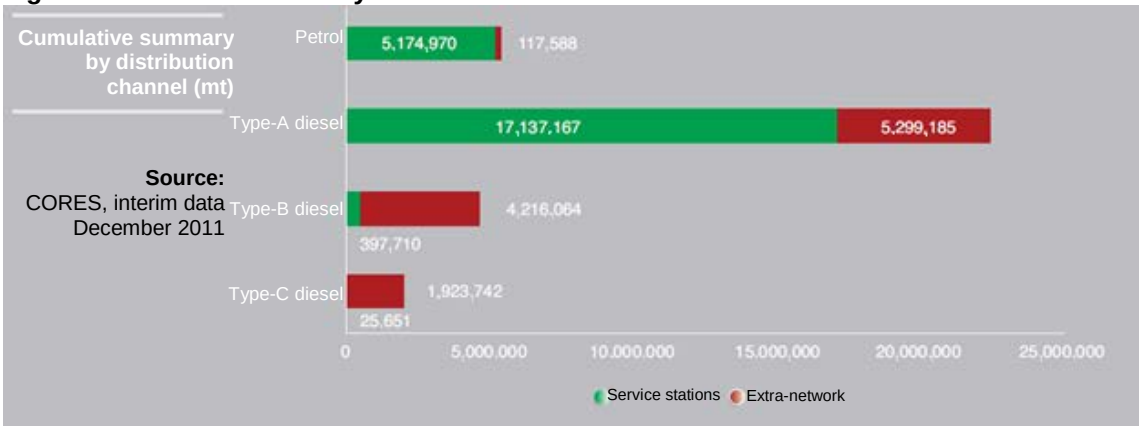
Tourism[49]. One indicator of the relevance of and interest in cutting down search costs is that the geoportal has spawned numerous computer applications for mobile devices that facilitate access to the Ministry's database and develop diverse functionalities.

a) *General structure of service stations supply*

67. **In Spain, there are some 9,000 service stations in operation, mainly owned by or related to wholesale operators, although there are some that are not tied to wholesalers**. The CNE estimates that 83% of service stations form part of the distribution networks of the wholesale operators, and only 17% are independent[50].

68. Petrol and diesel are distributed intra-network and extra-network. Petrol, which is primarily used by private vehicles, is mainly distributed through service stations. Type-A diesel (GOA) has a higher proportion of direct sales (to transport and vehicle rental companies, amongst others), whereas type-B diesel (farm use) is mainly distributed directly, independently of service stations.

Figure 5. Fuel distribution by channels



Source: AOP, Annual Report 2011.

69. According to a study prepared by the European Commission in 2009[51], **Spain ranks number 5 in the EU in number of service stations, behind Italy, France, Germany and the United Kingdom. Average sales per station are practically at the European average, while average number of service stations per capital and per km2 in Spain are**

[49] This portal contains up-to-date retail prices of nearly all Spanish service stations in real time. All service stations in Spain are required to report their selling prices to the Ministry of Industry, Energy and Tourism on a weekly basis (every Monday) and every time the prices are changed.

[50] *"Segundo Informe Annual de Supervisión del Mercado de Hidrocarburos Líquidos" (Second Annual Report on Supervision of the Liquid Hydrocarbons Market)* (2009), CNE.

[51] "*Survey of the competitive aspects of oil and oil product markets in the EU. A report to Directorate-General Energy and Transport of the European Commission*", Pöyry (2009).

below the respective European averages. According to the study, **this could be a sign that competition between service stations is weaker in Spain than in other countries**[52]. **Since 2009, the number of service stations has continued to grow in Spain, according to data from the AOP, despite the crisis**.

70. **The main operator is Repsol, followed by Cepsa and BP**. These are the three operators that have refining capacity in Spain and between them they **flag 59% of Spanish service stations,** according to data from the Asociación Española de Operadores de Productos Petrolíferos (AOP)[53]. Service stations display much more supplyside concentration in Spain than in other comparably sized EU countries: according to figures from the CNE and a study prepared for the European Commission, the HHI index that measures supplyside concentration by number of service stations was 2,233 in Spain in 2009, compared with 1,868 in France, 1,258 in Italy, 1,217 in Germany and 835 in the United Kingdom[54].

71. **The CNC has made its own estimates of market shares, by number of service stations and sales per station, based on data provided by the Ministry of Industry, Energy and Tourism**. These shares permit us to analyse the relative position of the main operators in the different provinces, and take into account the sales of each service station.

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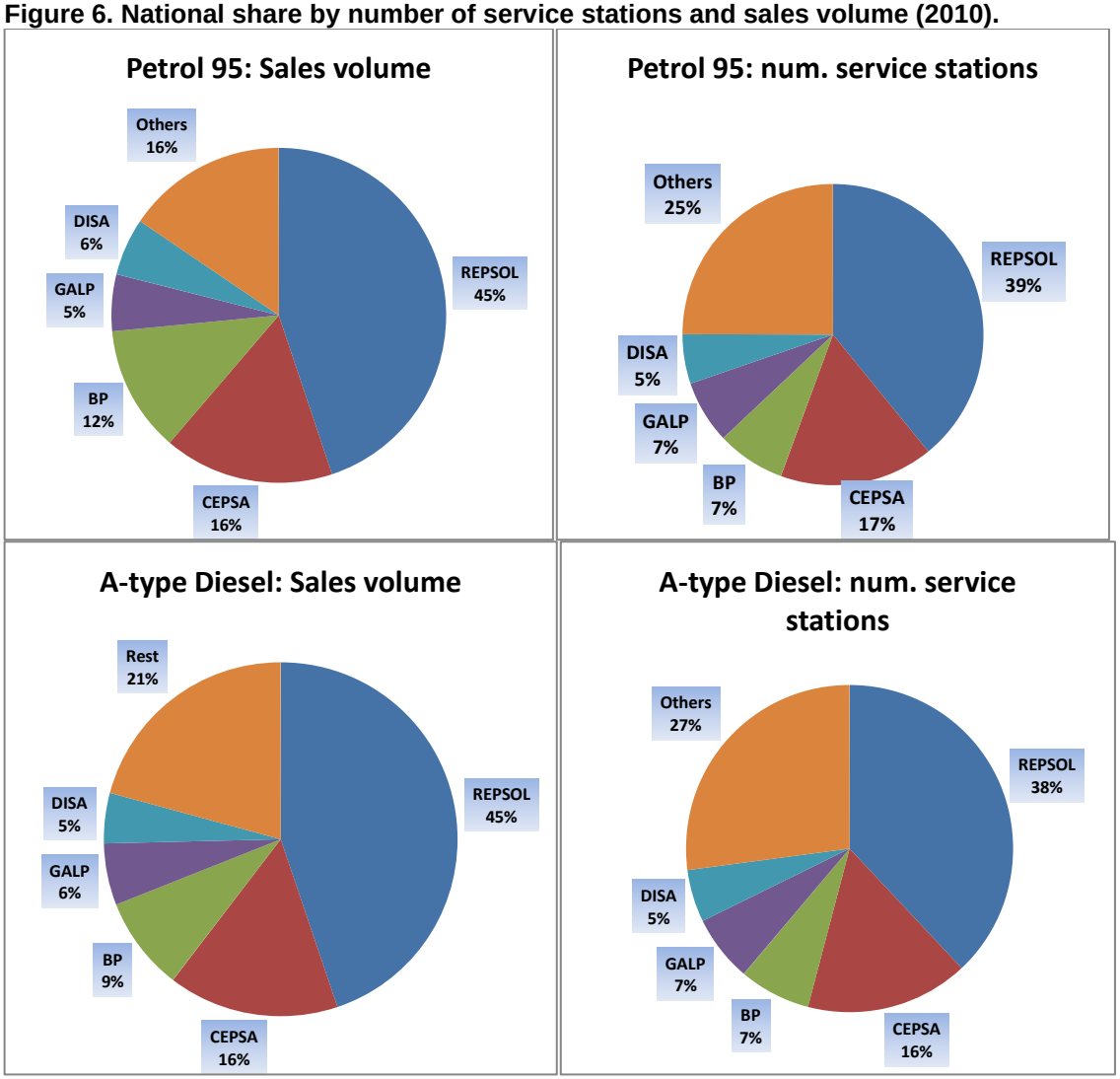
[52] "*This implies that retailers may not face the intensity of competition that retailers in other Member States face, but incur similar costs*"

[53] The following belong to AOP: Repsol, Cepsa, BP, Galp, Saras and Shell as affiliated member (AOP, Annual Report 2011).

[54] Source: CNE, "*Segundo Informe Annual de Supervisión del Mercado de Hidrocarburos Líquidos"* (Second Annual Report on Supervision of the Liquid Hydrocarbons Market) (2009) and PÖYRY, "*Survey of the Competitive Aspects of Oil and Oil Product Markets in the EU*" (2009).

Figure 6. National share by number of service stations and sales volume (2010).



Source: Prepared in house using information provided by the Ministry of Industry, Energy and Tourism

72. Figure 6 shows a **high degree of concentration at the national level, both by number of service stations and by sales volume**. **Repsol** is the biggest operator, with a share of 38-39% by number of stations and 45% of sales, followed by **Cepsa** (16-17% in number of stations, 16% in sales) and **BP** (7% in stations, 12% in sales of G95 and 9% for sales of GOA). **Between them, the big three have 62-63% of the points of sale, 73% of G95 sales and 70% of GOA sales**.

73. Therefore, **the service stations of the operators with refining capacity in Spain (Repsol, Cepsa and BP) sell, on average, more quantity than the service stations of the rest of the companies**, and, therefore, market shares measured by number of stations underestimate the combined relative position in the market of the top three operators. This occurs with more intensity in the case of Repsol and BP: Repsol's national

market share is 6-7% higher when measured by sales volume than when the metric used is the number of outlets; and BP's is 5% bigger by sales than by number of stations in G95 and 2% larger in GOA.

74. These numbers show, therefore, that **the operators with refining capacity (Repsol, Cepsa and BP) are the leaders in retail distribution through service stations, far ahead of all other operators**. Their refining capacity, in addition to allowing them a cheaper source of fuel, gives them greater supply security and flexibility. **The rest of the wholesalers acquire fuel from the Spanish refineries or, to a lesser extent, bring it in from their own refineries in other countries or buy it on the international markets and import it into Spain**. **The rest of the service stations procure their supply from the wholesale operators**.

75. **One special group consists of service stations at hypermarkets and supermarkets, which stand out, in other EU markets, for their unique competitive capacity**. At present, after more than 15 years of being considered potential competitors, only 275 service stations operate in Spain in hypermarkets and supermarkets. **The market share of these service stations, approximately 3%, remains far smaller than in other European countries** and in France in particular, where the operators in this segment hold a market share of 60%, at least 20 times higher than in Spain[55]. **New service station openings are marginal and now mainly concentrated in urban areas**.

76. According to data from AOP, **the relative positions of the three majors (Repsol, Cepsa and BP) by number of service stations has remained more or less stable over time**[56], with the most significant changes having been generated by mergers. **In 2001 a significant group of major oil multinationals were present in Spain, namely, Agip, ERG, ExxonMobil, Shell and Total, who have carried out a gradual and scaled pull-out from the Spanish market in the first decade of the century**, although some of them continue to allow their brand to be used at certain service stations. **The last to leave the market, in early 2012, was Chevron, which sold its network of stations and assets to Cepsa**[57]. The rest of the international operators sold their networks to the traditional operators in the Spanish market, such as Disa and Saras, although **the biggest beneficiary in terms of relative increase in number of stations has been Galp**.

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55 Ministère de l´écologie, du développement durable, des transports et du logement, France.

56 It should be noted that RDL 6/2000 imposed limits on the expansion of the service station networks of the main operators, Repsol (the moratorium was established for 5 years) and Cepsa (3 years), which partly explains the maintenance or reduction in the number of service stations flagged by these operators from 2001 to 2005.

