



**REPORT ON COMPETITION IN THE SERVICE
PROVIDED BY WHOLESALE CENTRAL MARKETS
SUPPLYING PERISHABLE FOOD PRODUCTS AT
DESTINATION**

January 2013



CONTENTS

EXECUTIVE SUMMARY	1
I. INTRODUCTION	4
II. LEGAL-ECONOMIC CHARACTERISATION OF THE WHOLESALE DISTRIBUTION OF FOOD PRODUCTS THROUGH THE MERCAS.	7
II.1 Regulatory framework for the activity of central markets in Spain 7	
II.2 Wholesale distribution channels for perishable products	15
II.2.1 The traditional channel.....	19
II.2.2 The wholesale self-service channel (cash & carry establishments)	21
II.2.3 The distribution platform channel.....	23
II.3 The distribution of perishable food products in the central supply markets	25
II.3.1 General characterisation	25
II.3.2 The Mercasa Network of Mercas	28
II.3.3 Supply in the Mercas	35
II.3.4 Demand in the Mercas	36
II.3.5 The geographical catchment area of the Mercas	39
III. DISTORTIONS OF COMPETITION IN THE ACTIVITY OF THE MERCAS 45	
III.1 The internal operating regulations of the Mercas	46
III.1.1 Restrictions on access to the Merca	46
III.1.2 Clauses that may facilitate anti-competitive coordination between sellers or buyers in the Merca.....	56
III.1.3 Clauses that may mean that the company managing the Merca is taking advantage of its position vis-à-vis the operators.....	62
III.2 The model for the provision and supply of the service provided by central markets.....	66
III.2.1 Reservation of activity in the case of the service provided by the central markets 67	
III.2.2 The centralised or decentralised management of the central markets.....	70
III.2.3 The direct or indirect management of the central markets	71
IV. CONCLUSIONS	75
V. RECOMMENDATIONS.....	77
BIBLIOGRAPHY	78



REPORT ON COMPETITION IN THE SERVICE PROVIDED BY WHOLESALE CENTRAL MARKETS SUPPLYING PERISHABLE PRODUCTS

EXECUTIVE SUMMARY

- This study analyses the distribution of perishable food products through the network of wholesale markets known as “Mercas”. Wholesale markets are wholesale trading centres that are located in the large conurbations. They receive crops, livestock and fish and shellfish from trading centres at source.
- In contrast to the major transformation that the Spanish commercial system has undergone in recent years, the current configuration of the model of marketing fresh products through central markets dates back to the 1960s. It seems advisable to check that the operation of the Mercas and the current model for providing the public service of central markets are rational and justified in the current context and to analyse their impact on the development of competition.
- In this context, a number of Resolutions of the now-defunct Competition Court [*Tribunal de Defensa de la Competencia*], which has been replaced by the National Competition Commission [*Comisión Nacional de Competencia* – hereinafter CNC], have imposed in the past sanctions on practices related to the activity of the Mercas and have also noted other distortions of competition deriving from the internal regulation of the Mercas.
- This study highlights two groups of problems connected with the organisation of the service provided by the wholesale markets and makes recommendations for mitigating them.
- First of all, the regulations that govern the internal operating regime of the Mercas, which are approved by the respective municipal councils, contain numerous clauses that are liable to distort competition.
 - Clauses that make it difficult for new dealers to access the Mercas, thereby unnecessarily protecting the position of the wholesalers already in the market (insistence on certain access requirements, duration of the permits or restrictions on transfers).
 - Clauses that limit the level of competition between the operators accessing the Merca (buyers or sellers) and make it easier for anti-competitive coordination to occur (obligation to channel payments through the Merca, duty to provide information to the joint venture company or obligation to pay cash, amongst others).

- Finally, clauses that establish the obligation to subscribe to certain services with the Merca, which make the market less efficient, to the detriment of consumer welfare (gutting of fish, reweighing of goods or intervention of the Merca in payments).
- Secondly, the model for organisation and management of the Mercas in Spain must be reviewed in order to check whether it is appropriate at the current time, for the reasons set out below.
- On the one hand, the reservation of the activity of central markets to municipal entities has lost much of its *raison d'être*, inasmuch as new channels and new commercial methods have emerged which are not reserved to the public sector and which do not compromise the objectives of quality, safety and traceability of food products. It therefore seems an unnecessary barrier to wholesale trade.
- On the other hand, the way in which the Network of Mercas is managed, grouping together the main central markets for the supply of perishable products at destination in Spain, centralised around Mercasa, is a legacy of the conditions prevailing in the 1960s, when an impulse from the public sector was needed for its creation, and it may not be the most efficient management structure today.
 - The centralised operating model may generate efficiencies as a result of the coordination of the activities and strategies of the Mercas and of management stability, but it discourages competition between the Mercas that belong to the Mercasa Network, which, given its importance and its impact on certain kinds of suppliers and customers, weakens competition between wholesalers at destination (competition *in* the market) and may have negative effects on the subsequent links in the chain and the final consumers.
 - Likewise the direct attribution of the management of the Mercas to public sector joint venture companies whose capital is shared between the municipal councils and Mercasa is being perpetuated, so that competition between companies in order to take over the management of the Mercas (competition *for* the market) is not permitted. This protects the position of the companies managing the Mercas and does not provide any incentive to adopt management methods that represent a cost saving, to be innovative in terms of the offer of services, commercial specialisation, transport or storage and to be efficient in the provision of the Merca's services.
- For all of the above reasons the CNC makes three recommendations aimed at improving competition and efficiency in the marketing of perishable food products at destination:
 - To review the internal operating regulations of the Mercas and any other municipal rules connected with them in order to prevent the

existence of rules that hinder competition and are not consistent with the principles of necessity, proportionality and non-discrimination.

- To remove the statutory reservation of the activity of central markets contained in article 86.3 of Act 7/1985 of 2 April 1985 which regulates the local government system, as it is considered that there is not sufficient justification for maintaining that reservation.
- To increase the management autonomy of the Mercas belonging to the Mercasa Network of Mercas in order to stimulate greater competition between the Mercas.

I. INTRODUCTION

- (1) The purpose of this study is to analyse competition in the marketing of perishable food products at destination through the Food Units of the central supply markets (the Mercas).
- (2) Food Units are wholesale markets for perishable products (fruit and vegetables, fish and shellfish and meat), located close to the retail distribution and consumption points. In Spain there are just under 40 institutions of this kind, although the most important in terms of size and influence form part of the Mercasa Network of Mercas¹. For this reason the report focuses mainly on the 23 Mercas grouped around Mercasa.
- (3) Traditionally, the wholesale markets channel was the main channel for the supply of perishable products at destination to the consumption centres. However, this channel has experienced a relative decline in recent years due to the decreasing influence of traditional distribution within retail distribution as a whole and the fact that modern distribution has become independent of the Merca channel, obtaining its supplies independently at source or through distribution platforms². Nevertheless, the Network of Mercas still channels approximately 55% to 60% of the fruit and vegetables currently consumed in Spain, 50% of the potatoes, 53% of the fish and shellfish and 20% of the fresh meat. These percentages significantly increase in the geographical catchment areas of the Network of Mercas³.
- (4) According to the data in the Mercasa 2011 Annual Report⁴, the wholesale activity of the 23 Food Units in the Network of Mercas reached a total value of around 10,000 million euros in 2011, corresponding to a volume

¹ The Mercasa Network of Mercas is made up of the main central supply markets in Spain. Apart from this Network and with the exception of Mercaolid, no other Food Unit of a comparable size to the ones that form part of Mercasa has been found.

² Casares, J., Fernández, A. and Martínez, E. (2007), "Red de Mercas. Resultados de un estudio sobre competitividad y competencia en el comercio mayorista de alimentos perecederos" [Network of Mercas. Results of a study of competitiveness and competition in the wholesale market for perishable food products], in *Distribución y Consumo* [Distribution and Consumption], May-June 2007.

³ The data in the report on the importance of the Mercas in total marketing refer exclusively to the importance of the Mercasa Mercas. Despite having requested information on this subject from the Ministry of Agriculture, Food and the Environment and from Mercasa, it has not been possible to obtain data that has been broken down for the Mercas that are not part of the Mercasa Network of Mercas.

⁴ The statistical processing of data relating to commercial activity in the Mercas forms part of the public service programme provided by Mercasa to the food chain as a whole and in that sense it is an important tool when it comes to market information and transparency.

of 6 million tonnes of perishable food products marketed. In terms of employment, the volume generated by the activity of the Mercas is estimated at close to 27,000 workers, split between the staff of the Mercas and the staff of the wholesalers and of services located in their facilities.

- (5) The activity and management of the Food Units through the Mercas, along with the activity of the dealers operating in them, have been the subject of analysis in various Resolutions of the National Competition Commission (CNC) in the past⁵. In particular, in its Resolution of 7 October 2002⁶ the now-defunct Competition Court [*Tribunal de Defensa de la Competencia*] (now the CNC) imposed sanctions on Mercasevilla for an abuse of a dominant position, as prohibited by article 6 of Spanish Competition Act [*Ley de Defensa de la Competencia*] 16/1989 of 17 June 1989 (now article 2 of Competition Act 15/2007 of 3 July 2007). In addition, in that Resolution the Competition Court noted the existence of other restrictions on competition which derived directly from the content of the Merca's internal regulations. At that time it was not considered to be appropriate to penalise them because they derived from the exercise of statutory powers, but it was convenient to analyse them so that, if appropriate, it could make proposals to the government for changing regulation in order to prevent restrictions on effective competition.
- (6) In light of the precedents, the aim of this report is twofold. On the one hand, to identify possible restrictions on competition contained in the operating regulations of the Mercas by reference to their effects on the market for wholesale distribution of perishable products at destination. On the other hand, to assess whether or not the current management model of the Food Units encourages competition.
- (7) The report is structured in the following way. Chapter II describes and characterises the wholesale distribution market, paying particular attention to the distribution of perishable products through the Mercas, to the statutory reservation of the activity of the markets and to the legislative framework applicable to the activity of wholesale distribution at destination and the management model for that activity through joint venture companies. Chapter III focuses on the distortions of competition deriving from the internal operating regulations of the Mercas and the current model of regulation and organisation of the service provided by the central markets. Finally, after the conclusions, there are a series of recommendations aimed at mitigating the barriers to competition identified in the analysis.

⁵ Case 340/93 Mercazaragoza; Case 378/96 Asentadores de Pescado; Case R366/99 Mercamálaga; Case R367/99 Mercabilbao; Case 516/01 Mercacórdoba; Case 525/01 Mercasevilla.

⁶ Case 525/01 Mercasevilla.

- (8) In order to prepare this report, interviews were held with the public bodies most directly involved in this area and information was sought from the Ministry of Agriculture, Food and the Environment, from Mercasa and from the 23 Mercas that make up the Network of Mercas.
- (9) This report was approved by the Council of the National Competition Commission in its meeting on 9 January 2013, in exercise of the powers of consultation conferred on it by article 26.1 of Competition Act 15/2007 of 3 July 2007. The article imposes a duty on the CNC to promote the existence of effective competition in the markets by actions such as advocating and undertaking studies and investigations on the subject of competition, making proposals for liberalisation, deregulation or legislative changes and preparing reports on situations that hinder the maintenance of effective competition in the markets as a result of the application of statutory provisions.

II. LEGAL-ECONOMIC CHARACTERISATION OF THE WHOLESALE DISTRIBUTION OF FOOD PRODUCTS THROUGH THE MERCAS.

II.1 Regulatory framework for the activity of central markets in Spain

II.1.1 The wholesale distribution channels for perishable products

- (10) Trade in perishable products is regulated by Royal Decree 1882/1978 of 26 July 1978 on channels for marketing agricultural and fish products for foodstuffs⁷. Article 1 of the Royal Decree provides that *“wholesale trading operations in perishable food products for the supply of population centres shall be done through wholesale markets and alternative marketing channels on the conditions set out in this Royal Decree”*.
- (11) The article therefore establishes a clear distinction between marketing through wholesale markets (Food Units of the central supply markets or Mercas) and other alternative channels, being the former the general rule, in that, in accordance with article 2 a) of the Royal Decree, only the alternative channels set out below *“are excluded from the obligation to pass through the central markets”*:
- If on leaving the area of production they are classified at source or are going to be classified at destination (article 2 a) 1).
 - If they are acquired by distribution centres that comply with the provisions of the aforementioned Royal Decree for subsequent classification and marketing (articles 2.a) 2 and 6). Article 6 lays down minimum sales thresholds for the distribution centres⁸.
 - If they are sold directly by the producers or their associations to the retailers and to the consumers or their respective associations (article 2. a) 3).

⁷ Amended by Royal Decree 200/2010 of 26 February 2010 which amends Royal Decree 1882/1978 of 26 July 1978 on channels for marketing agricultural and fish products for foodstuffs and Royal Decree 225/2006 of 24 February 2006 which regulates certain aspects of distance selling and registration in the register of distance selling companies in order to adapt it to Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the internal market.

⁸ 4,000 tonnes per annum of fruit, vegetables and potatoes. 1,000 tonnes per annum of beef, pork, lamb and poultry, 600 tonnes per annum of fish. In central markets that sell more than one group of perishable products at the same time, the minimum that has to be met will be deemed to be reduced to two-thirds of each of the quantities cited above. Exceptionally, and in towns with less than 50,000 inhabitants, central markets with lower tonnages may be considered.

- If they are acquired directly from producers, agricultural or fishing associations or markets at source, in the areas of production, by consumers, retailers or their associations (article 2 a) 4).”
- (12) Royal Decree 1882/1978 contains certain provisions related to the classification, packaging and checking of products that are common to all the channels. The rest of the provisions relate to wholesale markets and are set out in the sections that follow.

II.1.2 Statutory reservation of the activity of central markets in Spain

- (13) The activity of central supply markets is reserved to local councils by article 86.3 of Act 7/1985 of 2 April 1985 which regulates the local government system [*Ley reguladora de las bases de régimen local*] (hereinafter the Local Government Act)⁹.
- (14) Reservation of activity, unlike simple intervention¹⁰, means that individuals are prohibited from owning businesses in the sector over which the reservation operates.
- (15) Under Spanish law the statutory reservation of essential services affects ownership, so that the use or exploitation of the resource may be conferred on other legal persons by reference to the different management vehicles provided for in the legislation. This is made clear by article 95 of the Consolidated Text of the current legal provisions applicable to the local regime (hereinafter the Consolidated Text)¹¹ and article 13 of Royal Decree 1882/1978¹².

⁹ Article 86.3 of the Local Government Act reserves the following essential activities and services to the local entities: “*water supply and purification; waste collection, treatment and recycling; heating supply; central markets and exchanges; public passenger transport*”. Slaughterhouses disappeared from the list in article 86.3 of the Local Government Act as a result of a Royal Decree Law of 7 June 1996, and from article 26 of the Local Government Act, which means that they are no longer services that have to be supplied by the municipal councils.

¹⁰ Article 128.2 of the Spanish Constitution permits the simple intervention of the public sector in the economy, that is to say in the same way as any another person, or permits the reservation of activity to it by statute. In terms of local councils, article 86.1 of the Local Government Act refers to simple economic activity in the following terms: “*local authorities, by means of an enquiry that shows the advisability and opportuneness of the measure, may exercise the public initiative to carry out economic activities in accordance with article 128.2 of the Constitution*”.

¹¹ Article 95 of the Consolidated Text: “*local public services, including those carried out pursuant to the public initiative contemplated in article 86 of Act 7/1985, may be managed directly or indirectly*”.

¹² Article 13 of Royal Decree 1882/1978: “*wholesale markets [...], whatever their management model, shall be governed by the criteria of best possible public service and economic equilibrium in the exploitation*”.

- (16) It is for the local council to decide on the specific form of managing the reserved activity, although in certain cases it is necessary to have the approval of the corresponding Autonomous Community. Subsections one, two and three of article 85 of the Local Government Act set out the procedural requirements for the effective provision of an economic activity by the local council, which differ according to whether it is intended to carry out the activity under a regime of free competition (which is something that the municipal council can decide) or as a monopoly (which requires the approval of the Autonomous Community)¹³.
- (17) The majority of the Mercas that belong to the Mercasa Network of Mercas were created under the Local Services Regulations, which were approved by Decree dated 17 June 1955 (and which are still in force)¹⁴. According to the data collected from the information requests sent out, in the majority of the current Mercas the central market service was taken over by the municipal councils as a monopoly in accordance with article 166.1 of the Local Services Regulations. As with the declaration of reservation subsequently contemplated, this means there is a prohibition on individuals to own the service provided by the central market, that is to say it prevents private individuals from holding the subjective legal status of owner in this case, but not from taking part in the management.
- (18) However, the regulation of the management models has undergone major changes since the Local Services Regulations of 1955. The Regulations prevented public bodies other than the local council itself from taking part in the direct management of economic services provided by the local council, given that article 67 of the Regulations provided for the following forms of direct management: management by the council, by a public foundation of the service or by a private company, municipal or provincial. In the latter case there was an additional requirement that the council was the exclusive owner of the company's capital (article 89 of the Local Services Regulations).
- (19) Thus, in the case of the Mercas belonging to the Mercasa Network, as the state entity Mercasa participated in their capital, they were not operated via direct management. Even though the Local Services Regulations did

¹³ In order to start the economic activity it is necessary to undertake an enquiry to prove the advisability and opportuneness of the measure. If the economic activity is carried out under a regime of free competition, the definitive approval will be the responsibility of the council in plenary session and it will be responsible for determining the specific form in which the service is managed. If the activities are carried out as a monopoly, the procedure becomes a two-stage one, in that the definitive approval of the governing body of the autonomous community is also required.

¹⁴ Article 30 of the Local Services Regulations establishes that *"local councils shall have full power to form, organise, modify and remove the services coming within their jurisdiction, in terms of both staff and economic matters or any other aspect, in accordance with the Local Government Act, its regulations and any other applicable provisions."*

not actually talk of indirect management of the services, article 102 indicated that the joint venture companies would be created by means of a public entity in any of the following forms: limited partnership [*sociedad mercantil comanditaria*], public limited company [*sociedad anónima*] or limited liability company [*sociedad de responsabilidad limitada*]¹⁵. Thus the companies managing the Mercas were joint ventures in which the capital was shared between Mercasa and the corresponding local council.

- (20) This situation was initially retained with the Local Government Act, which expressly differentiated between the forms of direct and indirect management of local services, establishing in article 85.3 that the only models of direct management permitted were management by the local authority itself, by an autonomous local body or by a company whose share capital was wholly owned by the local authority. In the case of indirect management, the original version¹⁶ of the Local Government Act differentiated between concession, stakeholder management, arrangement, lease and commercial company and legally created cooperatives whose capital was only partly owned by the local authority.
- (21) Nevertheless, the amendment to the Local Government Act introduced by Act 30/2007 of 30 November 2007 altered this situation by including in the direct management models the “local company, whose share capital is publicly owned” (article 85.2 of the Local Government Act). This wording, which has been retained by Royal Legislative Decree 3/2011 of 14 November 2011 which approved the Consolidated Text of the Public Sector Contracts Act [*Texto Refundido de la Ley de Contratos del Sector Público*], has introduced an essential change, by permitting the direct management of a service in those cases in which the share capital of the local company does not belong exclusively and entirely to the local council. It is sufficient that the capital is wholly in public ownership.

II.1.3 Organisation and internal operation of the Mercas.

- (22) Central markets are governed by the provisions of the legislation that regulates the activity of wholesale distribution (Royal Decree 1882/1978) and by the operating and service provision regulations approved by the respective local council.

¹⁵ All these articles were repealed by Royal Decree 1098/2001 of 12 October 2001.

¹⁶ After the changes brought in by Act 57/2003 of 16 December 2003 on measures for the modernisation of local government [*Ley de medidas para la modernización del gobierno local*], the Local Government Act ceased to regulate the specific forms of indirect management, which were made referable to the provisions of article 156 of the Consolidated Text of the Public Sector Contracts Act, approved by Royal Legislative Decree 2/2000 of 16 June 2000.

(23) Royal Decree 1882/1978 regulates different questions, with the following being of particular note.

- a. Subjection to the Competition Act: Article 11 of Royal Decree 1882/1978 establishes that wholesale markets must have the necessary services and facilities to carry out their activities under a regime of free competition. In addition they must have the necessary facilities to exchange commercial information. However, that exchange must respect the restrictions laid down in the Competition Act, specifically the prohibitions in articles 1, 2 and 3 of the Act. Moreover, article 12 of Royal Decree 1882/1978 establishes that each wholesale market will have free spaces at the disposal of the administration and public entities which may also be used as regulatory stalls in case of need. By analogy with the exchange of information, public intervention in a regulatory capacity must be understood as being limited to truly exceptional situations, in which the measure is really justified under articles 1, 2 and 3 of the Competition Act.
- b. Regime for access to the Merca: Article 12 of Royal Decree 1882/1978 provides that producers in the agricultural and fishing sector and their organisations must be guaranteed sufficient space to sell their products and article 15 provides that the allocation of stalls in the markets must be done choosing from the systems authorised by the current provisions, the one that best guarantees supply equilibrium, consumer protection and the protection of public health, embracing the principles of publicity, objectivity, impartiality, transparency and competitiveness into account in the allocation procedure. Applications for licences to open stalls will be processed by the body managing the market so that they can be granted by the municipal council.
- c. Access and operating fees: Article 13 of Royal Decree 1882/1978 provides that the Mercas must be governed by reference to respect for the protection of consumers and public health, whatever their management model. If they are managed through a municipal joint venture, the fees must cover the cost of the service, ensuring that it is fully financed. The resources obtained from operating the markets must be applied in order to sustain them and to improve the conditions under which they are operated.
- d. Transparency in the operating of the Mercas: Article 14 of Royal Decree 1882/1978 establishes that each wholesale market will be governed by its own regulations, which will determine the articles that can be sold, the users that can operate in it and the class of operations that will be permitted. Article 15 also provides that the regulations must regulate the transfer of the right to use the stalls,

without prejudice to the applicability of the rules of the legal system in general.

