



**E/CNMC/002 STUDY OF THE
WHOLESALE AUTOMOTIVE FUEL
MARKET IN SPAIN**

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I. INTRODUCTION

I.1. Scope and Purpose of the Report

1. On 29 June 2012 the CNC, the National Competition Authority at the time, published a follow-up report on the Spanish automotive fuel distribution market (2012), and this was followed on 2 October 2012 by the approval of the *Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain*. The CNE, the National Energy Commission as it then was, carried out various monitoring exercises on the wholesale fuel market.
2. These reports showed the existence of numerous barriers to entry and expansion of new operators in the automotive fuel market, particularly in the retail segment and the sale of automotive fuels through service stations. The reports made a number of recommendations to public authorities and the legislature to improve the functioning of the market and facilitate a more efficient competitive dynamic in the sector. Some of the recommendations¹, particularly those aimed at the retail segment, were implemented in Law 11/2013 of 26 July on measures to support entrepreneurs and stimulate growth and job creation.
3. Despite the pro-competition measures introduced by Law 11/2013, so far market indicators (and particularly prices) do not point to an improvement in effective competition in the sector, given the steady increase in wholesale distribution margins and the persistent pre-tax price differential between Spain and its major European partners; also, the barriers to entry and expansion remain and fuel imports still do not discipline the market.
4. This report looks into the factors noted in previous CNMC studies that contribute to limiting effective competition in the automotive fuel market in Spain. **In particular, the report focuses on analysing the wholesale**

¹ In all, 23 recommendations were made: 16 on the wholesale segment and seven on the retail segment.

market, which has not been subjected to any recent in-depth analysis from the point of view of competition, and where the lack of dynamism could limit both competition between retail operators downstream and the effect of the measures introduced by Law 11/2013 on the retail market. After all, the existence of sufficient wholesale supply alternatives has a booster effect on competition in the retail service station sector.

5. The report is divided into three sections, apart from the introduction. In Section II we **analyse the structure of competition in the various sections of the logistics chain** (procurement, logistics, wholesale market and retail distribution market through service stations). Based on this analysis, section III points to **factors contributing, in the CNMC's view, to the low level of competition seen in the sector**, which may contribute to the existence of inefficient pricing and margins in excess of those seen in other countries. Section IV contains the **main conclusions of the report, as well as a number of recommendations for the competent public authorities** aimed at improving effective competition and efficient economic regulation in the wholesale automotive fuel market in Spain.

1.2. Historical background, Spain and the rest of Europe

6. Spain's automotive fuel sector has been a frequent object of attention from the point of view of competition and efficient economic regulation. In recent years the former CNC and CNE, the CNMC itself, other competition authorities and the European Commission have carried out numerous investigations and studies of the sector, analysing the automotive fuel market, with particular emphasis on the retail segment. In general terms they point to a structural problem of a lack of competition in the sector. Specifically, the CNC highlighted the restrictions to competition in the wholesale and retail markets for automotive fuels in various reports².

² Examples are: [Report on Competition in the Automotive Fuels Sector \(2009\)](#), [Follow-up report on the CNC Report on Automotive Fuels \(2011\)](#), [Follow-up report on the automotive](#)

Similarly, the CNE produced annual reports on the supervision of the liquid hydrocarbons market, micro-reports on small geographical areas and monthly reports on trends in price indicators and gross margins on fuels³. Subsequently the CNMC analysed the service station fuel distribution market in the municipality of Leganés⁴, as well as continuing the monthly analysis of the distribution of fuels through service stations. Also, in 2013 the OECD⁵ published a report on the automotive fuel market, indicating that the reasons for the Spanish market's lack of effective competition might be the oligopolistic structure of the market and the barriers, which might encourage concerted practices by operators with refining capabilities. National Competition Authorities have also shown interest in this market. For example, the Bundeskartellamt, Germany's Federal Cartel Office, recently established a price transparency unit, and a study of the "rockets and feathers" phenomenon was carried out by the UK's Office of Fair Trading (OFT, now replaced by the Competition & Markets Authority, CMA). Lastly, the CNC also analysed this market on numerous occasions from the point of view of the application of competition law⁶.

1.3. Recent regulatory developments in the wholesale market

7. Following some of the recommendations included in the reports of the CNC and the CNE on the consultation lodged by the State Secretariat for Economy and Business Support and the State Secretariat for Energy, the

fuels distribution market in Spain (2012), and Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain (2012).

³ Annual Reports on "The Spanish market for distribution of petrol and diesel through service stations", "Reports on "Macro-supervision of service stations: monthly report on fuel prices in Spain and the EU", reports on "Micro-supervision of the Spanish service station market", etc.

⁴ Report on the market for fuel distribution through service stations in the municipality of Leganés and recommendations to the municipality for increasing competition and the benefit to consumers (2014) and the Report on the Proposal of the CNMC relating to the amendment of Article 43 b) of Law 34/1998 of 7 October on the Hydrocarbons Sector (2014).

⁵ Policy Roundtables, Competition in Road Fuel. OECD, 2013.

⁶ Cases S/0474/13 and S/0484/13.

Government adopted the Royal Decree Law 4/2013 of 22 February, which was subsequently passed and adopted by Parliament as Law 11/2013 of 26 July on measures to support entrepreneurs and stimulate growth and job creation, the provisions of which included changes to Law 34/1998 of 7 October on the hydrocarbons sector aimed at fostering competition in the automotive fuel market. Most of the measures adopted by the Royal Decree affected the retail segment of distribution of automotive fuels through service stations. However, Law 11/2013 also included some measures to promote competition in the wholesale segment of the market. Specifically, in the wholesale area, the Law *“considers it necessary to ensure efficient hydrocarbon logistics so that distribution costs are as low as possible. For this reason, Articles 41, 43 and 109 of Law 34/1998 of 7 October are amended, and the supervisory framework for logistics and storage facilities is elaborated on; these are obliged to allow third-party access under transparent, objective and non-discriminatory conditions, so that the public authorities are able to appropriately monitor these companies' activities and their effect on competition in the market”*. Since the coming into force of Law 11/2013, the supervisory regime for logistics and storage facilities has been as follows:

1. Owners of fixed storage and transport facilities for petroleum products must: (i) allow access to third parties by means of a negotiated procedure, under non-discriminatory, transparent and objective technical and economic conditions, applying prices which they must publish; (ii) inform the CNE (now CNMC) of the requests for access, the contracts, the list of prices for their facilities and the methodology of their tariffs. They must also publish the used and available capacity of their facilities.
2. The managers of fixed storage and transport facilities must avoid any conflicts of interest between shareholders and users of the services.

8. Despite the recent measures introduced, effective competition in the wholesale fuel market does not seem to have improved substantially in recent times. These new measures seem not to have been sufficient, so far, to favour the entry of new operators and make the market more dynamic. Indeed, the indicators point to a possible deterioration in effective competition in the segment. Specifically, there has recently been a fall in imports, which still do not discipline the Spanish fuel market, and a sustained increase in gross distribution margins, thus increasing the cost of fuel at the downstream service stations and consequently the costs consumers have to bear.
9. It is therefore necessary to carry out an in-depth analysis of the potential barriers to entry that exist in the fuel market and to determine the underlying causes of the lack of effective competition in order to establish a series of recommendations aimed at promoting more effective competition in the sector and more efficient economic regulation.

II. STRUCTURE AND FUNCTIONING OF THE WHOLESALE AUTOMOTIVE FUEL MARKET IN SPAIN

II.1. Automotive fuel market

10. In barely twenty years, Spain's automotive fuel sector has gone from being a state monopoly to being a practically liberalised market. The process of liberalisation started in the mid 1980s with the elimination of the barriers to importing and exporting petroleum products. In 1992 liberalisation of the sector accelerated significantly when it ceased to be a public service provided as a monopoly. From that time on, the automotive fuel market thus became a general interest service provided by agents freely established under a competitive regime. Some years later, with the coming into force of the 1998 Hydrocarbons Law, the refining, transport, storage, distribution and marketing and sale of petroleum products (including

automotive fuels) was opened up to any economic stakeholder, subject to administrative authorisation. The only remaining exception is oil and gas exploration⁷.

11. Despite the effort to liberalise, Spain's automotive fuel market continues to show a high degree of concentration in all phases of the business, with only three operators with upstream refining capacity (Repsol, Cepsa and BP). Two of them, Repsol and Cepsa, are direct heirs to the old state monopoly Compañía Arrendataria del Monopolio de Petróleos Sociedad Anónima (Campsa). This monopoly extended to the related markets of wholesale and retail distribution through service stations. The process of liberalisation has reduced the degree of vertical integration of the automotive fuel markets in Spain. However, this reduction has not been enough to bring about a competitive fuel market.
12. To ensure the existence of greater competition in the Spanish automotive fuel market, it is essential that the relations among the refineries do not constitute a major obstacle to competition in the sector.

II.1.1. Structure of the automotive fuel sector

13. The automotive fuel market in Spain is particularly important given its effect on the economy, the operation of companies and its impact on end consumers, as well as its knock-on effects on practically all productive sectors. It is also a market with homogeneous, undifferentiated products, in which competition is essentially based on pricing. Consumers therefore have an incentive to refuel with the operator that offers the lowest price. In theory, it could happen that a wholesale operator would switch 100% of its

⁷ In accordance with Articles 7 and 8 of Law 34/1998, the Hydrocarbons Act, oil and gas exploration can be carried out subject to the following permits, authorisations and concessions: (i) an exploration permit must be obtained, allowing the holder to carry out exploration work; subsequently (ii) an investigation permit must be obtained, allowing the holder to investigate, on an exclusive basis, a given area, and finally (iii) an operating concession must be obtained, allowing the holder to exploit the resources discovered.

supply to one operator that offered it better financial conditions. However, there are costs associated with such conduct in the Spanish automotive fuel market, such as search costs and transaction costs⁸ arising from a change of supplier, as well as obstacles to such practices, such as the supply dependency arising from the market power of a particular company in a particular region. These costs and obstacles reduce competition in the market, and may lead to market prices higher than those expected in a competitive environment.

14. The automotive fuel market forms part of a wider economic sector, the petroleum sector, which includes all the economic activities relating to the processes and products obtained from petroleum. There are various phases in the production process for petroleum-based products. In the case of automotive fuels, the main phases of the production, marketing and sale of petrol and diesel are the following⁹:

1. Surveying and extraction of petroleum: consisting of finding oil deposits and carrying out the necessary activities to extract and store the output. Petroleum is transported by pipeline or in ships (tankers) from the production centres to refineries. This is a global market in which large international groups operate.

⁸ These costs are not specific to the Spanish case, although as mentioned in earlier studies of the CNC on the fuels market and specifically in the *Study on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain*, the Spanish market presents different characteristics from other EU countries, which exacerbate these search costs, among other things. In fact, the CNC's *Follow-up report on the automotive fuel market* of July 2012 points to search costs as a possible explanation for the asymmetries observed in the speed of pre-tax retail price adjustments to changes in international prices, emphasising the local market power situation that is due to these search costs. For the Spanish market in particular, this study points out that: "*In this regard, given the limited presence in the Spanish market of operators with ample possibilities for publicising their prices, as is the case with service stations at large shopping complexes, boosting new installations of this type of operators may help to reduce these search costs and consequently to increase competition in the retail market. Similarly, other measures to promote transparency in the retail prices of service stations, such as encouraging real-time access to service station prices from mobile devices, would help to reduce these search costs.*"

⁹ Case C/0366/11 CEPSA/CHESA (CNC).

2. Crude oil refining: the industrial processing of crude oil in refineries to obtain petrol and diesel (in the refining process, other products are produced from the various fractions of the crude oil, as well as automotive fuels). The economic operators in this second stage are the owners of the refineries (mainly large oil companies). The owners of the nine refineries in Spain are Cepsa, Repsol and BP. The Spanish refining market is therefore highly concentrated and oligopolistic.
3. Supply or first-time sale of refined products: The operators active in this phase are (i) refinery owners, who sell the fuel direct, or (ii) independent operators who purchase the products from the refineries and sell them in their own name.
4. Logistics: comprises both primary and secondary distribution. Primary distribution consists of transporting the products from the refineries (or import terminals) to the storage facilities. Secondary distribution consists of transporting and delivering the products to the points of sale or consumption, in this case, service stations. In Spain, secondary distribution is basically by pipeline, or tanker truck for short distances.
5. Distribution of refined products. Traditionally, in the distribution of fuels a distinction has been made between retail (or “on-network”) and wholesale (or “off-network”). Wholesale distribution consists of direct sales of fuels to commercial or industrial customers and independent retailers (service stations not included in any of the existing networks). The companies operating in this segment are either the oil companies that own the refinery or wholesale fuel operators who sell their products to retail distributors. Although there are two types of customers in this segment, this study

focuses on the wholesale automotive fuel market for service stations. Direct sales to pure industrial or commercial customers are therefore not included.

Retail distribution consists of the sale of automotive fuels to end consumers at service stations; the operators are basically oil companies with networks of service stations, which are owned or tied through contracts. There are also independent service stations that do not form part of any vertically integrated networks.

15. Operators in the Spanish automotive fuel market usually conduct their business in various stages and are normally present in more than two stages at the same time. The major groups, such as Cepsa, BP and above all Repsol, are present in all phases. As a result, the automotive fuel market in Spain shows a high degree of vertical integration.
16. In the following sections we analyse in depth the main stages of the production and sale of automotive fuels in Spain.

II.2. Supply of automotive fuels

17. The supply of automotive fuels is the first nationwide level of fuel distribution. It includes both refined fuel for the domestic market, which comes from refineries in Spain, and imports through Spanish ports.

II.2.1. Domestic Production and Refining Capacity

18. There are nine refineries in Spain¹⁰ producing automotive fuels (eight of them in mainland Spain and one in the Canary Islands). Among the major European partners, only Germany and Italy have more refineries than

¹⁰ The refinery owned by ASES (50/50 owned by Repsol and Cepsa) is not included, because it processes only asphalt products.