57 CNC Resolution C/0366/11.

- **Galp: a vertically integrated operator, holding a 5% stake in CLH, with two refineries in Portugal albeit without connection to CLH pipelines**. Its share of the service station retail distribution market is 7% by number of outlets and 6% by sales. Its current share of the retail market fundamentally originated with its acquisition of the former networks of Total[58] in 2003 and Agip[59] and ExxonMobil[60] in 2008.
- Saras: Italian multinational with refining capacity in that country and service stations in Spain and Italy. Present in Spain since the beginning of the century, in 2003 it sold all of its service stations (130) to Agip (CNC, case N/03002 Agip/Saras). In 2006 Saras returned to the Spanish market after acquiring a small network of 38 service stations, and at the end of 2008 it expanded its networks by acquiring 81 service stations from ERG (CNC, case C/0116/08 Saras/ERG).
- ERG: Italian multinational with operations in the oil, gas and electricity industries. It has refining capacity in Italy and together with the French Total operates a network of 3,400 service stations. ERG was in Spain with a small presence (around 100 service stations) from 2001 to 2008, when it sold its network to Saras.
- Total: French multinational group with operations in oil and gas and in the chemicals sector, biggest French company and world's fourth largest oil and gas group. Total was present in the Spanish market at the beginning of the century, with its own brand and through a jointly controlled (with BSCH) stake in Cepsa. In 2003 Total sold a large part of its network to Agip and Galp (CNC, case N/276 Agip/Petrogal/TFE), and between 2004 and 2007 it disposed of the rest (56 service stations). In 2008 Total cemented its exclusive control of Cepsa after acquiring a majority stake in its capital (European Commission, case COMP/M.4329), and in 2011 it pulled out of the Spanish market altogether after selling its holding in Cepsa to the fund IPIC (European Commission, case COMP/M.6171).
- Shell: a UK-based multinational of Dutch origin and one of the world's leading oil and gas producers. Present in Spain at the beginning of the century, Shell sold off its network (some 330 service stations) to DISA in 2004 and 2005 (CNC, case N/04073 Disa/Shell Peninsular/Shell Atlántica).
- Agip: a trademark of Italy's Eni group and one of the world's leading oil companies. Present in Spain at the beginning of the century, in

[58] CNC resolution case N/276 Agip/Petrogal/TFE.

[59] European Commission, case COMP/M.4329.

[60] European Commission, case COMP/M.5005.

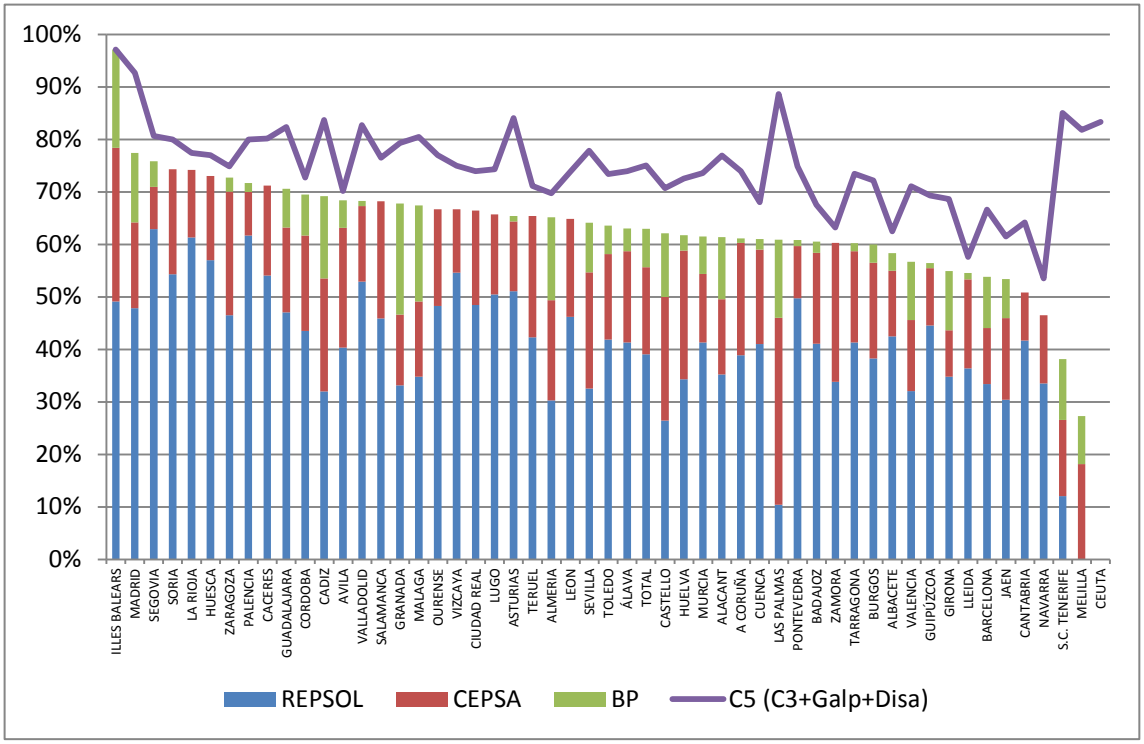
2003 it doubled the size of its network of service stations after acquiring assets from Saras (130 service stations) and Total (87 service stations, jointly with Galp). It remained in the Spanish market until 2008, when it sold its network to Galp (case COMP/M.5169).

- ExxonMobil: the world's biggest energy company by market cap, with interests in oil and gas. In Spain it operated a network of around 100 service stations under the Esso brand, which it sold to Galp in 2008 (case COMP/M.5005).
- Chevron: a United States-based company that ranks amongst the world's biggest operators in the energy sector, mainly operating in oil and gas. Chevron maintained a small network of around 60 service stations on the Canary Islands from the beginning of the century before selling it to Cepsa in 2011.

b) Regional structure of supply and refining capacity

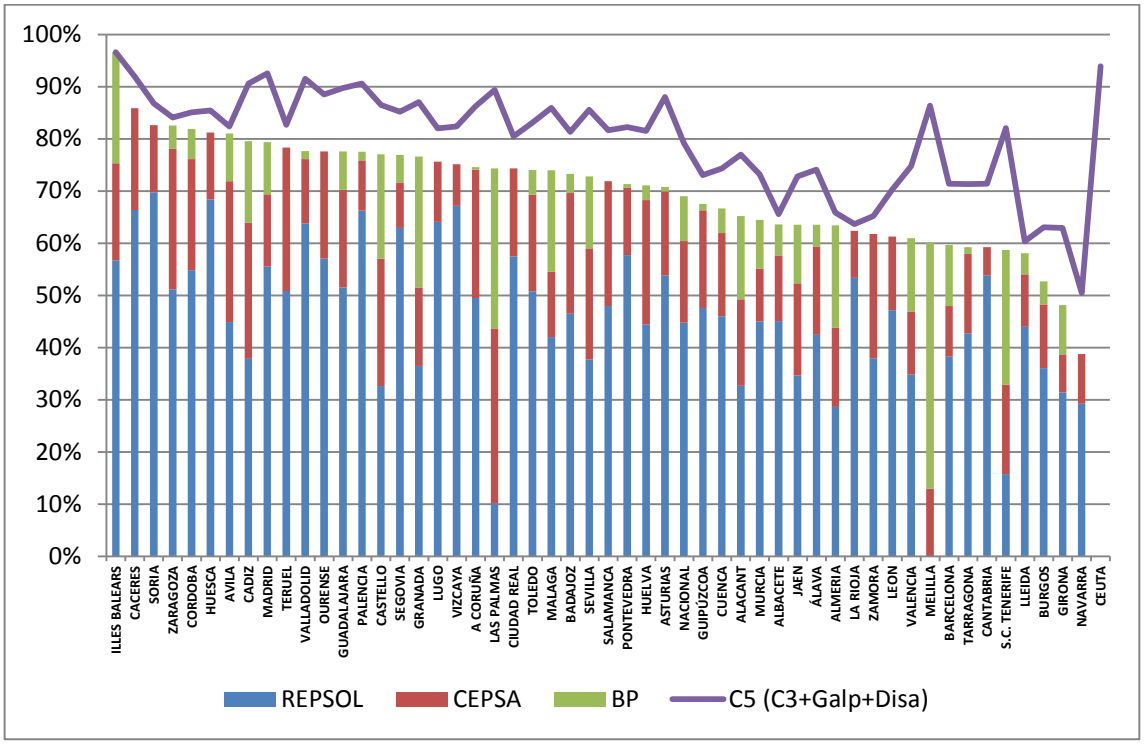
77. Figures 7 and 8 below show the **estimated provincial market shares by sales volume** calculated by the CNC on the basis of data provided by the Ministry of Industry, Energy and Tourism.

Figure 7. Market shares of G95 sales volume of the three vertically integrated operators with refining capacity, by province (2010)



Source: Prepared in house using information furnished by the Ministry of Industry, Energy and Tourism.

Figure 8. Market shares of GOA sales volume of the three vertically integrated operators with refining capacity, by province (2010)



Source: Prepared in house using information furnished by the Ministry of Industry, Energy and Tourism.

78. Figures 7 and 8 above support various **significant conclusions**. First, **the levels of concentration of supply owned by operators with refining capacity are very high in nearly all provinces**: in both types of fuel, the aggregate share of Repsol, Cepsa and BP is over 60% of sales in nearly all provinces, and in some cases surpasses 80%[61]. This means that **the market is highly concentrated not just at the national level, but also in almost every province**. If the fourth and fifth biggest operators, Galp and Disa respectively, are also taken into account, only in two provinces (Lérida and Navarre) is the combined share of the top-5 operators below 60% in G95, and only in one (Navarre) in the case of GOA. In fact, the aggregate share of the top-5 operators in G95 is higher than 80% in 39 Spanish provinces, and in 33 provinces for GOA.

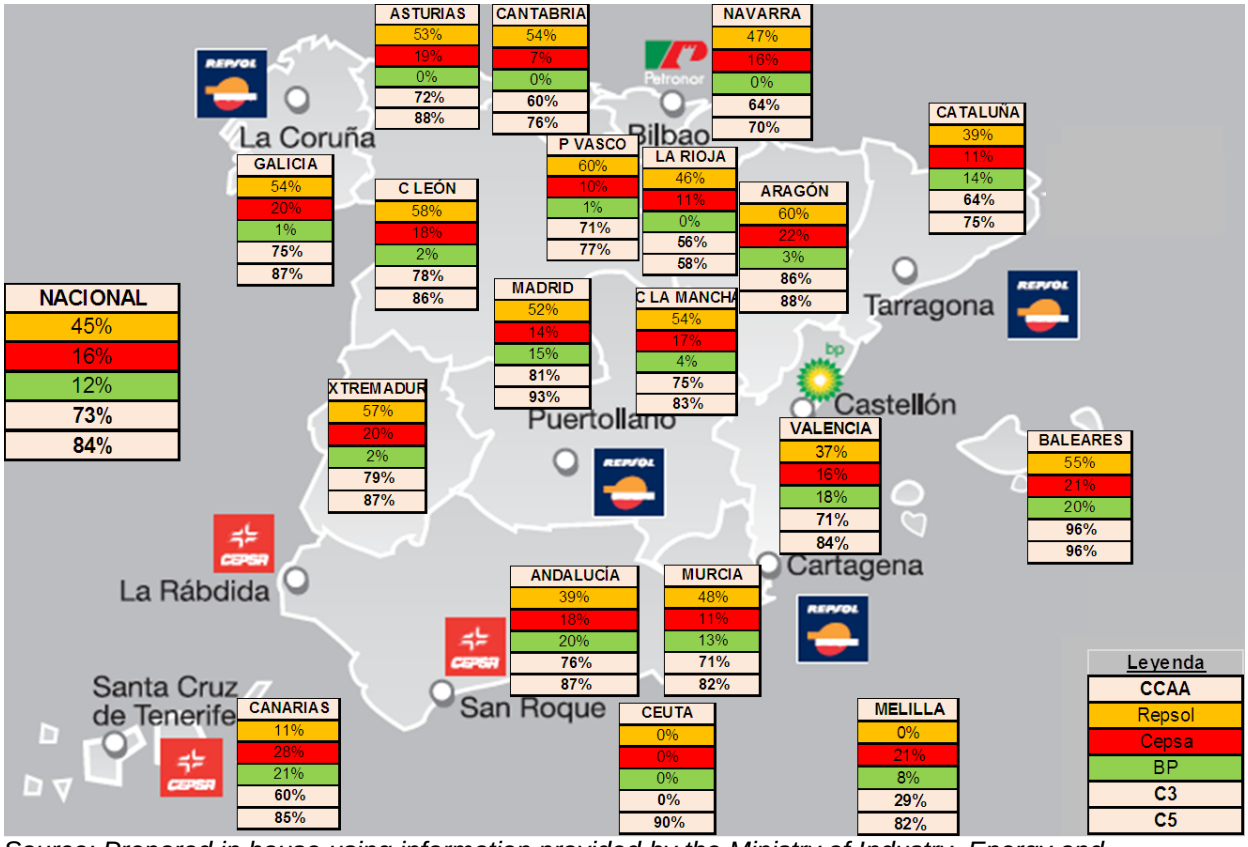
79. Second, **in nearly all provinces we find that the relative position of strength amongst the big three is repeated: first, Repsol; second, Cepsa; third, BP**. The Repsol and Cepsa networks cover the entire national territory, whereas BP is relatively more centred along the

[61] It should be taken into account, furthermore, that the provinces in which these three operators have a lower relative weight include the two provinces of the Canary Islands, Ceuta and Melilla, where Disa has a very large relative weight.