- e. Information and traceability of the products: Consignments of products destined for wholesale markets must be accompanied by a declaration from the sender or, otherwise, from the transporter of the goods for delivery to the wholesaler, who will be obliged to exhibit it when required to do so (article 14). The company responsible for managing each wholesale market and the users of it will be obliged to provide the Directorate General for Consumer Affairs and Market Discipline and the respective municipal councils with information on the goods entering and leaving the wholesale markets, the conditions on which the transactions are carried out and, in general, any aspect relating to the supply that the Directorate considers pertinent (art 16).
- (24) Along with this specific rule, certain provisions of Act 7/1996 of 15 January 1996 on the Regulation of Retail Trade [*Ley de Ordenación del Comercio Minorista*] must be construed as applying to wholesale trade, in particular the obligation to sell (article 9), the prohibition on selling at a loss (article 14) and payments to suppliers (article 17). In addition, Forth Additional Provision of the Act requires entities that are dedicated to wholesale trade to register and file accounts with the Commercial Registry¹⁷.
 - (25) Finally, most of the rules of the Autonomous Communities on internal trade contain concepts of wholesale trade or commercial activity. Even though the respective texts do not coincide exactly, they tend to agree on essential points, considering wholesale activity to be the activity of reselling to other traders, retailers or wholesalers or to proprietors, industrialists or artisans. Nevertheless, the regulation of this type of commercial distribution by the Autonomous Communities does not tend to impact on the performance of the activity, but rather on the extent to which it impacts on retail distribution¹⁸.
 - (26) In accordance with article 14 of Royal Decree 1882/1978 of 26 July 1978, and as indicated in the information requests sent out, the 23 Food Units belonging to the Mercasa Network have operating regulations and/or service provision regulations that establish their internal regime.
 - (27) In general, these regulations are concerned with organisational and operational aspects. They all have in common the fact that they regulate the following matters, amongst others:

¹⁷ “*Investigación de la cadena de distribución de determinadas frutas y hortalizas*” [*Investigation of the distribution chain for certain fruit and vegetables*], Competition Service [*Servicio de Competencia*] (now the CNC), January 2004.

¹⁸ “*Investigation of the distribution chain for certain fruit and vegetables*”, [*Investigation of the distribution chain for certain fruit and vegetables*], Competition Service (now the CNC), January 2004.

- a. Opening dates and hours
 - b. Control of entrance and exit of vehicles and goods
 - c. Products that can be marketed
 - d. Minimum lots for admission and sale in the market
 - e. Areas devoted to exhibiting goods
 - f. Sales forms and operations
 - g. Direct sales by producers
 - h. Conditions for setting up as a wholesaler
 - i. Obligations of the management company in relation to the administration of the markets
 - j. Definition of market users (sellers or suppliers and buyers or retailers)
 - k. Obligations and rights of the wholesalers
 - l. Economic regime for the adjudication of stalls
 - m. Transfer of the rights to use the stalls
- (28) The information obtained from the information requests sent out by the CNC shows that the company managing the Merca proposes the text of the operating or service provision regulations, which is then submitted to the competent municipal body for approval.
- (29) In terms of the approval of the regulations, article 50.3 of Royal Decree 2568/1986 of 28 November 1986, which approves the Regulations on the organisation, operation and legal regime of local authorities, indicates that *“the body in plenary session, once constituted in accordance with the provisions of the electoral legislation, shall have the following powers: [...] to approve the basic regulations, ordinances and other dispositions of a general nature that fall within the jurisdiction of the municipal council”*.
- (30) Article 49.2 of the Local Government Act refers to the procedure for approving the regulations, which must follow the following steps:
- a. Initial approval by the body in plenary session.
 - b. Public information and hearing of interested parties for a minimum period of thirty days for the presentation of complaints and suggestions.
 - c. Decision on all the claims and suggestions presented within the time period and definitive approval by the body in plenary session.
 - d. In the event that no claim or suggestion has been made, they will be deemed to be definitively adopted.

- (31) The entry of the regulations into force is contemplated in article 70.2 of the Local Government Act and article 196.2 of Royal Decree 2568/1986 of 28 November 1986, which contain provisions in the same direction, indicating that ordinances and regulations, including town planning rules, whose definitive approval fall within the jurisdiction of the local authorities, are published in the Official Provincial Gazette [*Boletín Oficial de la Provincia*] and do not come into force until their text has been published in full and the time period laid down in article 65.2 of Act 7/1985 of 2 April 1985 has expired, save for budgets and tax ordinances, which are published and come into force on the terms laid down in Act 39/1988 of 28 December 1988 which regulates local tax authorities.
- (32) In terms of the organisation and administration of the Food Units, it is usually the responsibility of the Director General of the company managing the Merca (or the Manager, depending on the terminology used in the different regulations) who normally reports to the company's board of directors and assumes the power to plan the operation of the different operating elements that make up the Food Unit, to direct and inspect the different services; he or she is also the company's most senior member of staff.
- (33) Under the provisions of many of the operating regulations, the Director General or Manager may have staff to work with him or assist him if necessary; in particular the regulations foresee the possibility of appointing someone to be responsible for the market (General Administrator or Market Head, depending on the terminology used), who either has functions that are allocated to him in the regulations themselves, or functions that are delegated to him.
- (34) Similarly, and subject to a few exceptions, practically all of the operating regulations of the Mercas in the Mercasa Network¹⁹ design the organisation of the markets through the figure of the so-called Social Advisory Committee, even though each Merca adopts a different name²⁰. As set out in the text of the regulations, this body is configured as a channel for consultation and qualified participation by the users with the company managing the Food Unit in the activities carried out in it, thus making it possible to have transparency of information between operators in relation to prices and other terms of trading, as well as coordination in relation to those aspects.

¹⁹ Mercasturias, Mercabadajoz, Mercabilbao, Mercacórdoba, Mercagalicía, Mercagranada, Mercairuña, Mercajerez, Mercalaspalmas, Mercamálaga, Mercapalma, Mercasalamanca, Mercasantander, Mercasevilla, Mercatenerife and Mercazaragoza.

²⁰ Consultative Committee, Social Information and Advisory Committee, Users' Committee, Users' and Markets' Committee, Technical Consultative Committee or Operating and Advisory Committee.

- (35) The committee is usually made up of the Managing Director of the Merca and representatives of the wholesalers who carry out business within it, operators from the complementary activities areas, municipal inspection services, retailers authorised to buy in the markets and consumer organisations.
- (36) Their powers consist of reporting to the governing bodies of the joint venture company, prior to those bodies taking any decisions, on matters related to the management, administration and operation of the Food Unit (including fixing opening hours, determination of minimum lots, use of containers), although such a step is not normally essential for the decision taken. In all cases it is expressly stated that their decisions will not be final and binding on the company managing the Merca and that they will require ratification by its corporate bodies in order to be effective.

II.2 Wholesale distribution channels for perishable products

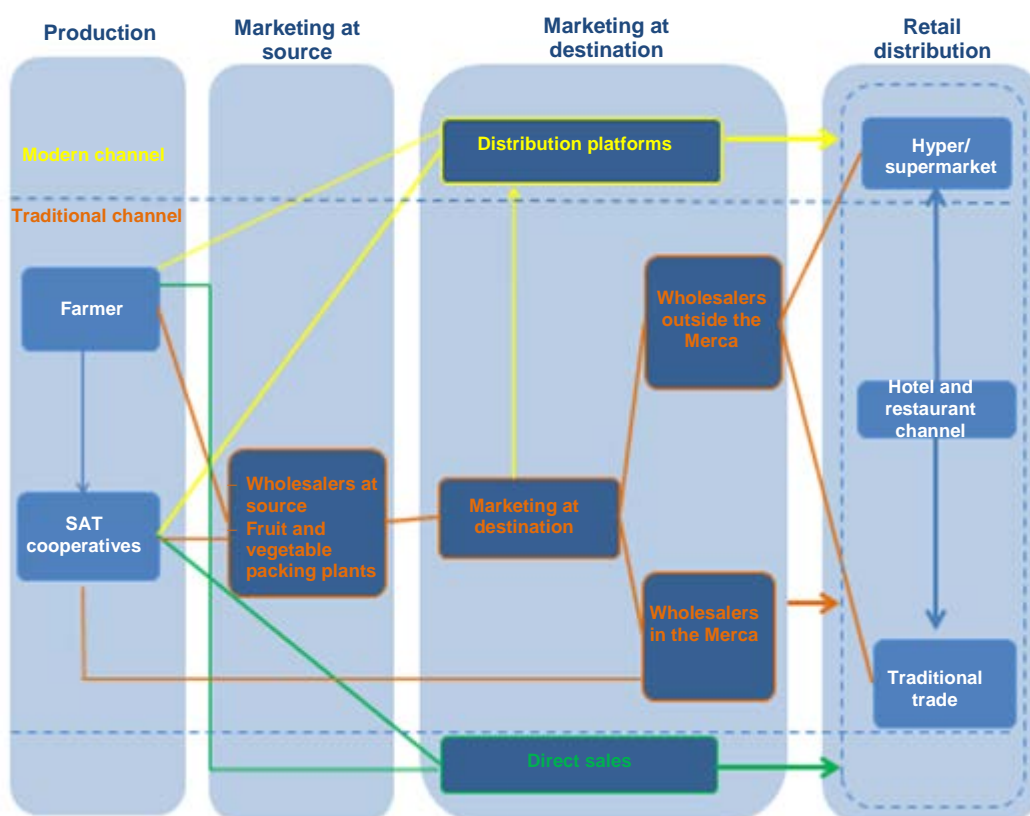
- (37) Wholesale trade includes trading of products between businesses throughout the chain (producers, processors, wholesalers at source, wholesalers at destination and retailers).
- (38) From an economic point of view the existence of intermediaries enables different tasks to be carried out more efficiently²¹:
- It reduces the transaction costs by reducing the number of trade transactions. The transaction costs of each contact between buyer and seller include the search for the customer and supplier, analysis, negotiation, order and transport and delivery.
 - It encourages the provision of added value services which require a minimum volume of operations that would not be achieved through each individual transaction.
 - It increases the size and depth of the market by increasing the power to attract customers who are prepared to travel greater distances in order to find a broad and varied supply, thereby reducing search costs.
 - It guarantees and brings the supply closer from the place of production to sales points close to the place of consumption through the use of intermediaries specialising in transport and storage.

²¹ “Los intermediarios mayoristas en la cadena de valor de alimentación fresca” [*Wholesale intermediaries in the fresh food value chain*], Revista Distribución y Consumo [Distribution and Consumption Review], Mercasa, March-April 2010.

- e. It facilitates the configuration of ranges of goods that adapt to meet the needs of the buyers. Thus, in contrast to the wholesaler at source, which consolidates large quantities of a product or of various products from the same source or production area, the wholesaler at destination consolidates the products of different wholesalers at source and offers large quantities of products from different origins.
- (39) Throughout the value chain it is possible to distinguish different marketing channels according to the agents intervening in it and the tasks that they perform.
- (40) In the case of perishable products, the basic distribution circuit is the so-called “long channel” in which producer, wholesaler at source, wholesaler at destination and retailer are involved in turn.
- (41) This basic configuration is derived from the former mandatory requirement that all perishable food products had to be marketed through the “central markets”. Thus, by reference to articles 1 and 2 of Royal Decree 1882/1978, it was possible to differentiate between three channels for wholesale distribution at destination:
- a. Wholesalers at destination: wholesale markets (articles, 1, 10 et seq) and independent wholesalers (article 2. a) 1).
 - b. Distribution centres (2. a) 2).
 - c. Direct sales (2. a) 3 and 4).
- (42) The circuit in which the products pass through the wholesale markets at destination is known as “traditional distribution”, whilst the circuit in which large retail companies intervene through distribution platforms or centres has led to this channel being named “modern distribution”. Direct sales include sales by the producer to final consumers²².
- (43) In recent years the traditional channel has given way to modern distribution, generating shorter distribution circuits in which new agents emerge and reducing the length of the distribution channel.
- (44) Thus, the roles of each player in the traditional value chain are changing and the boundaries between the two are blurring, so there is an increasing phenomenon involving vertical integration between the agents in the chain, with “backward” integration (for example distributors who form and control purchasing centres at source) or “forward” integration (for example cooperatives that form fruit and vegetable packing plants that negotiate directly with the distributors).

²² This distribution channel will not be analysed in greater detail, given the purpose of the study, although it must be borne in mind that it is an alternative distribution channel to the other two.

Diagram 1. The value chain in agricultural products.

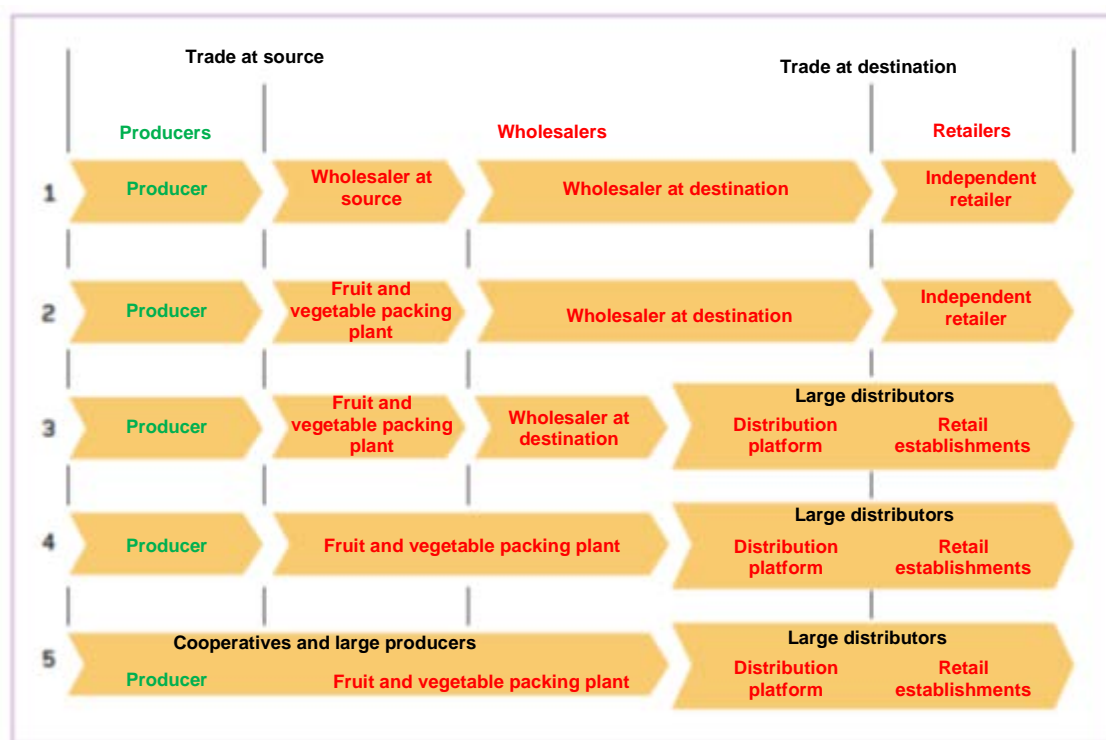


Source: prepared in-house

- (45) All the aforementioned circumstances can be illustrated with the example of the marketing channels for fruit and vegetables, shown in the diagram below. Up to five commercial distribution channels for fruit and vegetables can be differentiated²³.

²³ Without counting the additional channel of direct sales.

Diagram 2. Distribution channels and value chains for the marketing of fresh fruit and vegetables.



Source: "El sistema de comercialización en origen de las frutas y hortalizas en fresco" [The system of marketing fresh fruit and vegetables at source], Revista Distribución y Consumo [Distribution and Consumption Review], Mercasa, March-April 2008

- (46) As it can be seen from the diagram, the first two channels for marketing fruit and vegetables are characterised by the fact that the marketing at destination is exclusively done by wholesalers at destination and corresponds to the traditional channel. Example 1 is the most typical, as the figure of the wholesaler at source appears. The wholesaler at source is responsible for the physical distribution of the product, as well as some simple functions of selection, cleaning and packing. Example 2 is characterised by the fact that instead of the wholesaler at source, the fruit and vegetable plant becomes responsible for distribution and carries out the preparation and finishing of the product from selection to packaging. In this example it is actually the plant that places the product on the market for the first time, as the farmer delivers it semi-prepared²⁴. In the other

²⁴ One of the most important traits of modern marketing at source is in fact the task of the finishing of the product that is delivered by the farmers. Furthermore, this is a relevant factor when it comes to explaining the creation of value in the chain and the final selling price of these products, in particular the difference that exists between the price that the farmers receive and the final price that the consumers pay.

three examples marketing at destination is done through large retailers via distribution platforms (wholesale warehouses) and corresponds to what is named modern distribution, which uses three sources of supply: the services of wholesalers at destination, the fruit and vegetable packing plants or a single business entity made up of the producers and the fruit and vegetable packing plants which deals directly with the large retailers.

- (47) We describe below the traditional channel, the cash & carry channel and the modern distribution channel.

II.2.1 The traditional channel

a) Marketing at source

- (48) In the traditional channel the first producer sells the product to an operator at source or to a fruit and vegetable packing plant, which in turn resells it to a wholesaler at destination (it is rarely the case that the farmer sells the product directly to a wholesaler at destination).
- (49) Marketing at source includes storage services and simple processing activities: washing, selection, classification and even packaging. Although there are numerous figures intervening in this marketing channel at source, basically the following operators are of particular note²⁵:
- Wholesalers or warehouse operators at source: they are the initial buyers of the product, directly from the farmers. They acquire it for the domestic or export market, normally at the same time. They form companies that concentrate a certain volume of production and in many cases undertake all the marketing phases.
 - Wholesale hauliers: they are agents that take advantage of vehicles returning empty by loading them with products from the production area and reselling them in the markets at destination.
 - Brokers or commission agents: they are independent commercial agents that work on behalf of wholesalers at source or at destination. They act as brokers and their task is to find available supply and to match the buyer with the producer. They even carry out transactions on their behalf and they receive commission for their services. They almost always act on behalf of the buyer and they operate basically areas where production is made through smallholdings with little tradition of associations.

²⁵ *El sistema de comercialización en origen de las frutas y hortalizas en fresco* [The system of marketing fresh fruit and vegetables at source], Revista Distribución y Consumo [Distribution and Consumption Review], Mercasa, March-April 2008; *"Informe sobre competencia y sector agroalimentario"* [Report on competition and the agrifood sector], CNC, 2010.

- d. Exchanges [*alhóndigas* or *corridas*]: they are local private marketing centres at source where the farmer takes his products, and there is no need to belong to any association. The products are sold by lots using the Dutch auction system to a limited number of buyers, with the farmer being able to stop the auction and withdraw the product if the price is not acceptable to him. The exchange receives the product from the farmer, takes responsibility for its sale, weighing and loading, and, after deduction of the corresponding fee, pays for the merchandise at the time of delivery by the seller, assuming the credit risk with the buyer. Quality and presentation requirements are less stringent than in other channels as the products are an important source of supply for the processing industry.

Selling at source through exchanges has been of considerable importance, particularly in some geographical areas with heavy production, although as time goes on they have been giving ground to other forms of association that enable the producer to incorporate greater added value in parallel to greater vertical integration of the chain. In particular, there is a tendency towards the establishment of closer links with production, so that some exchanges are also producers of at least part of the product they sell. In some cases they even integrate logistical and marketing activities and the delivery of the product to the distribution centres of supermarket chains, mainly European chains.

- e. Fruit and vegetable packing plants: they are warehouses at source that perform product handling and marketing functions that are typical of intermediaries and they handle the receipt, classification and packing of the crops and prepare them for despatch to the consumer centres or keep them in cold storage in their natural state if necessary. Their main advantage is the solvency that they offer to the farmer. These operators are also characterised by their access to modern channels, both domestic and export channels.

The fruit and vegetable packing plants belong to agricultural cooperatives, agricultural processing companies [*sociedades agrarias de transformación*], large producers or, to a lesser extent, wholesalers at source or wholesalers associated with an exchange. They are one of the most dynamic marketing at source sectors.

- (50) The geographical definition of the activity of marketing at source is complex, given the diversity of markets in which this first phase of marketing can be configured. In any event, at least for the exchanges, the geographical scope of the activity could be local.
- (51) Furthermore, it must be emphasised that in parallel to the organisation and provision of new services by the producers and the development of large retailers, wholesalers at source have diversified their activities over time and some of them are also present in production, in order to guarantee

supplies, and in the sale to the retail distributor. Furthermore, although there are wholesalers at source who use their own fleet to transport the goods, the current trend is for transport activities to be subcontracted or for customers or wholesalers at destination to be in charge of them.

b) Marketing at destination

- (52) Marketers at destination buy the product from an operator at source and resell it to the retail sector (hypermarkets and supermarkets, traditional trade and the hotel and restaurant channel).
- (53) This activity may be performed by the following operators:
- a. Independent wholesalers²⁶: they act outside the Food Units of the central markets.
 - b. Traditional dealers: they are wholesalers who act together with other wholesalers in the Food Units of the central markets.
 - c. Wholesale intermediaries and brokers: as with the market at source, they are independent commercial intermediaries who work on behalf of wholesalers at destination and facilitate negotiation with large retailers, undertaking transactions on behalf of agents that do not access the Merca directly (normally in those provinces that do not have this type of establishment).
- (54) Distribution through wholesalers at destination is the main supply route for the specialist retail trade and for retailers who sell in travelling markets. It is therefore essential when it comes to supplying the public, given that between 40% and 50% of homes are supplied through the first method and between 6% and 7% through the second²⁷.
- (55) The demand for this type of distribution is basically made up of retail distributors, specialist traders, small markets, the hotel and restaurant channel and any other type of distributor of fresh food for consumption other than in the home.

II.2.2 The wholesale self-service channel (cash & carry establishments)

- (56) This is a format for the wholesale distribution of mass market products on a self-service basis and is aimed at businesses and professionals other

²⁶ *El sistema de comercialización en origen de las frutas y hortalizas en fresco* [The system of marketing fresh fruit and vegetables at source], Revista Distribución y Consumo [Distribution and Consumption Review], Mercasa, March-April 2008

²⁷ *La distribución agroalimentaria y transformaciones estratégicas en la cadena de valor* [Agrifood distribution and strategic processing in the value chain], Ministry of Agriculture, Food and the Environment.

than the final consumers, principally businesses active in the restaurant sector, hotel industry and retail sector²⁸.