Spain.¹¹ Repsol has five (Coruña, Bilbao –under the Petronor flag¹²-, Tarragona, Puertollano and Cartagena), Cepsa three (Huelva, Algeciras and Tenerife) and BP one (Castellón). Table 1 shows the current structure of refining capacity in Spain:

Table 1. Fuel refining capacity in Spain (2014)

Operator	Refinery	Capacity (millions of metric tons per year)	% of total (refineries)	% of total (companies)
Repsol	Cartagena	11	14.53%	58.78%
	La Coruña	6	7.93%	
	Puertollano	7.5	9.91%	
	Tarragona	9	11.89%	
	Bilbao	11	14.53%	
Cepsa	Algeciras	12	15.85%	34.08%
	Huelva	9.2	12.15%	
	Tenerife	4.6	6.08%	
BP	Castellón	5.4	7.13%	7.13%
TOTAL				100.00%

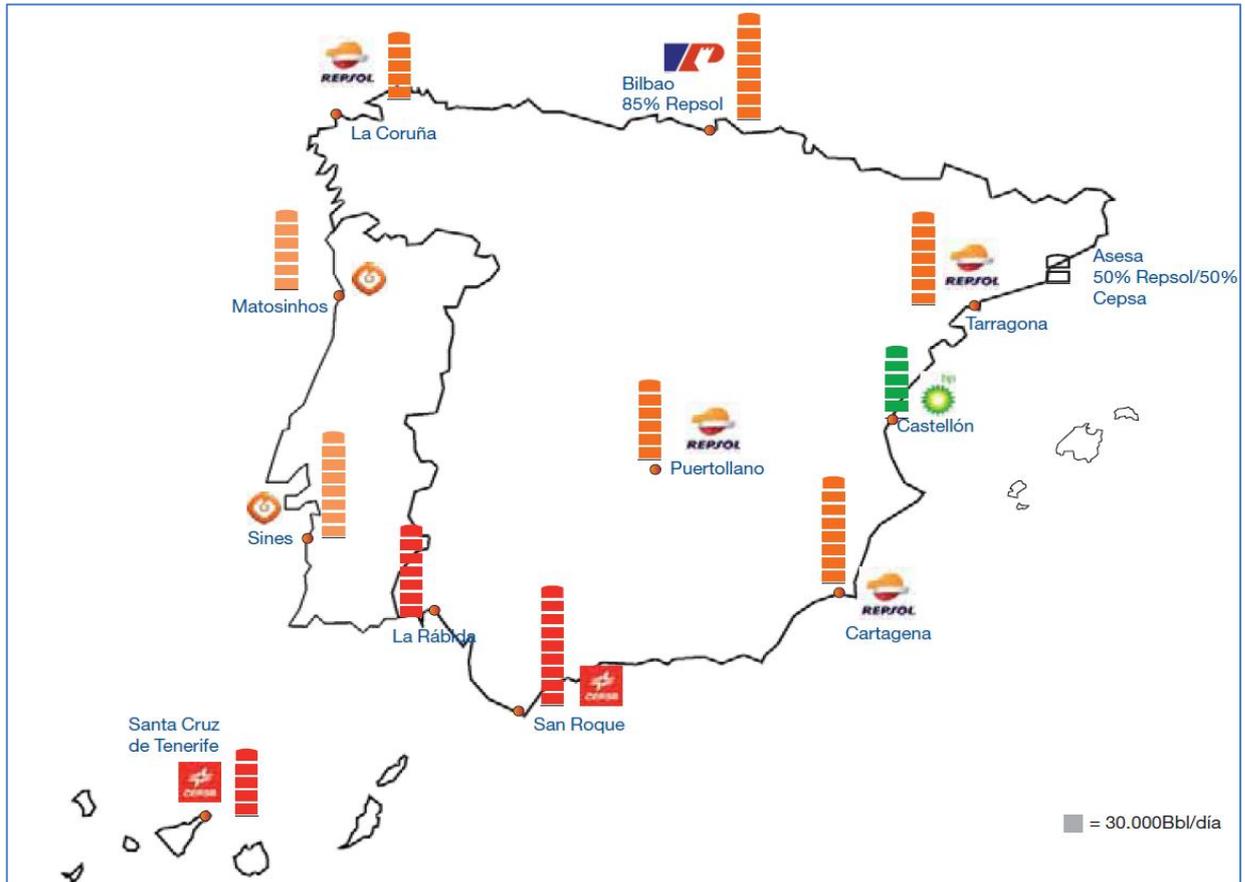
Source: Compiled by the authors based on the AOP Report: "Refining in Spain and Portugal"

19. The geographical location of Spain's refineries is shown in the following map:

¹¹ Germany and Italy each have eleven refineries, compared with Spain's nine. Source: AOP (Spanish Association of Petroleum Product Operators).

¹² Repsol controls 85.98% of Petronor.

Map 1: Geographical location of refineries in Spain and Portugal.



Source: AOP

20. Spain has one of the European Union's¹³ highest degrees of concentration as regards ownership of refineries, as its refining capacity is concentrated in just three companies: Repsol has 58.78% of Spain's refining capacity, Cepsa 34.08% and BP 7.13%.

¹³ Of the EU countries with more than five refineries (i.e., with a structure similar to the Spanish refining market) only France has a market as concentrated as Spain's (with three operators). In the other countries it is much less concentrated: Germany has ten operators, the UK seven, Italy seven and the Netherlands six.

21. Spain's refining capacity is also greater than the EU average. Spain's refining capacity of 75.7 MMTm/yr.¹⁴ is due to the capital expenditure made in the past few years on many of its refineries. This capital expenditure, carried out between 2008 and 2013, amounted to more than €6.5 billion¹⁵.
22. This capital expenditure, which was made despite the economic crisis, responded to the drastic change in the domestic consumption of automotive fuels, which in turn was due to the extensive conversion to diesel of vehicles in Spain in recent years. Since 2005, demand for medium distillates (which include diesel) has grown from 38% of the total Spanish market to 54% in 2010. Over the same period, demand for petrol and other light products has fallen from 18% to 14% of the total. The outlook is for this trend to continue, and for the demand for medium distillates to account for 62% of the total by 2020.¹⁶ Following this capital expenditure, Spain's refineries have sought to adapt their output to the market product mix while improving energy efficiency and reducing environmental impact¹⁷.
23. All this has been reflected in Spain's balance of trade in the form of reduced imports of medium distillates and since 2012 Spain has become, for the first time, a net exporter of petroleum products. Thus, the development of Spain's refining industry depends on exports to the EU and other countries, as well as on a possible increase in domestic demand.

¹⁴ Millions of metric tons per year

¹⁵ AOP report Refining in Spain and Portugal

¹⁶ AOP report Refining in Spain and Portugal

¹⁷ AOP maintains that, due to the improvements to the refineries, "*Spain has the most modern and efficient refining in the EU.*" However, "*exports will continue to be indispensable in order to maintain a high rate of utilisation. We are positive; we expect a modest recovery in domestic demand.*" <http://www.aop.es/pdf/Balance-Energetico-2013.pdf>

24. The capital expenditure plan has also had other kinds of consequences. The utilisation of refining capacity in Spain is currently only 80%¹⁸, showing a decrease from previous years¹⁹, as a result of the reduced consumption of refined products since the onset of the crisis in 2008 and the increased capacity of Spanish refineries.
25. The European market, like Spain's, has suffered a significant decrease in the demand for fuel since the onset of the crisis. However, the European petroleum industry, unlike Spain's, has not embarked on new capital expenditure programmes for its refineries, but has adjusted their excess capacity, closing a large number of refineries (between 2008 and 2013 fifteen refineries were closed in the EU²⁰). Due to refinery closures, Europe has lost 1.8 million barrels a day of refining capacity since 2008, nearly 11% of the capacity existing in 2008.²¹ However, the lack of competition in the Spanish market may have prevented the sector from adjusting to the fall in demand, compared with what has happened in other European countries.

II.2.2. Imports of Automotive Fuels

26. In the past few years Spain has had petrol surpluses and diesel shortfalls, due to the above-mentioned conversion to diesel of vehicles in Spain and the failure to adapt output to this shift in demand.
27. In 2013, net exports of 95 octane petrol (hereinafter “GNA95”) were approximately 1.8 MMTm (22% of petrol production²²) and net imports of A-type diesel (hereinafter “GOA”) amounted to 2.9 MMTm (17% of

¹⁸ Compiled by the authors, based on information from CORES (Spain's Central Stockholding Entity) and AOP (Spanish Petroleum Operators' Association).

¹⁹ In 2012 and 2013, production capacity utilisation was slightly higher, at around 80-85% on average. Source: CORES Statistical Bulletin, 2013.

²⁰ Source: Energy Market Observatory – European Commission.

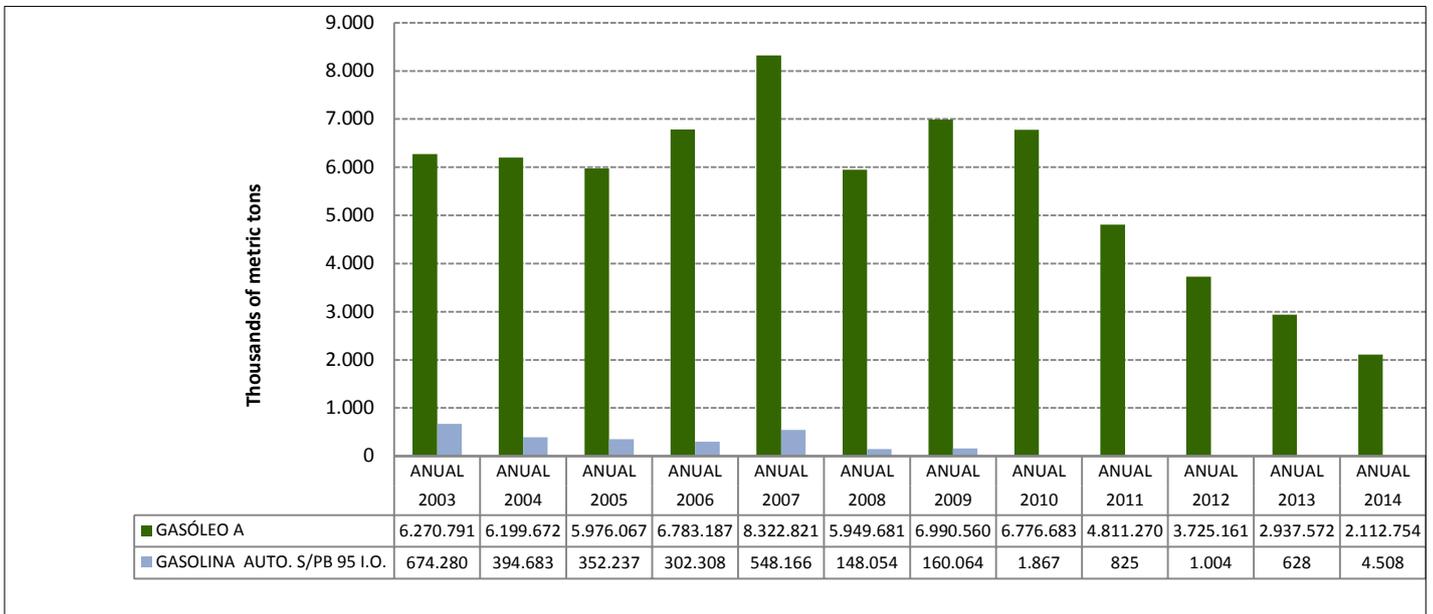
²¹ Source: IEA (International Energy Agency). IEA presentation at the EU Refining Forum held by the European Commission as part of the Refining Fitness Check.

²² Includes production of all types of petrol.

domestic consumption of auto diesel). In 2013, imports of GNA95 were just 628 metric tons, less than 0.001% of domestic consumption.

28. Spain therefore continues to have a surplus of petrol production, despite the efforts made to balance the product mix of Spain's refineries.
29. As shown in the following graph, the profile of Spain's automotive fuel imports has changed substantially in the past few years. Since 2009, imports of diesel have fallen continuously and significantly each year, while imports of petrol have practically ceased. This indicates a clear change towards self-supply. The Spanish automotive fuel market is basically supplied by the domestic production of the three existing refining operators: Repsol, BP and Cepsa. In the case of petrol, domestic supply represents nearly 100% of domestic demand, while domestically produced diesel accounted for more than 80% of the country's consumption in 2013. This 80% could however increase substantially if, for example, domestic fuel production increased. (It should be borne in mind that Spain's refineries have surplus capacity).

Graph 1: Imports of automotive fuels into Spain (period 2003-2014, in thousands of metric tons)



Source: Petroleum Statistics – CNMC

*2014: data up to October 2014

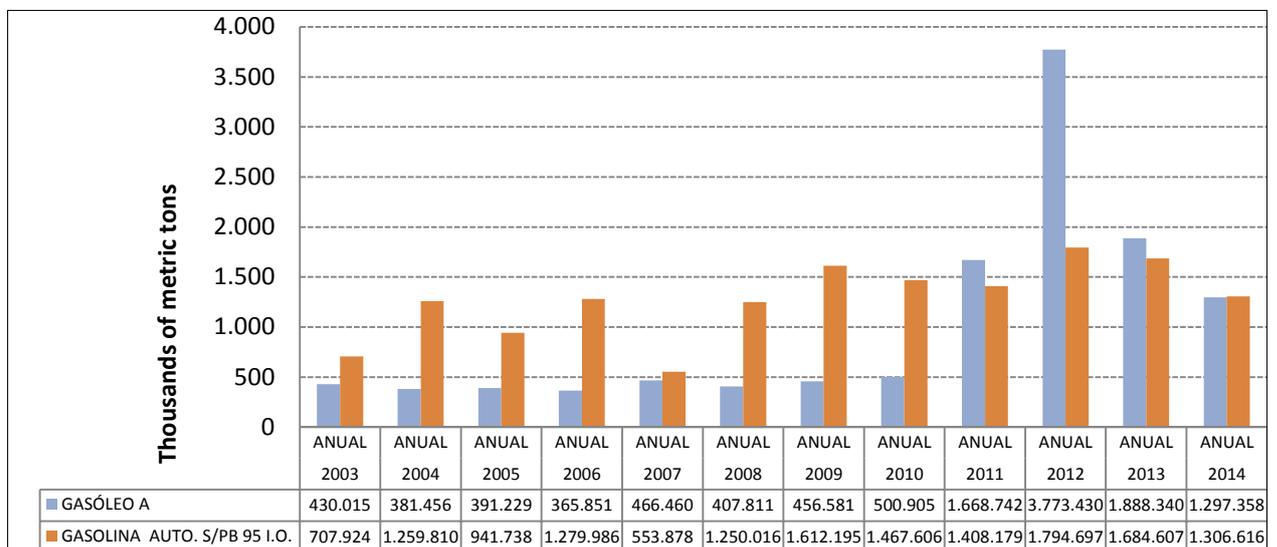
30. In 2013, 87% of imported petrol came from the Netherlands and the rest from the US and France. In the case of diesel, 22% of imports came from the US, 19% from Portugal, 16% from the Netherlands and 8% from Italy²³²⁴.
31. In absolute terms, however, it seems that national demand for fuel depends increasingly on the country's diesel and petrol producers, and less on imports.
32. As regards exports of fuels, the lower graph shows how exports of automotive fuels, contrary to what has happened with imports, have increased considerably since 2003. The threefold increase in diesel exports over the past few years is particularly notable. Exports of petrol have also increased in the past ten years, albeit less dramatically, particularly since 2009.