Mediterranean coast (Catalonia, Valencia, Murcia, Andalusia and Balearic Isles) and in the Canary Islands.

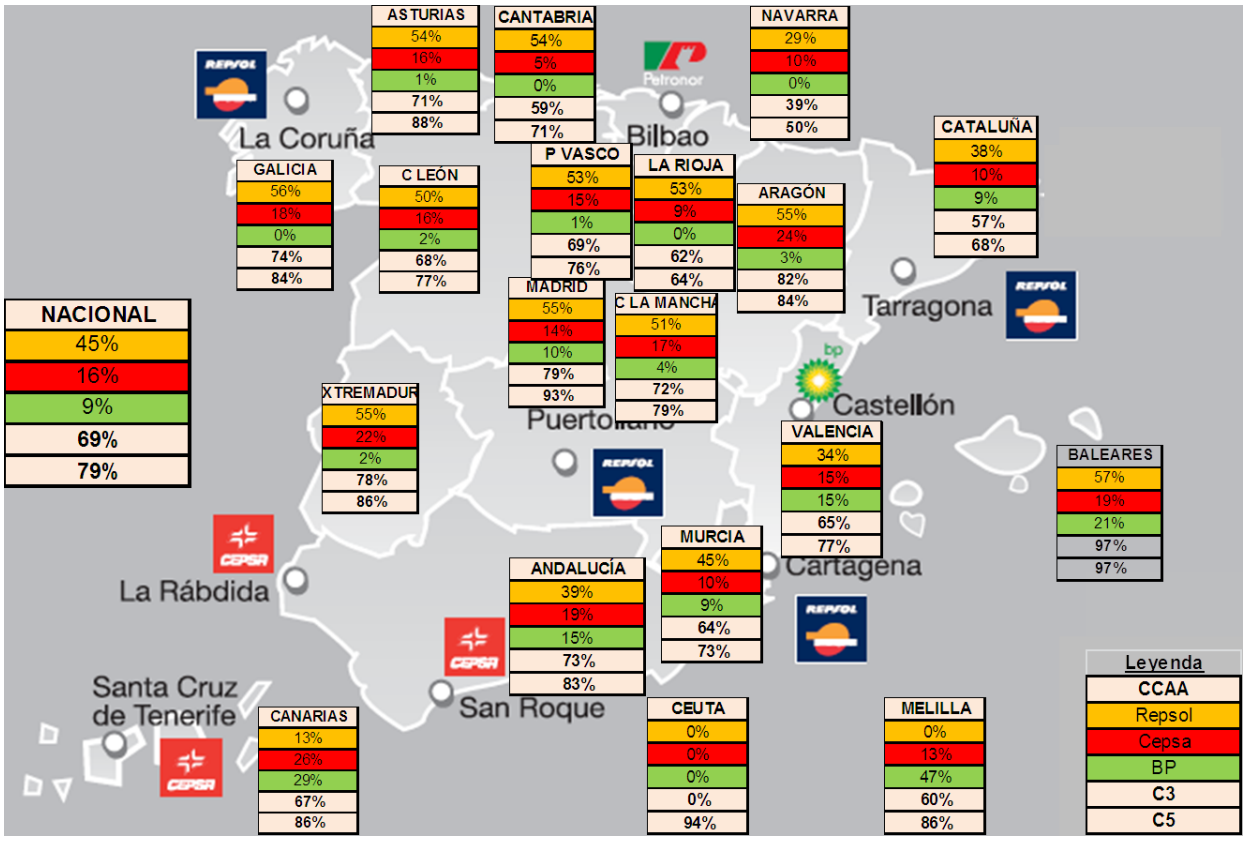
80. And third, **there is a positive relation between the location of the refineries and the relative presence of the three majors**: save for some exceptions, in those zones where the Repsol, Cepsa and BP refineries are located they are significantly stronger in terms of market share, although without altering the above "ranking", except in the Canary Islands and Balearic Isles. This can be seen more clearly in Figures 9 and 10 that follow, which summarise the market shares of the big three with refining capacity by region.

Figure 9. Market shares by volume of G95 sales of the three operators vertically integrated with refining, by region and location of the refineries.



Source: Prepared in house using information provided by the Ministry of Industry, Energy and Tourism.

Figure 10. Market shares by volume of GOA sales of the three operators vertically integrated with refining, by region and location of the refineries.



Source: Prepared in house using information provided by the Ministry of Industry, Energy and Tourism.

81. **Repsol has market shares above its national average in the northern and central zones** (Galicia, Asturias, Cantabria, Basque Country, Castilla y León, Navarre[62], La Rioja, Aragón, Madrid, Castilla-La Mancha and Extremadura), **which lie within the sphere of influence of their refineries in Coruña, Bilbao and Puertollano**. In Murcia, its position is also relatively stronger than at the national level, but with less intensity than in the central and northern zones, which may perhaps be related to BP's stronger presence in that region than elsewhere due to its refinery in Castellón and to the existence of the Saras and Galp import depots in Cartagena. Lastly, in Catalonia the strength that Repsol's refinery in Tarragona gives it may be mitigated by the number of private operators and storage facilities connected to CLH in the ports of Barcelona and Tarragona (Meroil, Tepsa, Decal, Terquimsa, Euroenergo).

82. **Cepsa is relatively stronger in Extremadura, Andalusia and the Canary Islands,** precisely the **zones closest** to **its three refineries**.

[62] In GOA, the Repsol share in Navarre (29%) is below its national average (45%).

83. **BP shows more strength than its national average along the Mediterranean corridor** (where its **refinery in Castellón** may boost its competitive capacity) and in the Canary Islands, where it enjoys a relatively strong position in import depots.

c) *Local dimension of competition and prices*

84. The structural analysis of the conditions of competition cannot ignore the importance of the local component in the distribution of fuel via service stations: **each service station's area of influence is determined by geographical, demand and supplyside factors, which combine to form a competitive dynamic of a possible local scope.**

85. The empirical persistence of price differences in local areas that are very close together and, to a lesser extent, the recent fiscal differences between sub-national areas, are increasing the importance and relevance of analysing location factors. Consequently, it is also salient to analyse competition in geographical environments smaller than the entire mainland or than entire archipelagos when a lack of competitive interaction between neighbouring areas is detected. And, indeed, there are **numerous elements that seem to point to significant differences in the conditions of competition between different territories within peninsular Spain**[63].

86. First, there is a clear spatial differentiation between service stations associated with each station's concrete location. **End consumers normally fuel up at the stations closest to their place of activity and prefer to avoid the cost in time and transport associated with searches for alternative service stations**[64]. High search costs tend to reduce substitutability between service stations for consumers, which lessens the interlocking of areas of influence of service stations.

87. In this sense, **the academic literature is increasingly focusing on the importance of localisation factors and other elements of a local nature for the intensity of competition in a given area**: location (urban area, rural area or road network), number of and distance between service stations in the zone, concentration of ownership or presence of unflagged

[63] The non-peninsular territories have always been considered relevant markets separate from mainland Spain. In some specific cases, each one of the Canary Islands (see, inter alia, CNC resolution C-0366/11 Cepsa/Chesa) and Ceuta (CNC resolution C-0301/10 Disa/Activos BP Oil) have been considered separate markets.

[64] The CNC's July 2012 *Report monitoring the automotive fuel market* cited search costs as one possible explanation of the asymmetries found in the speed at which retail pre-tax prices (PTP) adapt to variations in international prices, emphasising the situations of local market power spawned by those search costs.

stations are determinants of the intensity of competition and need not be homogeneous throughout the entire territory[65].

88. Second, **the CNC's experience in disciplinary proceedings[66] indicates that distributors set their benchmark prices[67] for the service stations in their respective networks as a function of the retail prices (RPs) established by their closest competitors**. From this strategy it is concluded that operators determine the main competitive variable, price, as a function of local factors.

89. Third, the **CNE has since 2007 been producing "micro" supervisory reports of the Spanish service stations market**, in which it oversees the retail distribution of fuel via service stations in smaller areas of the country in order to draw conclusions that allow specific antitrust problems to be pinpointed. **Those "micro" areas where the CNE concludes that there are significant deviations** from the national average in price levels, frequency and concentration, gross distribution margins, pricing policies of operators present in the zone or supplyside structure **are called *"areas of special supervision"*,** and are subjected to further scrutiny. The CNE has thus far detected two areas, out of a total of 22 analysed, of special supervision (municipalities of Seville and Almería).

90. Finally, the recent CNC ***Report monitoring the automotive fuel sector* of July 2012** underscored the existence of a **positive relation between provincial concentration and retail pricing levels (pre-tax prices) of fuel in provinces**. That relation indicates possible differences in the conditions of competition across sub-nationally sized areas.

d) *Intra-brand competition and access to the market*

91. It is important to bear in mind that **not all service stations that fly the flag of wholesale operators are owned by latter; a large part of those stations are owned by their managers, to whom the wholesalers supply fuel in exclusivity and give them access to their commercial network (including access to the loyalty cards**). The **different**

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65 The pioneering publication in this line of research is Verlinda, Jeremy A. (2008) "*Do rockets rise faster and feathers fall slower in an atmosphere of local market power? Evidence from the retail gasoline market*", The Journal of Industrial Economics, September 2008. At the national level, the main publication along these lines is Contín et al (2010) "*(2010), "Influencia de los factores de localización en la fijación de los precios de los carburantes de automoción en España" (Influence of localisation factors in pricing automotive fuel in Spain)*", Cuadernos Económicos de ICE, Nº79, June 2010.

66 See CNC resolution 652/08 Repsol/Cepsa/BP.

67 The benchmark prices may be fixed prices for service stations managed directly by the wholesaler, but they can only be "maximums" in the case of agency arrangements and "recommended" in the case of resellers. See CNC resolution 652/08 Repsol/Cepsa/BP.

contractual arrangements that can arise in this regard have given rise to a specific jargon:

- **COCO** (company owned – company operated): the service station is owned and operated by the wholesaler.
- **DOCO** (dealer owned – company operates): these service stations are owned by a third party and operated by the wholesaler.
- **CODO** (company owned – dealer operated): service stations owned by the wholesaler but operated, under the wholesalers flag, by an independent manager.
- **DODO** (dealer owned – dealer operated): the station is owned by an independent manager, who is branded by and supplied fuel by the wholesaler in exclusivity.

92. The CNE[68] estimates that 83% of Spanish belong to the service station networks of the wholesalers because they maintain contractual exclusivity relations with them. In the service station networks, some 20% have COCO ties, 38% CODO, 8% DOCO and the remaining 34% are DODO arrangements.

93. The distinction is important, because it allows **an assessment of the market's degree of accessibility for the other wholesale operators and the intensity of competition between flagged stations**. **COCO and DOCO** arrangements imply **the highest degree of control** by the wholesale operator and of stability in the supply relationship (the service station cannot be expected to procure supplies from a competitor wholesaler). **Nor in CODO situations can the station be expected to buy supplies from a competitor wholesaler**, but the manager does theoretically have a greater degree of independence for setting the retail price. In **DODO arrangements, the manager also has a theoretically higher level of independence for pricing the fuel, and its tie to the wholesaler is much weaker**, given that once the exclusivity commitment expires, the dealer may buy supply from any other wholesaler.

94. With respect to the intensity of competition between branded service stations, the available data show that **competition between stations flying the same flag is rather low**. This is corroborated by the differences between the suppliers' recommended retail selling prices (RSPs) and the retail prices actually charged by the service stations branded by those suppliers (RPs).

95. **The CNE has provided information** in this regard, based on the RSP and RP information submitted to the Ministry of Industry, Energy and Tourism by suppliers and service stations. **The CNE holds that a**

[68] *"Segundo Informe Annual de Supervisión del Mercado de Hidrocarburos Líquidos"* (Second Annual Report on Supervision of the Liquid Hydrocarbons Market) (2009), CNE.

distinction should be made between service stations that report their adherence to the wholesaler's RSP and the rest of the service stations.