- (57) Specifically, cash & carry establishments normally consist of warehouses whose area varies between 1,000 and 2,000 m² in and that are located on the outskirts of towns.
- (58) In Spain there are a large number of operators (some 18). MAKRO, AUTOSERVICIO MAYORISTA, S.A., which is part of the German METRO group, is the clear market leader in Spain. As well as MAKRO, there are other operators that are also present to a greater or lesser extent in other types of wholesale and retail commercial distribution of daily consumer goods, such as DINOSOL, MIQUEL ALIMENTACIÓ, COVALCO, EL ARBOL or EROSKI.
- (59) In terms of modern distribution platforms, this type of establishment is characterised by the fact that it offers a limited number of references, at prices that are lower than those offered by retail establishments, in an austere buying environment and without offering any added service. Such establishments are normally located on the outskirts of towns.
- (60) The cash & carry format shares certain similarities with distribution in the Mercas and in theory it could be an alternative source of products for buyers who use the Mercas.
- (61) However, in different decisions both the European Commission and the Spanish competition authorities²⁹ have distinguished between the market for wholesale distribution through cash & carry establishments and the wholesale markets at destination, for reasons of both supply and demand.
- (62) From a supply point of view, most of the operators of cash & carry establishments are large-scale national operators and are not active in traditional wholesale distribution. In addition, cash & carry establishments generally handle a greater number of references than the traditional wholesale distribution sector, including the selection of non-perishable products.
- (63) From a demand point of view, the cash & carry service has certain peculiarities that differentiate it from sales in the Mercas, such as the use of the self-service system, the fact that the customers visit the establishment to buy, the fact that it is normally located on the outskirts of town, the fact of cash payment (in contrast to credit sales in the traditional

²⁸ CNC, Case N/07074 DINOSOL/TAGOROR/TAGOROR.

²⁹ European Commission, Case no. IV/M.784 KESKO/TUKO; and CNC, cases N-140 PIO CORONADO/CEMETRO (C64/01 of the Competition Tribunal), N-230 CAPRABO/ ENACO (C70/02 of the Competition Tribunal), N-03053 CAPRABO/ALCOSTO (C83/03 of the Competition Tribunal) and C95/06 ALIMENTACIÓ/PUNTOCASH; N/07074 N/07074 DINOSOL/TAGOROR/TAGOROR and N/07032 TPH/N/07032 TPH/BARGOSA.

channel) or the fact that the customer transports the goods purchased. In addition, cash & carry establishments offer a much broader range of products, not just perishable products, which are sold to a lesser extent than alcoholic and non-alcoholic drinks and packaged food.

- (64) Thus the clientele visiting cash & carry establishments is mainly made up of small and medium-sized businesses with limited financial and storage potential, whose average purchasing volume is less than that of customers in the traditional channel and whose purchases are more infrequent, so that it would not be worth their while to use the Mercas or to have a supplier for each product. They prefer to concentrate their purchases in an establishment with a broad range of stock, like the cash & carry.
- (65) Moreover, the Merca channel has made an effort to diversify, so that wholesale distribution establishments in the cash & carry format can be found within the so-called Complementary Activities Areas. For larger customers, the fact that a significant percentage of wholesale customers use the cash & carry format and the traditional distribution format at the same time may involve that the two channels are considered by such customers to be complementary, rather than substitutes for one another³⁰.
- (66) However, it is precisely this complementary character that has led the CNC to consider in certain decisions that the cash & carry channel and the traditional wholesale distribution model are markets that are related or connected to one another, due to the fact that for some customers the two distribution channels, traditional and self-service, are complementary and the fact that the traditional wholesale distribution channel markets a range of products that to a large extent matches with that of the cash & carry establishments, is bought by similar customers and with similar aims. Thereafter, the CNC considered that the traditional distribution channel had a certain ability to discipline the behaviour of the operators in the wholesale distribution market for everyday consumer goods in cash and carry establishments³¹, although the other way around was not necessarily true.

II.2.3 The distribution platform channel

- (67) The channel which is based on marketing products through distribution platforms constitutes the so-called “modern channel”. Article 6 of Royal Decree 1882/1978 already referred to this channel by permitting the marketing of food products through distribution centres, converting it into one of the exceptions to the general obligation to pass fresh products through wholesale markets.

³⁰ CNC, Case C95/06 MIQUEL ALIMENTACIÓ/PUNTOCASH.

³¹ CNC, Case C95/06 MIQUEL ALIMENTACIÓ/PUNTOCASH.

- (68) This channel is becoming increasingly significant, in parallel to the growing importance of large retailers, with the result that in 2004 around 20% of the market for perishable products was already channelled through this type of intermediary³².
- (69) The development of this channel is a clear example of the phenomenon abovementioned, namely the diffusion of roles between the different operators in the value chain. Thus, some wholesalers at destination have diversified their activities in the chain towards production and handling at source, forming associations with producers or acquiring land from which to obtain their supplies. In other cases wholesalers act as logistical operators in the modern chain, creating distribution platforms for large retail distributors or in order to re-ship the product to other markets outside the Merca's catchment area, including export markets. The presence of certain multinationals through alliances with national producers or wholesalers at source is also noticeable³³.
- (70) The large retailers use this route to introduce distribution centres or platforms that group together products bought from large producers, cooperatives, fruit and vegetable packing plants or wholesalers at destination in order to distribute them to their own network of retail establishments in Spain or other European countries. The wholesale function does not disappear, but its performance is integrated through a single agent.
- (71) The direct relationship between the source market and the large retail distribution market is carried out through the buying centres. These are partnerships or groupings of traders with an independent legal personality from that of their members, forest up to become spokespersons with bargaining power vis-à-vis other operators in the market, whether suppliers or competitors. A variable number of distribution businesses get together for the purposes of consolidating the purchases of their members or affiliates so that they can obtain better trading terms from the suppliers due to their greater buying and selling power³⁴.
- (72) The implementation of centralised purchasing mechanisms for fresh products by the large retailers takes place in parallel to the trend for these establishments to increase the importance of fresh products in their establishments and the greater development of the supermarket or

³² "Investigación de la cadena de distribución de determinadas frutas y hortalizas" [Investigation of the distribution chain for certain fruit and vegetables], Competition Service (now the CNC), January 2004.

³³ "La distribución agroalimentaria y transformaciones estratégicas en la cadena de valor" [Agrifood distribution and strategic processing in the value chain], Ministry of Agriculture, Food and the Environment".

³⁴ CNC, Case N/07074 DINOSOL/TAGOROR.

neighbourhood formats in order to guarantee continuous supply and the quality of these products.

- (73) This is a sector which has been significantly concentrated, with large purchasing centres that trade in all types of food products for various supermarket chains³⁵, as well as independent purchasing centres that trade for a particular distribution group³⁶.
- (74) At times, as well as performing their basic task of handling purchases, the purchasing centres provide certain services to their members, such as storage, inventory management, transport and advice services.
- (75) In addition, the requirements of traceability and quality control have demanded greater involvement by the large retailers in the control of the supply chain, which has basically been done by outsourcing the logistical activity that provides the required added value services.
- (76) Thus, logistical operators carry out logistical activities and services in order to optimise the continuous supply chain, which covers the efficient maintenance of the cold chain, the reduction of the transit time of the product and the optimisation of transport to the point of sale. Although the commercial activities are normally carried out by the purchasing departments and centres of the large retailers, along with the units within the producer organisations responsible for marketing, some large wholesalers at destination have developed this capacity to act as a logistical operator.

II.3 The distribution of perishable food products in the central supply markets

II.3.1 General characterisation

- (77) Wholesalers at destination operate on their own or grouped together with other wholesalers (dealers) in the municipal wholesale markets (Mercas³⁷).
- (78) Wholesale markets are wholesale trading centres that are located close to major conurbations. They receive products from the land, livestock and the sea from the trading centres at source. They therefore bring together the

³⁵ EUROMADI and IFA, amongst others.

³⁶ ALCAMPO, CARREFOUR or MERCADONA, amongst others.

³⁷ The proper and closest meaning of the term Merca is the one that designates the entity responsible for managing the Food Units of the central supply markets. However, the term Merca is also used to refer to the Food Units or central markets for the products in question themselves and hence as a synonym for them.

main operators at destination, the dealers, and some large distribution platforms also use their facilities.

- (79) Mercas are large facilities that concentrate wholesale distribution and logistical services³⁸. They therefore perform an essential role for the operators at source as they receive a large part of the total unprocessed products channelled by the marketers at source (50% of the fruit and vegetable products and 25% of the meat sector, according to the CNC's 2010 report on competition and the agrifood sector).
- (80) Physically the Mercas usually have a separate market for each area of activity: fruit and vegetables, fish and shellfish, meat. In addition, the Food Units of the central markets are increasingly carrying out complementary activities in the so-called Complementary Activities Areas, which house businesses involved in marketing, handling, logistical services and customer care (packaging, storage, rented cold storage, bank branches, cafeterias, service stations, agencies, insurers or tobacconists, amongst others). The rest are mainly built-up areas (roads, car parks, green spaces, etc.) and areas devoted to commercial and administrative services. In these areas there are a group of wholesale businesses which need more space in which to process the product in order to carry out these added value activities; there are also certain distribution businesses with regional warehouses from which they distribute to their supermarket and hypermarket networks.
- (81) According to the latest Annual Report published by Mercasa, some 3,400 businesses operate in the 23 Mercas in its Network, of which around 2,000 are wholesalers installed in the fruit and vegetable, fish, flower and meat markets and the remainder are businesses devoted to complementary activities, logistical distribution or customer care for the users of the Mercas, which now represent 45% of the total³⁹.
- (82) In particular, the report indicates that 1,101 fruit and vegetable wholesale businesses operate in the 23 Food Units of the Mercasa Network of Mercas, with average annual sales of 3.5 million euros (annual turnover of 3,878.4 million euros); 428 wholesale businesses are involved in fish and shellfish, with average annual sales of 6.4 million euros (annual turnover of 2,746 million euros); and 260 businesses in meat with average annual sales of 2.8 million euros (annual turnover of 739.3 million euros).
- (83) In 2011 the pre-tax profit of the 23 Food Units was 25.9 million euros, compared with 22.3 million euros in 2010 and 20.1 million euros in 2009.
- (84) It must be also emphasized the large volume of employment generated by

³⁸ The performance of these services means that the main Mercas play an important role in large-scale commercial operations, including export.

³⁹ Mercasa, 2011 Annual Report.

the activity undertaken in the Mercas, which is estimated at close to 27,000 workers when one includes the staff of the Mercas and the staff of the wholesalers and the service businesses located in their facilities.

- (85) Similarly, the growing commercial and services activity in the Mercas generates an ever-increasing volume of people and vehicular traffic of all kinds. In 2010 some 17 million vehicles passed through the 23 Food Units (65,000 vehicles each business day). In terms of buyer numbers – both retailers and wholesalers, hotel and restaurant trade or institutional demand - daily attendance averages around 55,000 users.
- (86) In terms of the turnover and market share of the Mercas, according to the data in the Mercasa 2010 Annual Report⁴⁰, the wholesale trade in the 23 Food Units of the Network of Mercas reached a total value of around 10,000 million euros in 2011, corresponding to a volume of almost 6 million tonnes of perishable food products. Furthermore, direct distribution by businesses located in the Complementary Activities Areas is becoming increasingly important. The Complementary Activities Areas house businesses specialising in:
- a. The handling, preparation, packaging and distribution of fresh and frozen fish and shellfish.
 - b. The handling, ripening, preparation, packaging, preservation and distribution of fruit and vegetables.
 - c. The butchering and distribution of meat.
 - d. Other businesses specialising in complementary and ancillary activities.
- (87) By families of products, global fruit and vegetable sales in the Network of Mercas during 2011 amounted to some 4.7 million tonnes, a somewhat lower figure than in 2010, with a value of almost 4,100 million euros, around 11% less than the previous year⁴¹. For their part, global sales of fish products amounted to almost 700,000 tonnes in 2011, around 5% less than in 2010, due to the greater boost given to them in the facilities of the Complementary Activities Areas; in total the value of meat sold exceeded 4,200 million euros. In the case of meat, during 2011 close to 400,000 tonnes were sold in the Network of Mercas, with a value of 1,175 million euros.

⁴⁰ The statistical processing of the data on the commercial activity of the Mercas forms part of the public service programme provided by Mercasa to the food chain as a whole and in that sense is an important tool for market information and transparency.

⁴¹ These data on volume and value include the business corresponding to the wholesale fruit and vegetable markets, fish markets and slaughterhouses and meat complexes that operate in the different Mercas, as well as the Complementary Activities Areas that complete each of the Mercas.

- (88) According to Mercasa, these figures represent around 50% of the total fruit and vegetables consumed in Spain (inside and outside the home), 53% of the fish and shellfish and 20% of the fresh meat.

Table 1. Sales in the Mercasa Network of Mercas compared with national consumption (2011)

	Wholesale markets		Complementary Activities Areas		Total	
	Million €	%*	Million €	%*	Million €	%*
Fruit and vegetables	3,878	47.3%	222	2.7%	4,100	50%
Fish and shellfish	2,746	34.7%	1,454	18.3%	4,200	53%
Meat	739	12.6%	436	7.4%	1,175	20%

*Compared with national consumption

Source: prepared in-house by reference to the Mercasa 2011 Annual Report

II.3.2 The Mercasa Network of Mercas

- (89) The basic characteristic of the 23 Food Units that make up the Mercasa Network is that both the municipal council and the state-owned company Mercasa are shareholders of the company⁴². The rationale for this “collaboration” dates back to the 1960s, a time when the evolution of the distribution circuits in Spain experienced a major qualitative and quantitative leap with the creation of the “Empresa Nacional Mercasa”. The strong population growth and its concentration in urban centres made it necessary to adapt the commercial structures to the trends towards urbanisation that Spain was experiencing, which had converted the towns into large consumption centres with logistical distribution problems.
- (90) In order to meet these needs, between 1964 and 1975 the state institutions put into place a set of development plans whose aims included the modernisation and improvement of the wholesale marketing structures for food products. At that time they opted for the creation of new wholesale vehicles configured as Food Units and Mercasa was created by a government Decree dated 7 April 1966. It was given the necessary capital to set up and install these Food Units in the central markets and powers to manage them. It was set up as a public limited company [*sociedad anónima*].
- (91) In order to perform its task Mercasa needed the collaboration of the municipal councils, who were the owners of the service; however, municipal budgets were very limited at that time so the councils could not

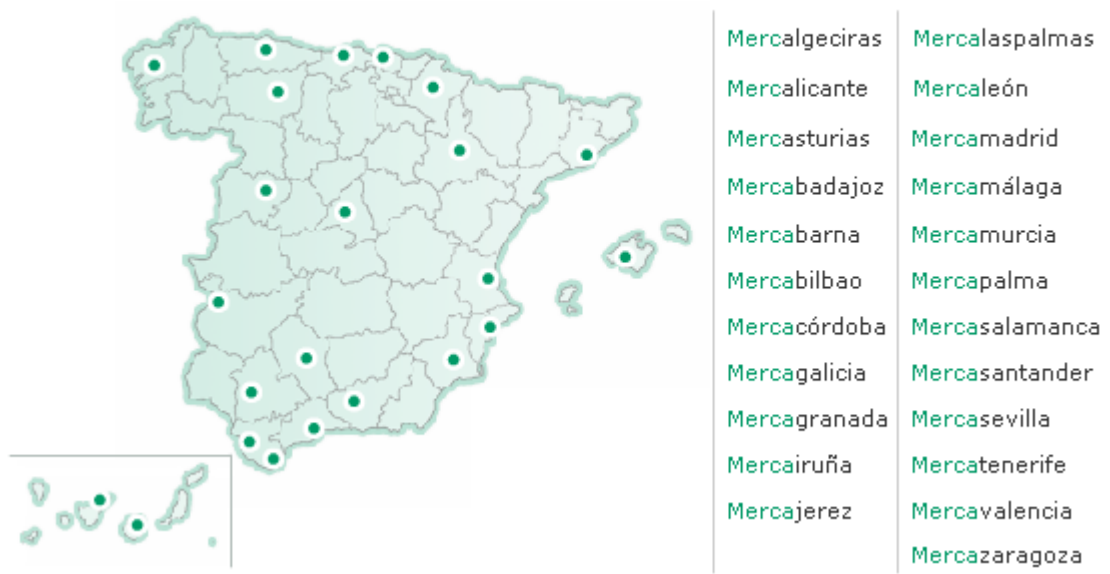
⁴² Mercasa continues to be a state-owned company under the auspices of the central government. Its shareholders are SEPI, Sociedad Estatal de Participaciones Industriales (51%) and the Ministry of Agriculture, Food and the Environment, through the Spanish Agrarian Guarantee Fund [*Fondo Español de Garantía Agraria – FEGA*] (49%).

meet the investments needed to build the new markets on their own. In order to settle this issue, Mercasa offered itself as an investment and technical partner to certain municipal councils with more than 150,000 inhabitants.

- (92) These local entities benefitted economically and technically from this collaboration, whilst at the same time retaining ownership of the service and their participation in the internal management of the markets created. This state cooperation with the municipal councils gave rise to the creation of the Food Units which now constitute the Network of Mercas.
- (93) The Network of Mercas is currently made up of 23 Food Units distributed throughout national territory.

Diagram 3. Configuration of the Network of Mercas in Spain

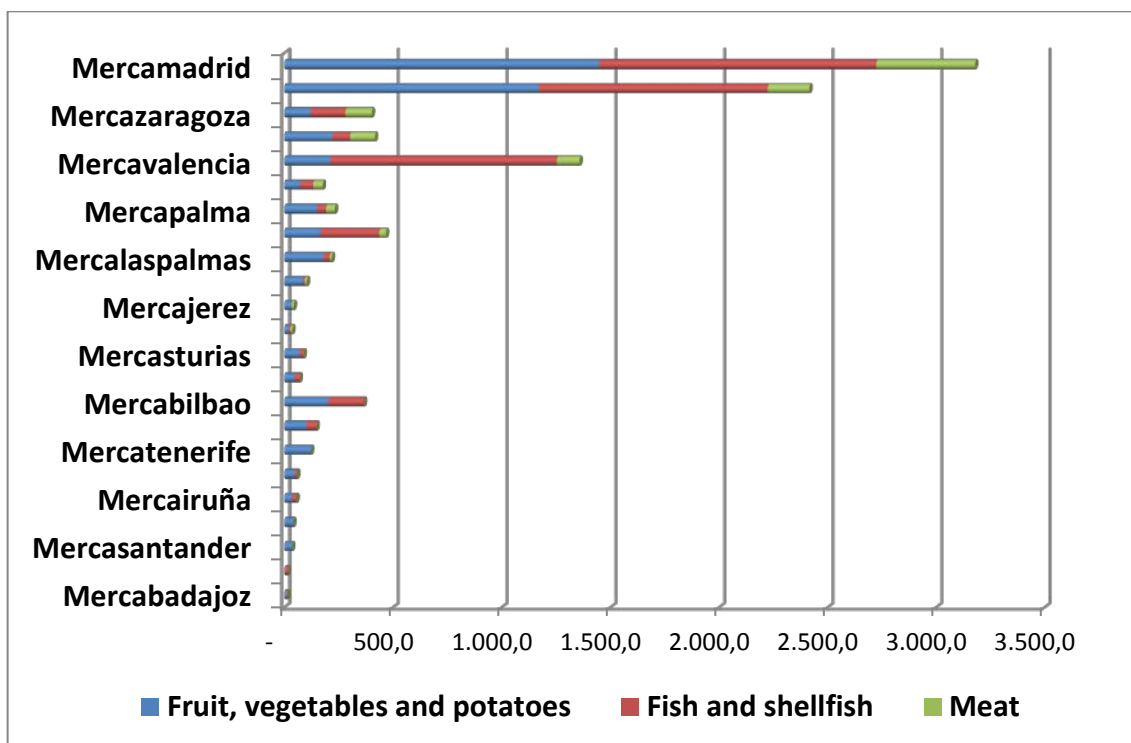
Red Mercas



Source: Mercasa (www.mercasa.es)

- (94) Of the 23 Mercas in the Mercasa Network of Mercas, the most important by annual volume of products sold are by far those in Madrid, Barcelona and Valencia. A second group would comprise Mercamálaga, Mercasevilla, Mercazaragoza and Mercabilbao, which also sell a significant volume of products.

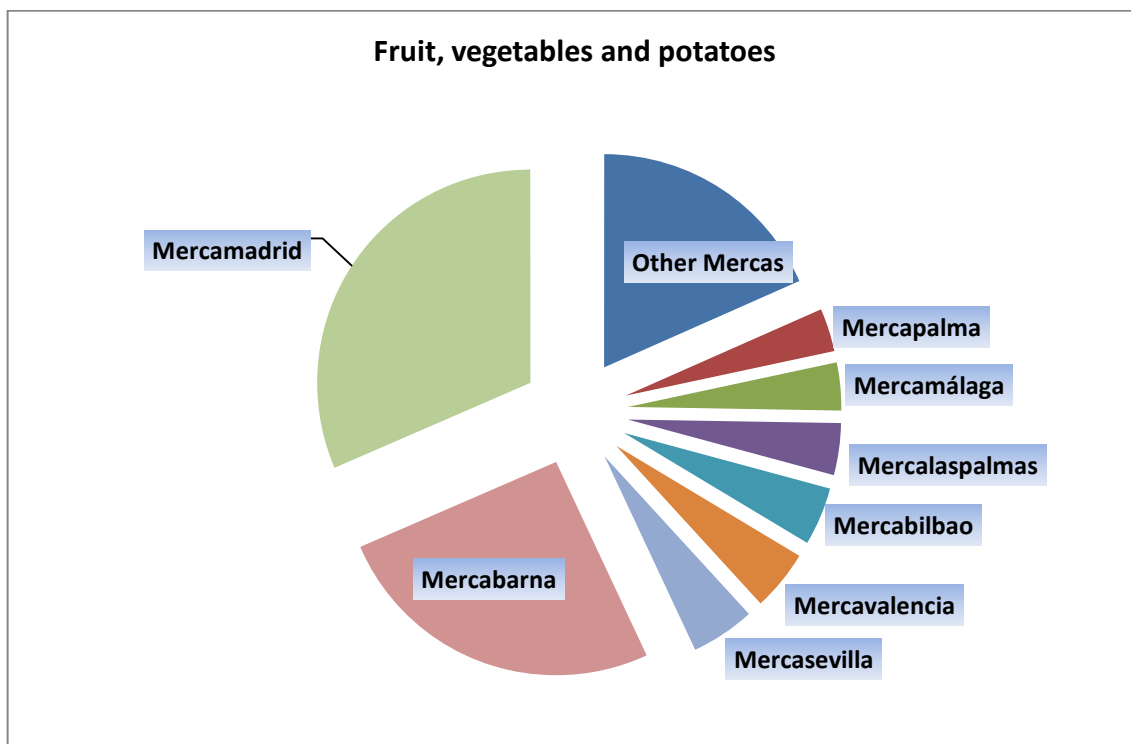
Diagram 4. Annual sales of the Mercas in the Mercasa Network of Mercas by products (data in million euros).