²³ Import data include imports of all types of petrol and diesel.

²⁴ CORES Statistical Bulletin. Data for 2013.

33. Thus, in 2012 Spain became a net exporter, the main export destinations for diesel being the EU Member States of France, Italy, the Netherlands and Belgium, which accounted for 36% of the total. 42% of petrol exports were to the US; 20% of diesel exports were to Africa.²⁵

Graph 2: Spain' exports of automotive fuels (period 2003-2014, in thousands of metric tons)



Source: Petroleum Statistics – CNMC

*2014: data up to October 2014

34. As a result, in spite of the competitive pressure that imports should in theory exert on domestic production, the analysis suggests that imports are not exerting sufficient competitive pressure on the domestic automotive fuel market. Domestic demand is met basically from the output of the operators with refining capabilities in Spain, i.e. Repsol, Cepsa and BP, while the role of imports is increasingly residual in the Spanish market.

²⁵ AOP report Refining in Spain and Portugal

35. The competitive pressure exerted by imports on the wholesale fuel market depends, among other factors, on the existence of adequate infrastructure for receiving, storing and transporting fuels, as well as on their cost.
36. It is therefore necessary to consider whether there are barriers to entry for imports of automotive fuel in Spain, and, if so, whether these barriers are the cause of the low level of imports. We will therefore look at whether there is adequate infrastructure for the reception, storage and transport of fuels in Spain, and at the economic viability of imports.

II.2.2.1. International transport and international prices

37. The imports of automotive fuel into Spain is mainly by oil tanker²⁶, given that Spain's pipeline network is not connected to any international pipeline network. In order to be able to import fuels, ports must have sufficient berthing and unloading capacity, and their tanks must be of a certain size.²⁷
38. Although domestic production and imports are normally considered to form part of the same product market, it must be borne in mind that domestic production does not have to bear the costs of international transport, insurance, freight or terminal unloading costs, etc. Furthermore, production in the refinery is more flexible, since it can be adjusted quickly in response to changes in demand, whereas the supply terms for import contracts are usually rather rigid²⁸. For example, when there are changes

²⁶ According to data from the CORES Statistical Bulletin of 2013, 81% of imports of petrol and diesel in 2013 were by ship. The remaining 19% was imported by road, since CLH's pipeline network is not connected to France or Portugal.

²⁷ See RCNC C/0366/11 Cepsa/Chesa, Report of the Investigation Directorate, paragraph 50, and Decision of the European Commission COMP/M.1628 – TotalFina/Elf, according to which import depots are defined as "those capable of accommodating large-capacity ships (between 30,000 and 50,000 tonnes). They can store all types of petroleum product and the largest ones are connected to at least two means of bulk transport." (paragraph 103).

²⁸ Another relevant structural factor in Spain's case is the fact that the Cartagena and Puertollano refineries (both owned by Repsol) are connected by oil and petroleum product pipelines, also owned by Repsol, which provide greater flexibility in the refining activity of

in demand, it is much easier to slow the pace of production at the refineries than it is to alter import commitments and terms or to divert tankers to other ports.

39. The refineries also provide their owners with an additional source of flexibility, in that they have storage tanks, which allows them to alter the pace at which products leave the refinery without changing the pace of refining (approximately 60% of storage capacity in Spain is in the hands of the operators with refining capabilities)²⁹. If necessary, therefore, this storage capacity would allow them to alter the speed at which products leave the refinery without having to change the speed of refining. All these factors could give domestic products a comparative advantage over imported fuels.

International prices: Is the cost of the Spanish imports competitive?

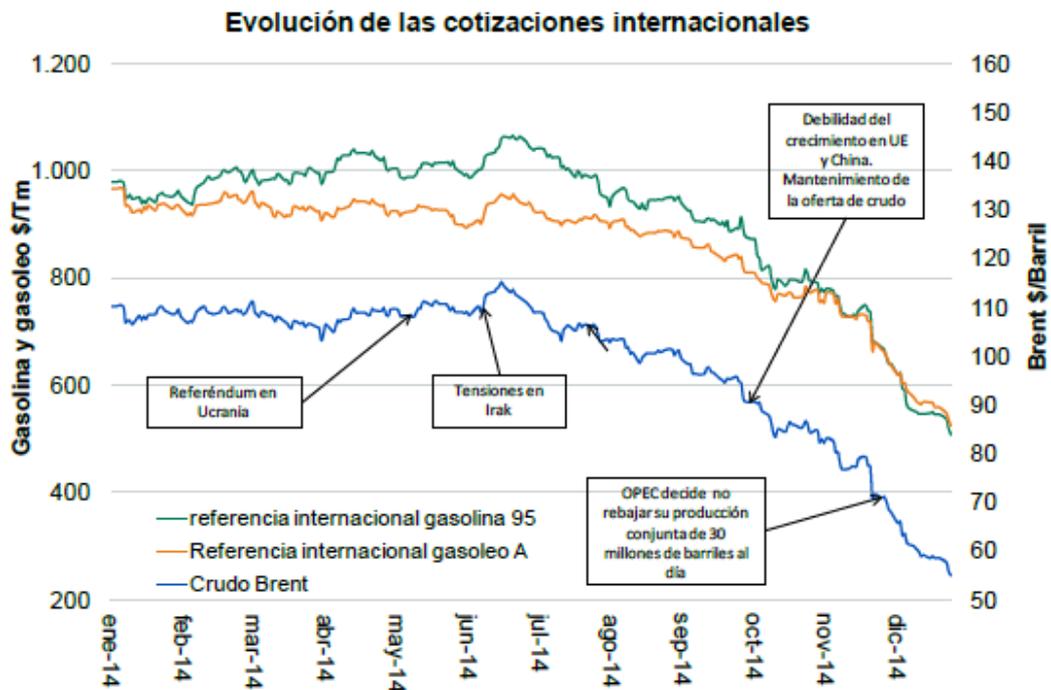
40. In Spain, the international reference markets are Rotterdam's NWE (Northwest Europe) market and Genova's MED (Mediterranean) market. Both are important trading centres with a large number of participants.
41. As can be seen in the following graph, international prices of petrol and diesel are strongly influenced by international crude oil prices and mimic their upward and downward movements. In 2014, there was a fall in both crude oil and automotive fuel prices, starting in the second quarter of the year. Among other factors leading to this fall were the signs of weakness in world demand and surplus production in the USA. At the end of the year, moreover, OPEC's decision to maintain output in a context of scarce demand, as a defence mechanism against new extraction techniques and

both complexes and relatively efficient transport of refined products between Cartagena and inland locations, with access at Puertollano to CLH's pipeline network. The recent expansion of the Cartagena refinery's production and conversion capacity has been accompanied by the commissioning, in 2012, of a petroleum product pipeline designed to work in both directions, allowing more efficient access from Puertollano to CLH's pipeline network for fuels produced in Cartagena.

²⁹ According to CNMC data.

alternative sources of energy, had a significant impact on crude oil prices, which was passed on in petrol and diesel prices, albeit not fully. We may conclude from the foregoing analysis that international crude prices have a strong influence on trends in either direction of automotive fuel prices, although price increases and reductions are not translated perfectly or immediately into international fuel prices.

Graph 3: Ci GNA 95 and GOA – Comparison with Brent crude price per barrel



Fuente: CNMC, elaboración propia

International prices in the Spanish market

- The Spanish market is supplied by the Mediterranean and Northwest European markets in proportions that differ from those of the EU-14. While for Spain the theoretical supply cost is the average of the quoted prices for 30% NWE CIF ARA Platt's High and 70% MED CIF Cargoes Platt's High,

for the EU-14 it is the average of the quoted prices for 50% NWE CIF ARA Platt's High and 50% MED CIF Cargoes Platt's High.

43. The different percentages applied in Spain might lead to a different supply cost from the cost borne by other European countries with different patterns of supply. To check whether international prices in Spain differ from those of its European partners and if so to what extent, a comparison can be made between Spain's theoretical supply cost and that of the EU-14, in each case, based on the corresponding international reference price (hereinafter, Ci³⁰) of petrol and diesel.
44. For do this, the degree of correlation between Spain's Ci and the Ci of the EU-14 must be established. Therefore, the former CNE determined the degree of correlation between the two variables over a four-year period. The study concluded that there was a high degree of correlation between the two, with a correlation coefficient very close to one (0.999)³¹.
45. This high degree of correlation implies that the international price formation reference values have behaved similarly in the Spanish and EU-14 references, as might be expected with the normal operation of an open international market such as the market for petroleum derivatives. The Ci of products imported by Spain does not differ significantly from those borne by its major European partners when importing automotive fuels. This high degree of correlation between supply prices also means that any differences in behaviour between Spanish pre-tax fuel prices and those of EU-14 countries must be due to domestic factors, not to any differential behaviour of international markets.
46. It is necessary to add that the international reference price or Ci includes the cost of maritime transport and insurance of the product as well as its

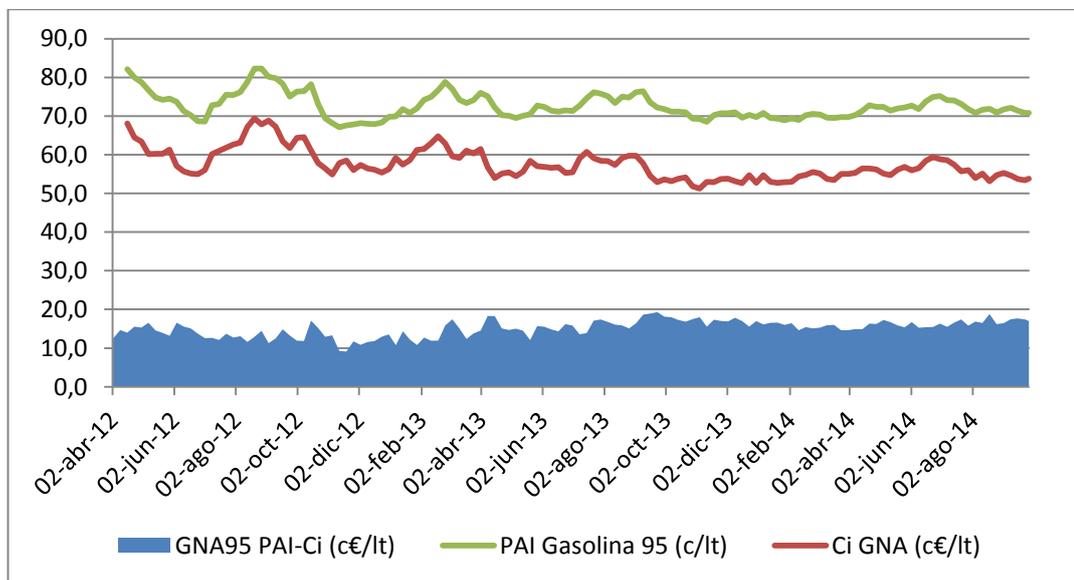
³⁰ For the purposes of this report "Ci (\$/lt)" means the arithmetic mean of the weekly international reference prices for the fuel in question expressed in US dollars per litre. These weekly international reference prices are in turn the result of the average of the daily prices published by Platt's in dollars per metric ton, converted to dollars per litre.

³¹ Report on trends in prices and selling margins of automotive fuels in Spain (CNE, the National Energy Commission as it then was).

cost, since the Incoterm CIF is used as the reference. Goods acquired on a CIF (Cost, Insurance & Freight) basis includes the cost of the product transported and its delivery to the destination port with freight and insurance paid. Thus, if the reference Ci in Spain were less than the pre-tax price of the fuels and Spanish wholesale auto fuel operators were therefore able to obtain a sufficient margin to cover their “local” supply costs and make a profit, we could conclude that imports of petrol and diesel constitute a real alternative for the Spanish market from a financial point of view.