96. **According to data from the CNE provided to the CNC**, the **number of service stations that, when reporting their retail prices to the Ministry of Industry, Energy and Tourism adhere to the price recommended by the wholesaler**[69] **has grown in recent years**. Nevertheless, theoretically, the fact that service stations adhere to the prices does not mean that, within the framework of their contractual relationships, they cannot deviate and set different prices, which they must report to the Ministry.

Table 11. Degree of adherence to the prices recommended by the operators with refining capacity in Spain (2008-2011)

	REPSOL	BP	CEPSA
2008	[40-50]%	[20-30]%	[30-40]%
2009	[50-60]%	[20-30]%	[50-60]%
2010	[60-70]%	[30-40]%	[60-70]%
2011	[60-70]%	[30-40]%	[60-70]%

Source: CNE

97. In relation to the service stations that do not adhere to supplier RSPs, the ***CNE draws the nuance that "The fact of the retailer rejecting its adherence option under the Order and reporting its average prices, does not mean that these are not the same as the prices given by the supplier***". In other words, **the non-adhering service stations may be applying the prices recommended by their wholesalers**. The price monitoring data for non-adhering service stations are shown below:

[69] As explained by the CNE, a distinction must be made between the "*service stations which, when fulfilling the reporting obligation, adhere to the wholesaler's prices and those other stations that weekly report their prices. Indeed, under the aforesaid Ministerial Order ITC/2308/2007, the owners of the operating rights of service stations tied to a wholesaler may "comply with the reporting obligation (…) by declaring (…) that their prices are the same as the maximum prices or prices recommended by the wholesaler". With that statement of adherence, which "shall be renewed quarterly", the retailer is exempted from the obligation to report prices at least weekly. Without prejudice to the above, "In the event the retailer sets different prices than the maximum or recommended prices, he must report the information".*"

Table 12. Degree of application of prices set by wholesale operators in service stations that do not adhere to the wholesaler's price report (2011)

	SAME — NON-ADHERING	NOT SAME			% Data employed
	% same prices	% prices NOT same	Average difference IND-OP		
			C€/lt	%	
REPSOL	[80-90]%	[10-20]%	[…]	[<1%]	29%
CEPSA	[80-90]%	[10-20]%	[…]	[<1%]	25%
BP	[60-70]%	[30-40]%	[…]	[<1%]	46%
Rest	[20-30]%	[70-80]%	[…]	[<1%]	16%

Source: CNE[70]

98. Table 13 integrates the 2011 data of the two preceding Tables for the three operators with refining capacity.

[70] The CNE explains that "*the criteria for extracting and analysing this information are as follows:*

- *The analysis does not include facilities in which the retailer has declared adherence to the wholesaler's prices, as set out above.*
- *Prices sent via SMS and REPRESENTATIVE are not taken into account.*
- *All types of contractual arrangement in which the manager of the station is independent, not the wholesaler, have been considered, namely: CODO commission (CO), CODO outright sale (OS), DODO commission (CO), DODO outright sale (OS). Obviously, in 100% of COCO stations the prices actually charged at the point of sale are the wholesaler's prices, as the latter owns and operates the station.*
- *The average Retailer-Operator (IND-OPE) differences have been calculated from the daily IND-OPE differences of each service station and taking into account the G95 and GOA prices jointly. That is, the wholesaler's recommended price is being applied when, for one service station and for one effective date, the price of both products is the same. For this reason, in relation to the latter, not all data send, either by the operators or the retailer, are capable of being compared. That is why the percentage comparison datum will only include data sent, for a given service station, with one and the same effective date. In view of all of the above, the analysis includes the percentage of data employed, calculated as all data in which the comparison CAN be made (because for the same effective date and for one and the same service station, price information has been reported by the retailer and by the operator) as a percentage of the total number of price reports. For this reason, the analysis will not include price reports in which, for the effective date of reference, there is not a submission from both the dealer and the company.*"

Table 13. Degree of application of the prices set by the service stations branded by the wholesale suppliers

	Repsol	Cepsa	BP
Adhering (A)	[60-70]%	[60-70]%	[30-40]%
Non-adhering (B), of which:	[30-40]%	[30-40]%	[60-70]%
- Do not deviate (C)	[80-90]%	[30-40]%	[60-70]%
- Deviate (D)	[10-20]%	[10-20]%	[30-40]%
% Deviate / total (BxD)*	**[0-10]%**	**[0-10]%**	**[20-30]%**
Size of deviation (%)**	[<1]%	[<1]%	[<1]%

* Estimation. It should be taken into account that adhering service stations (A) may have deviated on occasion, although that information is not available.
**Percentage difference between supplier's RSP and RP charged in the service stations.
Source: Prepared using information provided by the CNE

99. **The above data demonstrate that the intensity of intra-brand competition between service stations flagged by the traditional operators is extremely low**. Thus, in 2011 only **[0-10]% of Repsol service stations deviated from the selling prices set by that oil company**; the rest of the service stations did not deviate from the commercial policy laid down by Repsol, either because they adhered to the prices it set ([60-70]%), or because though they reported as not adhering they did in fact apply those prices ([20-30]%, result of multiplying "B" by "C" in Table 11). The case of **Cepsa** is very similar, with a mere **[0-10]% of deviations** with respect to the prices indicated by the wholesaler. It should be recalled that between them these **two operators and BP account for 73% of G95 sales and 70% of GOA sales.**

100. As for the **degree of contractual ties** to the wholesale operators, this factor has **important implications for the market's openness**. Service stations that are **owned by the wholesale operator (COCO and CODO), those which the wholesaler leases from a third party (DOCO) long-term cannot switch to another wholesaler**, so these arrangements are considered to have a **"strong tie"** to the wholesale operators. Conversely, service stations under **short-term DOCO arrangements and DODO stations** can be "attacked" commercially by a competitor wholesaler, so they are considered to have a **"weak tie"**. The degree of openness of a market is calculated as the portion of the market that is not branded or which has a weak tie to the supplier, as this is the part of the market which wholesalers compete to supply. Now then, **it is estimated that only 20% of service stations on mainland Spain have weak ties or are not flagged**, and the remaining 80% have strong ties; these percentages are to **45% weak ties** and 55% strong ties **in the Canary Islands**[71]. **The situation in mainland Spain has given rise to various competition**

[71] See CNC cases R691/06 DISA and 2575/04 Disa Canarias

infringement proceedings due to the overly long durations of the exclusive supply arrangements. Some of those cases ended with the adoption of commitments by the operators to facilitate unbinding their strongly tied service stations[72].

e) *Difficulties for opening new service stations*

101. Lastly, **attention must be called to the rigidities confronted to open a new service station**. Contrary to what occurs in the wholesale segment, opening a new service station **remains subject to the authorisation scheme instead of being subject to the new, less restrictive, sworn declaration**[73].

102. **Most formalities associated with openings are carried out before the municipal authorities and, to a lesser extent, in the Departments of Industry of the respective Autonomous Community.** The competence of the General State Administration is centred on preparing the basic legislation, granting authorisations to service stations on national roadways and having to centralise the register of service stations from the regional data. The regulatory development and implementation of the basic legislation is done at the regional and municipal level.

103. The **main licenses and authorisations** that must be attained to open a new station are as follows (these licenses may differ from one territory to another):

- The municipal licence for construction work and classified activity.
- Authorisation from the regional government's Department of Industry for the proposed oil product facilities project.
- Authorisation from the owner of the access road to the public roadway.
- Authorisation from the regional Department of Industry for starting up and carrying on the activity.

104. These licenses and authorisations are not homogeneous across all of Spain, and differences exist in the different towns and Autonomous Communities. In any event, opening a **service station requires complying with technical rules and standards** designed, in principle, to **minimise the risk of accidents and guarantee supply**, as set out in the Complementary Technical Instruction MIIP-04 approved by Royal Decree 1523/1999 of 1 October 1999.

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[72] European Commission, case COMP 38,348 Repsol CPP, and CNC, cases 2697/06 Cepsa and 2738/06 Galp Energía, S.A.

[73] The Omnibus Law (25/2009), in article 19, modifies the previous system of authorisation to one based on sworn declaration of compliance for wholesalers of oil products and GLP and for retailers of GLP.

105. One **basic element** in the authorisation procedures for new service stations is their **location in towns or on roadways**.

106. Under the current rules, setting up a service station **in a municipality can be done in the locations designated** in the town plans. Also, **Royal Decree Law 15/1999 attempted to establish certain minimum land areas that would be available in each municipality for installing service stations**, under the powers provided for in article 4 of the LSH for mandatory planning[74]. Thus, article 11 of Royal Decree Law 15/1999 instructs the Government, with input from the Autonomous Communities, to determine a minimum number of service stations per municipality in order to ensure supply[75]. However, **these provisions were not subsequently developed or implemented**. The CNE, in its report on the proposed planning instruments for the electricity and gas sectors for the period 2008-2016[76], criticised that the planning did not include the determination of general criteria for installing retail supply facilities for petroleum products[77]. Furthermore, **RDL 6/2000 stipulated that municipal licences to open large commercial establishments must automatically entail grant of the licenses needed to install service**

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[74] Amongst others, those powers include "*Stipulating general criteria determining a minimum number of facilities for the supply of retail petroleum products in line with the density, distribution and characteristics of the population and, if applicable, the density of vehicle traffic.*".

[75] The Government "…*will proceed to approve the general criteria to determine a minimum number of facilities for retail supply of petroleum products as a function of the density, distribution and characteristics of the population, the density of vehicle traffic, and such other parameters as may be deemed necessary", which after being prepared will be presented to the Congress of Deputies. The provision stipulated that the planning instruments had to be adapted to said criteria within two months of their approval, "zoning the land sites properly and adapting the land and establishing the reservations of land needed to site the new facilities*".

[76] Report 4/2008 of the CNE on the document Proposed planning instruments for the electricity and gas sectors 2008-2016, dated 24 January 2008.

[77] "…*in relation to the petroleum sector, energy planning instruments are binding in respect of the storage facilities for the strategic reserves of petroleum products and for determining the general criteria for installing facilities for retail supply of petroleum products. Although a chapter has been included dedicated to the storage infrastructure for the strategic reserves of petroleum products (specifically chapter 5, which is discussed in the next section), the planning document does not address the second aspect*" (page 83).

Further ahead in the report, the CNE notes that "*On this point it should be recalled that the "Planning" document does not contemplate the establishment of criteria regarding retail supply facilities for petroleum products, so it conforms neither to the provision of this article 4 of the Hydrocarbons Law nor to article 11 of the RDL 15/1999 mentioned above. In this regard, it bears mention that energy planning rules have never contemplated this point since the approval of Law 34/98. This Commission only has knowledge of one working document produced in 2000 by the Secretary of State for the Economy, Energy and Small and Medium Enterprises of the Ministry of Economy titled "Criteria for determining the number of service stations" which, based on the provisions of article 11 of RDL 15/1999, analysed possible criteria to be considered* " (page 87).

stations[78], and established certain facilities for processing licences for service station in already operating commercial outlets (Transitional Provision 1).

107. On the other hand, the **opening of non-urban service stations** (located on the road network) requires authorisation from the entity that owns the road. There are **national regulations of the Spanish State and regional rules of the Autonomous Communities** regulating access from public roadways in order to protect road safety, and they lay down diverse requirements for installing service stations. **The administrative authorisation procedure for service stations located on state roads is different depending on whether or not the stations are located in service areas**[79]. Article 19.4 of the Roadways Law 25/1988 of 29 July 1988 provides that concessions will be granted in competitive tenders, whereas the General Regulation on Roadways approved by Royal Decree 1812/1994 of 2 September 1994 stipulates that service stations on roadways but outside service areas will be authorised by the Directorate General for Roads.

108. According to the Roadways Law and General Regulation on Roadways (Royal Decree 1812/1994), **the award of service areas on State-owned roads** is done through **competitive tenders** resolved by the Directorate General for Roads of the **Ministry of Public Works and Transport (Ministerio de Fomento)**. This law allows **concessions both to operate service areas individually and to operate several areas as a block**. And **each element of the service area may be awarded separately**. In the case of stations not sited in service areas, there is greater discretion. In an attempt to foster competition in this area, **Royal Decree Law 15/1999 of 1 October 1999**, approving measures for liberalisation, structural reform and increased competition in the hydrocarbons sector, introduced **favourable weighting for the award of service stations located in service areas of State-owned roads for bids whose supplies were not contracted with the same operator as the next closest preceding and subsequent service stations on the road**[80].