Source: Mercasa (www.mercasa.es)

- (95) In general, the main activity of all the Mercas is the fruit and vegetable (and potato) market, except the case of Mercavalencia, whose main activity is the sale of fish and shellfish. Nine Mercas do not sell meat and in general the sale of meat is the least important activity in the 14 Mercas in which it is sold (except Mercaléon, Mercajerez, Mercalicante and Mercasevilla, in which meat sales are more important than fish and shellfish sales).
- (96) By products, Mercamadrid and Mercabarna jointly account for almost 60% of the total fruit and vegetables sold in the Network of Mercas.

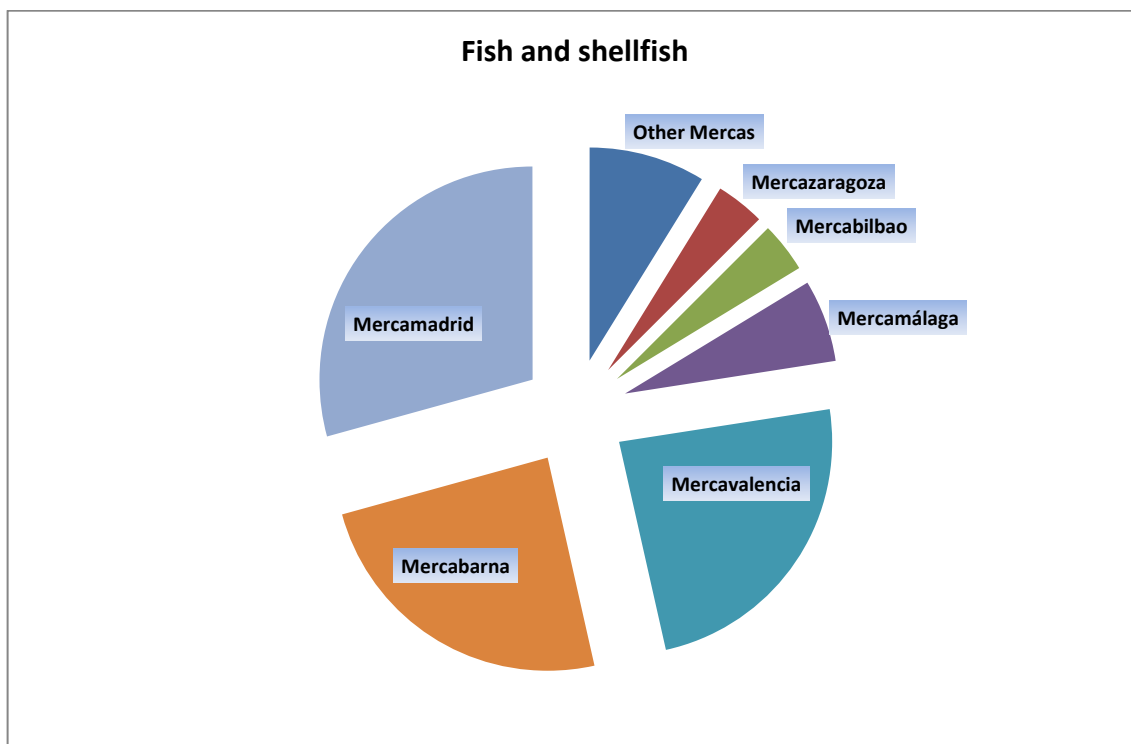
Diagram 5. Share of sales of fruit, vegetables and potatoes by Mercas by reference to annual turnover



Source: Mercasa (www.mercasa.es)

(97) In terms of fish and shellfish, Mercamadrid, Mercabarna and Mercavalencia account for more than three-quarters of the volume sold in the Network of Mercas. Of the rest, annual sales of fish and shellfish only exceed 100 million euros in Mercamálaga, Mercabilbao and Mercazaragoza.

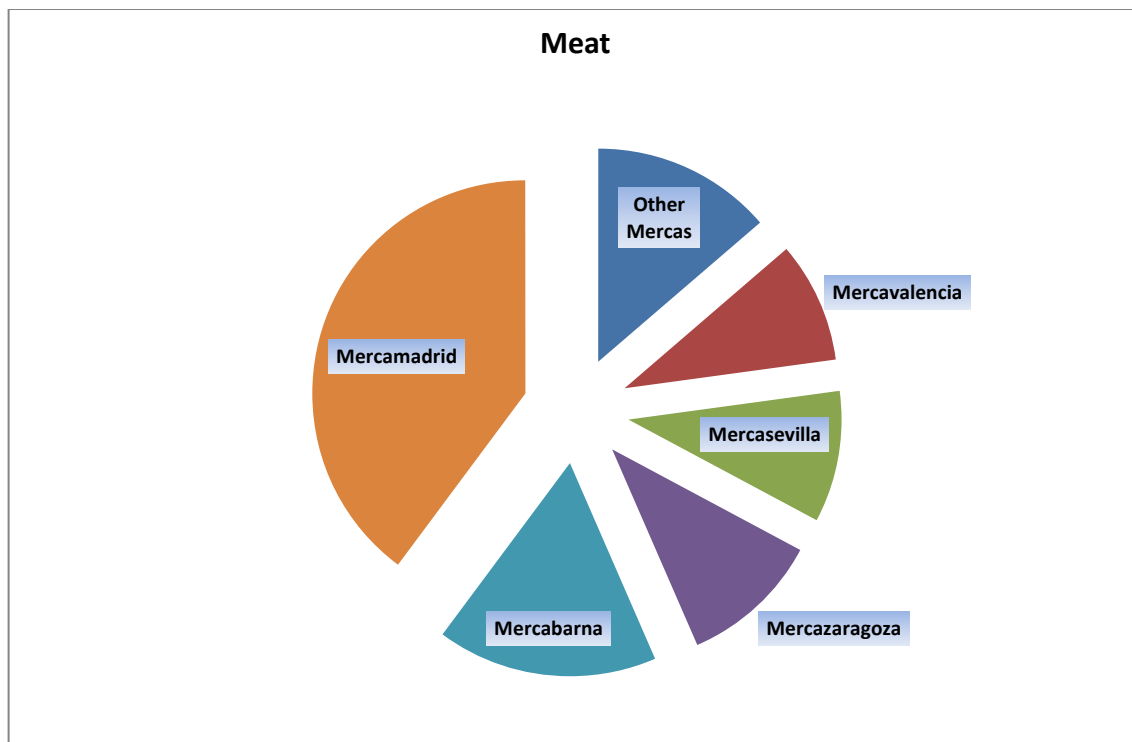
Diagram 6. Share of sales of fish and shellfish by Mercas by reference to annual turnover.



Source: Mercasa (www.mercasa.es)

(98) Mercamadrid is the most important Merca for meat, selling 40% of the meat sold in the Network of Mercas. It is followed in importance by Mercabarna Mercazaragoza, Mercasevilla and Mercavalencia. The remainder of the Mercas only account for 13% of total meat sales between them.

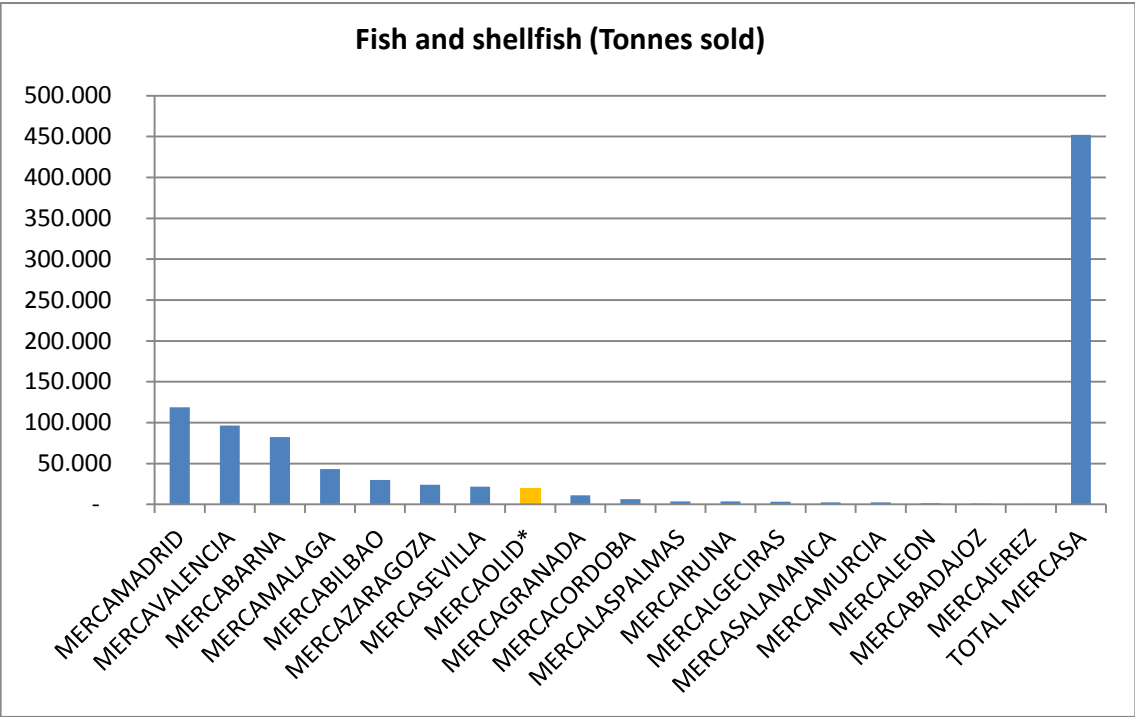
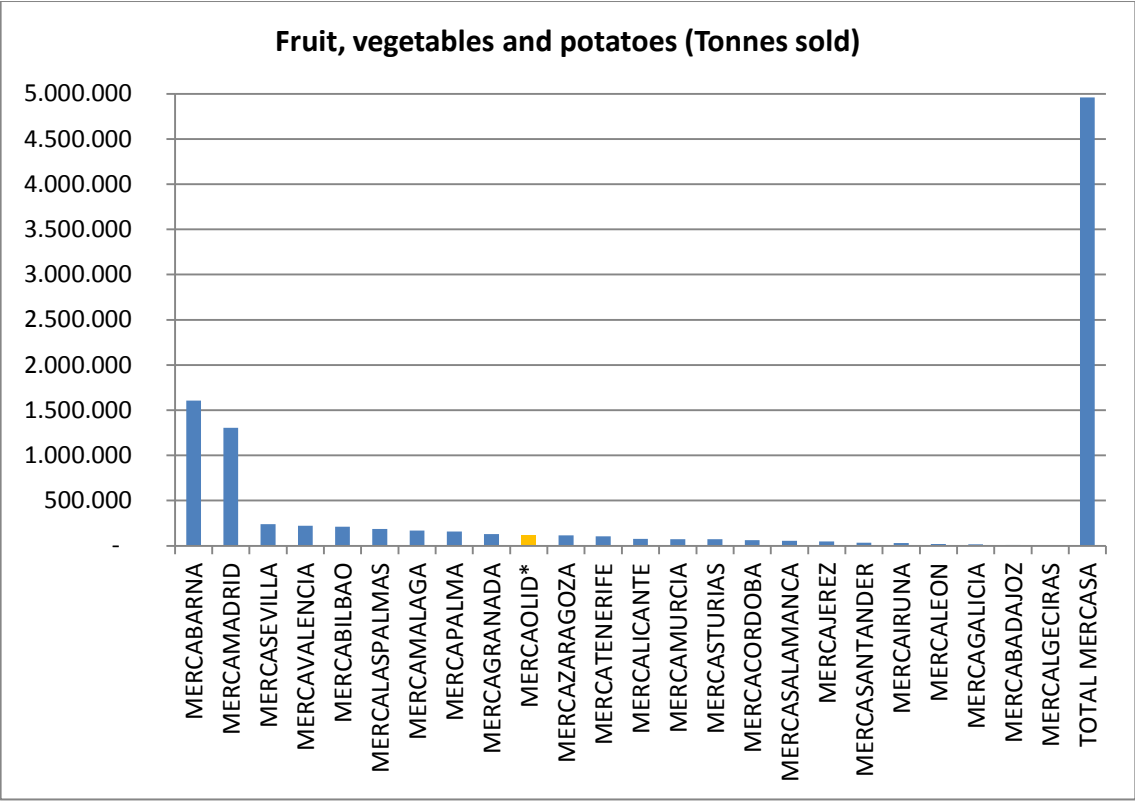
Diagram 7. Share of sales of meat by Mercas by reference to annual turnover.

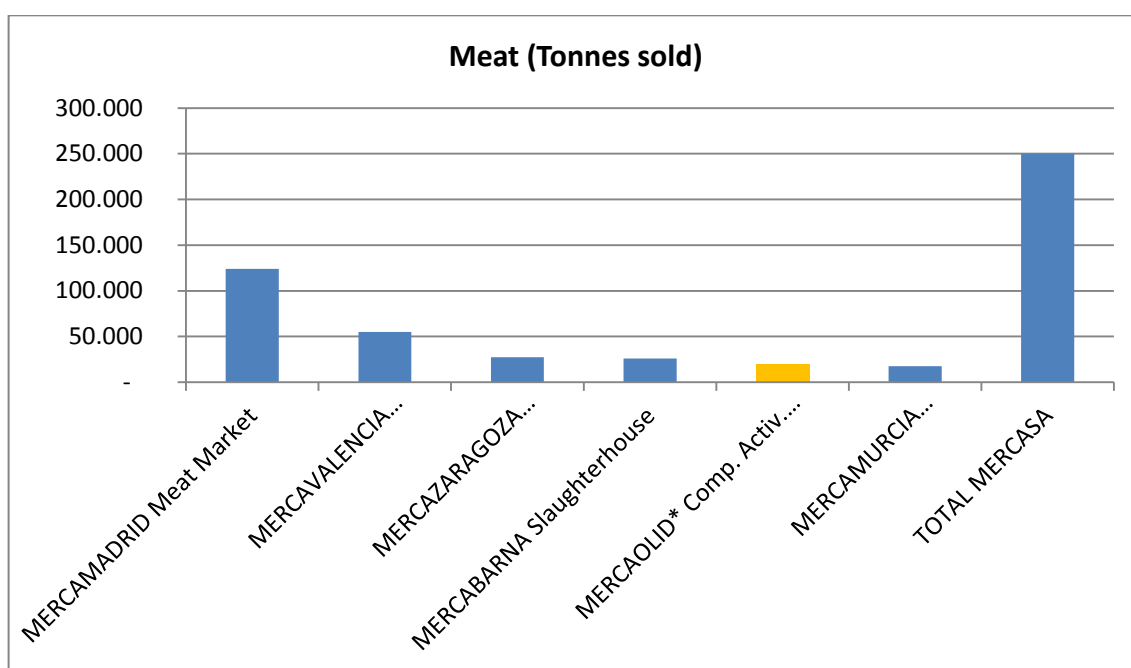


Source: Mercasa (www.mercasa.es)

- (99) Apart from the Mercas belonging to the Network of Mercas, according to the information provided by Mercasa and its 2009 Annual Report, other central markets where fresh products are traded close to the consumption centres have been identified: Mercaolid, Mercavallès, Mercagirona, Mercat del Camp, Mercat Central de Fruites i Verdures, Mercado Mayorista de Vitoria and Mayoristas de fruta y verdura de Xàtiva.
- (100) However, most of these municipal central markets are not as important, in terms of turnover, as the 23 Food Units that make up the so-called Mercasa Network of Mercas. In particular, the only one of these markets that appears to be of a comparable size to the Mercas in the Mercasa Network of Mercas, according to the information published on its website, is Mercaolid. Mercaolid sells a similar volume to the most important Mercas in the Network of Mercas, as it can be seen from the following diagrams.

Diagram 8. Comparison between Mercaolid and the Mercasa Network of Mercas





Source: Information supplied by Mercasa and Mercaolid website.

II.3.3 Supply in the Mercas

(101) Most of the sellers based in the Mercas are wholesalers at destination. For them, the alternative to setting up in the Merca is to operate independently, supplying products directly to the retailers and to the hotel and restaurant channel. Some of the perishable products are supplied in this way; however, the ability of the Mercas to attract customers in the context of wholesale trade is very important and they achieve market shares of over 70% for certain fresh products in their catchment area⁴³. Setting up in a Merca has significant advantages for wholesalers⁴⁴:

- a. Sharing of common costs: the management of the market as a single space means that all the businesses operating in it can make costs savings. Other services that are provided in the wholesale markets such as the management of packaging, water purification or waste collection and recycling would be much more expensive if they were done on a smaller scale⁴⁵.

⁴³ Cruz Roche, I. (2010), "Los intermediarios mayoristas en la cadena de valor de alimentación fresca" [Wholesale intermediaries in the fresh food value chain], in *Revista Distribución y Consumo* [Distribution and Consumption Review], Mercasa, March-April 2010.

⁴⁴ See section II.3.5 below.

⁴⁵ The wholesalers operating in the Food Units have to pay fees or tariffs by way of rent. These are normally lower than the rents charged on the open property market. For example, in the case of fruit and vegetable stalls these fees represent a rental cost that varies between 16

- b. Increased power to attract demand: the ability to attract retail customers varies according to the volume, variety and number of wholesalers present in the market. This attraction transfers to nearby businesses, which can take advantage of the traffic generated by the activity in the market (for example cash & carry establishments located in the market that sell products that complement the ones sold in the Food Units).
- c. Network savings: the 23 Mercas that form part of the Mercasa Network of Mercas obtain reductions in costs and additional income through the common management of certain aspects (for example lower energy supply costs thanks to joint bargaining, advertising campaigns for the whole Network).

(102) To a much lesser extent producers and agricultural cooperatives are also present in the Mercas: most of the markets have an area dedicated to producers where they can make direct sales⁴⁶; the presence of agricultural cooperatives in the central markets is very limited⁴⁷. In 2011 total sales in the areas set aside in the Network of Mercas for producers reached 112,000 tonnes, which represents a market share of around 10% of total sales of vegetables and potatoes (which are the products to which first and foremost the agricultural producers are dedicated) in the Mercas in which they operate.

II.3.4 Demand in the Mercas

(103) According to the data in the most recent Mercasa Annual Report, in 2011 50% of all the fruit and vegetables consumed in Spain were traded in the Mercas in its Network, 53% of all the fish and shellfish and 20% of all the meat. The share is lower in the case of meat because the slaughterhouses and meat markets do not exist throughout the network.

(104) However, the above figures must be qualified. First of all because the

euros/m² in the case of Mercamadrid and 5.4 euros/m² in the case of Mercasalamanca, taking an average stall size of 60 m². In the fish markets the fees vary between 25 euros/m² in Mercamadrid and 6 euros/m² in Mercasalamanca. Apart from these costs, the wholesalers in the Food Units have to pay certain service charges. (*“Los intermediarios mayoristas en la cadena de valor de alimentación fresca”* [Wholesale intermediaries in the fresh food value chain], in *Revista Distribución y Consumo* [Distribution and Consumption Review], Mercasa, March-April 2010).

⁴⁶ Only six Mercas do not have such an area: Mercagalicia, Mercagranada, Mercairuña, Mercajerez, Mercamadrid and Mercasevilla (Report on *“la distribución agroalimentaria y transformaciones estratégicas en la cadena de valor”*, [agrifood distribution and strategic processing in the value chain], Ministry of Agriculture, Food and the Environment, 2008).

⁴⁷ Whilst the agricultural cooperatives make 39.3% of their sales directly to large retailers, they only sell 4.9% directly in the Mercas, a similar figure to the 3.3% that they sell to the end consumer.

importance of the products sold in the Mercas is slightly higher in the case of products for domestic consumption. In 2009⁴⁸ 65% of the fruit, vegetables and potatoes consumed in Spanish homes came from the Mercas (in comparison with 55% of the total sales in the Mercas that year, including domestic non domestic consumption), 57% of the fresh fish and shellfish (in comparison with 45% of the total), 47% of the frozen fish and shellfish (in comparison with 37% of the total) and 25% of the meat (in comparison with 21% of the total). And secondly, because these figures are calculated by reference to the total consumption of fresh products in Spain, including areas in which the sales of the Mercas in the Mercasa Network account for a much higher percentage of final consumption and areas in which there are no Mercas⁴⁹. As we have already indicated, some Mercas sell more than 70% of the fruit and vegetables consumed in their catchment area⁵⁰.

- (105) The demand in the Merca channel comes from three groups of buyers: traditional trade, large retail distributors and the hotel and restaurant channel⁵¹.
- (106) The commercial distribution sector (traditional trade and large retail distribution) obtains its supplies principally from the Mercas (40.5% of its supplies)⁵². However, the Merca is much more important for traditional trade than for the retail establishments involved in organised distribution. Within this latter category, the large supermarket and hypermarket chains principally use their own distribution platforms but the small regional supermarket chains normally go to the central market in their region.
- (107) The hotel and restaurant channel has a much less active presence in the Mercas. The table below sets out the split of purchases by sources of supply of the commercial distribution sector (large retail distribution and traditional distribution) and the hotel and restaurant channel. Table 2 shows that the commercial distribution sector depends more on perishable products from the Mercas (40.5% of its supplies of perishable products) than the hotel and restaurant channel (12% of its supplies).

⁴⁸ The data for 2011 are not available.

⁴⁹ Later we present the results of a study by Mercasa in 2009 which sets out the share of the 23 Mercas in the Network of Mercas compared with total consumption in their catchment area.

⁵⁰ The ability of the Mercas to attract customers, local or regional, is limited. Mercasa estimates that in the case of the larger Mercas, their catchment area could be supra-regional, extending for more than 300 kilometres. To be precise, Mercasa estimates that the catchment area of each Merca subdivides into two areas: the primary catchment area, which is the area that covers 85% of sales in the Merca, and the secondary catchment area, which covers the rest of the sales.

⁵¹ The hotel and restaurant channel includes independent restaurants, restaurant chains, bars and coffee shops, hotels and night spots.

⁵² Mercasa (2009).