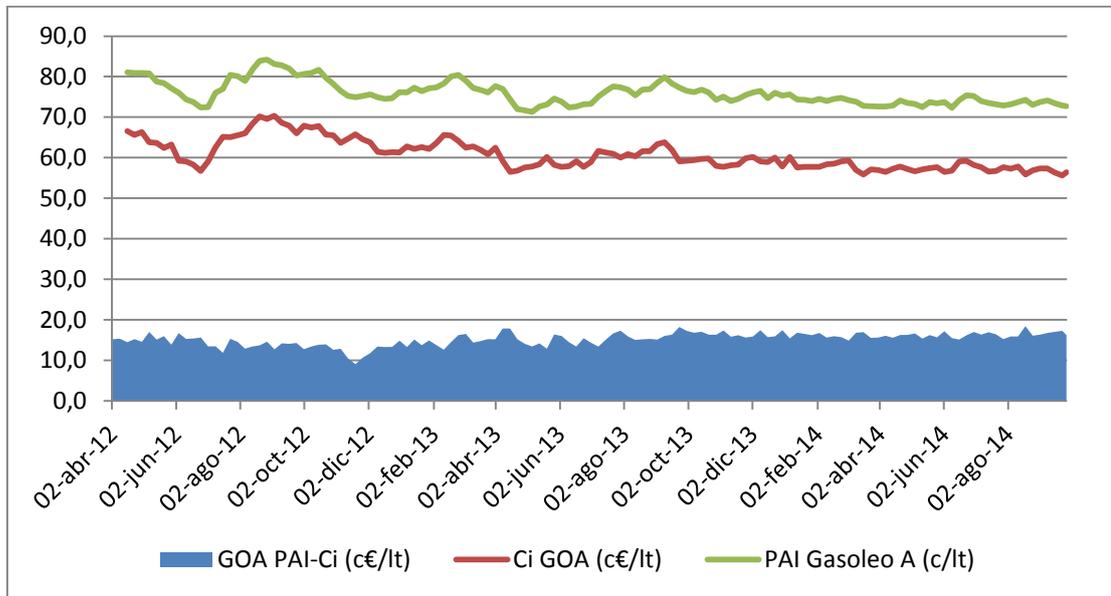
47. The following graphs are particularly revealing in this respect:

Graph 4: Pre-tax prices and Ci in Spain (GNA95, 95 octane unleaded petrol) (euro cents per litre)



Source: compiled by the authors, CNMC

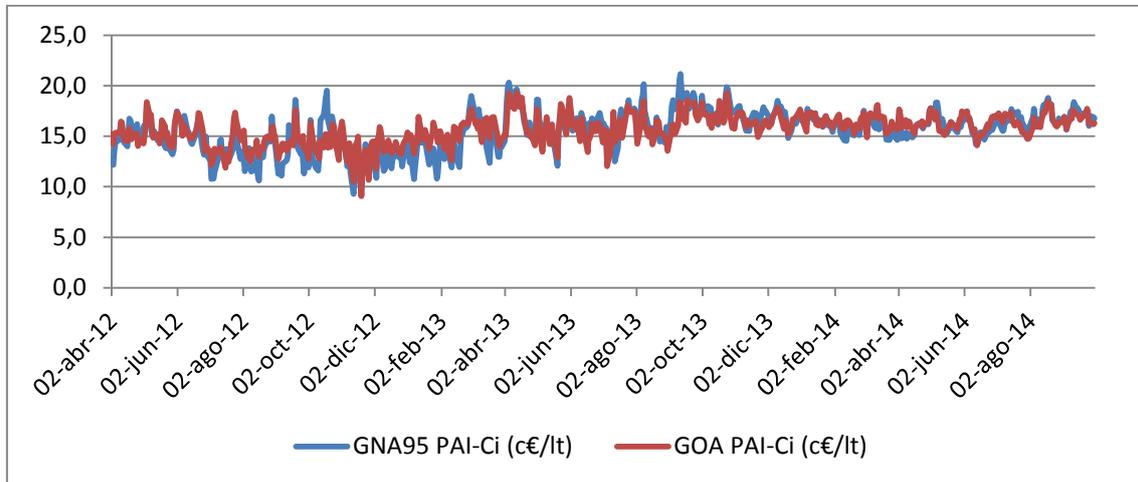
Graph 5: Pre-tax prices and Ci in Spain (GOA, A-type diesel) (euro cents per litre)



Source: compiled by the authors, CNMC

48. In both graphs and for both fuel types over the past few years, we see stable and slightly rising gross margins, defined as the difference between the pre-tax price of petrol and diesel and their respective international prices.
49. Specifically, during the period analysed (April 2012 to August 2014), the gross margin of potential automotive fuel importers would have been around 15-17 euro cents per litre, less at the beginning and more at the end of the period, i.e. increasing, for both 95 octane petrol and A-type diesel.

Graph 6: Trends in gross distribution margins for GNA95 (95 octane unleaded petrol) and GOA (A-type diesel) in Spain



Source: Compiled by the authors, CNMC

50. From the foregoing analysis, in view of the increasing trend in the gross margin over the past few years in Spain, we could conclude that imports of automotive fuels to Spain seem to constitute a viable alternative from a financial point of view, since the trend in profits might reflect a lack of competitive pressure in the sector.

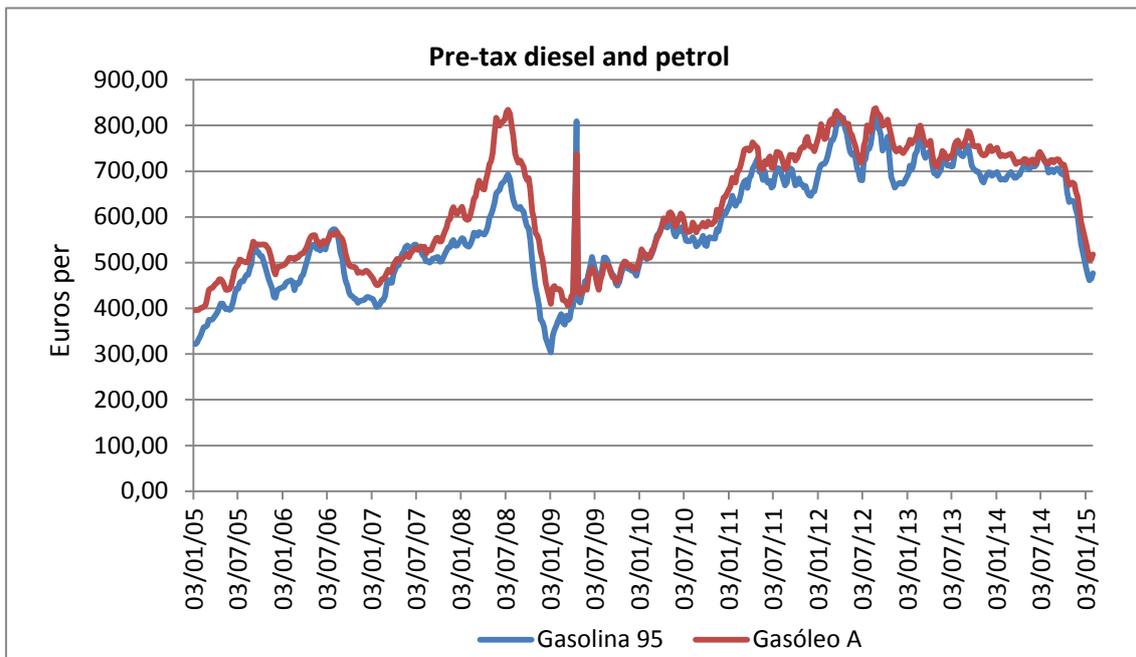
II.3. Prices of automotive fuels and gross distribution margin

51. Prices are one indicator of the level of competition in a sector. We will now analyse the prices of automotive fuels in Spain and the margins obtained by the operators, with a view to verifying whether the lack of imports to Spain results in higher prices for end consumers and therefore less effective competition. For this we shall use pre-tax prices, since: (i) taxes are not uniform across all regions of Spain and (ii) taxes are also not uniform across all EU Member States. Therefore, the best way to make national and European comparisons is to use pre-tax prices.

II.3.1. Pre-tax prices of petrol and diesel in Spain

52. In Spain, pre-tax prices of 95 octane petrol and A-type diesel have followed an aggregated path, rising from the beginning of 2009 to mid-2014; the most notable increase being from the first quarter of 2009 to mid-2012.

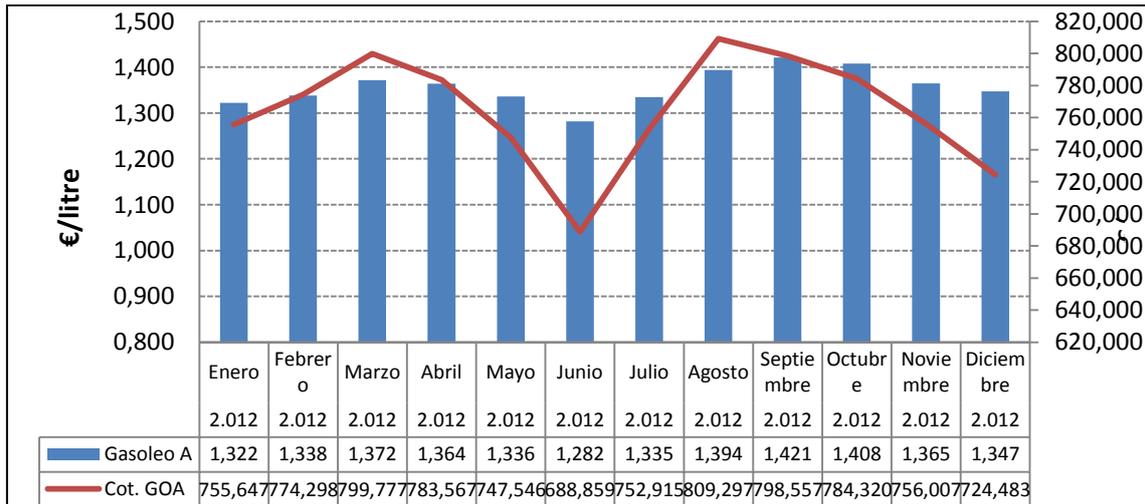
Graph 7: Pre-tax prices of petrol and auto diesel in Spain (period 2005-2015)



Source: compiled by the authors based on the European Commission's Oil Bulletin.

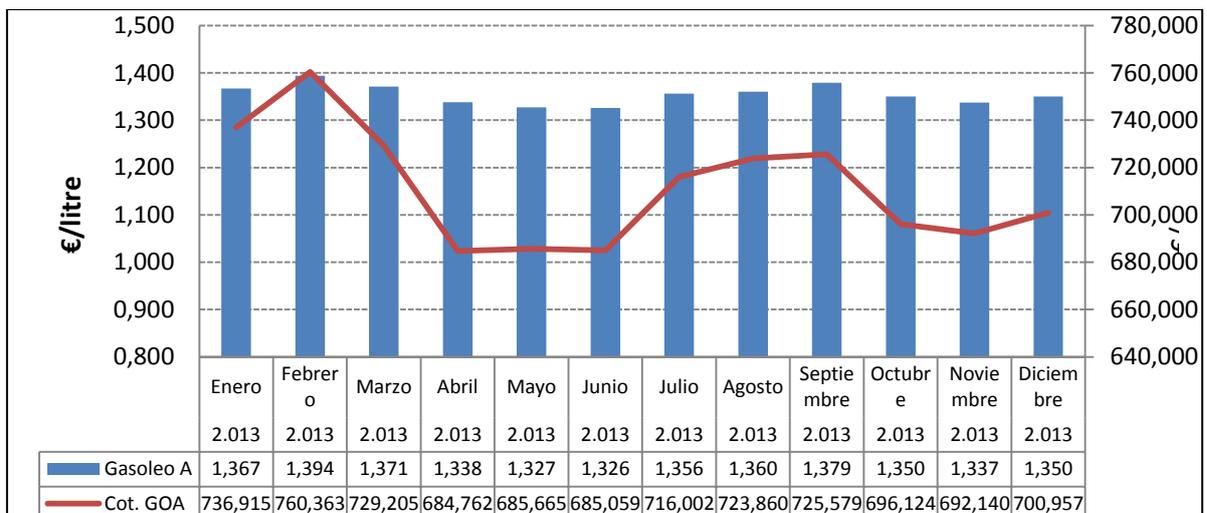
53. Since 2009, moreover, as we saw under section II.2.2, imports of diesel have fallen continuously each year and imports of petrol have practically ceased.
54. The increase in prices could be related to the fall in imports, or it could be a reflection of the growth trend for international prices. The following graphs show the changes in the past three years of pre-tax prices of diesel-A in Spain compared to the Ci of both fuels.

Graph 8: Trends in pre-tax prices of GOA (A-type diesel) vs. the Ci of GOA 2012



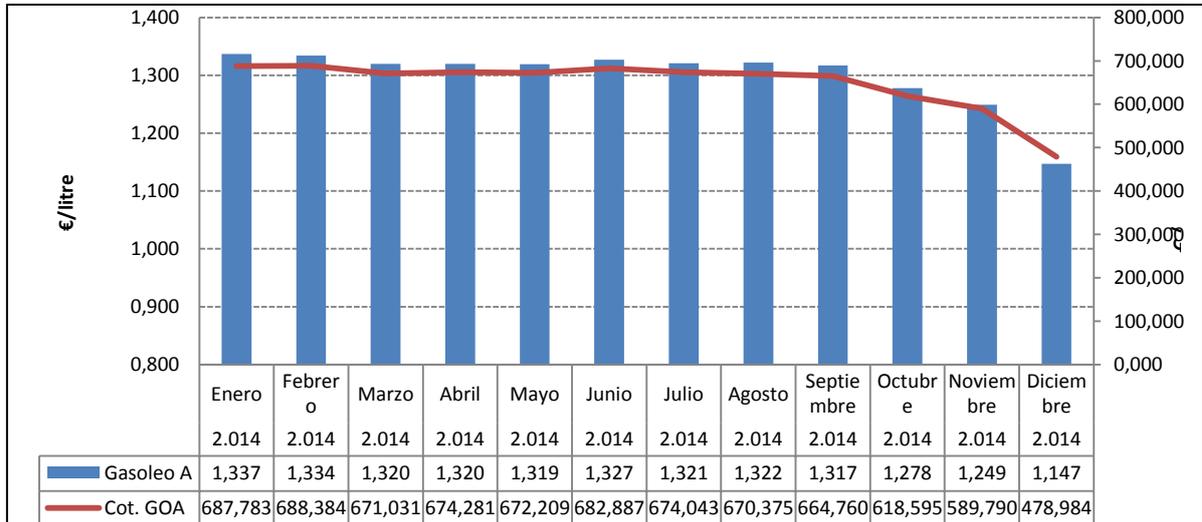
Source: Petroleum statistics, January 2015 (CNMC)

Graph 9: Trends in pre-tax prices of GOA (A-type diesel) vs. the Ci of GOA 2013



Source: Petroleum statistics, January 2015 (CNMC)

Graph 10: Trends in pre-tax prices of GOA (A-type diesel) vs. the Ci of GOA 2014

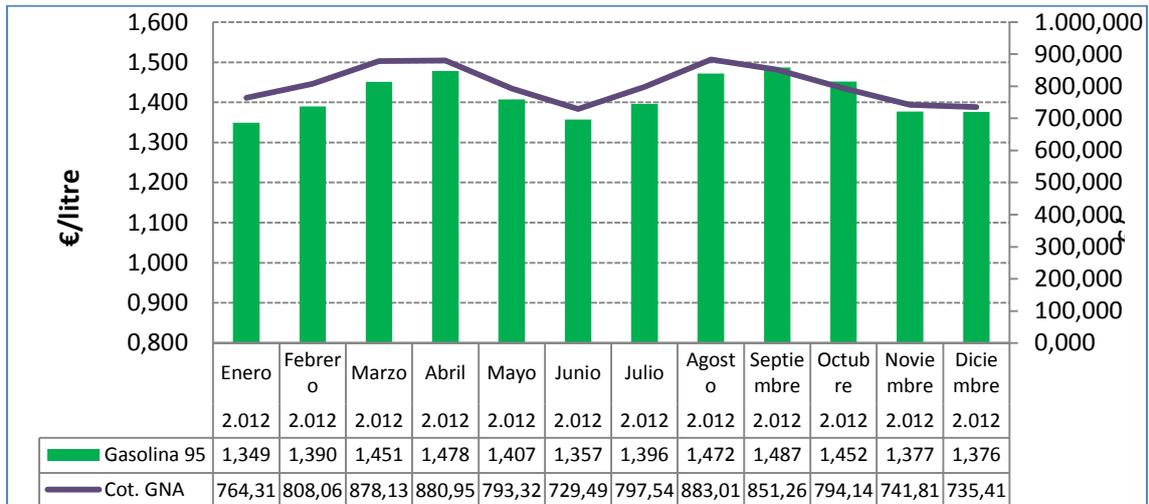


Source: *Petroleum statistics, January 2015 (CNMC)*

55. A number of conclusions can be drawn from the above graphs. In the first place, in periods of rising international prices for diesel A, pre-tax prices seem to adjust quickly to these rises, albeit not perfectly. However, this effect is not observed when studying periods of falling internationally quoted diesel prices. During these periods, prices tend to take longer to adapt to the falls in quoted prices, and in some cases there is no adjustment at all. In this regard, price movements in 2014 are particularly noteworthy. In that year, internationally quoted prices for diesel were fairly stable up until September, as were domestic retail diesel prices. In the last quarter of the year, internationally quoted prices fell sharply, and domestic pre-tax prices fell proportionally or even more. This price behaviour is an exception in the case of Spain. And it was an exception that did not last long: in January 2015 pre-tax prices of diesel A increased to above the internationally quoted price.