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[78] Art. 3.2: "*the grant of the municipal licences required for the establishment will implicitly entail grant of those needed for installing a petroleum product supply facility*".

[79] Article 56 of the General Regulation on Roadways (Royal Decree 1812/1994) indicates that service areas are the zones adjoining the roadways, expressly designed as sites for facilities and services to satisfy the needs of motorists, which may include refuelling stations, hotels, restaurants, repair shops and similar services aimed at facilitating the safety and convenience of users of the roadway.

[80] *Article 8. Preference in the award of service areas. Under the current regulations on State roadways, in the competitive tenders to licence facilities for retail supply of petroleum products sited in service areas, a favourable weighting is given to bids that do not entail exclusive supply with the same wholesaler or operator in the same corporate group as the one that supplies in exclusivity the service stations located immediately before and after (in the same traffic direction) the station being tendered.*

109. Lastly, with respect to **toll expressways**, **Law 8/1972** on construction, maintenance and operation of expressways under concessions **allows the award of services area on the roadway to be decided by the concessionaire**.

III. FACTORS LIMITING THE DEGREE OF COMPETITION IN THE SECTOR

110. The fuel market, by its very nature, has certain **characteristics** that can facilitate situations of weakened competition, such as **consumer search and travel costs** (such that the location of the service stations, the main differential variable between them, can generate certain market power), the **rigidity of demand to prices** (there are hardly any substitutes for these fuel in the near or medium term) and the fact that the **product sold is homogeneous save for its location**.

111. But **those characteristics are augmented in the case of Spain**[81] **by a series of important barriers to entry and expansion that can accentuate the above problems and further constrain competition in this sector**.

112. Spain's automotive fuel sector is **highly concentrated**, and the high levels of supplyside concentration at the national level are reproduced at the provincial level. **The top three companies** (Repsol, Cepsa and BP) enjoy **substantial advantages over the rest, as a result of their vertical integration with refining operations, the economies of scale and network generated by the size and far-reaching extension of their service station networks, and their lower dependence on import, transport and storage infrastructure**. Operators who want to enter and **compete in Spain face difficulties**:

- for **opening new service stations**, given the numerous town planning restrictions that prevail in Spain;
- for **branding and supplying already existing service stations**, as a large part of those outlets are tied to the incumbent operators by long-term exclusive supply contracts;
- and for **obtaining fuel supplies on conditions as competitive as those of operators with refining capacity in Spain**, because, apart from having to acquire the fuel from these operators or import it and pay the related shipping costs, they are more vulnerable to incorrect functioning of the logistics system, dominated by a single operator (CLH) in which, moreover, the traditional operators are shareholders and can therefore exert influence.

[81] The existence of entry barriers in the automotive fuel sector does not seem to be exclusive to Spain, to judge from the concern voiced by other competition authorities over insufficient effective competition in the automotive fuel sector of their respective countries. Recently, the Office of Fair Trading in the United Kingdom and the Bundeskartellamt in Germany initiated investigations on competition in this sector.

113. Therefore, in practice, since supply fundamentally depends on the biggest oil companies with refineries in Spain, **the capacity to compete in the service stations market of the rest of the operators is limited, given their supply dependence on the former**. The alternative for these smaller operators would be to procure their fuel supplies on the international markets, but this requires having a large and stable demand in the retail segment and competitive transport logistics, in addition to the considerable economies of scale that exist in the international acquisition of fuel and its storage.

114. Due to these difficulties, **the corporate structure of the automotive fuel distribution sector has varied very little with respect to 15 years ago**, when the sector was liberalised on paper. **Although** in those 15 years **multinational companies strongly entrenched in other European countries and with available international fuel supplies entered the Spanish market**, many of them **pulled out a few years later when they were unable to expand their networks or be competitive with traditional operators**. This, together with the **high concentration seen in all segments of the fuel sector**, reflects that **the automotive fuel sector has major barriers that reinforce the market power of incumbent operators, to such extent that it can be said that at the present time the vertically integrated operators with refining capacity in Spain wield significant market power**.

115. The above illustrates that **to facilitate greater effective competition in the automotive fuel market and obtain lower fuel prices, measures are needed to favour the entry and expansion by alternative operators to the incumbents with refining capacity**. The most effective way to do this includes **reducing barriers to entry and expansion** that are described below, and which affect both the **retail and wholesale segments of the market**, and **counteracting the market power of the operators with refining capacity in Spain**. Policies that only consist in actions affecting the retail segment of the market, such as making it easier to open more service stations or for service stations to switch suppliers, are needed to increase competition. But their effects may be limited or even counterproductive if not simultaneously accompanied by measures to allow alternative operators easier access to the wholesale market, for otherwise it is the incumbents who would be more likely to see their position in the retail market strengthened, without greater effective competition being ensured as a result.

III.1 Barriers in the <u>wholesale</u> segment of the market

116. Entry barriers in the wholesale segment of the market are due to the obstacles for installing and starting up new refineries and, above all, to the regulation of access to storage and transport infrastructure, as well as to the role played by CLH and the regulations by which it is governed.

III.1.1 Difficulty for installing and starting up new refineries

117. The last refinery built in Spain dates back to the year 1970[82]. Building a refinery requires a major outlay of capital and can represent a high barrier to entry in the market. The last refinery project planned, in the town of Santos de Maimona (Badajoz), had an estimated cost of between 2.5 and 3.5 billion euros. The proposed site was eventually not authorised due to environmental concerns.

118. Apart from environmental questions, or from whether or not there is room in the Spanish market for new refineries, issues that are beyond the purview of the CNC, the facts seen in the refinery projected described above point to an unjustifiable delay in the administrative response to the proposed opening of a business project, which appears to have been initiated more than four years ago. Commissioning a refinery in Spain requires many administrative formalities, including construction licences and environmental clearances, that can delay construction and start-up for several years. The lack of suitable sites for building refineries and installing their complementing infrastructure are a further difficulty. Therefore, when an application for opening a refinery is filed, the requisite administrative processing should be carried out with the utmost diligence possible.

III.1.2 CLH's position as transport network monopolist

119. The current ex ante regulation of CLH are materialised in three fundamental elements:

- Limits on the presence of oil industry operators in its shareholder base: the ownership structure of CLH is regulated by article 1.1 of Royal Decree Law 6/2000 of 23 June 2000 on Urgent Measures for Intensification of Competition in Markets for Goods and Services, which provides that *"No natural or legal person may directly or indirectly hold more than 25% of the capital or voting rights of Compañía Logística de Hidrocarburos, Sociedad Anónima (CLH). The aggregate direct and indirect equity holdings of shareholders who have refining capacity in Spain shall not exceed 45%"*.

- Obligation to provide third-parties with access to its network on transparent, objective and non-discriminatory conditions. According to article 41.1 of the LSH, which regulates the conditions for access by third parties to the storage and transport facilities, CLH must allow

[82] The refineries in Spain are, by date of inauguration and current owner: Santa Cruz de Tenerife (1930, CEPSA), Cartagena (1951, Repsol), La Coruña (1964, Repsol), Puertollano (1965, Repsol), Huelva (1967, CEPSA), Castellón (1967, BP), Tarragona (1968, REPSOL), Algeciras (1969, CEPSA), Bilbao (1970, Petronor/Repsol).

access to its infrastructure by means of a negotiated procedure on transparent, objective and non-discriminatory conditions, and publicly disclose the prices applied[83].

- Accounting unbundling. Additional Provision 29 of the LSH stipulates that "*Companies or business groups that perform exploration, production, refinery, transportation, storage, wholesale distribution and retail distribution activities involving petroleum products, and the wholesale or retail distribution of liquefied petroleum gases must keep separate accounts for each of those activities*".

120. However, in the opinion of the CNC, **the current regulation of CLH is insufficient for avoiding the risks deriving from the market power it enjoys by virtue of its natural monopoly of transportation. That insufficient regulation makes it possible for the operators with refining capacity in Spain and strong distribution operators to also wield influence in CLH**. **By virtue of its status as monopolist of an essential and non-replicable service, CLH has significant market power that must be controlled** to prevent it from increasing the costs of the system and obtaining excessive profits with its rates or from trying to perpetuate its position by weakening competition in storage. **But, what is more, this control must be doubly strengthened because the capacity to influence in the CLH shareholder base enjoyed by certain players in the sector**, through their shareholdings and by their seats on the Board of Directors, **carries a large risk of CLH designing commercial and planning policies that do not favour effective entry of new operators and the development of competition**.

121. Regulation does not include rules on conflicts of interest that impede the presence of certain operators in CLH's ownership structure. Not only can this give them access to strategic and sensitive commercial information of the rest of the wholesale operators in and out of CLH, it may also allow them to influence CLH's decisions to align them more with the particular interests of the shareholders with refining capacity than with the general interests of CLH as independent corporate entity. This aspect, given the CLH's importance as a result of its strategic position in the development of the wholesale and retail distribution markets, is important enough to severely constrain competition in the entire fuel sector.

122. RDL 6/2000 established certain limits on the presence of sector operators in CLH's shareholder base, but those limits are less restrictive than the ones applied to comparable operators to CLH in Spain such as in the

[83] "*The owners of permanent storage and transportation facilities for petroleum products, who, (…) must allow access by third parties, shall notify the National Energy Commission, within the maximum term of three months, of any contracts they enter into, the list of prices for the use of those facilities and any changes in them. The National Energy Commission shall publish this information under the terms set forth in point 4 of the third paragraph of the additional provision eleven hereof*".

natural gas sector (Enagás, natural gas transport operator) and electricity (REE, electricity transmission operator), energy industries with a similar economic configuration given that all operators need access to a series of essential assets (the networks) with natural monopoly features.

123. Thus, in the cases of Enagás and REE, no one company may hold more than 5% of its capital and 3% of its voting rights (in REE, the limit is 1% for companies with interests in the sector), whereas in CLH the ceiling is 25% both for the equity interest and voting rights. Furthermore, CLH has a limit on the aggregate presence of petroleum companies in its shareholder base of 45%, similar to the comparable limit in place in Enagás (40%); but the ceiling in Enagás applies to all operators with interests in the sector, whereas in CLH it is only for operators with refining capacity.

Table 14. Limits on presence of sector operators in the shareholder base of CLH, Enagás and REE

	CLH (art. 1.1 RDL 6/2000)	Enagás (Add. Prov. 31 and 32 LSH)	REE (Add. Prov. 3 Law 7/2007)
Combined presence of operators	45% (operators with refining capacity)	40%	-
Individual ownership limits	25%	5%	5%
Individual limits on voting rights	25%	3%	3%
Others	-	No interests in activities other than transport and technical management of the system	Individual limits on voting rights of 1% for sector operators

Source: prepared in house.

124. But, furthermore, the capacity of operators with refining capacity in Spain to influence CLH may be greater than reflected by their relative shareholdings. As pointed out previously, the chairman of CLH at present comes from the number one operator in the Spanish fuel industry, and the major operators with refining capacity and strong presence in retail distribution together directly control five seats on the CLH Board of Directors.

125. In summary, the capacity of operators with refining capacity in Spain to influence decisions in CLH, together with the market power wielded by CLH and its position as manager of a network that is necessary for distributing fuel in Spain and economically non-replicable, may have a negative impact on the following crucial aspects for development of competition in the wholesale and retail fuel markets:

- On the rates charged for access to the CLH network: Unlike the electricity [84] and natural gas sector[85], the rates charged for using the liquid hydrocarbons transport system are not regulated. Given the capacity and incentives that all monopolists have to set prices above the effective competitive level, regulation theory counsels *ex ante* stipulation of the charges for using the transport network, introducing mechanisms that foster a reduction in the costs of the monopoly operator and guidance on its rates[86]. This regulation also allows the application of a more socially efficient rate structure, that prevents the monopolist from obliging users to contract unwanted services or taking into account the externalities generated when maximising its profit. This favours a more efficient logistics system, which ultimately helps keep retail prices down.