Table 2. Sources of supply of perishable products for commercial distribution and the hotel and restaurant channel

	Commercial distribution	Hotel and restaurant channel
Producers at source	20.5%	9.8%
Wholesalers outside the Merca	30.9%	43.5%
Wholesalers in the Merca	40.5%	12.0%
Wholesale self-service (cash & carry)	0.7%	7.2%
Retailers	1.0%	9.1%
Distributors	4.9%	18.3%
Others	1.4%	0.3%
TOTAL	100%	100%

Source: Martín Cerdeño, V. J. (2011), "Estrategias de aprovisionamiento de la restauración comercial, colectiva y social. Posicionamiento de las Mercas en el abastecimiento de alimentos frescos para consumo fuera del hogar" [Supply strategies of the commercial, collective and social restaurant industry. Positioning of the Mercas in the supply of fresh food for consumption outside the home] in *Revista Distribución y Consumo* [Distribution and Consumption Review], Mercasa, March-April 2011.

- (108) According to different studies⁵³, as well as going to the Merca, restaurant establishments go to a further ten types of suppliers of perishable products, so that in the hotel and restaurant channel the main suppliers of perishable products are the wholesalers outside the Merca (43.5% of consumption), followed by organised distribution (18.3%) and Mercas (12%). These data seem to show that the wholesalers in the Mercas have had a lower adaptation to the needs of the hotel and restaurant channel⁵⁴.
- (109) According to these studies, the reasons given by operators in the hotel and restaurant channel for not buying in the Merca are the need to have staff available to go to the Merca (43%), travel costs (30.9%), unsuitable opening hours (21.8%), prices (15.5%) and entry costs (8.9%). For the commercial distribution sector these percentages are considerably reduced, so that only prices show a higher value in terms of the reason for not buying in the Mercas (21.9%). In this case, the main reason for not using the Merca is travel costs (24.9%), followed by satisfaction with their current supplier (24.3%).

⁵³ Study on "el canal horeca en España" [the hotel and restaurant channel in Spain] (FIAB and IC, 2007); "El mercado potencial de las Mercas" [The potential market of the Mercas] (Mercasa 2009).

⁵⁴ "Los intermediarios mayoristas en la cadena de valor de alimentación fresca" [Wholesale intermediaries in the fresh food value chain], in *Revista Distribución y Consumo* [Distribution and Consumption Review], Mercasa, March-April 2010.

II.3.5 The geographical catchment area of the Mercas

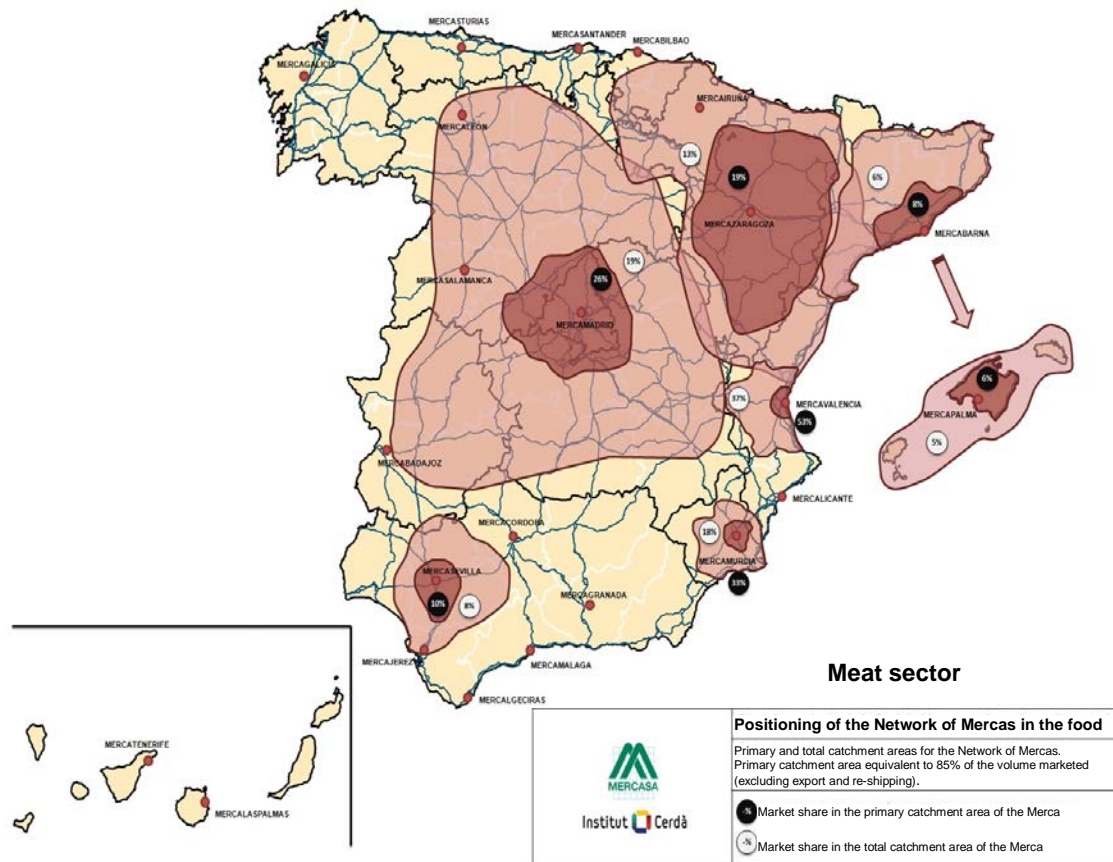
- (110) In case N/07032 TPH/BARGOSA it was indicated that the “*geographical catchment area for the sales made through the traditional channel, that is to say directly through the stalls of dealers in the central markets of the main Spanish cities (Mercamadrid, Mercabarna, Mercavalencia, etc.), could be less than national, being restricted to the catchment area of the Autonomous Community*”, to which, based on what we have mentioned earlier, we can add the fact that this catchment area may even be smaller than that of the Autonomous Community. In addition, in areas that are equidistant from two central markets, there is competitive interaction on homogenous competition conditions.
- (111) According to the study done by Mercasa entitled “*Los intermediarios mayoristas en la cadena de valor de alimentación fresca*” [*wholesale intermediaries in the fresh food value chain*], the ability of the Mercas to attract customers, local or regional, is limited. Mercasa estimates that in the case of the larger Mercas, their commercial catchment area may be supra-regional, extending more than 300 kilometres.
- (112) In its 2009 Annual Report, Mercasa estimates that the catchment area of each Merca is subdivided into two areas: the primary catchment area, which is the area that covers 85% of the sales of the Merca, and the secondary catchment area, which covers the rest of the sales. The diagrams from that Annual Report, which show Mercasa’s estimates of the ability to attract customers and the catchment area of each of its Mercas, are reproduced below.

Diagrams 9, 10 and 11. Geographical catchment area of the Mercasa Network of Mercas in the food chain according to Mercasa estimates (fruit and vegetables, fish and meat)

(See pages below)

Source: Mercasa, 2009 Annual Report and information supplied.





- (113) As it can be seen from the diagrams, the catchment area of each Merca could be local or regional, which would create geographical markets segmented by regions, unless there are areas of overlap between the catchment areas of the Mercas that are large enough to represent effective competitive pressure. However, not all the Mercas have an equal catchment area: in the case of the large Mercas, such as the ones in Madrid or Barcelona, the catchment area could extend beyond the region, extending as far as 300 kilometres.
- (114) As it has been indicated, the analysis of the catchment area of the Mercas reveals that distribution through the Mercas has a greater importance than is reflected by the weight of the wholesale markets channel in the consumption of perishable products.
- (115) Hence certain Mercas carry particular weight in their respective catchment areas. In the case of fruit and vegetables, Mercalaspalmas, Mercacórdoba, Mercasalamanca, Mercagranada, Mercabarna, Mercabilbao, Mercapalma and Mercasevilla have a market share of over 70% in their respective primary catchment areas⁵⁵, which means that more than 70% of the fresh fruit and vegetables consumed in their respective immediate catchment areas is sold in the Merca; in Mercairuña and Mercamadrid the percentage is over 60%, in Mercamálaga it is over 50%, and in Mercatenerife, Mercazaragoza, Mercamurcia and Mercabadajoz it is over 40%. In other words, 15 of the 23 Mercas have a market share for fruit and vegetables in their primary catchment area that accounts for more than 40% of total consumption. It is striking that the percentage market shares are still very high in the total catchment areas, which are much broader in certain cases: thus Mercamadrid sells 47% of the fruit and vegetables consumed in the centre of the country; Mercabarna 54% of the fruit and vegetables consumed in Cataluña; and Mercasevilla, Mercacórdoba, Mercagranada and Mercamálaga jointly sell more than 40% of the fruit and vegetables consumed in central and western Andalucía. We also have to add the archipelagos, where the shares of Mercapalma (62% in the Balearic Islands), Mercalaspalmas (74% in the islands of the province of Las Palmas) and Mercatenerife (49% in the islands of its province) are very significant.
- (116) In the case of fish, the importance of the Mercasa Mercas is more limited. In their respective primary catchment areas, only Mercazaragoza (60%) and Mercavalencia (54%) have market shares of over 50%, and a further five Mercas (Mercacórdoba, Mercagranada, Mercairuña, Mercabarna and Mercamálaga) have shares of over 40%, although it must be borne in mind that the catchment areas of the Mercas in Andalucía overlap considerably and Mercasa's real position may be stronger than the market shares of its Mercas reflect when considered individually. In the total catchment areas, only Mercavalencia has a share of more than 40%. (48% in the area of Levante and Albacete).

⁵⁵ In its study Mercasa distinguishes between the primary catchment area, which is the area closest to the Merca, where 85% of the volume sold in it is consumed, and the total catchment area, which is much broader.

(117) Only seven Mercas sell meat and only Mercavalencia has a significant position in its primary catchment area, with a market share of 53%.

(118) Mercasa considers that the position of each Merca in the market is explained by the potential demand in the Merca's catchment area, the existence of competitors and the size of the wholesalers located in the Merca. To be specific, the factors cited by Mercasa are⁵⁶:

- Proximity to potential demand in its catchment area.
- Competition in the surrounding area (existence of other wholesale markets and/or external operators).
- The presence of a critical mass of operators within the Merca, which is around 50 operators in the central markets and around 40 operators in the Complementary Activities Areas, although each Merca has its peculiar features.
- The size of the operators within the Merca, with a greater ability to generate synergies and economies of scale and opportunities, the larger and more diversified they are.

(119) Mercasa considers that the Network of Mercas presents an important level of competitiveness and positioning compared with other food sites⁵⁷ in neighbouring areas, given that:

- The Mercas belonging to the Network of Mercas present an equivalent level of competitiveness to other food sites in nearby areas.
- The level of occupation of the Mercas is in many cases higher than the average for other sites.
- The Network of Mercas is better located with respect to:
 - Major population centres
 - Municipal markets
 - Logistical and organised distribution platforms
 - Connectivity with infrastructure

⁵⁶ Mercasa, 2009 Annual Report.

⁵⁷ Mercasa, 2009 Annual Report.

III. DISTORTIONS OF COMPETITION IN THE ACTIVITY OF THE MERCAS

- (120) As shown in the previous section, although the Mercas have lost relative importance when compared to the past, even today they still channel a very significant part of the wholesale consumption at destination of perishable products in Spain: around 50% of the fruit and vegetables, more than 50% of the fish and shellfish and 20% of the meat consumed in Spain passes through the Mercas⁵⁸. These percentages may even underestimate the position of the Mercas, bearing in mind that there are areas of national territory not covered by the Network of Mercas: hence the Mercas are far more important in their immediate catchment areas and the Mercas are very important for the traditional retail trade.
- (121) In contrast to the significant transformation that the Spanish commercial system has gone through in recent years, the current configuration of the model of selling fresh products through central markets dates back to the 1960s. It seems advisable to check that the functioning of the Mercas and the current model for the public service provided by central markets are rational and justified in the current context and to analyse their impact on the development of competition.
- (122) In this context it must be borne in mind that certain actions of the Mercas, or of the businesses installed in the Mercas, have been in the past subject of scrutiny by the competition authorities, and that sometimes breaches of the competition legislation have been proved. A paradigm case is that of Mercasevilla (Case 525/01, Mercasevilla), in which the Competition Court found proof of breaches of the Competition Act and imposed sanctions on Mercasevilla. It also found other restrictions on competition which arose out of the Merca's operating regulations, although it was not considered to be appropriate to impose sanctions on these practices. A similar reasoning was applied by the Competition Court in Case R367/99 Mercabilbao.
- (123) An analysis should be done on the internal operating rules of the Mercas, approved by the municipal councils, in order to see how they affect the development of competition between the agents operating in the Merca (section III.1). It is also necessary to review the general approach to the activity of central markets and the justification for public intervention and for the existence of reserved activities (section III.2).
- (124) The following analysis is based on the operation of the Mercas that make up the Network of Mercas, given that they are the main Mercas and are the ones that have the most influence on wholesale distribution of fresh food products. Where possible, the analysis of the Network of Mercas has been completed with the analysis of other central markets, in particular Mercaolid.

⁵⁸ Data exclusively for the Mercasa Network of Mercas.

III.1 The internal operating regulations of the Mercas

- (125) The 23 Food Units that make up the Network of Mercas are governed by their own operating regulations or service provision regulations, which have to be approved by the municipal council, as proposed by the corresponding joint venture company in each case⁵⁹.
- (126) The regulations of the Mercas lay down the various actions that form part of the daily operation of the Food Units, following a given time sequence. There are therefore clauses relating to:
- Pre-sale actions.
 - The sale itself.
 - The method of payment.
 - Post-sale actions.
 - Other types of clauses.
- (127) From a competition perspective, these clauses are subject to be categorised according to the type of anti-competitive effect that they may generate. Conceptually, the behaviour of the Mercas may generate two types of anti-competitive effects in the market:
- a. It may reduce effective competition between operators, either by blocking access for sellers and buyers to the space of the Merca (section III.1.1), or by limiting the possibilities and incentives for effective competition between the agents operating in the Merca (section III.1.2).
 - b. It may take an unfair part of the profit generated from the agents, impacting negatively on the final consumers (section III.1.3).

III.1.1 Restrictions on access to the Merca

- (128) The Merca is a public space in which dealers set up in order to sell their products. The first type of problem stems from the fact that the number of stalls is limited, so that the way in which they are allocated between sellers or the requirements imposed on them in order to operate in the Mercas may distort competition in the market, encouraging anti-competitive coordination between the wholesalers already installed in the market or reducing the competitive pressure of the potential bid.

⁵⁹ According to the responses to the requests for information sent out by the CNC's Advocacy Division, Mercalgeciras and Mercamurcia do not have regulations covering their internal operating regime or service provision regulations. Mercalgeciras expressly states that "there are no internal operating regulations or service provision regulations approved by the company's governing bodies".

a) *The administrative authorisation and the requirements for accessing the Merca*

- (129) The regulations of all of the Mercas provide that in order to own a stall and operate in a Food Unit it is necessary to **obtain an administrative authorisation** or licence issued by the corresponding municipal council, at the proposal of the Merca or the joint venture company responsible for managing the service, following compliance with a series of requirements laid down in the regulations. Subsequently it is the joint venture company that assigns the specific stall to the permit holder. Only in one case (Mercairuña) the system for granting the licence or authorisation is the tender process run by the joint venture and decided by the municipal council for the adjudication of the stall..
- (130) Given that the Merca is a public space, access to it may determine the provision by the operators of the services of selling fresh products on a wholesale basis. As a result, this administrative authorisation must be treated as being subject to the provisions of Act 17/2009 of 23 November 2009 on free access to service activities and their exercise [*Ley sobre el libre acceso a las actividades de servicios y su ejercicio*] (hereinafter the Umbrella Act). As a regime for authorisation, its existence should be sanctioned and justified by a rule with the status of the law and must be non-discriminatory, necessary and proportionate (article 5 of the Umbrella Act). However, it does not appear that these conditions are satisfied. There are serious doubts about whether it is in the **public interest** to need an authorisation other than the ones that may be required, in general terms, in order to operate as a wholesaler of fresh products, or anything other than the actual decision by the joint venture company to award the stall. In any event, in that the purpose of the permit is to check the applicant's compliance with the requirements laid down in order to own a stall and not to give access to the stall per se – which is granted by the joint venture company via another route – the form of a **sworn affidavit** may be more proportionate than that of the authorisation (article 5 of the Umbrella Act) or, at least, it might be more appropriate for the joint venture company to be responsible for checking compliance with the requirements imposed on the dealer as part of the adjudication procedure for the stall.
- (131) Some of the requirements laid down in order to be an authorisation holder could also be contrary to the Umbrella Act:
- a. The **requirement to hold Spanish nationality**. This clause is present in the regulations of six Mercas (Mercabadajoz, Mercalaspalmas, Mercamálaga, Mercasantander, Mercavalencia and Mercazaragoza) and is expressly prohibited by articles 5.a) and 10.a) of the Umbrella Act.
 - b. The requirement to prove **sufficient financial standing** to trade in the Merca and to specify the **type of articles and the quantity of them that it is proposed to sell** in the market. These requirements for obtaining permits apply in practically all of the Mercas. In both cases it can be seen the risk that these economic requirements may be used to make the granting of the permit subject to “... *proof of the existence of an economic need or a demand in the market, to the evaluation of the possible or actual economic effects of the activity or*

to an assessment of whether the activity accords with the economic programming aims fixed by the competent authority or the selling of products or services of a particular type or provenance...”, which are expressly prohibited by article 10.e) of the Umbrella Act.

(132) Finally, it must be borne in mind that in a large majority of the Mercas applications for authorisations to occupy a stall must be sent to the joint venture company, which in turn sends them to the municipal council with a report or a proposed decision. To the extent that these reports or proposals may be influenced by the dealers in the Merca as a result of their status as shareholders in the joint venture company or because they participate in its consultative committees (see paragraphs 176 to 179 on Social Advice Committees), the provisions of article 10.f) of the Umbrella Act would be breached, as this would allow the operators already in place would be allowed to influence the decision about the entry of new competitors.

b) The duration of the authorisations

(133) The duration of the authorisationsto occupy the stall is very closely connected to the duration of the joint venture companies. Based on the content of the regulations and with the information provided by Mercasa, the 23 Food Units can be categorised as follows:

- In the thirteen Mercas that are managed by a publicly-owned joint venture company, it was provided that the joint venture company would run the market for a period of 50 years by application of article 111.1 of the Local Services Regulations. In those cases⁶⁰ - except the case of Mercajerez – the duration of the authorisationsto occupy a stall is linked to the duration of the joint venture company itself and is **50 years**⁶¹.
- In the case of the two Mercas without any enquiry into the takeover of the services by the municipal council⁶² and the four Mercas that have moved to a direct management model⁶³, which are also subject to the public law regime, the market is operated by the joint venture company indefinitely. In these cases the duration of the authorisationsto occupy a stall is **50 years**⁶⁴ or **indefinite**⁶⁵.

⁶⁰ Mercalicante, Mercairuña, Mercajerez, Mercalaspalmas, Mercamadrid, Mercamálaga, Mercamurcia, Mercapalma, Mercasalamanca, Mercasantander, Mercasevilla, Mercavalencia and Mercazaragoza.

⁶¹ Strictly speaking, the 50 years are not reached, as it is stipulated that the duration of the approval may not be longer than the duration of the joint venture company or, in particular, may not exceed six months or one year from the date of the reversion of the facilities of the Food Unit to the council.

⁶² Mercagalicia and Mercaleón.

⁶³ Mercabarna, Mercabilbao, Mercacórdoba and Mercagranada.

⁶⁴ See footnote 61.

⁶⁵ In the case of Mercabilbao the approvals are for an initial maximum of 10 years, automatically renewable for periods of five years, which converts them into indefinite permits. In Mercagranada, according to its regulations, approvals are granted for a term that does not

- In the four Mercas in which the service has not been taken over by the municipal council⁶⁶, Mercasa indicates that the management is subject to private law principles. According to the information supplied by Mercasa, stalls are allocated for 5-10 years in Mercalgeciras, 25 years in Mercatenerife, 50 years in Mercasturias and for an unlimited duration in Mercabadajoz.
- (134) Such long terms constitute a barrier to entry for new dealers and consolidate the position of the wholesalers already installed in the market. Furthermore, these terms breach the provisions of article 9.2 of the Umbrella Act, which establishes: *“where the number of authorisations to carry out a particular service activity is limited: [...] b) the authorisations granted shall be for a limited and proportionate term, taking account of the characteristics of the provision of the service, and shall not give rise to an automatic renewal procedure or confer any form of advantage on the outgoing provider or on persons particularly connected with it once the authorisations has expired”*.
- (135) This situation also unjustifiably prevents the entry of new operators to the market for long periods of time. Although the Services Directive allows the validity of the permits to be temporarily protected where they are limited in number, it also requires that their duration is proportionate, in the sense that they *“do not restrict or limit free competition beyond what is necessary to guarantee the recoupment of the investments and a fair return on the capital invested”*.
- (136) The Catalan Competition Authority adds in this respect that *“it appears obvious that a term of 50 years (the maximum permitted by the regulations of the markets of the municipal council in question) would not be proportionate, as the necessary investments (basically in movables) do not require such a long recoupment period. From a competition point of view, it is therefore recommended that the duration is the shortest possible period that enables competition “for the market” to occur as frequently as possible whilst enabling the investments made to be recouped. This procedure for granting the licence must respect the principles of publicity, objectivity, impartiality, transparency and competitiveness”*⁶⁷.
- (137) Furthermore, even though procedures for automatic renewal or extension of the term of the licences have not been detected in the regulations analysed, it does appear advisable to point out that the Services Directive does not allow such provisions.
- (138) The table below shows that some Mercas have a very small number of businesses. For example, there are less than ten businesses in the fruit and vegetable markets of Mercalgeciras and Mercabadajoz, in the fish and shellfish markets of Mercalaspalmas, Mercasalamanca, Mercairuña, Mercaleón, Mercajerez and Mercabadajoz and in the meat market of

restrict or limit free competition further than is necessary in order to guarantee that investments are recouped, but the regulations do not lay down any limit.

⁶⁶ Mercalgeciras, Mercabadajoz, Mercasturias and Mercatenerife.

⁶⁷ General observations in relation to a query raised by a town council in the province of Barcelona about municipal markets (CO 49/2012), Catalan Competition Authority.

Mercasevilla. In many other markets there are no more than 20 businesses in situ.

Table 3. Number of businesses installed in each Merca, by products.