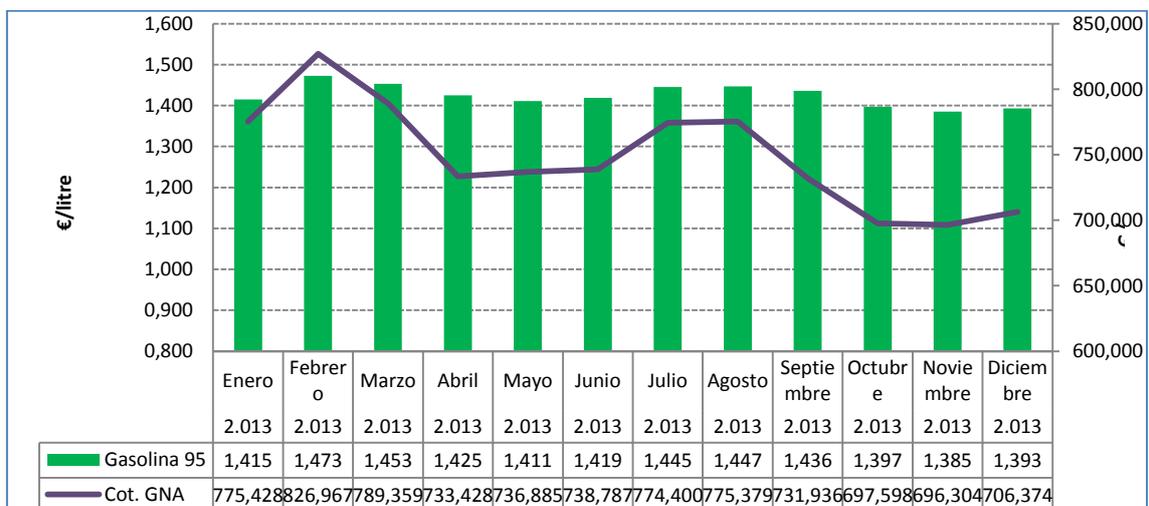
56. If we were to analyse the price adjustments of 95 octane petrol as compared to internationally quoted prices, the results would be similar, albeit with less pronounced upticks:

Graph 11: Trends in pre-tax prices of GOA (A-type diesel) vs. the Ci of GOA 2012



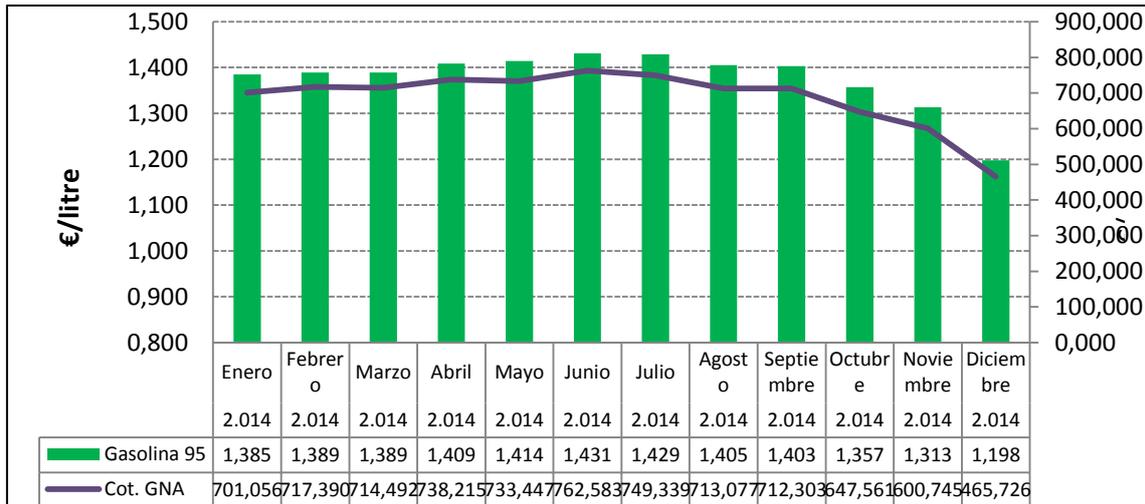
Source: Petroleum statistics, January 2015 (CNMC)

Graph 12: Trends in pre-tax prices of GOA (A-type diesel) vs. the Ci of GOA 2013



Source: Petroleum statistics, January 2015 (CNMC)

Graph 13: Trends in pre-tax prices of GOA (A-type diesel) vs. the Ci of GOA 2014



Source: Petroleum statistics, January 2015 (CNMC)

57. This pattern of prices in which price reductions are delayed and not fully passed on is compatible with the phenomenon known as “rockets and feathers” (Bacon, 1991) whereby fuel prices adjust faster to increases in internationally quoted prices than to reductions. This phenomenon may also be explained by the so-called Edgeworth price cycles (Maskin & Tirole, 1998). According to Edgeworth, operators make small price reductions over a long period and then raise them suddenly. Economic literature³² suggests that this behaviour might be due to at least temporary collusion, tacit or explicit, among operators to increase prices, although there are also authors³³ who are of the opinion that the phenomenon of rockets and feathers is compatible with a competitive market. For

³² Policy Roundtables, Competition in Road Fuel. OECD, 2013.

³³ Policy Roundtables, Competition in Road Fuel. OECD, 2013.

example, Noel, in 2011³⁴, maintained that the behaviour of Edgeworth cycles was a sign of a competitive market.

58. This asymmetric price transmission has been studied previously by the former CNC and CNE. Nonetheless, despite the discrepancies among the various authors, there seems to be a consensus as to the possible solution when the pattern of prices corresponding to the phenomenon of rockets and feathers (or Edgeworth price cycles) is caused by problems of lack of competition in the market. The solution would come from the reduction or elimination of barriers to entry, in both the wholesale and retail segments, which would lead to an improvement in effective market competition.
59. In short, Spanish pre-tax fuel prices have followed an aggregated path, rising from the beginning of 2009 to mid-2014, the most notable increase being from the first quarter of 2009 to mid-2012. The changes in pre-tax prices imperfectly reflect the trend in C_i , adjusting to increases in quoted prices but not decreases, except in the last quarter of 2014. As has been pointed out, these trends in Spanish pre-tax prices might be due to a lack of effective competition in the wholesale fuel market in Spain, either because of the market power of one or more operators or a lack of competitive pressure from imports or both.
60. In order to determine whether Spanish pre-tax prices are also higher than those of other European countries, we shall carry out a comparison with EU Member States under the following heading.

II.3.2. Comparison with Europe and trends in pre-tax prices

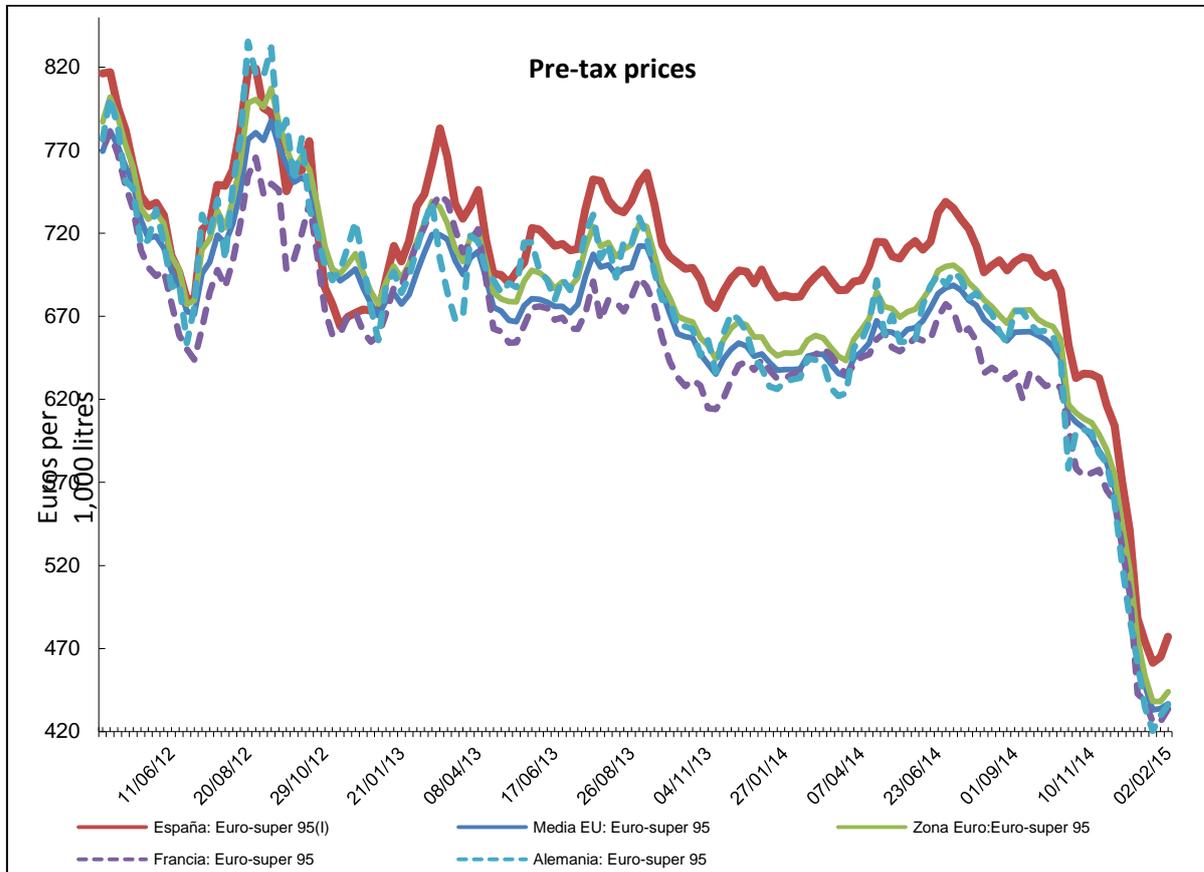
61. In order to determine whether pre-tax prices of fuels are higher in Spain than in other EU countries, we shall compare pre-tax prices in Spain with these same prices in Europe.

³⁴ Noel, M. (2011) "Edgeworth Price Cycles, 2011"

62. The following graphs show the pre-tax prices of 95 octane unleaded petrol³⁵ and A-type diesel in Spain and compare them with the average pre-tax prices of EU-28 countries, euro zone countries and France and Germany, since these last two present similar characteristics to Spain, with a view to determining Spain's relative position and quantifying the differences from European averages.
63. The pre-tax prices used were taken from the Oil Bulletin, a weekly publication of the European Commission Energy Directorate containing information on prices and taxes for various petroleum products. This information is sent to the European Commission by the Member States. The prices published are prices before the application of any possible discounts and taxes.

³⁵ 95 octane and unleaded 98 octane petrol present almost identical behaviours and price correlation coefficients, so the results of the analysis of prices and distribution margins for 95 octane petrol can be applied to unleaded 98 octane petrol.

Graph 14: Pre-tax prices of GNA (95 octane unleaded petrol) - European Comparison

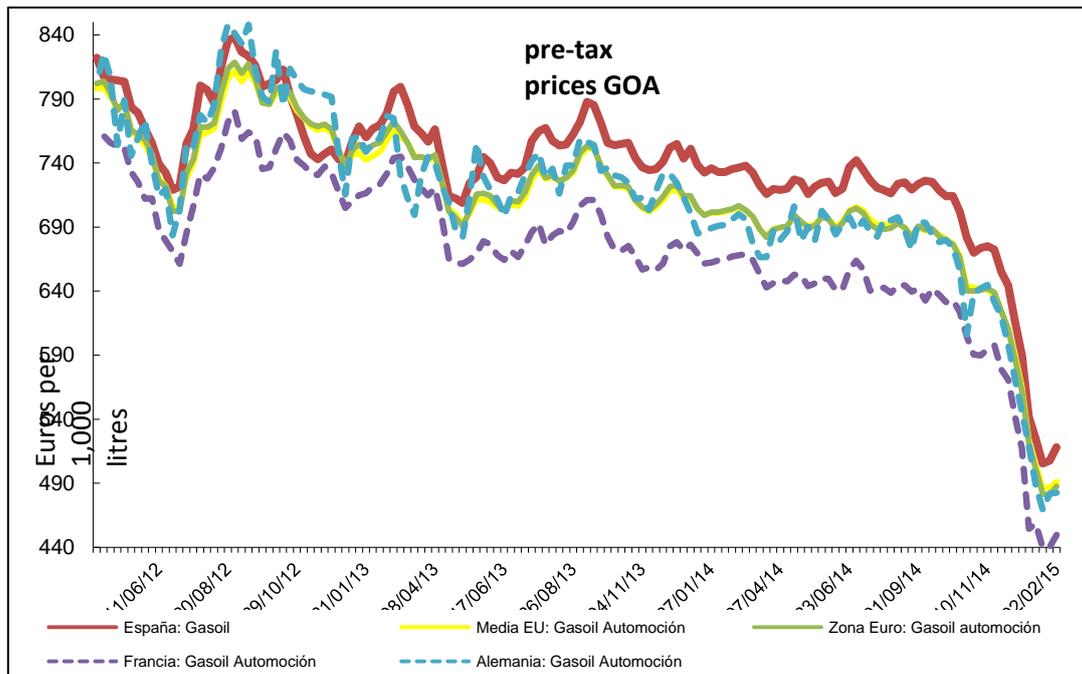


Source: Compiled by the authors based on prices published in the European Commission's Oil Bulletin.