  In the absence of regulation of these rates, it is left to the operators themselves, CLH's clients, to pressure CLH to reduce its costs and keep its prices low. But to the extent that the major operators form part of CLH, this incentive disappears. For one, because in their position as shareholders, they can recover at least part of their costs via dividends[87]. Also, the oil companies present in CLH can use their influence to obtain a rate structure that gives them an advantage, such as setting lower rates for those parts of the network that are operated by them more intensely in exchange for higher prices for the other segments of the system, granting discounts that can only benefit the major operators or applying a rate scheme that hinders entry by new operators.

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[84] Art. 38.1 Electricity Sector Act 54/1997: "*The transport facilities may be used by qualified consumers and subjects […] The price for use of the transport networks will be determined by the rate approved by the Government*".

[85] Art. 70.1 LSH: "*The owners of the facilities must allow their use […] by means of the separate or joint contracting of transport, regasification and storage services, on the basis of the principles of non-discrimination, transparency and objectivity. The price for use of the transport networks will be determined by the prevailing rates*".

[86] The current regulation only allows indirect *ex post* control of CLH's rates by means of the accounting unbundling obligation. In addition, that obligation is not being put into practice sufficiently, as CLH does not break down its annual financial statements by activities.

[87] CLH asserted in 2010 (Corporate presentation to the General Meeting of Shareholders of 2010, page 27) that it "during the Strategic Plan it outperformed other companies in the sector", obtaining total returns for the shareholder of 43% from 2007 to 2009, twice that of the "logistics sector" (21%) and far better than the "oil companies" (-5%) and the companies in the "Ibex-35" select index (-6%). In that same presentation (page 29) it said that "CLH is one of the most profitable companies in the logistics sector", and draws a comparison of profits over sales and return on assets with the major oil industry logistics companies, which it outperforms by a wide margin. In summary, CLH stands out (page 35) as a company with "Stable earnings and a low risk level", "High return for the shareholder" and "High rate of return and sustained growth".

- On the CLH network access conditions: The TNA rules and monitoring by the Administration of the contracts signed do not prevent certain situations of effective discrimination. The petroleum companies present in CLH can try to influence to have CLH guarantee them better technical conditions for access to the network, assign them the best time bands or the best port for unloading fuel, etc. In addition, it should not be overlooked that the operators present in CLH have inside access to the state of the network and to CLH's expansion plans, which are unknown to their competitors[88], and they have access to very sensitive commercial information on their competitors.
- On CLH's capital spending: In Spain, there is no mandatory planning of liquid hydrocarbons transport networks, unlike natural gas and electricity, where government planning of the transport system does exist and is binding[89]. This means there is no effective control of CLH's investments, which can therefore tailor its capital spending to benefit its shareholders more than the rest of the users of the network, underinvest [90] or, simply, design its capital expenditure without regard to the objective of favouring entry in the system by third parties. The lack of international pipeline links and absence of physical interconnections between the different pipeline networks inside mainland Spain benefits operators with refining capacity in Spain proportionately more than others as they see the areas of influence of their refineries protected.
- On the storage market: Unlike what occurs in other network-based sectors, like gas and electricity, CLH's obligations to connect with third-party storage facilities have not been developed. Energy regulations make no specific mention that CLH must accede to connecting its transport facilities to third-party facilities and, in fact,

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88 Thus, they can obtain detailed non-public information on possible bottlenecks, real and projected, and on the capacities of the transport network, the degree of reservation and utilisation of the storage depots.

89 According to art. 4 of the LSH, planning of petroleum product secondary transport facilities is indicative, not mandatory, contrary to what occurs in the electricity and natural gas sector, where primary transport planning is of compulsory compliance (art. 4 LSE, art. 4 LSH). The latest National Energy Plan which includes indicative planning for the oil sector is the one that covers the period 2001-2010 (at present, there is only planning for the power and natural gas grids, through the "*Planning of the Electricity and Gas Sectors 2008-2016*" document, which leaves out the oil industry). Since 2011 the CNE conducts general monitoring of the activity of CLH ("*Annual and quarterly report on supervision of the logistics market: CLH monitoring report*", which has been issued on two occasions, in 2011 and in the first half of 2012).

90 According to the *Report on supervision of the logistics market: CLH monitoring report* for the half of 2012 of the CNE, "*Total investments during the first half of 2012 amounted to €28.00 million, 30.3% below budget and 45.6% less than in the same period in 2011*"; CLH yearly capital spending went from €160 million in 2007 to €110 million (2011).

only eight non-CLH terminals have links to its network. Given that private storage operators are competitors of CLH, the latter may have incentives to use its unassailable monopoly in pipeline transport to stave off competition from other storage operators, for example, by requiring its users to contract, together with the basic logistics service, other services that could be provided by third parties[91], or designing its rate structure to make it more expensive for users to carry fuel to a given destination when the point of origin is a third party's facility than when it is owned by CLH. The traditional operators with refining capacity in Spain, shareholders in CLH, may lack incentives for establishing international pipeline connections for Spain and, conversely, find it advantageous to have fragmented transport networks, as this can protect them from competition in their traditional areas of influence.

III.1.3 Risk of hoarding storage and transport capacity

126. As noted when analysing the import infrastructure market, the demandside substitutability between primarily depots located in geographically separate points can be limited. As a result, the number of depots that allow fuel to be available in a given location at a competitive cost may be small.

127. This fact makes infrastructure bottlenecks more likely to emerge and limit the number of operators who can import fuel in competitive conditions. Bottlenecks can also be provoked artificially by operators with a large volume of activity, as they can contract more capacity than they will actually utilise and thus shut other wholesalers off from access to the logistics infrastructure.

128. The rules on third-party access to the network (TNA) on objective, transparent and non-discriminatory conditions that apply to storage sites located away from the refineries have to ensure that ownership of the storage facilities does not give the owner any privileged capacity to obtain storage on better terms than other operators. But the TNA rules have not been developed the same as in other similar national energy industries with essential infrastructures, such as natural gas. First, there is no obligation to publicise the available capacities, the occupied time bands or projected saturation of the infrastructure, which can hinder planning of logistics activities and create an advantage for the owners of these infrastructures. Second, there is no register of requests for access to the networks or facilities, so there is no way to verify if there are access requests that have been denied or subsequently modified. Third, unlike the natural gas system, operators are not penalised if they reserve more

[91] CLH provides a basic integrated service of reception at the point of delivery, operational storage, transport and delivery at destination. This service includes, with no option not to contract, 15 days of operational storage.

capacity than they eventually use, which may encourage them to reserve more capacity than necessary.

129. In short, contrary to what occurs in other network-based energy industries, there is no control system that efficiently limits the contracting of excess logistics service capacity, which can generate incentives for the main incumbent operators to artificially create bottlenecks that limit access to the market by other operators.

III.1.4 Privileged access to refinery storage depots by the refinery owners

130. The rules on obligatory access to storage and transport facilities regulated by article 41.1 LSH (the TNA regime) do not include storage depots located in refineries. Therefore, those storage facilities can only be used by the operators who own each refinery.

131. Given that the operators with refining capacity in Spain are also present in the wholesale and retail distribution markets, excluding these facilities from the TNA obligations gives them a competitive advantage over the rest of the wholesale operators, and may constitute an additional obstacle to access and result, albeit on isolated occasions, in exclusionary situations.

III.2 Barriers in the retail segment of the market

III.2.1 Difficulties for opening new service stations

132. Section II.4 above on the structure of the retail market describes the administrative procedure for setting up new service stations. Installing a station requires that different authorisations be obtained from different levels of government and may imply an insurmountable obstacle for building and starting up a service station. It bears emphasis that those procedures differ between different municipal governments and Autonomous Communities, there being no one consistent regulation for the entire national territory.

a) Urban service stations

133. Service stations located in towns are subject to a dual control on opening: municipal and regional. To be able to build and operate a station, in general terms, an interested party must have or obtain:

- Land with the right zoning specifications according to the applicable town plan.
- The pertinent authorisations from the Department of Industry of the competent Autonomous Community or the environmental assessment.

- Municipal construction and operating licences.

134. On numerous occasions, municipal land use planning rules are very restrictive with respect to service stations, as they make no provision for parcels of land suitable for said use. Concrete examples of these restrictions are zoning instruments that classify the distribution of automotive fuel differently than other industrial or commercial activities, so that land that can be used for other industrial or commercial activities cannot be used to build service stations (or even failure to include service stations in the planning instruments); or requirements for installing service stations apart from those regarding type of land and with little justification, such as the requirement that retail fuel distribution can only be done on land lots meeting a certain minimum size.

135. As indicated in section II.4, Royal Decree Law 15/1999 already stipulated that, pursuant to its mandatory planning powers, the Government would draw up general criteria for determining a minimum number of service stations in each municipality (based on the density, distribution and characteristics of the population and the density of vehicle traffic, amongst other parameters), to which the urban planning instruments would have to be adapted. However, that planning has never been carried out. In this respect, it must in any event be noted that those criteria, since they relate to article 4 of the LSH, are associated with the guarantee of supply, a different issue than the one addressed here, which is not whether the authorities should guarantee that there be a specific number of refuelling stations in each town, but rather simply to assure that private initiative to install service stations not be thwarted because the town planning instruments have provoked a lack of eligible sites.

136. Apart from the problems deriving from a shortage of land properly zoned for the installation of service stations, the municipal authorisations of activity may imply an important stumbling block for opening a station. In its Report on the automotive fuel market of September 2009, the CNC pointed to numerous examples of municipal actions that prevented or delayed the opening of service stations.

137. Town halls may be tempted to control the availability of land for service stations and make grant of the authorisations conditional on fulfilment of economic criteria, even though this is expressly prohibited by Law 17/2009 of 23 November 2009 on free access to and exercise of service activities (Umbrella Law). This may stem from influence by pressure groups tied to service stations already operating in the town, but also come about if the municipal authorities perceive it as beneficial to restrict the number of stations. Specifically, one funding source for municipal governments can be awarding concessions of municipal land or land use rights to build service stations, and these can be priced higher if the restrictions on number of outlets are expected to generate extraordinary profits.

138. Royal Decree Law 6/2000 of 23 June 2000 on urgent measures for intensification of competition in markets for goods and services sought to reduce these obstacles for service stations sited in large commercial complexes. Service stations at such centres are considered as a potentially very important lever for intensifying competition. That has been the case in countries like France and United Kingdom, where service stations at supermarkets and hypermarkets have given rise to considerable declines in pre-tax prices. In Spain the resolution handed down by the former Competition Tribunal (TDC) in case r489/01 Repsol/Cepsa/BP underscored that when service stations came into operation in hypermarkets, prices dropped considerably in the area and competition in the "non-oil" segment intensified[92].

139. As originally worded, article 3 of RDL 6/2000 stipulated that large retail establishments (more than 2,500 m^2) were required to include at least one service station, to which effect it stipulated that "*the grant of the municipal licences required for the establishment will implicitly entail grant of those needed for installing a petroleum product supply facility*". Furthermore, in its First Transitional Provision, it established certain provisions to make it easier for shopping centres already in operation when the RDL came into effect to open service stations (that provision stipulated, inter alia, that "*The municipal licences needed to build facilities and put them into operation will be considered granted by affirmative administrative silence if no express resolution is notified within forty-five days following the filing of the application*").

140. Despite the theoretical facilities of RDL 6/2000 for opening service stations, practice shows that it has not been completely effective. For example, in Spain Carrefour has 172 hypermarkets (more than 2,500 m^2) and 116 "Market" supermarkets (between 800 and 2,000 m^2), and only 100 service stations[93]; Eroski has 103 hypermarkets and 974 supermarkets (including convenience stores), and only 60 petrol stations[94]. The CNC's September 2009 Report on the automotive fuel sector in Spain already indicated that "*despite being interested in opening more service stations in their commercial complexes, as they have stated to the CNC, the hypermarkets have not been able to open all service stations they wished, due to administrative restrictions, basically urban development restrictions, that prevented application of the measures contemplated in the legislation*."

141. But not just hypermarkets and supermarkets contribute to more dynamic competition in their local areas. There are many businesses that can be

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92 The "non-oil" segment is composed of activities that complement refuelling, such as convenience shops, hypermarkets and supermarkets, restaurants, repair shops and carwashes.

93 http://www.carrefour.es/grupo-carrefour/carrefour-en-espanya/

94 http://www.eroski.es/es/conoce-eroski/memoria-eroski-2011/principales-magnitudes-2011/

complementary with service stations, such as carwashes, repair shops, parking facilities, cinemas and entertainment centres, etc. Like hypermarkets and supermarkets, these businesses fit well together from the standpoint of demand and bear lower distribution cost. This can contribute to a greater differentiation of commercial strategy between owners of service stations and thus increase the incentives for them to compete with each other more actively.