<u>Merca</u>	<u>Fruit, vegetables and potatoes</u>	<u>Fish and shellfish</u>	<u>Meat</u>
Mercamadrid	148	162	24
Mercabarna	161	74	41
Mercazaragoza	36	17	190
Mercalaspalmas	196	5	-
Mercasevilla	75	42	1
Mercavalencia	58	27	14
Mercamálaga	59	24	-
Mercamurcia	59	11	10
Mercabilbao	39	24	-
Mercagranada	33	17	-
Mercapalma	38	-	10
Mercatenerife	42	-	-
Mercacórdoba	23	12	-
Mercalicante	31	-	-
Mercasalamanca	25	6	-
Mercairuña	13	8	-
Mercasantander	20	-	-
Mercaleón	11	7	-
Mercasturias	17	-	-
Mercajerez	13	1	-
Mercalgeciras	1	10	-
Mercagalicia	10	-	-
Mercabadajoz	4	4	-

Source: Mercasa (www.mercasa.es)

c) The system for allocation of stalls

(139) Once the corresponding authorisation has been obtained, the allocation of stalls to the operators by the manager of the Merca takes place. In general, a certain level of **imprecision and ambiguity in the determination of the criteria for this allocation has been noticed**. The vast majority of the regulations provide in generic terms that the system to be used will be the one that accords with the criterion of best public service; some of them are a little more specific, making reference to criteria of publicity and competitive tendering (Mercabadajoz, Mercagranada, Mercatenerife, Mercasevilla, Mercalaspalmas), whilst in

other cases the regulations simply state that the criteria will be “the criteria determined in the regulations” with no further specification (Mercasturias, Mercapalma). Finally we must highlight the case of Mercavalencia, whose regulations indicate that stalls will be allocated by drawing lots or by whatever procedure is deemed most suitable, a system which in no way guarantees the existence of a competitive process by which to award the stalls. Very few regulations are more explicit in the sense of making reference to specific systems that guarantee competitiveness.

- (140) Hence the company managing the Merca is given a **broad discretion in terms of the selection and designation of the businesses that are awarded stalls**. This allows them to interfere in the free play of supply and demand, making the grant of the authorisation subject to economic criteria, for example weighing-up their suitability by reference to the supply of products in the geographical area or to economic programming aims. It must be remembered that the use of these criteria is expressly prohibited by article 10.e) of the Umbrella Act. This discretion causes a distortion to the free play of supply and demand that in some cases may be justified by some higher interest. However, in that case, the principles of necessity, proportionality and non-discrimination must be satisfied.
- (141) This situation appears to stem from the original wording of Royal Decree 1882/1978, article 15.1 of which provided that: *“When it comes to the allocation of stalls in the wholesale markets, without prejudice to the provisions of article 12, out of the systems authorised by the current legislation the one that best fits with the criterion of best public service and gives the greatest guarantee that the successful candidate will carry out its commercial activity on the terms set out in this Royal Decree shall be used”*. This wording was amended in 2010, precisely in order to bring Royal Decree 1882/1978 into line with the Umbrella Act and to introduce competition into the allocation procedures for allocating stalls, with the new wording reading as follows: *“When it comes to the allocation of stalls in the wholesale markets, without prejudice to the provisions of article 12, out of the systems authorised by the current legislation the one that best guarantees supply equilibrium, consumer protection and the protection of public health shall be used. The allocation procedure must take account of the principles of publicity, objectivity, impartiality, transparency and competitiveness.”* However, despite the fact that the amendment was introduced in February 2010 and came into force in September of the same year, it has not given rise to any amendment to the regulations of the Mercas, which continue to refer to the previous legislation.
- (142) The fact that the methods for selecting the dealers are discretionary could help to explain the tendency that exists whereby **stalls that become vacant over time are taken over by dealers that are already installed in the Merca**.
- (143) First of all, relatively few stalls become free in the markets, which is consistent with what it is said in subsection b) above about lengthy durations. Thus between 2000 and 2012 there were 1,318 changes of ownership in the 23 Mercas as a whole (see table 4). The majority (908 changes, 69%) correspond to transfers of stalls between individuals. The fact that there are private transfers between individuals means that the

transfers happen totally beyond the control of the Merca, as the transfers depend solely on the wishes of the individuals to assign their stalls. In fact what it has happened, for example in Mercamadrid, the largest Merca in Spain, is that no transfer took place between 2000 and 2012, whilst in Mercalaspalmas there were 213 private assignments in that same period. Only 410 changes (31%) were assignments by the Mercas, which represents an average of 17.8 changes per Merca over the 13 years, that is to say, on average, only 1.4 stalls per year per Merca.

Table 4. Data on stalls in the Mercas (2000-2012)

MERCA	No. of changes of ownership	Private transfers		Assignments by the Merca	
		No.	%	No.	%
Mercabadajoz	15	0	0%	15	100%
Mercabarna	174	174	100%	0	0%
Mercabilbao	42	39	93%	3	7%
Mercacórdoba	71	49	69%	22	31%
Mercagalicia	9	0	0%	9	100%
Mercagranada	143	62	43%	81	57%
Mercairuña	10	8	80%	2	20%
Mercajerez	15	3	20%	12	80%
Mercalaspalmas	216	215	100%	1	0%
Mercaleón	11	4	36%	7	64%
Mercalgeciras	33	0	0%	33	100%
Mercalicante	36	23	64%	13	36%
Mercamadrid	4	0	0%	4	100%
Mercamálaga	48	29	60%	19	40%
Mercamurcia	72	42	58%	30	42%
Mercapalma	0	0	-	0	-
Mercasalmanca	35	33	94%	2	6%
Mercasantander	50	0	0%	50	100%
Mercasevilla	73	65	89%	8	11%
Mercasturias	16	0	0%	16	100%
Mercatenerife	85	3	4%	82	96%
Mercavalencia	111	110	99%	1	1%
Mercazaragoza	49	49	100%	0	0%
TOTAL	1,318	908	69%	410	31%

Source: prepared in-house from information supplied by Mercasa.

(144) Secondly, the occupation of the stalls released does not always take place via a competitive procedure. Table 5 shows the way in which the 410 stalls allocated by the Mercas were assigned. Five Mercas do not use an allocation procedure. Instead they assign the stalls by means of leases, so that a large number of the assignments have been by way of leases

(175, 43% of allocations) and there are various direct allocations (18), without any guarantee of a competitive process in the selection of the successful candidates⁶⁸.

Table 5. Systems for allocating stalls released by the Mercas.

MERCA	No.	Form of assignment	MERCA	No.	Form of assignment
Mercabadajoz	15	Lease	Mercamálaga	19	18 direct allocation 1 public allocation
Mercabarna	0	-	Mercamurcia	30	18 allocation 12 negotiated
Mercabilbao	3	Allocation	Mercapalma	0	-
Mercacórdoba	22	Allocation	Mercasalamanca	2	allocation
Mercagalicia	9	Lease	Mercasantander	50	Allocation
Mercagranada	81	Allocation	Mercasevilla	8	Allocation
Mercairuña	2	Allocation	Mercasturias	16	Lease
Mercajerez	12	Allocation	Mercatenerife	82	Lease
Mercalaspalmas	1	Public tender	Mercavalencia	1	Allocation
Mercaleón	7	Allocation	Mercazaragoza	0	-
Mercalgeciras	33	Lease			
Mercalicante	13	Allocation			
Mercamadrid	4	Allocation			

Source: prepared in-house from information supplied by Mercasa.

(145) The change made to Royal Decree 1882/1978 in 2010 does not appear to have improved the scenario described in the two preceding paragraphs. Indeed, since 13 September 2010 (when the changes made in Royal Decree 1882/2010 came into force) there have been 182 changes of ownership of stalls in the Mercas belonging to the Mercasa Network of Mercas, of which 136 (75%) have been between private operators and 46 have been assignments by the Merca (25%). However, there has been a change in the way in which the Merca has carried out the assignments, so that leases and direct assignments have become the predominant forms used, accounting for 63% of the assignments (in the previous period they accounted for 46%). Tables 6 and 7 below compare the figures for changes of ownership of stalls and allocation systems before and after the change to the regulations:

⁶⁸ The way in which the rest of the allocations were carried out has not been exhaustively checked.

Table 6. Data on access to stalls in the Mercas. Comparison by periods

PERIOD	No. of changes of ownership	Private transfers		Assignments by the Merca	
		No.	%	No.	%
2000 - Sept 2010	1,136	775	68%	364	32%
Oct 2010 - 2012	182	136	75%	46	25%
TOTAL	1,318	911	69%	410	31%

Table 7. Systems for allocating stalls released by the Mercas. Comparison by periods

PERIOD	Assignments by the Merca	Leases		Direct allocations		Other allocations	
		No.	%	No.	%	No.	%
2000 - Sept 2010	364	152	42%	12	3%	200	55%
Oct 2010 - 2012	46	23	50%	6	13%	17	37%
TOTAL	410	175	43%	18	4%	217	53%

(146) Thirdly, it has been noted that even in the few cases which do provide for a competitive allocation system, some of the tender conditions contain allocation requirements that prevent new operators from entering the central supply markets, which would also explain the abovementioned tendency for free stalls to be occupied by dealers already installed in the Merca.

(147) Thus in the case of Mercabilbao, the tender conditions for the tender for authorisations for stalls in the fish market make it a requirement to be able to take part in the tender that the applicants *“are natural or legal persons, dealers in MERCABILBAO [...]”*. Consequently the allocation criteria state that a circumstance to be considered when deciding to whom to award the tender will be that the applicant *“at the time when the tender process is taking place and whilst the tender is performed, is the holder of a stall in the Bilbao Food Unit, especially for activities analogous to the ones referred to in these tender conditions”*. In other tender conditions for stalls in the same Merca the allocation criterion laid down is that the applicant must be a dealer in fish in any of the wholesale markets in the European Union, awarding one point for each year as a dealer up to a maximum of 20 points, out of a total of 100 points.

(148) For its part Mercacórdoba stipulates in its tender conditions – in this case in the fruit and vegetable market – that the allocation of the stalls will be governed, amongst other things, by the fact that *“the wholesalers are owners of adjacent stalls to the ones that are the subject of this tender”* and the *“use during the last two years of modules for storage complementary to the sale.”*

(149) Mercabarna also stipulates, in the case of a stall in the central fruit and vegetable market, that natural and legal persons may take part in the tender process if they are: *“fruit and vegetable wholesalers, cooperatives, unions of cooperatives or their commercial services, associations of*

producers, groups of retailers that use the market for the distribution of products amongst their members, central, regional or local government authorities, directly or through bodies authorised for market regulation purposes”.

(150) In a similar way to what it happens with the approval of the internal operating regulations of the Mercas, it is the Merca that proposes the allocation procedure to the municipal council by reference to certain bases or conditions that are also proposed by the Merca⁶⁹.

(151) The preferential rights and advantages that the tender conditions give to the former licence holders or persons connected with them after the expiry of the licence are also contrary to the Services Directive and Act 17/2009. The former licence holders may not have any kind of “acquired rights” because *“if the former licence holders were recognised as having any kind of preference or advantage they would be able to continue to provide their services and to occupy one of the places – which are limited – without having to compete with the rest of the potential entrants. This would be a breach of the principle of free competition and the principle of equality of treatment between all of the possible competitors, which constitutes a serious restriction of competition”*⁷⁰.

d) Restrictions on transfers of stalls between wholesalers

(152) Practically all of the regulations analysed give the Merca a right of first refusal and retraction or a pre-emption right when a transfer of ownership of a stall occurs. In all of these cases there is also a provision that if the Merca does not exercise that right it will be entitled to a percentage of the price for assigning the stall, which varies between 20% and 40%⁷¹.

(153) Through this figure the Merca could make the price of the stalls more expensive, making the entry of new competitors difficult. There is also an incentive for the Merca to act in this way, given that by increasing the price of a particular stall the valuation of the rest of the stalls established in the Merca would also be artificially increased. Furthermore, given that the regulations of the Mercas do not contain criteria to regulate the exercise of the right of first refusal, this right could be used by the Merca to block the entry of competitors that it does not want because of economic programming criteria.

e) Duty of the wholesalers to market certain quantities:

(154) The requirement to market a minimum tonnage is a very generalised clause in the regulations of all of the Mercas analysed. In 17 Mercas a failure to sell the minimum quantities laid down leads to the termination of

⁶⁹ That is seen in the cases of Mercabilbao and Mercacórdoba.

⁷⁰ General observations in relation to a query raised by a town council in the province of Barcelona about municipal markets (CO 49/2012), Catalan Competition Authority.

⁷¹ In the case of Mercaolid, 15%.

the authorisation to own a stall or the loss of the status of seller-user in the market.

- (155) This obligation finds support in the original version of Royal Decree 1882/1978 of 26 July 1978, which has now been repealed. Article 14 provided that the regulations of each wholesale market would determine the minimum tonnage to be sold on each stall by reference to its characteristics and the type of product, as well as the review of those tonnages. However, after the adaptation of the Royal Decree to the Umbrella Act, implemented by Royal Decree 200/2010 of 26 February 2010, the possibility of determining minimum sales per stall has disappeared from the state regulations, given that this is a requirement of an economic nature which makes the provision and continuation of the service subject to compliance with certain economic objectives determined by the company managing the Merca, and as such is contrary to the provisions of article 10 of the Umbrella Act.
- (156) Moreover, only in one case (Mercairuña) the regulations impose a duty on the wholesalers not to exceed a maximum tonnage sold (article 53), a provision which by analogy with the preceding one, constitutes an unjustified requirement that is contrary to the provisions of article 10 of the Umbrella Act.
- (157) Along the same lines, the Catalan Competition Authority has also assessed⁷² a clause in regulations that fixed a particular number of stalls by category of product or by the establishment of a commercial mix defined in percentages of the total sales area, taking the view that *“provisions of this kind are not only contrary to the Services Directive but also amount to unjustified restrictions on competition that prevent or hinder access to the market by interested operators. In fact, provided that adequate conditions are present, the determination of the supply and demand, and the results of their confrontation, must be resolved through market mechanisms, as a consequence of the decisions of the economic agents, and must not be influenced by the economic programming of the public authorities”*. It also adds that *“In general, the incumbent operators have an interest in the application of protectionist measures, which have negative effects on competition (they prevent the entry of operators that want to enter and there is therefore a reduction in the competitive pressure to which the operators that are already established are subject) and, in consequence, they also provoke negative effects on consumers: less freedom of choice, higher prices or lower quality products”*.

III.1.2 Clauses that may facilitate anti-competitive coordination between sellers or buyers in the Merca

- (158) We have identified a second group of clauses which may have the effect of reducing the level of effective competition between the agents operating in the Merca and of encouraging the appearance of coordinated behaviour

⁷² “General observations in relation to a query raised by a town council in the province of Barcelona about municipal markets (CO 49/2012), Catalan Competition Authority.

between them by facilitating the monitoring of their commercial strategies and limiting the possibilities for differentiation.

a) Obligation to channel payments through the Merca

- (159) The regulations of one Merca (Mercasevilla) lay down an obligation to channel collections and payments through the company managing the Merca. It is not possible to deduce from the internal operating regulations of Mercasevilla whether this obligation is intended to apply to all kinds of products or whether it only applies to retailers buying fish (in article 33 of the regulations there is a general provision to this effect, despite the fact that article 30 of the same regulations, when setting out the obligations of the retailers, only and specifically refers to the obligations of fish retailers).
- (160) The obligation to channel collections and payments through the company managing the Merca may encourage control by the dealers over the prices actually applied by each of them if that information is disseminated on an individual basis between the businesses. To this end, it is essential to ensure that the operators in the Merca do not have access to this information and that they do not participate in bodies with access to it or with the ability to influence decision-making about the management of collections and payments.
- (161) Furthermore, this clause means that the Merca attributes the mandatory and exclusive provision of a service to the dealers, which makes the costs of operating in the market more expensive and it is likely that this will have negative repercussions for the final consumers.
- (162) For all of these reasons, it does not appear that there is any justification or proportionality in the fixing of this type of obligation by the Merca.

b) Duty to provide information to the joint venture company

- (163) This is a clause that is contained in fifteen of the Mercas analysed. The clause provides that the wholesalers must provide both the management of the Merca and the competent authorities with information in relation to the entry and exit of goods, terms of the transactions undertaken and, in general, all aspects relating to supply that they are asked for. Over and above this generalised obligation, in the case of three Mercas, it has been found that as well as mentioning these aspects, the regulations specifically include certain information about prices amongst the information that must be provided to the management of the Merca, in particular:
- Maximum, minimum and dominant prices (Mercagranada)
 - Minimum and maximum prices achieved by the articles sold throughout the day, although it is emphasised that these data will be obtained for statistical purposes (Mercapalma)
 - Minimum, maximum and most frequent prices (Mercasevilla) and in addition it is established that the Merca must check the sale prices obtained for each of the products.

- (164) In addition, the majority of the regulations analysed contain a generic obligation on the buyers and on the users of the market, in general, to provide all the information that they are asked for by the Merca or the competent bodies. Only in some cases (for example Mercasturias and Mercapalma) these provisions are accompanied by a clarification that such information will only be compiled and used for statistical purposes.
- (165) Obligations to provide information to the company managing the Merca, and in particular information about prices, may result in risks for competition as a result of the use made of that information. The dissemination of individualised information may allow the businesses to control things between themselves, removing the incentive for aggressive commercial strategies, low prices and discounts. Nevertheless, to the extent that this information is used for statistical purposes, is disseminated on an aggregated or anonymous basis, is not disseminated immediately or is disseminated on an open basis, the risk of coordination will be lower. It may also promote objectives of efficiency by encouraging a better adjustment between supply and demand. Other factors, such as the frequency of the information, may also be taken into account in this analysis, depending on the particular circumstances of each case⁷³.
- (166) Likewise, it is important to ensure that the dealers do not have access to the information that all of the sellers provide through internal committees or bodies involved in the management, monitoring or control of the activity of the Merca.
- (167) In this sense the powers of the Social Advisory Committees⁷⁴ are of concern from the competition perspective, to the extent that, on the one hand, the dealers and the buyers in the Merca have access to commercially sensitive information on other competitors through these Committees (prices, quantities sold by the dealers, applications for expansion or improvement of stalls) and potential entrants (applicants for permits) and may influence management decisions or the proposals that the Merca sends to the municipal councils, including the operating regulations. This may affect, for example, the possibilities for other operators to access the market.

c) Obligation to pay cash

- (168) This clause appears in the internal regulations of ten Mercas (Mercalicante, Mercabadajoz, Mercagalicia, Mercagranada, Mercairuña, Mercavalencia, Mercazaragoza, Mercalaspalmas, Mercamálaga and Mercasantander).
- (169) The determination of the payment method limits the possibilities for differentiation between dealers, as far as it ensures the homogenous

⁷³ Guidelines of the European Commission on horizontal cooperation agreements.

⁷⁴ As we have indicated, these Committees adopted different names depending on the Mercas (see section II.1.3): Consultative Committee, Social Information and Advisory Committee, Users' Committee, Users' and Markets' Committee, Technical Consultative Committee or Operating and Advisory Committee.

application of a term of trading that eliminates the possibilities for commercial differentiation in relation to a competitive variable such as payment by credit, generating the same effects as would be produced if it were a practice adopted by the operators⁷⁵. In the past the competition authorities have imposed sanctions on behaviour of this kind where it has been agreed between private operators, due to the fact that it constitutes a breach of article 1 of the Competition Act⁷⁶.

- (170) The payment method is an aspect that must be autonomously defined by each seller bilaterally with the buyer and it must be the result of a freely negotiated agreement reached between the parties. This clause therefore removes an important competitive constraint between dealers, for example the possibility that some of them might propose to finance the purchases made in the Mercas by offering credit terms, bearing in mind that we are usually talking about large volume purchases, which could be a decisive factor for the retailers using the Merca when it comes to deciding which wholesaler to go to.
- (171) In fact, several regulations analysed do not contemplate this provision and others (Mercapalma) add clauses that provide that payment for the goods will be made in accordance with the terms agreed with the seller. Three out of the ten regulations (Mercasantander, Mercamálaga and Mercagalicía) that contain this provision add, at least, to the obligation to pay cash the clause “except for deferred payment agreed with the seller”, which introduces the possibility that the seller is free to negotiate a deferred payment with the buyer.

d) Prohibition on sales between wholesalers in the market

- (172) This is a clause that applies in thirteen Mercas (Mercalicante, Mercasturias, Mercabadajoz, Mercabilbao, Mercagranada, Mercajerez, Mercalaspalmas, Mercapalma, Mercasalamanca, Mercasantander, Mercasevilla, Mercatenerife and Mercazaragoza). In the case of Mercatenerife, the regulations expressly state that the reason for the prohibition is to prevent such sales from “*possibly resulting in the appearance of a new intermediate step in the distribution process*”.
- (173) Certainly, the prohibition on transactions between wholesalers may reduce the likelihood of restrictions on competition between the dealers in the Merca, by limiting the mechanisms for sharing out customers or sources of supply between wholesalers. But this is not always justified and it may sometimes be an excessive measure for these objectives.

⁷⁵ CNC Resolutions of 24/09/2009 (Case S/0046/08 Pan de Asturias, Legal Ground 6), 28/09/2009 (Case S/0055/08, INPROVO, Legal Ground 3) and 14/10/2009 (Case S/0053/08 FIAB y Asociados, Legal Ground 5).

⁷⁶ In its Resolution of 17 May 2010, case S/0106/08, the CNC confirmed the restrictive nature of the conduct of the Union of Ironmongers of Spain [*Unión de Almacenistas de Hierros de España*], which consisted of distributing amongst its members draft letters about alternative payment methods during holiday periods (see Legal Ground 9).