64. As can be seen from the graph, from mid-2012 until the end of 2014, the price differential with the European average (EU-28 and euro zone), and with France and Germany, was significant. Spanish pre-tax prices have been well above the European average, particularly since the beginning of 2013. The differential with France is especially marked. Only from October 2014 did Spanish pre-tax prices start to approach the European average, although they are still above them (and we see an uptick at the beginning of January 2015). The biggest differences with the euro zone (between +4 €/lt and +5 €/lt) are seen in June 2014 for 95 octane petrol. The highest positions in the ranking of EU pre-tax prices were reached for G95 in May

and June, when Spain was in second place, and in January and the period from June to September for diesel A, when it was in sixth place.

Graph 15: Pre-tax prices of GOA (A-type diesel) – European Comparison



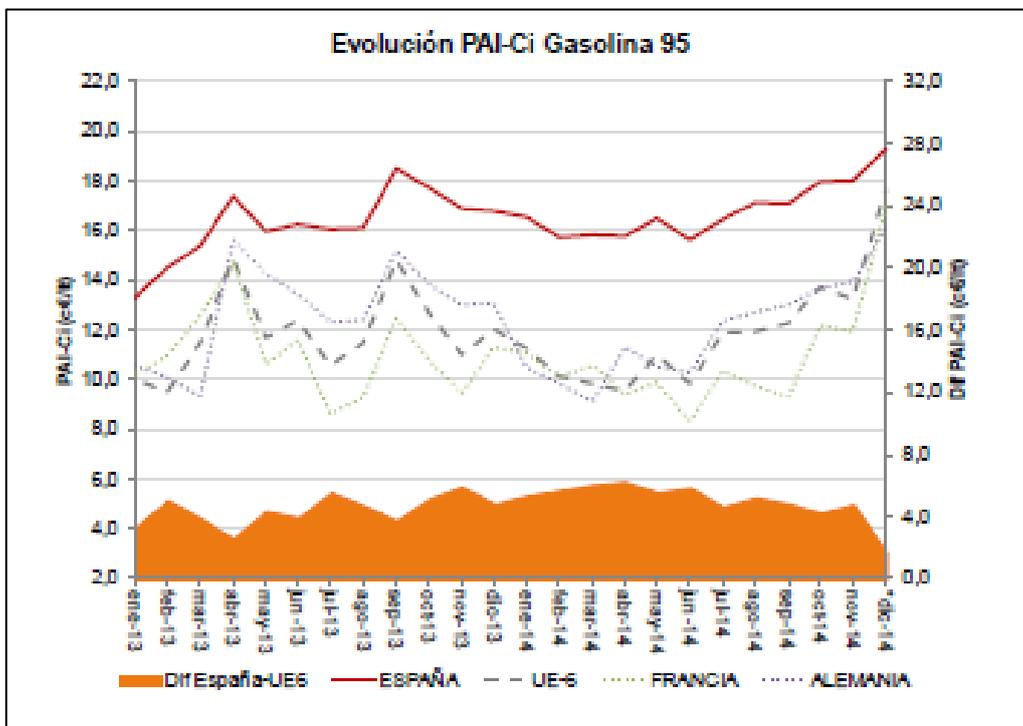
Source: Compiled by the authors based on prices published in the European Commission's Oil Bulletin.

65. The behaviour of diesel is very similar to that of petrol, i.e. with prices above the European average, and with a difference from France that is particularly revealing. In fact, despite the substantial fall in prices during the last few months of 2014, pre-tax prices were above the European averages throughout 2014.
66. The fact that Spain's price structure (pre-tax prices of petrol and diesel in Spain) is higher than those of neighbouring countries is inconsistent with a competitive dynamic: in an efficient market imports of automotive fuels from countries with lower prices could be expected to bring domestic prices into line with these countries' more competitive prices, discounting transport costs for imports.

II.3.3. Analysis of trends in gross distribution margin in Spain

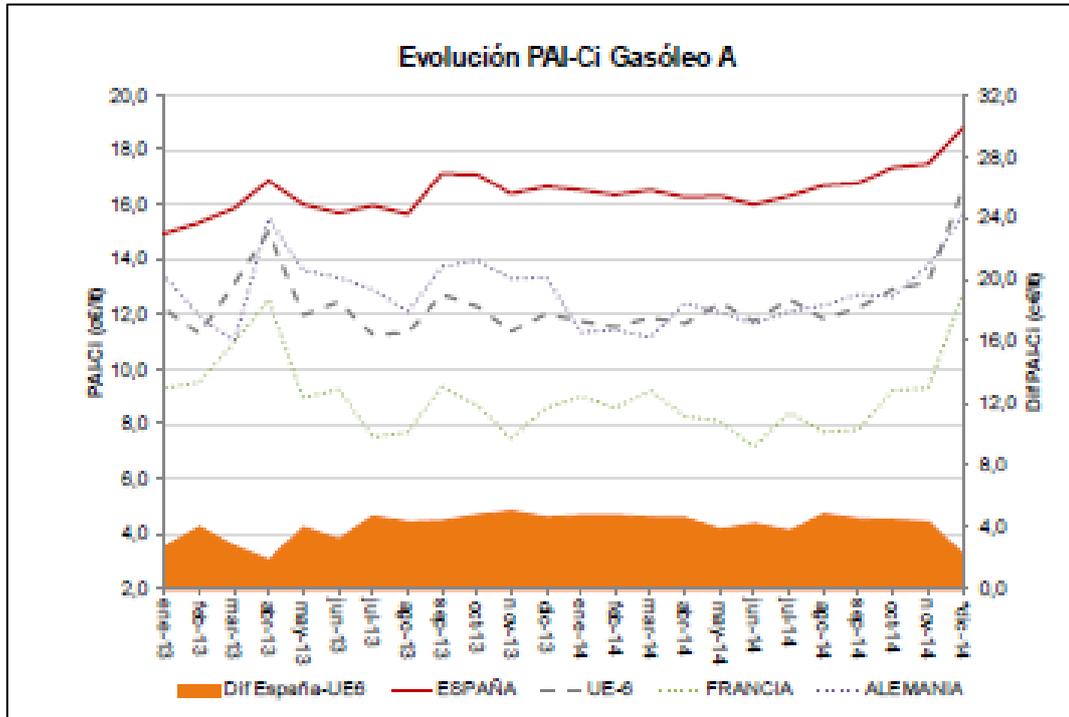
67. Spain's higher pre-tax prices are due to higher gross distribution margins. The gross distribution margin on fuels is a measure that includes the cost of all the logistical activities in the fuel distribution chain in the country where the fuel is consumed, as well as other costs associated with the wholesale operator and its net margin. As already pointed out, it is obtained by subtracting the theoretical cost of importing the fuel (Ci) from the country's pre-tax prices.
68. The pre-tax prices comprise three basic elements: (i) the wholesale cost of fuel (the Ci is used as an approximation); (ii) the cost of distribution, which includes service station-related costs (personnel, pumps, tanks, etc.), the cost of transport from the point of supply to the service stations, the cost of storing strategic reserves, the additional cost of biofuels and, since July 2014, the cost of the contribution to the National Energy Efficiency Fund, and (iii) the net wholesale margin.
69. In a competitive market, if domestic supply costs exceeded the internationally quoted price of the fuel in question, operators would import the fuel to reduce their supply costs. Imports would contribute to disciplining the market, lowering the domestic supply costs until they fell to the level of the internationally quoted price. It is for this reason that we use the Ci of petrol and fuel as an approximation to wholesale fuel supply costs.
70. The gross margin on automotive petrol and diesel would be obtained by adding distribution costs to the net wholesale margin. A gross distribution margin in Spain that is higher than that of its European partners would imply that the costs associated with distribution are higher in Spain, and/or that the net wholesale margin is higher.
71. The following graphs show the trends and amounts of gross distribution margins in Spain relative to EU-6 countries, France and Germany.

Graph 16: Changes in gross distribution margin for GNA 95



Source: Monthly report on the supervision of fuel distribution in service stations (December 2014). Figures for December are for 1 to 15 December.

Graph 17: Changes in gross distribution margin for GOA



Source: Monthly report on the supervision of fuel distribution at service stations (December 2014). Figures for December are for 1 to 15 December.

72. As shown in the graphs, gross distribution margins on fuels (pre-tax prices - Ci) are significantly higher in Spain than in the EU-6, France and Germany. Since January 2013, gross margins in Spain have increased on both types of fuels, and for petrol in particular. In the case of the EU-6, gross margins have shown significant fluctuations, with long periods of falling margins and substantial increases at the end of 2014. EU-6 margins are more volatile than Spain's, probably due to a more competitive dynamic in their markets, in which we see rises and falls in supply costs being more fully and symmetrically reflected in pump prices.
73. It is also necessary to highlight the substantial difference in margins between France and Spain. The structure of France's fuel market is very different from Spain's. In particular, France imports a large percentage of

its fuel requirements³⁶, and the market share of independent and private label operators is very significant (around 50-60% of the market), whereas in Spain imports and independent retail operators represent a small part of the market.

74. The orange area on both graphs represents the difference in gross distribution margins between Spain and the EU-6 for each automotive fuel. In the period covered by the graphs, this difference grew almost constantly until late 2014. Since then the differences in gross distribution margins relative to EU-6 countries have decreased. This is due to a greater increase in the gross distribution margin in the EU countries in the last few months of 2014. This increase came at the same time as a very sharp fall in the quoted prices for crude oil. In fact, we can see that the highest gross distribution margins, both in Spain and in EU-6 countries, France and Germany were posted in the last few months of 2014.
75. Leaving aside the exceptional situation in these past few months, the differential in gross distribution margins between Spain and the EU-6 has in general demonstrated a rising trend throughout this period. Gross distribution margins have, without exception, been higher in Spain than in the countries of the EU-6.
76. This pattern of gross distribution margins is not new in Spain, as was observed in the last report on fuels issued by the CNC in 2012, which summarised and updated all the previous ones, and which was requested from the CNC by the State Secretariat for Economy and Business Support. According to this report, in the period 2007-2010, the gross distribution margin in Spain grew by approximately 20% for both petrol and diesel. This increase in the gross distribution margin was from a base that

³⁶ In 2011, France imported 40% of its total fuel consumption (*The Spanish market for distribution of petrol and diesel through service stations*, CNE, 2012).

was already much higher than that of other comparable countries, and in spite of the sharp contraction in the demand for fuel since 2007³⁷.

77. There can only be two reasons for the high levels of gross distribution margins in the Spanish market:
- i. The costs associated with fuel distribution are higher in Spain,
 - ii. Wholesale margins are bigger
78. In the following sections we will determine the causes of the high logistical costs borne by wholesale fuel operators in Spain. In this regard, the two most significant cost headings are those relating to logistics (import infrastructure, storage facilities and transport by pipeline), and those associated with the minimum security reserves.
79. We will also determine whether the market power of wholesale operators upstream and downstream may be the cause of the bigger wholesale margins in the Spanish fuels market.

II.3.3.1. Logistics: import capacity in Spain and substitutability of ports

80. In order for imports of automotive fuel to exert sufficient competitive pressure on Spanish operators, not only must imports represent a real economic alternative, there must also be an adequate network of import infrastructures so that the price of imported fuel can be competitive in the domestic market, bearing in mind all the costs to which it is subjected to. For that reason, it is important to carry out an exhaustive analysis of port import infrastructure and determine the real berthing, unloading, storage and distribution capacities of these import depots at Spanish ports, as well

³⁷ Before that, consumption of petroleum products in Spain had grown continuously, peaking in 2007. However, the crisis that began in 2008 and has intensified in the past few years has led to the consumption of petroleum products declining continuously since then, with petrol consumption decreasing by more than 30%. Auto diesel has performed better, falling by 7.2% relative to 2004 (source: AOP)

as the substitutability of the various alternatives for transport and distribution of fuels within Spain in terms of volumes and costs.

Import ports

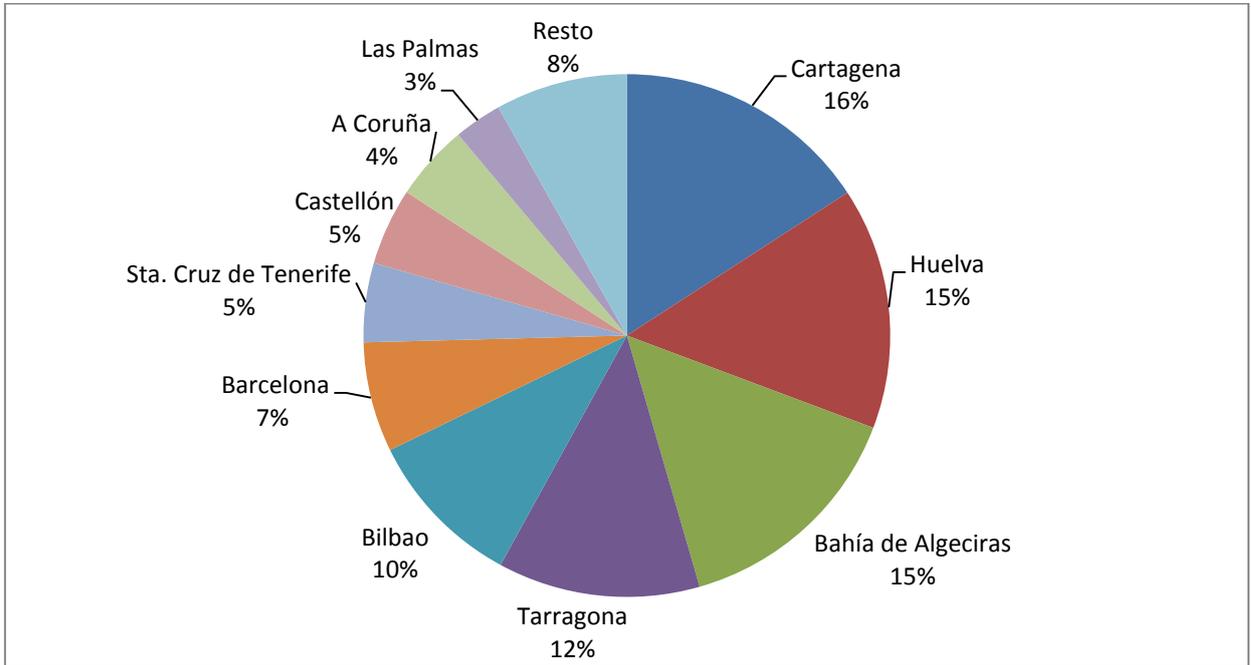
81. The import of automotive fuels to Spain takes place through ports equipped with storage facilities for petrol and diesel and with sufficient berthing capacity to accommodate large oil tankers. In this regard, the European Commission, in case COMP/M.1628 TotalFina/Elf, and subsequently the CNC, in case C-0366/11 Cepsa/Chesa, define import depots as those capable of (i) accommodating large-capacity ships (between 30,000 and 50,000 metric tons) and (ii) storing petroleum products (only petrol and diesel storage facilities are relevant to this study). The European Commission further notes that the largest ports are connected to at least two means of bulk transport. Railway infrastructure and pipelines can be considered means of bulk transport. In Spain, the transport of automotive fuels by rail is not usual³⁸, being pipelines the most commonly used means of transport. Moreover, in Spain, transport by pipeline is also the most efficient transport, allowing significant economies of scale and network savings. When there are no connections to pipelines or railway infrastructure, the alternative is tanker truck loading facilities. Their distribution capacity is however limited, as is their area of influence.