142. Yet, commercial establishments that did not qualify as “large” have not had and do not have the same benefits as the large establishments.

143. From 2000 to the end of 2009, commercial outlets not included in the “large establishments” category were not included amongst the beneficiaries of the aforementioned measures of article 3 and the First Additional Provision of RDL 6/2000, as the facilities indicated for opening service stations only applied to the large commercial establishments within the meaning of the Spanish Retail Sector Regulatory Act (Ley de Ordenación del Comercio Minorista). In 2009, Act 25/2009 of 22 December 2009 amending diverse laws to adapt them to the Act on free access to and exercise of service activities (Omnibus Law) extended those facilities for opening service stations to all commercial establishments, not just to those classified as large.

144. However, that extension of opening facilities has only applied to establishments opened since the entry into force of the Omnibus Law, so those are the only ones that as from that time can benefit from the automatic grant of service station opening licences provided for in article 3 of RDL 6/2000. Commercial establishments opened prior to the effective date of the Omnibus Law do not benefit from that provision, and according to the wording of the first additional provision of the RDL, the facilities for including service stations in already existing establishments do not benefit them either, given that those facilities are confined “*to commercial establishments in operation at the effective date of this Royal Decree Law and holding for such purpose the requisite municipal opening licence*”.

145. In summary, the general perception is that it in general terms the opening of service stations in urban areas is still enormously complicated. On occasions, the administrative licensing procedures can drag out over much time (even where the authorisation is eventually granted, the licensing process can take more than 1 year). Municipal authorities retain many instruments to control or delay the opening of service stations in their municipalities and have incentives for limiting the number of stations.

146. The general difficulty that exists in Spain to open service stations not only hinders entry in the business by operators, but it also limits competition in business strategies, due to the constraints on opening stations in large and medium size commercial establishments and in service areas with petrol stations. Therefore, the restrictions on service station openings has a negative impact on retail concentration, the stability of market shares,

the introduction of new pro-competitive business models and the potential size of the wholesale market, creating disincentives for new operators to enter this segment. All of this can foster tacit or outright collusion in the market and operate to lessen the level of effective competition.

b) *Service stations on roadways*

147. The service stations on expressways, highways, dual carriageways or located on conventional roads owned by the State differ from all other service stations because they are overseen directly by the Directorate General for Roads of the Ministry of Public Works. It is common to find service stations of the same brand all along a given road, after the failed attempt to foster competition in this regard via Royal Decree Law 15/1999, which introduced more favourable weighting in the relevant tenders (for petrol stations in areas) for those stations whose supplier was the not the same as for the previous or next service stations on the road.

148. On toll expressways, the phenomenon of consecutive service stations flying the same flag is even more pronounced, given that Act 8/1972 on construction, maintenance and operation of expressways under concessions allows the expressway concessionaire to decide the award of its service areas. The concessionaire has incentives to award all service areas to the same operators since the monopolist will be prepared to pay more in exchange for the extraordinary profits it can make by charging higher prices and those higher prices will be borne by the motorists, not the concessionaire.

149. Nor does Spain have a significant presence of service areas with petrol stations of different brands, as are found in the USA, where they serve to further dynamise supplyside competition. This category of services areas has not been developed in Spain, even though they are envisaged in article 9 of RDL 15/1999 for State roadways: "*The Ministry of Public Works and Transport, ex officio or at the request of any interested party, when the location and characteristics of the service areas so permit, will call tenders for the grant within the same area of independent concessions to build and operate different facilities for retail sale of petroleum products*".

III.2.2 Long-term exclusive supply contractual ties

150. A separate problem from that of the difficulties for opening new service stations, but likewise a very important barrier to entry and expansion for other operators, is the existence of service stations with very long-term contracts with supply exclusivity (CSE) for their fuel.

151. These CSE arrangements can have a foreclosure effect, making it difficult for operators to establish or expand branded service stations[95]. When an important part of the market is covered by these exclusivity arrangements, the possibilities of expanding an operator's network of flagged stations are sharply curtailed, given that competition between operators to sign up points of sale becomes confined to a small portion of the market.

152. As already noted, diverse precedents identify the Spanish market as a closed market. Specifically, in its resolution in case 2575/04 Disa Canarias, the CNC held that in mainland Spain the market is barely accessible, given that 80% of the service stations are owned by or have long-term ties to the entrenched wholesale operators.

153. In addition, in the case of Spain it should be taken into account that a good part of the long-term exclusive supply contracts are in the hands of the incumbents, which means their networks of points of sale are protected from competition, whereas the exclusive supply and branding contracts signed by new entrants do not have such long terms, so that the latter are exposed to competition from the traditional operators. This asymmetry is beneficial to the traditional operators of the Spanish market and represents a high barrier to entry.

154. The long durations of the exclusive supply contracts has been a recurring problem in vertical relations, and in the fuel sector have been targeted by a specific treatment in the EU Regulations on vertical restraint block exemptions. At present, the establishment of certain vertical restraints is covered for purposes of the prohibition on anti-competitive agreements by EC Regulation 330/2010. With respect to long-term non-compete clauses, said Regulation provides that to qualify for the exemption, the exclusive supply contracts cannot have terms longer than five years except "*where the contract goods or services are sold by the buyer from premises and land owned by the supplier or leased by the supplier from third parties not connected with the buyer, provided that the duration of the non-compete obligation does not exceed the period of occupancy of the premises and land by the buyer*", and provided that the supplier's market share does not exceed 30% of sales and the service station's share does not exceed 30% of the purchases in the relevant market on which they carry out the transactions between them, amongst other conditions.

155. In this context, several precedents have held that exclusive supply arrangements in the fuel market with a term beyond the 5 years indicated in the Block Exemption Regulation (BER) may have anti-competitive effects in the market[96] in the case of already foreclosed markets.

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[95] See CNC resolution case 2697/06 Cepsa.

[96] See European Commission Decision in case COMP/B-1/38348-Repsol CPP and CNC Resolutions in cases 2697/06 Cepsa and 2738/06 Galp.

III.2.3 Competition between undertakings and asymmetry of information

a) Ties between undertakings

156. Shareholding ties and interlocking boards of directors between companies in the fuel sector facilitate the coordination of business strategies, fostering the alignment of incentives and homogeneous behaviour, with harmful consequences for effective market competition.

157. In order to prevent the strongest operators in the energy markets from coordinating their competitive behaviour as a result of the presence of common shareholders, article 34 of RDL 6/2000 laid down certain limits on the simultaneous presence on the Board of Directors of more than one of what it terms the "main operators" in specific markets, including production and distribution of fuel, as well as the exercise of the voting rights carried by their shareholdings. The CNE compiles and releases an annual list of the main operators in each sector. For 2011, the main operators in the fuel production and distribution sector were Repsol, Cepsa, BP, Galp and Saras[97].

158. This regulation of the main operators nonetheless allows them to maintain strong ties with each other that can weaken competition. Certain ties, even though they do not run afoul of article 34 of RDL 6/2000, may have harmful effects on competition comparable to those that said articles seeks to prevent, such as the case of Disa with Repsol.

159. Disa controls 16% of the share capital of Sacyr Vallehermoso, which in turn holds 10% of Repsol's capital. This strategic link is reinforced by the ties that both oil companies have with Gas Natural Fenosa, on whose Board of Directors there sits the current chair of Disa on behalf of Repsol.

160. This strategic relationship can weaken the intensity of competition between Disa and Repsol, with possible negative effects, in particular, on fuel distribution in the Canary Islands, where both operators have a very significant position. In primary storage, only Disa (after the culmination of the expansion of the terminals in Salinetas) and Terminales Canarios (a 50-50 holding of Repsol and BP) have petrol import capacity, and in diesel Terminales Canarios has 21% and Disa 19% of the total import capacity for the archipelago. Also, Disa controls all fuel transport by ship between the islands. In the retail market, Disa has a market share of 25% by sales volume and Repsol 11%[98]. On the Iberian mainland, real and potential competition between Disa and Repsol may be curbed by their structural

[97] CNE resolution of 10 February 2011 establishing and publicising, for the purposes of article 34 of Royal Decree Law 6/2000 of 23 June 2000, the lists of main operators in energy sectors.

[98] Source: Prepared in house using information provided by the Ministry of Industry, Energy and Tourism.

ties. Disa owns the former Shell network on the mainland, composed of some 300 service stations.

b) *Pricing recommendations*

161. The pricing recommendations and maximum prices that suppliers impose on service stations can restrict competition as they allow the operator to reduce competition between its branded service stations, that is, intra-brand competition. The fact that service stations are flagged by and tied to their suppliers under exclusivity arrangements does not mean they must relinquish their independence for pricing the products they sell. When sale prices are recommended to dealers who are theoretically independent, part of that independence is diluted as the retailer inevitably has information on the commercial policy that the operator will follow in its COCO stations, in which it does have the capacity to fix the sale prices, and may more easily anticipate the commercial behaviour of the other branded service stations in that operator's network.

162. Also, pricing recommendations and maximum prices foster alignment of prices between operators of different brands, thus reducing inter-brand competition as well. If competition between service stations of the same flag (intra-brand competition) disappears or lessens, service stations flying different flags find it easier to align their prices, as the number of points where commercial policy is decided is smaller.

163. For these reasons, price fixing has been and remains, together with the duration of the exclusive supply contracts and eligibility for consideration as agency arrangements, the target of infringement proceedings by TDC and CNC in the retail distribution of fuel. And this includes not just formal fixing of prices, but also price fixing by indirect means, by way of price recommendations or maximum resale prices supplemented by certain elements that reduce the retailer's capacity or incentives to deviate from such price guidance.

c) *Asymmetry of information*

164. Fuel distribution displays a problem of asymmetry of information between consumers and producers. Consumers confront significant search costs, which prevent them from easily comparing the prices charged by different stations in their area of interest before making their product purchases, and this curbs price competition between stations.

165. The Ministry of Industry, Energy and Tourism in 2000 set up a system that, provided antitrust concerns are respected, is proving to be very beneficial to consumers by giving them online access to prices and to comparisons between service stations. It might be helpful to complement that geoportal with information on other additional services offered by the service

stations, as is done in France, and establish or promote the appearance of rankings that recognise and advertise the least expensive outlets.

IV. RECOMMENDATIONS

166. This report puts forth evidence that the level of effective competition in the automotive fuel sector in Spain is insufficient; a situation which may explain the high prices and margins recorded in Spain and their differential with respect to other EU countries.

167. Other European nations, such as the United Kingdom[99] and Germany[100], have recently opened investigations on competition in their respective automotive fuel markets, so the problems of insufficient competition in this sector might not be exclusive to Spain. But the barriers to competition in the fuel sector in Spain appear to be much more important than in other EU countries. Corporate concentration in refining and in the retail distribution of automotive fuel in Spain is much greater than in comparably sized EU countries, and the biggest operators have the capacity to exert influence over the lone manager of the pipeline networks, therefore not providing incentives for the potential cost reductions that should derive from a unified management of the transport network. This indicates that Spain may need specific regulation which, unlike other sectors such as natural gas and electricity, has not been previously defined at the European level in the form of EC Directives.

168. An indispensable requirement for resolving the problem of high prices and margins in the automotive fuel sector in Spain is that greater effective competition be introduced. The automotive fuel sector shows a very high level of corporate concentration, and is dominated by three operators (Repsol, Cepsa and BP), who control the entire national fuel production, have capacity to influence the company that owns the pipelines and most of the storage facilities on mainland Spain and the Balearic Isles (CLH), and operate a majority of service stations (and, moreover, on average, their service stations are the largest). Consequently, the measures must be aimed not just at facilitating the establishment of more service stations, but especially at strengthening and favouring the presence of alternative operators to the three majors.

169. The recommendations specified below, therefore, are necessarily asymmetric, in that they seek to foster the entry of other companies in order to curb the significant market power wielded by the operators with refining capacity in Spain. It is for this reason also that the recommendations do not only target the retail segment, since the main advantages that accrue to the operators with refining capacity arise in the wholesale part of the market.

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[99] http://www.oft.gov.uk/news-and-updates/press/2012/76-12.

[100] http://www.bundeskartellamt.de/wEnglisch/News/press/2012_09_27.php.