- (174) Transactions between wholesalers in the Merca may make it easier for the wholesalers to adapt to increases or reductions in demand, and in fact the regulations provide for the possibility that such transactions may occasionally take place between wholesalers in order to complete or conclude lots or stocks or due to circumstances authorised by the Merca, always with prior authorisation from the company managing the Merca. Similarly the prior authorisation of the Merca may make trading between wholesalers less flexible.
- (175) Likewise the danger supposed to be avoided, namely that sales between wholesalers lead to the appearance of new intermediate steps within the distribution process, is not always an undesirable situation. It can even be efficient, if it encourages a specialisation of the wholesalers themselves. And, inasmuch as these operators do not have market power, if the creation of a second step is not efficient, the market itself could discipline it.

e) Intervention of the Merca as seller in the market

- (176) All the regulations analysed include central, regional and local government bodies amongst the operators who may sell in the Food Unit, along with the joint venture company itself.
- (177) According to some of the regulations (Mercagranada and Mercazaragoza), the justification for such provisions is the attainment of the objectives of regulating prices for producers and consumers. The regulations of Mercasturias and Mercaleón are more vague, as they point to the existence of public policy grounds as the reason for the joint venture company putting products up for sale, without giving more details.
- (178) In addition, the regulations of Mercabilbao, Mercacórdoba, Mercajerez, Mercamadrid and Mercasevilla provide that the Merca will make commercial spaces or free stalls available to the public authorities at their request. In particular, in the case of Mercasevilla the regulations state that the joint venture company reserves the right for the competent public bodies, the municipal council or the joint venture company itself to use the premises, quarters or sales outlets in order to meet the objectives of regulating prices for producers and consumers.
- (179) Furthermore, in five cases (Mercasturias, Mercacórdoba, Mercagalicia, Mercajerez and Mercaleón) the company managing the market is given the status of buyer-user in the Merca.
- (180) Finally, in the particular case of Mercasturias it has been found a provision that clearly goes beyond the functions of the Merca, in that the regulations expressly state that the management of the company managing the market may adopt certain exceptional measures on a temporary basis in extraordinary situations, including restrictions on competition (article 3). This clause represents a clear breach of the Spanish Constitution, which imposes the rule of law, understood in the broad sense as meaning all the rules and regulations that make up the legal system. This includes the Competition Act, whose sole purpose is to protect effective competition. Neither the internal operating regulations of a

Merca nor the body that has the power to approve them are authorised to make exceptions to the application of Act 15/2007.

- (181) The intervention of the joint venture company as buyer or seller of products in the market could have been justified in the past in light of the risk of food shortages and for reasons of security of supply. However, it cannot be justified at the present time, particularly when such intervention is justified on vague public interest grounds, which may protect price or sales objectives, or where it is justified by this type of objective. Such action represents an interference in the free play of supply and demand to the detriment of consumers.
- (182) Regarding the recognition of the Merca itself or of the public authorities as seller or buyer, the Spanish Supreme Court has already ruled on the illegality of such a provision in its judgment of 28 September 1993, which confirms that articles 12.b) and 58 of the operating regulations of the wholesale fish market of Mercavalencia S.A. were voidable, as the High Court of Justice of Valencia had already ruled on 21 May 1990. The appeal filed by the Association of Fish Wholesalers of Valencia [*Asociación de Empresarios Mayoristas de Pescados de Valencia*] was brought as a result of resolutions of the Valencia municipal council which approved the operating regulations of the joint venture company responsible for managing the Merca.
- (183) These articles included the bodies of the state administration, state entities and municipal bodies as possible owners of stalls in the wholesale market, generating *“a collapse of the adopted principle of freedom of tendering or competition, with discriminatory consequences and to the detriment of the other sellers, by making it possible for the public administrations, with their status as a “more powerful person” and with the privileges inherent in their position, to act as simple sellers; as the basic regulations and the operating regulations decide the mechanisms for public intervention of certain entities in the capacity of sellers [amongst them, the joint venture company itself] in order to achieve the objectives of regulating prices, guaranteeing supplies for the town and its catchment area or establishing quality and competition in the market; a situation of intervention which due to its very purpose can only arise for the reasons referred to and on an exceptional basis”*.
- (184) According to this judgment therefore, commercial spaces or free stalls in the markets must not be allowed to be made available to the central, regional and local government bodies that ask for them.

f) Restrictions on export

- (185) In the case of seven Mercas (Merca Asturias, Merca Galicia, Merca Córdoba, Merca Granada, Merca Jerez, Merca León and Merca Palma) the regulations provide that exporters have the right to visit the Merca as buyers, provided that they do so in order to sell the products that they buy in the Merca outside the town in which the Merca is located.
- (186) This is a measure that artificially protects both sellers and the local buyers in the Merca, given that on the one hand it prevents a particular group of

buyers (exporters) from acting as wholesalers, reselling the products bought in the Merca to other buyers in the town in which the Merca is located, and on the other hand prevents them from acting as retailers in that town. In addition, the territorial restrictions on reselling that are applied to export buyers would be contrary to article 11.1.a) of the Umbrella Act, which provides that *“the rules and regulations that govern access to a service activity or the carrying out of the activity must not make such access or exercise subject to: a) Quantitative or territorial restrictions and, specifically, limits fixed by reference to the population or to a minimum distance between suppliers. Economic aims, such as the aim of guaranteeing the economic viability of certain suppliers, may not be invoked as justification for quantitative or territorial restrictions.”*

III.1.3 Clauses that may mean that the company managing the Merca is taking advantage of its position vis-à-vis the operators

- (187) The third group of clauses identified may mean that the Merca is taking advantage of its position, in order to restrict the freedom of the wholesalers and retailers to contract certain services, by making obligatory for them to contract with the Merca itself or with a third party.
- (188) In these cases it is foreseeable that there may be a detriment to the final consumers, due to the fact that either the sellers or the buyers in the Merca will pass on the additional costs, directly increasing their prices or indirectly reducing quality or providing fewer sales services.
- (189) Only in exceptional circumstances it may be justified to impose an obligation to contract these services with the Merca itself, in particular where it is proved that the centralised provision of these services by the Merca represents a significant potential saving for each of the users compared with the provision of the service by the market in competition (for example the presence of economies of scale), that the centralised provision of the service by the Merca is not viable without the demand of each and every one of the operators in the Merca, and that in the absence of the obligation to acquire the service from the Merca, a sufficient number of operators would acquire it outside the Merca and, as a result, make the centralised provision of the service unviable. In addition, there must be proof that the centralisation does not distort competition in the market for the service being centralised.

a) Unloading and transport of the goods

- (190) Seven of the analysed regulations deal with the unloading and transport of the goods. In five of these cases (Merca Asturias, Merca Córdoba, Merca Galicia, Merca Jerez and Merca Alid) the regulations provide that the unloading of the goods from the vehicles of the entrants and their transport to the warehouses must be done by staff or entities that are duly authorised by the joint venture company, which seems to imply that this cannot be done by the wholesalers themselves. However, in the other two cases (Merca Palma and Merca Sevilla), the regulations provide for exactly the opposite, that is to say, they specifically provide that in both Food

Units this operation will be done by staff who do not work for the joint venture company, meaning therefore that this task is the responsibility of the wholesalers. The case of Mercamadrid is also worth highlighting. The articles of its regulations dealing with loading and unloading were annulled in 1991, except the case of the banana market, in which it is provided that the unloading will be done by the persons or entities designated by the group of users of the section and that the buyers may handle the loading operations themselves, as with in the five cases already mentioned.

b) Boning and preparation of fish for leather production

- (191) The operating regulations of one Merca (article 70 of the regulations of Mercasevilla) establish that once the leather-production fish has been unloaded and before it is transferred to the sales hall, leather-production fish weighing more than 3 kilograms must be boned and have the head and tail cut off in the preparation hall of the market by Merca staff. This type of obligation is not seen in the regulations of any other Merca.

c) Placement of the goods at the point of sale

- (192) This clause is only included in the operating regulations of one Merca (Mercasevilla). As we have mentioned, the regulations of some of the Mercas do include the obligation that staff of the joint venture company must unload the goods and transport them to the halls, but in no event is there an obligation regarding the placement of the goods at the point of sale.

d) Obligation on the buyers to reweigh the goods

- (193) The internal regulations of Mercasevilla impose an obligation on the buyers in the fish market to weigh the goods in the Merca's facilities (article 78). This means that the retailer buying the goods must transport them to the corresponding weighing machine so that they can be immediately weighed, in addition to obtaining the corresponding sales slip. However, the regulations (article 36) do not make the same provision in the case of the fruit and vegetable market; for this market a less restrictive rule is laid down which indicates that the reweighing of the goods is optional.
- (194) This obligation is not contained however in the fruit and vegetable market, which lays down a less restrictive rule which indicates that the re-weighing of the goods is optional. It also contrasts with the regulations of the rest of the Mercas, in which either there is no mention of re-weighing by the buyers, or there is a provision that this is optional but not obligatory (amongst others, Mercasturias, Mercajerez, Mercalaspalmas, Mercapalma, Mercasevilla and Mercagranada).

e) Involvement of the joint venture company in the payment by the retailer to the wholesaler

- (195) As indicated, the regulations of Mercasevilla impose an obligation to channel collections and payments through the company managing the Merca. The Merca receives a commission for this broking service, which represents an added cost for the businesses operating in the Merca.
- (196) As indicated, it is not totally clear in the case of these regulations whether the provision is intended to cover all types of products or whether it only applies to the retailers who buy fish (in article 33 the obligation is contemplated in general terms, despite the fact that article 30 of the same regulations, when laying down the obligations applicable to retailers, refers only and specifically to fish retailers).
- (197) In addition, the regulations of Mercasevilla provide that the seller has a period of 24 hours in which to make payment, although the Merca has a period of 48 hours in which to make the corresponding payment to the seller, following the deduction of the commission corresponding to the handling of the sale in question. The time between the two events means that the Merca obtains a financial benefit that does not appear to be justified.

f) Payment of a bond for the use of containers

- (198) The regulations of the Mercas generally provide in general terms that sellers must deposit empty containers in the area established for that purpose or in the corresponding hall.
- (199) However, the regulations of Mercasevilla indicate that the purpose of this facility is the storage of metal containers or other recyclables which belong to the senders of the fish or the wholesalers and which are used by retail buyers to remove the goods bought in the market. The Merca may manage this directly or sub-contract it.
- (200) However, in this case the regulations require the retailers to provide a bond before using these containers. This is highly unusual as the regulations of no other Merca contemplate this additional obligation to provide a bond for the use of the containers.

g) Storage facilities and refrigerated chambers for goods bought but not removed

- (201) The regulations of twelve Mercas establish an obligation for retailers to use storage facilities or refrigerated chambers for goods bought but not removed.
- (202) In five of these cases (Mercacórdoba, Mercalaspalmas, Mercatenerife, Mercazaragoza and Mercamadrid) the regulations provide expressly that goods bought and not removed may be deposited in the dealers' own individual chambers, aside from the possibility of using the Merca's official chambers.
- (203) However, in the remaining seven cases (Mercaurias, Mercagranada, Mercajerez, Mercamálaga, Mercapalma, Mercasalamanca and Mercasevilla) the regulations provide that goods bought must be removed within a certain period of time or must be deposited in the storage facilities

or refrigerated chambers of the Food Unit. In other words, dealers' possibility to use their own chambers is not contemplated, meaning that the buyers must pay the corresponding fee.

- (204) Although this provision could be justified, amongst other reasons due to the lack of space, it is a restriction on competition based on the imposition of a service that the dealers could provide themselves. As it has already said, this means that if such justification exists it must be based on the principles of necessity, proportionality and non-discrimination.
- (205) Furthermore, the existence of various refrigerated chambers in the Merca means that there may be various providers of this service, a possibility that is expressly recognised in some cases (Mercagranada, Mercajerez, Mercamadrid or Mercamálaga, amongst others).
- (206) In contrast, two Mercas (Mercapalma and Mercacórdoba) provide for the existence of a single refrigerated chamber and a single provider of the service; and in a third case (Mercasevilla) it is expressly established that this service may be provided directly or may be sub-contracted, which will attract the corresponding fee.

h) Removal and storage of unsold stock in the refrigerated chamber

- (207) In terms of marketing fish, the operating regulations of one of the Mercas (Mercasevilla) provide that the surplus stock from each day's sale will be removed from the sales outlets by staff of the joint venture company immediately after the sale has ended and will be transported to the refrigerated chambers.
- (208) They also provide that if the wholesaler wishes to remove the stock from the market it may do so, provided that the stock is destined to markets outside the municipal district of Sevilla, which means that the wholesalers are forced to perform this service by themselves, because if they remove the stock to store it themselves they cannot put it up for sale again in the Food Unit. The regulations also indicate that the preparation and handling of the surplus fish stored in the chambers will be for the wholesaler's account.
- (209) Similarly, it does not make sense that according to the clause referred to in the previous paragraph, retailers can deposit goods that they have bought but not taken away themselves, yet the wholesalers cannot deposit the unsold stock in the refrigerated chamber themselves and the intervention of staff from the Merca is necessary.
- (210) In fact, in the case of this same Merca, the same regulations (article 50), when dealing with the marketing of fruit and vegetables, allocate this function to the wholesalers themselves, with no intervention whatsoever from the staff of the joint venture company. Likewise, the internal operating regulations of Mercasevilla provide that the refrigerated facilities for fruit and vegetables may be used for storage in accordance with the rules and regulations and that this service may be provided by the joint venture company or may be subcontracted to third parties. They also specify that the transport of the different products to the general refrigerator or to the rest of the refrigerated chambers in the market will be

assumed by the wholesaler, the person bringing them in or the owner of the goods: in all cases the corresponding fee must be paid. Both the entry and the internal movement and exit of products from the chambers will be for the wholesalers' account.

- (211) The regulations of Mercapalma contain similar provisions to the regulations of Mercasevilla in respect of the Food Unit for fish, providing that the storage, internal movement and exit of goods from the general refrigerator will be done by staff of the joint venture company, with the company receiving the fees laid down for doing so. The regulations differentiate between two concepts: the fee for occupation and the fee for moving goods.
- (212) In contrast to the aforementioned regulations, Mercamadrid provides in its operating regulations in respect of fish (article 65) that unsold fresh fish that is not deposited by a wholesaler in its own chamber will be deposited in the Merca's refrigerated chambers, from which it will be removed each day before the start of trading. The regulations therefore permit not only the use of a wholesaler's own chambers, but also, in cases where the Merca's chambers are used, allow the wholesaler to handle the removal of the goods without any intervention from the staff of the joint venture company.

i) Exclusive use of the ice-making plant of the Food Unit

- (213) The operating regulations of four Mercas (Mercamadrid, Mercacórdoba, Mercasevilla and Mercaolid) deal with this matter and in every case they provide that the Food Unit may only sell ice that is produced in the plant of the fish market itself and that there will be only one plant in the Merca.
- (214) In one of the three cases (Mercamadrid) the regulations add that this service may be awarded to various bidders, in the case of Mercaolid the regulations refer to the existence of a single successful bidder and in the other case (Mercasevilla) they state that this service may be undertaken by the joint venture company or may be subcontracted.

III.2 The model for the provision and supply of the service provided by central markets

- (215) In the previous sections it has been shown that the service provided by central markets in Spain has undergone and is undergoing profound changes. When Mercasa was formed at the end of the 1960s, sales through distribution platforms did not exist, whereas they currently represent a very significant part of the market. Similarly wholesalers that operate successfully at destination outside the Mercas have emerged.
- (216) The Mercas have been gradually losing market share to alternative channels and this raises the question of whether the reason for this is intrinsic to the market or has something to do with the organisational model of the activity of central markets.

- (217) In these circumstances it is necessary to reflect on whether the organisational model for the activity of central wholesale markets at destination in Spain is justified at the present time and whether it should be modified in order to encourage greater competition and a more efficient operation of the system.
- (218) First of all, the fact that the activity is reserved to the municipal councils makes private initiative more difficult and raises the question of whether this is justified nowadays. Secondly, the central markets have been managed to date on a centralised basis, under the Mercasa umbrella, and an assessment of the efficiencies and inefficiencies of that model shall be made. Finally, a trend has been observed in recent years towards maintaining the forms of direct management as against the forms of indirect management, a question which is also worth addressing.

III.2.1 Reservation of activity in the case of the service provided by the central markets

- (219) As described in previous sections, practically all of the Food Units were formed in accordance with the provisions of articles 48 and 166.1 of the 1955 Royal Decree, which indicated that market services, amongst others, could be undertaken by the municipal councils as a monopoly. Along the same lines, albeit varying the terminology, article 86.3 of the Local Government Act established the reservation of this activity to the local authorities.
- (220) The reservation of this activity to the municipal councils prevents access to the activity by new operators interested in providing it. Each municipality has a single agent that controls the number of suppliers that there can be.
- (221) Furthermore, essentiality is an idea linked to the circumstances of each moment in time. Essentiality and social needs vary over time and with the development of technologies, which means that it is necessary to review whether this necessary character of the service continues to exist and whether the model created around it is justified⁷⁷.
- (222) Therefore, in this particular case it is important to assess whether the grounds that determined the essentiality of the activity of central markets and, consequently, the possibility of it being provided by the municipal council as a monopoly in the first instance and the subsequent statutory reservation established by the Local Government Act, continue to exist today and impact on the functioning of society, bearing in mind the current climate.
- (223) Some of the arguments that have been put forward to justify the necessity for municipal intervention are as follows⁷⁸:

⁷⁷ de Juan Asenjo, O. (1984), *La Constitución Económica española: iniciativa económica pública “versus” iniciativa económica privada en la Constitución Española de 1978* [The Spanish Economic Constitution: public economic initiative versus private economic initiative in the Spanish Constitution of 1978].

⁷⁸ Medina Calvete, R. A. (1971), *Prestación de los servicios de abastecimiento en mercados centrales de mayoristas: municipalización del servicio y constitución de una empresa mixta*

- a. It is the mission of the administration to regulate, classify and rationalise the supply of food products to the large consumption centres due to the requirement to meet the primary needs of a large number of people and because the prices prevailing in them will have a decisive influence on the general prices index for these products.
- b. Guarantee of cleanliness and hygiene in the markets.
- c. Guarantee of market unity and greater transparency thanks to the interrelation between the different markets and the necessary collaboration between municipal councils.
- d. Disappearance/reduction of price differences between markets for identical products, standardising the way in which transactions are carried out (for example establishing simultaneous auctions).
- e. Better provision of a public service and better performance of the checks, on both health and prices that the provision of the service entails.
- f. Reservation of stalls for producers in order to strengthen competition between wholesalers by avoiding monopoly situations existing in the markets as a consequence of the restriction on available spaces and of the difficulty producers have in accessing them due to lack of organisation and resources.
- g. Increase in the productivity of the wholesalers due to the mechanical resources made available to them in the market.
- h. The introduction of a security fence or protected area for the central market to prevent the proliferation of wholesalers from trading outside the market; the fixing of such an area has to take account of the interests of the different towns, transport costs and the investments already made in these areas by some wholesalers.
- i. The adoption of new kinds of exchanges and transactions that respond better to the current circumstances.
- j. Control of volumes being sold to prevent the appearance of small wholesalers who sell a small volume of goods, with the consequent repercussion on unit costs.
- k. Regularisation of transaction prices when necessary via the reservation of stalls for producers and the authorities.

(224) In short, intervention by the municipal council was considered the best option for the administration of the wholesale food markets and to comply with the social aim of procuring a normal supply of food products for the population and with the control functions attached to the provision of the public service of central markets.

(225) However, a possible **food shortage** is not currently a justified concern given the existence, as remarked in the course of the study, of a diversity and wealth of alternative channels that guarantee the food supply in

para su desarrollo [Provision of supply services in wholesale central markets: municipalisation of the service and creation of a joint venture company to perform them].

healthy and hygienic conditions and which, due to their survival, have weakened the “essentiality” of the service performed by the central markets.

- (226) Other reasons put forward to justify why this service should be provided by the municipal councils have already been the subject of analysis and criticism in this study as they have become standard clauses in many of the regulations analysed, generating unjustified restrictions on **competition**. This means that they cannot in any way continue to be the basis for a particular model of service provision.
- (227) In terms of the **control functions** that have been mentioned, as the CNC has already argued on other occasions when this same proposal has been defended⁷⁹, we cannot see why in a system of free provision of services, subject to an authorisation or licence for example, the public authorities cannot satisfactorily guarantee the monitoring and performance of the public service obligations of the operators providing the service.
- (228) In terms of the **administration and management of the service**, the introduction of competition could help to reduce costs to the extent that economies of scale can be obtained when the size of the town is not the optimum one in economic terms for the provision of the service.
- (229) But above all, the appearance and gradual development of marketing channels for perishable products that sometimes are alternatives to the central wholesale markets, is evidence of the fact that the reservation of their activity to the municipal council has lost its original meaning. It is neither necessary nor proportionate for certain forms of marketing to operate with protection against competition and with public ownership at municipal level whereas in other cases, in contrast, the private initiative is free.
- (230) Therefore, it cannot be seen the need for this activity to continue to be reserved, that it is to say for it to be provided by the municipal councils as a monopoly, pursuant to article 86.3 of the Local Government Act. If the service provided by central markets can be provided by businesses in competition on terms that are more favourable for the users than those offered by the holder of the monopoly, and there is currently no reason to justify the existence of the monopoly for this activity, from the competition law perspective the possibility of the municipal councils exercising the statutory reservation and therefore providing this service on an exclusive basis must be excluded.
- (231) There is no doubt that the liberalisation of this activity constitutes the model that best respects competition and enables the public interest objective that is being pursued to be guaranteed, without any reasons that point to the fact that the involvement of private initiative in this economic activity may carry with it a latent threat against the public interest or the

⁷⁹ CNC, IPN 06/2009 sobre puertos de interés general [Legislative Impact Report 06/2009 on public interest ports] and TDC [Competition Tribunal] (1993), *Remedios políticos que pueden favorecer la libre competencia en los servicios y atajar el daño causado por los monopolios* [Political remedies that may encourage free competition in services and put a stop to the damage caused by the monopolies].

fact that the social function of this activity would be better served by being entirely controlled by the public sector, in this case by the corresponding municipal council.

- (232) In any event it must be emphasised that this proposal does not exclude the possibility of the municipal councils to perform this activity under a regime of free competition with private initiative, as recognised by articles 128.2 of the Spanish Constitution and 86.2 of the Local Government Act. But what it does need to be allowed is that any private business that meets the requirements of the competition legislation and any requirements that may be laid down in the pertinent regulations may carry out the activity.

III.2.2 The centralised or decentralised management of the central markets

- (233) Mercasa has an essential role in the operation of the Mercas in Spain, given that it is the backbone of the Network of Mercas. Mercasa is currently present in the management of the 23 Mercas thanks to its participation in the capital of the companies that manage the Mercas. In some cases Mercasa has a majority interest whilst in other cases it has a minority share. However, this apparently does not lead to any differences in terms of Mercasa's treatment of the Mercas in the Network of Mercas.