Ports in Spain with import capability

82. According to Puertos del Estado ("State Ports", a public body reporting to the Ministry of Public Works and Transport), ten port authorities move 91.9% of the traffic in bulk liquids, which include both petroleum and refined products.

³⁸ The CNC, in its [Report on competition in the transport of goods by rail in Spain](#) noted that "rail is the means of transport with the smallest presence, with barely 3% of total flows (in port traffic)". It also indicated that "some ports lack rail access and others have rail access but no electrified track". All of which makes rail access difficult at maritime terminals.

Graph 18: Traffic in Bulk Liquids at Spanish Ports (2012)



Source: Puertos del Estado (State Ports) (Ministry of Public Works and Transport)

83. The preceding graph shows that eight ports in mainland Spain and two in the Canary Islands unload almost all petroleum products in Spain. The eight mainland ports received nearly 129 million metric tons a year of bulk liquids, the breakdown being as follows:

Table 2: Liquid Bulk Traffic by Port Facility, 2012

Liquid Bulk - 2012	Volume (thousands of metric tons)
Cartagena	24,230
Huelva	22,921
Bahía de Algeciras	22,700
Tarragona	19,050
Bilbao	15,061
Barcelona	10,431
Castellón	7,313
A Coruña	7,208

Source: Puertos del Estado (State Ports) (Ministry of Public Works and Transport)

84. In the case of the Canary Islands, the ports of Santa Cruz de Tenerife and Las Palmas de Gran Canaria received 12 million metric tons in 2012.
85. As can be seen from these figures, port traffic in petroleum products is concentrated at a limited number of Spanish port facilities, despite the existence of other Spanish ports with suitable facilities for import.
86. According to CLH, there are eleven port facilities in mainland Spain with the infrastructure required to unload petrol and diesel. These ports are: Barcelona, Tarragona, Castellón, Cartagena, Motril, Algeciras, Rota, Huelva, Coruña, Gijón and Santurce (Vizcaya).
87. According to public information from the Spanish port authorities and CLH, and information on the flow of goods loaded and unloaded by wholesale operators³⁹, these eleven mainland ports can be considered, in terms of unloading capacity, as import depots, since they can accommodate ships of 30,000-50,000 metric tons capacity⁴⁰. However, at three of the eleven import depots there are notable restrictions on unloading automotive fuels. As CLH indicates on its website, ships cannot be unloaded at the port of La Coruña⁴¹ because CLH's terminal is not connected to the port of La Coruña, and at the ports of Tarragona and Castellón petrol cannot be unloaded. Unloading has to be carried out at alternative ports designated by CLH⁴² because CLH's storage facilities are connected to the port by a single diesel transport pipeline.
88. As regards the Canary Islands, neither the port of Granadilla in Tenerife nor that of Salinetas in Gran Canaria has the infrastructure for unloading large tankers, although expansion projects are being carried out to be able to accommodate these ships in the future.

³⁹ Source: CORES forms

⁴⁰ It has not been possible to determine the receiving capacity of the port of Rota. However, for the sake of simplicity we shall assume that this port has the necessary infrastructure to accommodate large oil tankers. Similarly, in the case of the port of Motril, the facilities can accommodate oil tankers with a displacement of up to 40,000 DWT. This implies a deadweight tonnage (DWT or load capacity) of close to 30,000 metric tons.

⁴¹ However, CLH does not specify the reasons for this restriction or how long it will last.

⁴² Source: CLH

89. Lastly, we would point out that neither Porto Pi in Mallorca nor the port of Ibiza has any restrictions on the maximum tonnage of ships that can dock there. Both ports will be considered to be import depots⁴³. This makes a total of thirteen ports in Spain with the capacity and capability to import automotive fuels.

Substitutability among ports

90. In Spain, the cost of transporting fuel may appreciably reduce substitutability between coastal facilities and those located inland. While it may be technically possible to unload imported fuel at a particular port and transport it to another port, transport costs may make the fuel uncompetitive with fuel unloaded in the port of destination, which may lead to a market configuration in which import infrastructure is of a regional or local nature as opposed to nationwide.

⁴³ The petrol and diesel storage facilities are not located at Porto Pi, but at Son Banya. However, since this storage infrastructure is connected by pipeline to Porto Pi, it will be considered to be an import depot.

91. Table 3 below illustrates this phenomenon:

Table 3: Prices for unloading petrol and diesel and transport between CLH import facilities in mainland Spain (in €/m³ and month)

Port of origin (reception by tanker vessel)	Prices of unloading and transport to storage from port of origin*	Least costly alternative port	Most costly alternative port
Port of Rota	4.64	11.53 (Huelva)	15.07 (Bilbao)
Port of Huelva	4.64	11.53 (Rota)	14.74 (Bilbao)
Port of Coruña	4.64	13.48 (Bilbao)	15.73 (Barcelona)
Port of Gijón**	4.64	13.68 (Bilbao)	16.84 (Barcelona)
Port of Bilbao	4.64	13.55 (Coruña)	16.07 (Barcelona)
Port of Barcelona	3.86	7.52 (Tarragona)	15.26 (Bilbao)
Port of Tarragona	4.64	8.29 (Barcelona)	15.47 (Bilbao)
Port of Castellón	4.64	11.6 (Tarragona)	15.84 (Bilbao)
Port of Cartagena	4.64	12.68 (Castellón)	15.39 (Bilbao)
Port of Motril**	4.64	12.45 (Cartagena)	15.21 (Bilbao)

* All prices include basic logistics: reception and unloading of the oil tanker, operational storage (15 days) and transfer to tanker truck.

**Ports of Gijón and Motril: CLH also has two oil tankers on time-charter from first-class ship-owners, with a capacity of 48,121 deadweight tons, for transporting fuel from its facilities to the two mainland plants that are not connected to the pipeline network (Motril and Gijón) and to the Balearic Islands, and to cover the operating needs of the company's logistics.

92. The column “Port of origin (reception by oil tanker)” contains a list of Spanish port facilities with suitable infrastructure for the import of petrol

and diesel. The list does not claim to be exhaustive, but is illustrative of the costs that have to be taken into account by potential importers of automotive fuels into the Spanish market at various Spanish ports. The column “*Prices of unloading and transport to storage from port of origin*” refers to the prices applied by CLH for unloading at each port, and includes transport of the unloaded fuels to CLH's storage facilities adjacent to the port of unloading and an operational storage of 15 days. The columns “*Least costly alternative port*” and “*Costliest alternative port*” contain the price charged by CLH for unloading at alternative maritime terminals (the cheapest and most expensive) and transporting the product from that unloading terminal to the terminal of the port of origin. The aim is to show the opportunity cost for an operator that cannot unload its product at a particular port of origin (i.e., the one closest to its end customers) and is forced to unload it at alternative ports and subsequently transport it to the storage facilities closest to its customers.

93. As can be seen, the basic price of unloading and storage at each port is identical, except in the case of Barcelona, which is cheaper than the other mainland ports. However, the difference in price between one port and another, when we add the costs resulting from transport from an alternative port to the port of origin, is very significant. An operator wishing to unload in Huelva and not being able to do so would have the port of Rota as a cheaper import alternative. This alternative (unloading at Rota and transporting the product to the storage facilities in Huelva) would increase the cost by more than 200% compared with unloading and storage at the port of Huelva. This increase in cost is not specific to the port of Huelva, but can be extrapolated to all the ports studied. According to these data, the cheapest alternative unloading option is 170%-290% more expensive than import at the port of origin, and the costliest option is 310%-390% more. Given the cost of transporting petrol and diesel from one port facility to another, we may conclude that alternative ports are not mutually replaceable, i.e., they do not constitute economically viable

alternatives for the operators. Moreover, it has to be borne in mind that net margins in this industry tend to be slim⁴⁴, so that an increase of 200% in the cost of logistics has a significant effect on final net margins, unless it is passed on to the end consumers.

94. In Table 3 the cost associated with the port of Bilbao also stands out. The Bilbao port facilities are the seventh most costly alternative of the ten ports studied. This is so even in the case of the port of Barcelona, where, even though the Bilbao facilities are closer to Barcelona and therefore there is a shorter pipeline distance than those of the port of Huelva, it is nevertheless more expensive to transport the product from Bilbao to Barcelona than from Huelva.

*II.3.3.2. Effects of the lack of substitutability among Spanish ports:
Why does Spain not import fuel?*

95. As has been indicated, the lack of substitutability among ports has a direct effect on wholesalers' logistical costs and therefore margins and profits.
96. This lack of substitutability also makes it difficult for wholesale operators, especially the smaller ones, to import fuels. There are some thirty or so active wholesale automotive fuel operators in Spain, of which only 15-20 handle annual volumes in excess of 30,000 metric tons of automotive fuel (i.e., petrol and diesel). Of these 15-20 wholesale operators, roughly half have annual sales of automotive fuels of over 100,000 metric tons. Among these operators are BP, Repsol and Cepsa. From this, we can deduce that there are very few wholesale operators with the capacity to import 30,000 metric tons of automotive fuels to a particular Spanish port at any given time. Only operators with volumes of at least 30,000 metric tons committed in the short term to their downstream customers, who moreover would have to be located close to the import depots, would be able to import

⁴⁴ Source: AOP

petrol and diesel into Spain. For other operators, the cost of (i) storing the uncommitted surplus product and (ii) moving the product through CLH's pipeline network throughout Spain would be very high and might jeopardise its profit and loss account. This could also imply that supply by the national operators would reduce drastically or even totally, which could give rise to strategic behaviour by these operators, such as refusal to supply or reduction in supplies from that time on.

97. Some operators have pointed out, however, that the cost of importing product is variable, and may be higher than the cost of sourcing supply domestically from the Repsol, Cepsa and BP refineries. This could be due to the current excess capacity of Spanish refineries resulting from the capital expenditure carried out and the contraction in demand since the onset of the crisis. This could encourage domestic producers to sell automotive fuels at prices that are competitive compared with the cost of importing. Despite this, based on information collected by the CNMC when carrying out this study, there are also windows of opportunity for operators with import capabilities to import automotive fuels at prices below those applying to domestic supply. However, very few operators ultimately decide to import. Among the reasons we might find transaction costs of import operations (many small and medium size wholesale operators lack the necessary resources to monitor import opportunities on a regular basis) and fear of a possible adverse reaction on the part of the three Spanish operators with refining capabilities (and especially those established nationwide).
98. There is also the possibility of a group of wholesale operators importing fuels jointly so as to reach the minimum threshold for import volumes. Such would be the case of an oil tanker berthing at the port of Barcelona, for example, and distributing its product among various wholesale companies. Although this is perfectly possible, it would require coordination among a number of operators. This coordination would have to extend not just to the volumes, but also to *when* and *where* the imported

products were to be unloaded. It is hard to see how small operators could arrange regular imports of small volumes of petrol and diesel at the ports and on the dates that meet their needs, without the security of their supplies being compromised. In this regard, several wholesale operators without refining capacity have pointed to a reduction in the number of international traders in the Spanish market. According to these operators, in the past few years a significant number of traders that used to offer petroleum product import services on the Spanish market have stopped offering their services. According to these operators, the reasons for this are the adverse economic conditions in the Spanish market, the increase in and surplus of capacity at Spanish refineries and the reduced incentive for wholesale operators to use their services. As a result, the Spanish market is no longer as attractive as it was for international traders.

99. From the foregoing we may conclude that the import of automotive fuels into Spain is possible from a technical point of view; that is to say, there is appropriate and sufficient import infrastructure.
100. However, we have been able to identify barriers to entry for imports, which might be preventing them from disciplining prices on the domestic market. The first barrier is the minimum volume for imports, which is too high for many of the independent wholesale operators active in Spain. It is possible to import jointly or collectively with other operators, although again it might prove more expensive, quite apart from the costs arising from the necessary coordination if the critical mass of customers or service stations to which the wholesaler can supply the imported product is not located close to the import facilities.
101. The second barrier is the high cost of transporting large volumes of fuel through CLH's distribution network to geographically remote points of Spain. These high costs might be reducing the import capabilities of fuel wholesalers that have a sufficient number of nationwide service stations but these are too far flung from the point of view of distributing imports. The lack of a sufficient critical mass of service stations at a given

geographical location might limit these operators' import capabilities, given the minimum import volumes and the high cost of transporting the fuel over long distances along several segments of pipeline.

102. The third barrier is the current state of the domestic market, which has suffered a significant contraction in consumption, while its productive infrastructure shows signs of significant excess capacity. As a result, domestic demand can be met by domestic production, substantially reducing the Spanish market's dependency on an external supply of automotive fuels. The attractions of the Spanish market for traders are therefore very limited at present, as are the incentives for wholesale operators to monitor market opportunities (export or import) given that international quoted prices are not always below domestic prices. In the long term, this behaviour could have negative consequences for wholesale operators with import capabilities in Spain, since when they would go to the import market the supply alternatives will have reduced drastically as a result of traders and international companies leaving the country.