170. All measures proposed to foster competition must be applied simultaneously in both segments of the market. Otherwise, if measures are only applied in the retail segment, there can be no assurances of entry by new operators and expansion by alternative operators to the incumbents, the key levers for strengthening competition in the sector. The dismantling of barriers in the wholesale segment of the market may favour entry by new operators who can dynamise competition in the retail segment as well, but the opposite need not necessarily occur. That is, the reduction of entry barriers in retailing might, for example, facilitate the opening of new service stations, but an increase in the number of outlets does not by itself guarantee more effective competition in the sector. The key is to promote the existence of effective alternatives to incumbent competitors who can genuinely dynamise the market. This will require assurances that, apart from being able to expand in the retail segment, they can obtain fuel supplies on competitive conditions with the vertically integrated operators with refining operations in Spain.

171. These recommendations are addressed to the Government, as the competent authority for the basic planning and regulation of the hydrocarbons sector and economic planning in general.

IV.1. Recommendations for the wholesale segment of the market

One: Governing bodies and the shareholder base of Compañía Logística de Hidrocarburos (CLH)

CLH owns and operates the pipeline networks in mainland Spain and also owns most of the storage facilities, essential assets for marketing automotive fuel in Spain. The recommendations set forth below are intended to ensure that no company that operates in the fuel refining and marketing markets in Spain can exert control or significant influence over CLH.

1.1. Develop rules on conflicts of interest for the governing bodies of CLH, including directors and the chairman of the Board of Directors, to make it impossible for directorships to be held by members or representatives or professionals employed or in some other way directly or indirectly related to the companies that carry on refining operations or wholesaling or retailing of liquid hydrocarbons in Spain.

1.2. Set a ceiling of 5% on the share capital that may be directly or indirectly held in Compañía Logística de Hidrocarburos (CLH) by any one natural or legal person, and 3% on the voting rights they may exercise, and not allow the pooling of shares for any purpose. Entities who carry on activities in the liquid hydrocarbons sector in Spain and those natural or legal persons who directly or indirectly hold equity interests of more than 5% in such entities should not be allowed to exercise more than 1% of the voting rights in CLH. Furthermore, the sum of the direct and indirect equity

interests in CLH of entities that carry on activities in the liquid hydrocarbons sector cannot exceed 40%.

Two: Control of transport

The transport activity has all of the features of a natural monopoly, and the networks of pipelines in mainland Spain are an essential asset for operators who market automotive fuel in Spain. The recommendations that follow are aimed at concretising, developing and supplementing the principles set forth in article 41 of the LSH to ensure a properly functioning transport network, as a fundamental aspect for controlling and reducing the end price of automotive fuel and for guaranteeing that access to the market by wholesale and retail operators and by owners of facilities that compete with CLH is permitted on objective, transparent and non-discriminatory conditions.

2.1. The rates charged for using the CLH transport network:

a. should be subject to authorisation by the regulator, and this authorisation should cover both the base tariff and any discounts established thereon;

b. should be based on the costs of providing the service and aimed at enhancing the efficiency of the transport service;

c. should only include the basic logistics services of reception, transport and dispatch; and

d. should be set using an objective, transparent and non-discriminatory methodology that is made public.

2.2. CLH should not be able to make contracting basic logistics services conditional on contracting other additional logistics services, nor to establish a pricing policy that has the effect of forcing clients to acquire the basic and additional logistics services jointly.

2.3. Third-party access to the CLH transport network will be granted in strict order of request. Toward this end, a system must be set up to register all requests for access to the CLH network, and those requests must be formal and indicate the calendar and timetable for use of the facilities, points of entry and points of dispatch.

2.4. CLH should have the obligation to publicly release and keep up to date at all times detailed information on transport capacity, product flows and saturation recorded in each segment of its pipeline networks.

2.5. Stronger control of the development of the pipeline network should be exerted. CLH must give the regulator detailed reports on projected expansions, improvements or changes in its transport network and the expected calendar for those modifications, and release that information publicly and keep it up to date.

2.6. The physical connection of the pipeline networks in Spain to other countries should be promoted.

2.7. CLH should have the obligation to facilitate physical connection to its transport network by all private networks and storage facilities that so request, without prejudice to regulatory determination of the most efficient way of recovering the cost of said infrastructure.

Three: Control of storage operations

Storage depots are an essential asset for operators who market automotive fuel in Spain. The recommendations that follow are aimed at concretising, developing and supplementing the principles set forth in article 41 of the LSH, to ensure access to the storage facilities is obtained on objective, transparent and non-discriminatory conditions, minimise the impact of artificial shortages of capacity, and facilitate the installation of alternative storage facilities to those already existing if the market so demands. Furthermore, given the potential problem of capacity-hoarding indicated in the report, certain obligations are established that only apply to the biggest storage operator (CLH) and to the depots controlled by the operators who have refining capacity in Spain.

3.1. The storage capacity of the refineries located in Spain that are not needed for the operational requirements of the refining activity or for maintaining the CORES minimum security stocks (MMS) should be subject to the same rules on third-party network access as the rest of the storage facilities. For these purposes, the regulator should calculate the capacity of each one of the storage depots located in the Spanish refineries that is needed to meet the operational requirements of the refining and to maintain the CORES MMS.

3.2. CLH and all owners of oil product storage facilities who, directly or through other companies in their same corporate group or controlled or held by the latter, also engage in refining operations in Spain should have the obligation to publicly release and keep up to date at all times detailed information on storage capacity, the capacity reserved to third parties and the capacity available to be contracted at each of their facilities by types of product for a medium-term horizon, and, periodically, on the degree of actual utilisation of those capacities.

3.3. The reservation of storage capacity should be done by means of a formal request, indicating the calendar and timetable for use of the facilities and a record of those requests must be kept. Owners of storage facilities should be obliged to accept access requests received in strict order of request.

3.4. The reservation of storage capacity should entail a penalty if the capacity actually used is significantly lower than the capacity reserved.

3.5. The regulator should assess the possible existence of saturation points in the storage facilities and, in such situations, endeavour that private

initiative does not encounter difficulties to set up storage depots, by providing for the existence of available land suitable for construction of such depots. In inland sites, where the restrictions on possible locations may be expected to be greater, one possibility for favouring the availability of land on which to site depots could be dry docks.

Four: Competition in refining

As already noted, the last refinery built in Spain dates back to 1970. Building a refinery is an activity which, apart from the major fixed costs involved, can face significant difficulties in relation to sites and permits. The first recommendation established below seeks to ensure that private initiatives to install new refineries are not blocked or discouraged by the length of the process. The second aims to mitigate the reinforcement of the market power obtained by operators with refining capacity in Spain when they are allowed to use, for testing their compliance with the minimum security stocks obligations, products that the refineries already have for their production processes.

4.1. A maximum time frame should be set for processing the authorisations needed to build the refining facilities referred to by article 39 of the Hydrocarbons Sector Law 34/1998.

4.2. Appropriate measures should be implemented to mitigate the market power obtained by operators with refining capacity in Spain from the advantage, not available to operators without refining capacity, of being able to hold the minimum security stocks in the form of crude oil, raw materials or semi-refined products.

IV.2. Recommendations for the retail segment of the market

Five: Facilitate the opening of new service stations

The recommendations set forth below are aimed at ensuring there are sufficient available sites for installing service stations, both in municipalities and on roads, and avoid delays and reduce the differences between different public authorities in relation to the grant of municipal and regional licences for initiating and carrying on the activity. For these purposes, the national Government should make use of its basic powers for regulating economic activity in general and for planning the hydrocarbons sector, in order to ensure compliance with these recommendations.

5.1. The urban planning instruments should not establish limits on the number of sites available in municipalities suitable for installing service stations. For these purposes:

a. Land that is suitable for the opening of any commercial and industrial activities that complement retail distribution of automotive fuel, and land considered suitable for activities with similar levels of danger,

waste and environmental impact, should also be considered officially suitable for siting service stations, without requiring additional conditions or declarations. Toward this end, the Government should establish certain common minimums for the entire country.

b. In relation to land zoned as urban, developed or developable and similar categories, municipal authorities should be obliged to guarantee the existence of a minimum number of parcels zoned as suitable for service station use. That minimum should be calculated on the basis of the local population.

c. The authorities should not be able to invoke reasons of public interest to prevent or deny authorisations for siting service stations on non-developable land and on non-delimited land.

d. The authorities should favour the availability of new sites suitable for service station use on land that is accessible from the roadways (primarily, toll expressways and highways), such as traffic circles, U-turns and other zones adjoining the accessways that are plausible from the standpoint of safety and security.

e. The availability of new sites suitable for service station use in service areas where there are already service stations in operation should be favoured.

5.2. Direct authorisations or allocation of public land or of land use rights for automotive fuel retailing within the municipality or on State and regional roadways:

a. Should not be granted to companies that directly or indirectly brand, own or manage or have the capacity to influence the management of a substantial part of the service stations in the municipality or on the roadway in question.

b. Where government tendering is used, a favourable significant weighting in the overall criteria assessed to make the award decisions should be given to the bidder's non-presence in the municipality or in the segment of the road close to the service station, as applicable.

c. To apply these requirements, if at the time the interested entity submits its application it has acquired branding or fuel supply exclusivity commitments in respect of the future service station sought in the application, the identity of the future supplier will be taken into account for purposes of the limitations set out in subparagraphs a and b above.

d. On toll expressways and highways where a third party acts as concessionaire, the terms and conditions for awarding the expressway or highway concession must include the obligation for the concessionaire to comply with these requirements in the

assignment of land or rights for the construction and operation of service stations.

5.3. An assessment should be made of the actual impact of Royal Decree Law 6/2000 on streamlining administrative procedures for opening service stations in commercial establishments, and measures to foster proper implementation of this objective should be considered. In addition, the following specific measures in relation to opening and operating authorisations should be promoted:

a. Expand the sworn statement of compliance regime of article 5 of Act 17/2009 of 23 November 2009 on free access to and exercise of service activities to the installation of service stations in commercial establishments that meet the requirements of Royal Decree Law 6/2000 in order to avoid the litigiousness that blocks or delays the openings.

b. Extend the facilities for service station openings set out in the First Transitional Provision of Royal Decree Law 6/2000, automatically and without exception, to all commercial establishments that have a municipal opening licence or that fulfil the requirements for operating commercial establishments, so that opening service stations in those establishments does not require any further authorisations or verifications.

c. Homogenise the procedures, authorisations and licences needed at the regional and local level to open service stations and, in particular, stipulate maximum time frames for the administration to process the authorisation application.

Six: Shorten the duration of exclusive supply contracts

The recommendation set forth below is aimed at preventing the exclusive supply contracts used by the main operators from continuing to stand as one of the main barriers to entry and expansion by alternative operators to the large operators with refining capacity in Spain.

6.1. A maximum duration should be regulated for contracts that stipulate exclusivity in the supply to service stations when the supplier is an operator with significant weight in the retail sale of automotive fuel through service stations.

Seven: Limit recommendations of retail prices and incentives for coordination between companies

The aim of the following recommendations is to avoid a confluence of commercial interests between operators, reduce the possibilities of alignment of

their commercial strategies and foster competition between service stations branded by the same company but operated by an independent dealer.

7.1. Suppliers should be prohibited from recommending the retail price to the service station managers if the suppliers are operators with a significant weight in the retail sale of automotive fuel through service stations.

7.2. The restrictions currently established under article 34 of Royal Decree Law 6/2000 on the exercise of voting rights and presence in the governing bodies of more than one main operator should be expanded and strengthened by:

a. Expanding the concept of main operator to include those other operators who, though not considered main operators, have in some differentiated part of the territory a significant presence in marketing fuel or in some other segment of the liquid hydrocarbons sector.

b. Extending the limits on exercise of voting rights and participation in the governing bodies of the main operators to companies that directly or indirectly exercise control over or are controlled by the main operators, so that no natural or legal person can exercise more than 3% of the voting rights, nor appoint members of the governing bodies, nor represent the interests of more than one main operator, nor of any other company controlled by or that exercises control over the main operator, even if they operate in different markets than the markets where the operator is designated a main operator.

Eight: Measures to foster transparency

The following recommendations are made in order to reduce the search costs and enhance the capacity of consumers to compare between service stations and thus stimulate competition between stations.

8.1. It is recommendable for the Ministry of Industry, Energy and Tourism to complete its petrol station price information service by:

a. Preparing and publicising rankings of the cheapest service stations in the last week, the last month or the last year, in local areas.

b. Indicating the additional services associated with the service station, such as hypermarket, supermarket, carwash, repair shop or other “non-oil” services.