- (234) Mercasa performs a broad range of activities whose aim, according to Mercasa itself, is to improve transparency, competition and efficiency in the food chain, especially in the wholesale trade in fresh food in particular⁸⁰:

- It maintains a system of information about prices in the different levels and intermediate markets of the distribution channels, publishing the daily trading prices in the wholesale markets through its websites www.mercasa.es and www.mercadosmunicipales.es.
- It provides the price information for the wholesale trade in fresh food from which the Index of Trends in Commercial Margins in fresh Food Products is prepared.
- At the request of the Ministry of Economy and Competitiveness, it prepares studies on price differences in food and mass market products by commercial formats, which constitute the documentary basis for the preparation of the Retail Trade Prices Observatory.
- It also plays an active part in the Food Prices Observatory, formed within the Ministry of Agriculture, Food and the Environment, of which all the sector associations representing the different links in the food chain form part, along with the Autonomous Communities.
- Furthermore, in order to improve competition in the intermediate markets, it continues to strengthen the competitive position of the Mercas and their decisive contribution to meeting the requirements of

⁸⁰ Mercasa 2010 Annual Report.

traceability and food safety.

- (235) In addition, the coordinated or centralised provision of the service provided by central markets throughout national territory may have benefits by encouraging, for example, the specialisation of the different Mercas or the rationalisation of services. It must also be remembered that the creation of Mercasa was probably a response to a market foreclosure, so that the creation of the Food Units that currently exist would not have been possible without the help of Mercasa, its financing, specialisation and knowledge of the market and of management.
- (236) However, along with this series of important benefits that Mercasa produces for the food chain as a whole, it is necessary to consider the possible damage to competition deriving from Mercasa's presence in the joint management of the 23 Mercas making up the Network of Mercas.
- (237) The fact that Mercasa participates in the management of the 23 Mercas in the Network of Mercas means, first of all, that these 23 Mercas do not compete with one another to attract dealers or in terms of the offer of services that they provide in the way that they would do if they were independent entities.
- (238) We must not forget that even though each Merca performs its activities in a particular town, the catchment area of the Merca extends beyond the town boundaries, so that there may be competitive tension between Mercas located in different towns. In section II.2 it was analysed the catchment areas estimated by Mercasa for each of its Mercas and it can be seen that there is an overlap between many of them.
- (239) However, given that all of the Mercas are under the Mercasa umbrella, it is not likely that they have any incentive to compete with one another as they would do if they were independent entities. This may have negative consequences for the prices of the services that the Mercas provide, the offer of services, the level of investment or innovation. In addition, Mercasa's financial resources may influence the making of new investments in this respect. Moreover, the coordination exercised by Mercasa in the Network of Mercas may create another problem. The fact that the 23 Mercas are centrally managed may represent a disincentive for the appearance of other Mercas that are separate from Mercasa.

III.2.3 The direct or indirect management of the central markets

- (240) The companies managing the central wholesale markets for perishable products at destination started to function at the end of the 1960s. According to the legislation in force at that time, in order to enable the state-owned company Mercasa to have a stake in the capital of the Mercas, the management companies were created as joint venture companies with a mix of capital from the municipal council and capital from the state for a limited period of time, generally 50 years, at the end of which the company and its assets would revert to the municipal council.
- (241) In the mid-2000s some Mercas found themselves only a few years away from the expiry of their management companies. However, a legislative change to the Local Government Act, introduced by Act 30/2007 of 30

October 2007, the Public Sector Contracts Act, has facilitated an escape route, so that these joint venture companies do not have to come to an end and can continue to manage the service provided by the central markets. This change has consisted of the fact that the provision of a service by a company entirely in public ownership, even if not entirely state-owned, is now treated as direct management and therefore ceases to be subject to the provisions of the public procurement legislation: there is no time limit on the management, nor is it necessary to organise a form of adjudication of the service via a competitive process.

(242) According to the data obtained from the requests for information sent out, in a number of recent cases a change in the direct management model is currently underway, or has already taken place⁸¹.

Table 8. Capital structure of the Mercas.

<u>Merca</u>	<u>Capital structure</u>
Mercalgeciras	95% Mercasa, 5% Algeciras municipal council
Mercalicante	49% Mercasa, 51% Alicante municipal council
Mercasturias	51% Mercasa, 35.2% Regional Society for the Promotion of the Principality of Asturias [<i>Sociedad Regional de Promoción del Principado de Asturias</i>], 13.8% various municipal councils (7)
Mercabadajoz	98.3% Mercasa, 1.7% Badajoz municipal council
Mercabarna	37% Mercasa, 51% Barcelona municipal council, 12% Barcelona regional council [<i>Consell Comarcal del Barcelonès</i>]
Mercabilbao	40% Mercasa, 60% Bilbao municipal council
Mercacórdoba	48.9% Mercasa, 51% Córdoba municipal council
Mercagalicia	49% Mercasa, 51% Santiago municipal council
Mercagranada	48.7% Mercasa, 51% Granada municipal council, 0.49% small shareholders
Mercairuña	40% Mercasa, 51% Pamplona municipal council, 9% Navarra regional government [<i>Comunidad Foral de Navarra</i>]
Mercajerez	49% Mercasa, 51% Jerez municipal council
Mercalaspalmas	58.3% Mercasa, 41.6% Las Palmas de Gran Canaria municipal council, 0.1% others
Mercaleón	36.8% Mercasa, 63.2% León municipal council
Mercamadrid	48.6% Mercasa, 51.13% Madrid municipal council, 0.24% others (associations and users)
Mercamálaga	87.23% Mercasa, 12.65% Málaga municipal council, 0.12% others
Mercamurcia	49% Mercasa, 51% Murcia municipal council
Mercapalma	45.2% Mercasa, 54.8% Palma de Mallorca municipal council
Mercasalamanca	48% Mercasa, 52% Salamanca municipal council
Mercasantander	48.7% Mercasa, 51% Santander municipal council, 0.3% others
Mercasevilla	48.2% Mercasa, 51.25% Sevilla municipal council, 0.55% others
Mercatenerife	40.74% Mercasa, 42.38% island government, 16.88% others (23 municipal councils)
Mercavalencia	49% Mercasa, 51% Valencia municipal council
Mercazaragoza	48.8% Mercasa, 51% Zaragoza, 0.2% own shares

Source: Mercasa (www.mercasa.es)

⁸¹ Mercabarna, Mercabilbao, Mercacórdoba and Mercagranada are already subject to the direct management regime, according to information supplied by Mercasa, whilst Mercajerez and Mercamurcia are going through the process.

- (243) The fact that they can take advantage of this provision has led a number of Mercas to go through the process of redeeming the existing privately-owned shares so that their capital is exclusively in public ownership, albeit that this capital comes from a number of different entities.
- (244) In line with what it has been said above, some of the Mercas are already management companies whose capital is entirely in public ownership and they will be governed by private law rules, whatever their legal form, except in relation to accounting, budgets, financial control, control of efficiency and procurement (article 85 ter of the Local Government Act).
- (245) It does not necessarily follow that it is better for the management of the service provided by central markets to be performed by a public entity or by a private entity.
- (246) The public provision of a public service may be justified if, for example, there are high fixed costs or insufficient demand for the service from the general public to make the management profitable⁸². In addition, other considerations such as loss of control over management or damage to the public image may be the reason for the presence of public authorities.
- (247) However, direct management by a public authority may mean the elimination of competition between businesses because it gains control of the provision of the service (competition “for the market”), which is an important source of efficiencies: the bidding between the different competitors in the phase of access to the market will enable these costs efficiencies to be passed on to the provision of the service⁸³. In addition, the fact that private companies are profit-driven may generate greater incentives to adopt management methods that represent a costs saving.
- (248) According to economic doctrine, the decision to outsource the management of certain essential services by means of indirect management would be the most suitable and beneficial solution for the public interest, if the following requirements are met⁸⁴:
- a. Sufficient number of bidders interested in providing the service and potential for effective competition between them to obtain the management contract. This element would guarantee the existence of alternatives in the event that the successful bidder should fail to perform the service satisfactorily and reduces the need for the local authority to regulate prices.

⁸² ESPINOSA GARCÍA, *Servicios públicos locales y competencia*, I Congreso sobre Derecho de la Competencia y regulación en las Administraciones Públicas, 2010 [*Local public services and competition*, I Congress on Competition Law and regulation in public administrations, 2010].

⁸³ ESPINOSA GARCÍA, *Servicios públicos locales y competencia*, I Congreso sobre Derecho de la Competencia y regulación en las Administraciones Públicas, 2010 [*Local public services and competition*, I Congress on Competition Law and regulation in public administrations, 2010].

⁸⁴ ESPINOSA GARCÍA, *Servicios públicos locales y competencia*, I Congreso sobre Derecho de la Competencia y regulación en las Administraciones Públicas, 2010 [*Local public services and competition*, I Congress on Competition Law and regulation in public administrations, 2010].

- b. Little relative importance of specific assets that involve high entry costs, in particular sunk costs. If the fixed costs and initial investments that the operators have to incur in order to be able to manage the service are irrecoverable when they cease to perform the activity, this will act as an incentive for the operators already installed in the market to take part in future tender procedures and will act as a disincentive for potential competitors.
- c. The local authority must allow the provider a significant level of control over the costs deriving from the management of the service. This provides an incentive for competitors to internalise the efficiencies deriving from their management ability in the bids that they submit, which will be more competitive.
- d. Forecast and limitation of the circumstances that may lead to alterations to the economic content of the contract. Uncertainty about the possible modification of the agreed contractual terms may result in less incentive for competition in the access phase.
- e. Finally, a forecast must also be made about the type of agents that will have incentives for participating in the bidding to manage the service because, if the management is awarded to agents that compete in the market, in vertically related activities, there may be a risk of an anti-competitive effect. If the municipal service is essential, or relatively important, in order to compete in the provision of downstream or upstream services, the manager of the service may have incentives to exclude its rivals. That is why it is necessary to assess the possibility of creating control mechanisms that discipline this type of behaviour or remove the incentive for it when the view is that it may be dangerous.

IV. CONCLUSIONS

One.

The Food Units are configured as the main platform for the trade in perishable food products in Spain, fundamentally for the traditional channel, which mainly obtains its supplies through this channel.

Competition between Mercas is limited, given that their catchment area is local and that Mercasa controls a very important part of the Mercas and participates in the management of the others. Competition from outside the Mercas, whilst relevant in terms of volume, does not offer the same type of services and may not be a total substitute for the Mercas, especially for certain types of customers. Furthermore, potential competition is limited by the fact that the activity of central markets is reserved to the municipal councils.

Over time the absence of competitive pressure has given rise to inefficient practices in the Mercas, which may have contributed to the success of other channels which offer alternatives to the wholesale central markets at destination.

Two.

The operating regulations of the Mercas contain many clauses which may hinder competition and efficiency, either by raising barriers to entry to new wholesalers, or by reducing the rivalry between the operators installed in the Mercas, or by imposing inefficient costs on them for the provision of certain services.

Whilst certain restrictions could be justified on efficiency grounds, in most cases such restrictions represent an unjustified harm to competition and, in short, for consumers and final users.

Three.

In general terms and in particular with regard to the organisation of the supply of the Food Unit's services to buyers and sellers, the Merca is an economic operator and its acts are therefore subject to the disciplinary regime set out in articles 1 to 3 of the Spanish Competition Act.

Furthermore, as instruments issued by municipal councils do not have the status of an Act, the behaviour of the managers of the Mercas, although it may be covered in municipal regulations, may fall within the definitions contained in articles 1 to 3 of the Spanish Competition Act and may be unlawful within the meaning of those articles, according to article 4 of the Act. The law confers on municipal councils the exclusive initiative to establish the service provided by central markets and to decide on how it is managed and organised, but does not give them complete freedom regarding that organisation, so that it must respect the competition rules.

Four.

The current model for the organisation and operation of the wholesale central markets for perishable products at destination, characterised by the reservation of the activity of central supply markets, the centralised or coordinated management of each of the Mercas in the Network of Mercas through the presence of Mercasa in the capital of the companies managing the Mercas, and the tendency to perpetuate the direct management of the Mercas by public companies with municipal and state capital, may not be the most suitable model from the point of view of efficiency.

- On the one hand the reservation of activity does not appear to make much sense, given that there has been a proliferation of alternative channels to the wholesale markets at destination, including wholesalers that operate outside the Merca, without compromising the objectives of quality, safety and traceability of food products. Reservation of activity prevents new wholesale markets at destination from emerging and links the management and investment decisions to the needs of the town, when the catchment area of many central markets clearly extends beyond the municipal boundaries.
- Furthermore, the centralised management of the Network of Mercas may have certain advantages in terms of specialisation and rationalisation, but it loses the efficiencies that arise from competition *in the market*. The tendency towards direct management of many Mercas means that competition *for the market* cannot exist either.

V. RECOMMENDATIONS

One. Improvement of the internal operation of the Mercas

Mercasa, the 23 Mercas that make up the Network of Mercas, the other wholesale central markets and the municipal councils that own the public service provided by central markets are urged to review the internal operating regulations of the Mercas and any other municipal rules related to them in order to prevent distortions of competition. In particular the municipal councils are urged to adapt their regulations to the principles of necessity, proportionality and non-discrimination and the Mercas, and Mercasa in particular, are urged to audit themselves in order to adapt to the competition rules and avoid the restrictions identified:

- Restrictions on the entry of operators to the Mercas
- Restrictions on competition between the dealers in the Mercas
- Obligations to contract certain services with the Mercas.

Two. Removal of the statutory reservation of activity

The CNC recommends the removal of the activity of central markets from the list of activities reserved to the municipal council under article 86.3 of the Local Government Act, a reservation which has no justification in the current context, as shown by the appearance of channels which in part at least are alternatives to the Mercas, which are not reserved to the public sector and which do not compromise other public objectives such as the guarantee of supply, safety, traceability or food quality as a result.

Three. Intensification of competition between the Mercas

The CNC urges the government to give greater autonomy to the management of each of the central markets that form part of the Mercasa Network of Mercas. Greater competition between Mercas, resulting both from competition between neighbouring Mercas and from referential competition, may imply additional efficiency gains, which may be compatible in turn with the benefits of the economies of scale that stem from the provision by Mercasa of certain services that are common to the Mercas in which it has an interest.

BIBLIOGRAPHY

- **ARANA GARCIA, ESTANISLAO.** *El procedimiento administrativo necesario para la prestación de servicios públicos esenciales y la iniciativa pública económica en el ámbito local* [The necessary administrative procedure for the provision of essential public services and the economic public initiative in the local context]. Revista de estudios de la Administración local [Review of local administration studies], 291. Madrid 2003.
- **BALLESTEROS FERNANDEZ, ÁNGEL.** *Comentarios en torno a la Ley de Bases del Estatuto del Régimen Local* [Commentaries on the Local Government Act]. Sevilla, Municipal council, 1976.
- **BEL I QUERALT, GERMÁ Y ESTRUCH, ALEJANDRO.** *La gestión de los servicios públicos locales: ¿por qué se privatizan los servicios y qué efectos tiene la privatización?* [The management of local public services: why are the services being privatised and what effects does the privatisation have?] Anuario de derecho municipal [Municipal law yearbook], no. 5, 2011.
- **CNC,** *Informe sobre competencia y sector agroalimentario* [Report on competition and the agrifood sector], 2010.
- **CNC,** *IPN 06/2009 sobre puertos de interés general* [Legislative impact report 06/2009 on public interest ports].
- **COBO OLVERA, TOMÁS.** *Ley de Bases del Régimen Local: comentarios, concordancias y jurisprudencia* [Local Government Act: commentaries, agreements and case law]. Barcelona, Bosch, 2004.
- *Comentarios a la Ley Reguladora de las Bases del Régimen Local* [Commentaries on the Local Government Act]. Valencia, Tirant lo Blanch, 2007.
- *Comentarios a la Ley Básica de Régimen Local* [Commentaries on the Local Government Act]. Madrid, Civitas, 2005.
- **European Commission (2005),** *Guidance on the Commission's Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings.*
- **CORTES RODRÍGUEZ, HELIODORO.** *Municipalización de servicios* [Municipalisation of services], thesis. Madrid, IEAL, 1965.
- **CRUZ LEZAUN DÍAZ DE RADA, JOSE.** *Municipalización de mercados centrales de mayoristas -empresa mixta- con la colaboración de "Mercasa"* [Municipalisation of wholesale central markets – joint venture – with the collaboration of "Mercasa"]. Madrid, IEAL, 1973.

- CUÉTARA MARTINEZ, JUAN MIGUEL DE LA. *Problemática de los servicios públicos locales: la calificación de los servicios esenciales de la comunidad en la legislación española* [Questions regarding local public services: the stadning of the community's essential services in Spanish legislation]. Madrid, Instituto de Estudios Fiscales [Institute of Fiscal Studies], 1985.
- DE JUAN ASENJO, O. *La Constitución Económica española: iniciativa económica pública "versus" iniciativa económica privada en la Constitución Española de 1978* [The Spanish Economic Constitution: public economic initiative versus private economic initiative in the Spanish Constitution of 1978]. Madrid, CEC, 1984.
- EC Guidelines for the assessment of horizontal cooperation agreements.
- CRUZ ROCHE, IGNACIO, "Los intermediarios mayoristas en la cadena de valor de alimentación fresca" [Wholesale intermediaries in the fresh food value chain]. *Revista Distribución y Consumo*, *Revista Mercasa* [Distribution and Consumption Review, Mercasa Review], March-April 2010.
- ESPINOSA GARCÍA, JUAN "Servicios Públicos Locales y Competencia" [Local Public Services and Competition"]. I Congreso sobre Derecho de la Competencia y Regulación en las Administraciones Públicas [First Congress on Competition Law and Regulation in Public Administrations] held in the CNC in September 2010.
- GERBAUD GABRIELLE. "El modelo de Mercasa como estrategia mayorista de distribución" [The Mercasa model as a wholesale distribution strategy].
- GÓMEZ-FERRER MORANT, RAFAEL. *La reserva al sector público de recursos o servicios esenciales* [The reservation to the public sector of essential resources or services]. *Estudios sobre la Constitución Española* [Studies on the Spanish Constitution]. Madrid, Civitas, 1991.
- GUTIERREZ PELAEZ, ANTONIO. *Planificación: la nueva red de mercados de abastos* [Planning: the new network of public markets]. Santander 1970.
- GONZÁLEZ PUEYO, JESÚS. "Gestión de servicios públicos locales. Sociedad mercantil local" [Management of local public services. Local company]. *Federación Española de Municipios y Provincias y Centro de Estudios Locales y Territoriales* [Spanish Federation of Municipalities and Provinces and Centre for Local and Territorial Studies] (INAP, Ministry of Public Administrations).
- IBÁÑEZ CASANOVA, CONSTANCIO. "Mercados mayoristas alimentarios: Nuevos tiempos, nuevas respuestas" [Wholesale food markets: New times, new responses].

- CLAVERO AREVALO, MANUEL FRANCISCO. *Municipalización y provincialización de servicios en la ley de régimen local* [Municipalisation and provincialisation of services in the Local Government Act]. Madrid, IEAL, 1952.
- MAGALDI MENDAÑA, NURIA. *Los orígenes de la municipalización de servicios en España: el tránsito del Estado liberal al Estado social a la luz de la municipalización de servicios públicos*. [The origin of the municipalisation of public services in Spain: the transit from the liberal state to the social state in light of the municipalisation of public services]. Madrid, Instituto Nacional de Administración Pública [National Institute of Public Administration], 2012.
- MARTÍN CERDEÑO, VÍCTOR J., “Estrategias de aprovisionamiento de la restauración comercial, colectiva y social. Posicionamiento de las Mercas en el abastecimiento de alimentos frescos para consumo fuera del hogar” [Supply strategies of the commercial, collective and social restaurant sector. Positioning of the Mercas in the supply of fresh food for consumption outside the home]. *Revista Distribución y Consumo* [Distribution and Consumption Review], Mercasa, March-April 2010.
- MARTÍNEZ CASTRO, EMILIA Y REBOLLO ARÉVALO, ALFONSO, “El sistema de comercialización en origen de las frutas y hortalizas en fresco” [The system of marketing fresh fruit and vegetables at source]. *Revista Distribución y Consumo* [Distribution and Consumption Review], Mercasa, March-April 2008.
- MEDINA CALVETE, R. A. *Prestación de los servicios de abastecimiento en mercados centrales de mayoristas: municipalización del servicio y constitución de una empresa mixta para su desarrollo* [Provision of supply services in central wholesale markets: municipalisation of the service and creation of a joint venture company to perform it]. Bilbao, 1971.
- MENENDEZ, PABLO. *Una interpretación renovada de la reserva de servicios esenciales en favor de las entidades locales (especial referencia a abastecimiento de aguas y suministro de gas)* [A renewed interpretation of the reservation of essential services to local authorities (special reference to the supply of water and gas)]. *Revista española de Derecho Administrativo* [Spanish Administrative Law Review], 89. Madrid, Civitas, 1996.
- Mercasa, Annual Report, various years.
- Ministry of the Environment, Rural and Marine Environment. [Prepared by SDV Consultores at the request of the Association of Spanish Supermarket Chains (ACES)], “La distribución agroalimentaria y transformaciones estratégicas en la cadena de valor” [Agrifood distribution and strategic processing in the value chain], 2008.
- QUADRA-SALCEDO, TOMAS DE LA. *Artículo 128: riqueza, iniciativa pública y reserva al servicio público* [Article 128: richness, public initiative

and reservation to the public service]. Comentarios a la Constitución Española de 1978 [Commentaries on the Spanish Constitution of 1978], vol. x. Madrid, Cortes Generales [Spanish Parliament], Edersa, cop. 1998.

- ROYO VILLANOVA, ANTONIO. *La autonomía y la municipalización* [Autonomy and municipalisation]. Madrid, municipal press, 1919.
- SÁNCHEZ DÍAZ, JOSE LUIS. *Los servicios locales de naturaleza económica: municipalización, concesión y autorización* [Local services of an economic nature: municipalisation, concession and authorisation]. Revista de estudios de la Administración local [Local government studies review], 291. Madrid 2003.
- SARASOLA GORRITI, SILVIA. *En torno a la reserva de servicios esenciales en la legislación local básica* [The reservation of essential services in the basic local government legislation]. Revista vasca de Administración pública [Basque Public Administration Review], 52. Oñati 1998.
- Servicio de Defensa de la Competencia [Competition Service], “*Investigación de la cadena de distribución de determinadas frutas y hortalizas*” [Investigation of the distribution chain for certain fruit and vegetables], January 2004.
- SOSA WAGNER, FRANCISCO, “*La gestión de los servicios públicos locales*” [The management of local public services], 2nd and 7th edition, Aranzadi, 1995 and 2008.
- Competition Tribunal, *Remedios políticos que pueden favorecer la libre competencia en los servicios y atajar el daño causado por los monopolios* [Political remedies that may encourage free competition in services and stop the damage caused by monopolies], 2003.