II.4. Logistics: distribution of petrol and diesel in Spain

103. The wholesale operators' ability to compete in the Spanish market is determined by the capacity of the storage facilities, access to these facilities, and the cost of this access. Hence, it is especially important to determine whether there are problems in accessing the facilities or using and contracting their capacity, whether the cost of the facilities is excessive, and whether there is a lack of substitutability among the various storage facilities, either from a technical or a financial point of view.

II.4.1. Access conditions to logistical facilities: national legislation

104. The conditions for access by third parties to storage and transport facilities in Spain, including those of CLH, are laid down in Article 41.1 of Law 34/1998 of 7 October on the Hydrocarbons Sector.
105. This Law establishes that operators of fixed petroleum product storage and transport facilities, authorised in accordance with the provisions of Article 40 of the Law, must permit access by third parties through a negotiated procedure, on non-discriminatory, transparent and objective technical and economic conditions, applying prices which they must publish. Thus, any operator in the wholesale imported fuel market may have access to this infrastructure, providing there is available capacity at the facilities.
106. In the past, the CNC⁴⁵ pointed out that the current regime regulating access to storage and transport facilities does not eliminate problems of access, given that there is a small number of tanks that are interchangeable from the demand point of view, and a lack of available capacity in one tank could lead to bottlenecks. Here we have a potential problem from the point of view of competition: the lack of available, contractable storage capacity may be due to the actual lack of physical capacity, or to the fact that the capacity is reserved for the operators, regardless of whether or not it is used.
107. This problem had already been referred to by the former CNC in its analysis of merger C/0366/11 Cepsa/Chesa, when it identified the lack of available capacity for importing fuels as a barrier to entry: *"...there are arguments for concluding that access to import capacity for petroleum products might influence conditions of access to the supply market and thus indirectly the competitive behaviour of markets downstream. In short, primary storage facilities cannot be replaced by secondary or coastal*

⁴⁵ "Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain (2012)." of the former CNC.

storage facilities for purposes of supplies from abroad...” (Report of the Investigation Directorate, para. 52).

108. In the following paragraphs we will determine whether the current regime may pose problems of competition in terms of access to facilities in the Spanish wholesale automotive fuel market. To do so, it is first necessary to identify which facilities have sufficient capacity to import product, and secondly to estimate their available capacity.

II.4.2. Capacity of Storage Facilities

109. Storage facilities are considered appropriate for import when they have sufficient capacity to store products offloaded from large seagoing tankers. For these purposes, the European Commission defines import storage terminals as those with a minimum storage capacity for petrol and diesel of 30,000 metric tons.

110. Table 5 shows the storage capacity of terminals with sufficient storage capacity to be considered import depots. Petrol and diesel are shown separately because each type of fuel must be stored in tanks with particular characteristics and specifications and is subject to different permits, so that an investment has to be undertaken to convert a petrol storage facility into one for diesel, and vice versa⁴⁶. The table also shows each import storage facility as a percentage of the total.

⁴⁶ CNC, Resolution on case C-0366/11 Cepsa/Chesa, para. 59 of the Report of the Investigation Directorate.

Table 5: *Import storage terminals in Spain (millions of cubic metres (Mm3))*

Operator	Petrol (Mm3)	Diesel (Mm3)	% Total Petrol	% Total Diesel
CLH Baleares (Son Banya)	29	138	2.5	2.8
CLH Barcelona	60	209	5.3	4.3
Decal Barcelona	32	292	2.8	6.0
CLH Barcelona	6	174	0.5	3.5
Terquimsa Barcelona	0	38	0.0	0.8
Tradebe Barcelona	50	55	4.4	1.1
Meroil Barcelona	240	681	21.0	13.9
CLH Tarragona	17	62	1.5	1.3
Euroenergo Tarragona	77	255	6.7	5.2
Terquimsa Tarragona	0	101	0.0	2.1
CLH Cartagena	103	409	9.0	8.3
Saras Cartagena	13	98	1.1	2.0
Felguer-IHI Cartagena	0	110	0.0	2.2
CLH Castellón	9	85	0.8	1.7
Galp Valencia	22	113	1.9	2.3
TP Valencia	0	56	0.0	1.1
Vopak Algeciras	38	29	3.3	0.6
CLH Motril	21	102	1.8	2.1
Secicar Motril	28	38	2.5	0.8
CLH Huelva	64	444	5.6	9.1
Decal Huelva	80	170	7.0	3.5
CLH Rota	35	85	3.1	1.7
CLH Coruña	6	45	0.5	0.9
Forestal Coruña	82	201	7.2	4.1
CLH Gijón	32	108	2.8	2.2
Galp Gijón	15	41	1.3	0.8
Petroleos Asturianos Gijón	31	209	2.7	4.3
CLH Vizcaya	29	136	2.5	2.8
Esergui Vizcaya	18	200	1.6	4.1
CLH Vizcaya	4	218	0.4	4.4
TOTAL	1,141	4,902	100.0	100.0

Source: compiled by the authors based on information provided by the operators in accordance with Article 41 of the Hydrocarbons Law and the CLH website (www.clh.es). Data to 30 June 2014 in m³ (equivalent to 30,000 or more metric tons of combined storage)

111. According to the data shown in Table 5, Spain has thirty terminals with the minimum storage capacity to be considered import depots. Of these thirty terminals, ten should not be considered import depots because: (i) either they are not located close to a port with the ability to import petroleum products or (ii) they are not connected to more than one means of bulk transport. This is the case of the storage facilities that are not connected to CLH's pipeline network, which makes the distribution of imported products through an efficient and economically viable transport system difficult. For this reason, they are not considered in this study to be suitable import storage facilities.⁴⁷
112. This brings the number of import depots in mainland Spain down to 19, with a total storage capacity of 802 m³ for petrol and 3,850 m³ for diesel. The disparity between the two storage capacities is due to the structure of the Spanish market.⁴⁸
113. Spain's storage facilities with import capabilities are unevenly spread around the mainland, and this might be a factor contributing to the fragmented nature of the market. As can be seen from table 6, import depots are concentrated in six autonomous regions: Catalonia, Balearic Islands, Valencia, Murcia, Andalusia and the Basque Country, these being six of the nine autonomous regions with a coast, the others being Cantabria, Asturias and Galicia, suggesting that the concentration of import depots in these regions is a reflection of a natural advantage.

⁴⁷ The storage facilities at La Coruña are not considered an import depot because product cannot be unloaded at the port.

⁴⁸ Spain is in surplus (net exporter) for petrol and in deficit (net importer) for diesel.

Table 6: Import depots by autonomous region

Operator	Petrol (Mm3)	Diesel (Mm3)	% Total Petrol	% Total Diesel
CLH Barcelona	60	209	7.5	5.4
Decal Barcelona	32	292	4.0	7.6
CLH Barcelona	6	174	0.7	4.5
Terquimsa Barcelona	0	38	0.0	1.0
Tradebe Barcelona	50	55	6.2	1.4
Meroil Barcelona	240	681	29.9	17.7
CLH Tarragona	17	62	2.1	1.6
Euroenergo Tarragona	77	255	9.6	6.6
Terquimsa Tarragona	0	101	0.0	2.6
Total Catalonia	482	1867	60.1	48.5
CLH Cartagena	103	409	12.8	10.6
Saras Cartagena	13	98	1.6	2.5
Total Murcia	116	507	14.5	13.2
CLH Castellón	9	85	1.1	2.2
Total Valencia	9	85	1.1	2.2
CLH Huelva	0	444	0.0	11.5
Decal Huelva	80	170	10.0	4.4
CLH Rota	35	85	4.4	2.2
Total Andalusia	115	699	14.3	18.2
CLH Vizcaya	29	136	3.6	3.5
Esergui Vizcaya	18	200	2.2	5.2
CLH Vizcaya	4	218	0.5	5.7
Total Basque Country	51	554	6.4	14.4
CLH Baleares (Son Banya)	29	138	3.6	3.6
Total Balearic Islands	29	138	3.6	3.6
TOTAL	802	3850	100.0	100.0

Source: Compiled by the authors, CNMC

114. It is striking that Catalonia has 60.1% of the mainland import depot capacity for petrol and 48.5% for diesel. The position of CLH in the various autonomous regions is also striking. Whereas in Catalonia and the Basque Country CLH's market share is moderate, in both petrol and diesel, in Andalusia, Valencia, the Balearic Islands and Murcia, CLH is the operator

with greatest market power. In these four autonomous regions, wholesale operators without refining capacity in Spain rely largely on CLH's storage facilities.

115. At national aggregate level, CLH also has a significant market position, with 35.2% and 40.7% of total import storage in mainland Spain and the Balearic Islands; the second-ranking competitor Meroil, with 29.9% for petrol and 17.7% for diesel, is present only in Barcelona. The third biggest operator, Decal, has market shares of 14% and 12% for petrol and diesel respectively.
116. Furthermore, CLH is one of the most important companies in Europe. In terms of storage capacity, it is Europe's second biggest company⁴⁹, surpassed only by [...]. CLH also manages Europe's third most extensive network of pipelines for refined products, behind France and Ukraine.
117. We must also point out that the locations of the independent storage facilities not only compete with CLH's facilities but are also mainly in the same places as the refineries of Repsol, BP and Cepsa. In Vizcaya, Petronor, which is controlled by Repsol, has a refinery in direct competition with the petrol and diesel import depots at the port of Bilbao. In Andalusia, the storage facilities of Rota and Huelva are close to Cepsa's refineries and storage facilities in Huelva and San Roque. This circumstance is repeated with the storage facilities of Castellón, Cartagena and Tarragona, which are located close to the port and storage infrastructure of the Cartagena (Repsol), Castellón (BP) and Tarragona (Repsol) refineries. The only exception is Barcelona, which has storage facilities but no refinery. The nearest refinery to Barcelona is located in Tarragona.
118. Lastly, it is necessary to analyse the storage capacity located in the Canary Islands. In the Canary Islands, the situation is very different from that of mainland Spain and the Balearic Islands. In the first place, the

⁴⁹ We have considered only independent logistics companies.

mainland and Balearic Islands incumbent, CLH, is not present. There is however another incumbent: DISA. DISA heads a group of companies dedicated to activities relating to the petroleum industry, mainly the wholesale and retail distribution and sale of fuels and the provision of fuel storage and transport services in the Canary Islands. It is thus a vertically integrated company with market power (in this case deriving from a monopoly) in the inter-island distribution of fuels. DISA's fleet of vessels is the only one transporting fuels in the Canary Islands.

119. Despite this market power, its presence in the market for petrol and diesel storage facilities is limited to Gran Canaria, where it has petrol and diesel storage facilities adjacent to the port of Salinetas. There are however alternatives on the island, such as the terminals of Petrocan, Terminales Canarios and Petrologis for diesel, and of Terminales Canarios for petrol. On Tenerife, Terminales Canarios offers its services for the storage of both fuels and Petrocan offers them for diesel. The lack of terminals for petrol could be due to the presence of the Cepsa refinery in Tenerife. In fact, this refinery is the major supplier of automotive fuels in the islands, Cepsa being at the same time DISA's main customer.
120. The lack of import storage capacity does not seem to be a problem at present in Tenerife or Gran Canaria (the only islands in the archipelago that might be considered to be potential import ports). One of the biggest obstacles to wholesale operators is the market power of Cepsa, as the major producer and supplier of petroleum products, and DISA's monopoly of inter-island transport of products.
121. In this regard, the DISA/Shell case examined by the former CNC underlined the logistical problems faced by the islands due to their geography, imposing obligations on DISA aimed at ensuring access to inter-island shipping services on transparent, objective and non-discriminatory conditions for its competitors in the aviation fuel supply market. This was aimed at reducing the barriers to entry to the Canary Islands market, also allowing smaller operators to expand. The

commitments however were for just three years and limited to aviation fuel.

II.4.2.1. Available capacity at import depots

122. According to information provided by CLH, the company has petrol storage capacity of 1.1 million m³ and 5.4 million m³ for diesel.
123. At present, all CLH's storage facilities have available capacity, except in Algeciras⁵⁰. The percentage utilisation of its storage facilities is currently around 60-70%,⁵¹ so there is sufficient available capacity in the market for new entrants. It seems therefore that at the aggregate national level there is no problem of capacity in the import storage facilities.
124. At the local level, however, there could be some difficulties, albeit only exceptionally. Such is the case of the Algeciras terminal, which has no free capacity at present, although it could be increased depending on demand⁵². If an operator needed to store product in Algeciras, it would have to contract capacity with Vopak, since CLH's terminals have no available capacity. Under certain circumstances and at certain times, there could be a lack of storage in Algeciras, although the CNMC has not been informed of this situation having arisen in the past. Terquimsa also provides information through its website on the situation at its storage facilities, indicating that there is no available capacity at its Tarragona and Barcelona terminals, although it is not possible to determine whether this information is up to date. This is a common problem with the information published by logistics operators. Despite the fact that Law 11/2013 requires publication of utilised and available capacity at their facilities, not all operators comply with this obligation, or the information published is vague and out of date, which could increase information costs for

⁵⁰ Publication of CLH's storage capacity.

⁵¹ According to CNMC data.

⁵² Publication of CLH's storage capacity.

wholesale operators. In Catalonia there are numerous alternatives to Terquimsa's storage facilities, so it does not seem that Terquimsa's lack of storage has a negative effect on the import market.

125. From the foregoing analysis we may conclude that available capacity at storage facilities does not in principle constitute an impediment to entry or expansion in the Spanish automotive fuel market for wholesale market operators. With very occasional, isolated exceptions there is sufficient storage capacity available for imports of fuel into Spain.

II.4.2.2. Excess Capacity Contracted by Operators

126. Although Article 41.1 of Law 34/1998 of 7 October on the Hydrocarbons Sector guarantees access to storage and transport facilities on non-discriminatory, transparent and objective technical and economic conditions, it only does so when the storage and transport facilities have available capacity. In other words, an operator who does not have available capacity cannot be obliged by law to grant access to its facilities.

127. Consequently, one or more operators might have an incentive to adopt strategic behaviour consisting of blocking access to storage infrastructure by contracting all the available capacity of one or more facilities without using all or even any of that contracted capacity.

128. This risk may well exist with some import depots, but in the case of CLH's facilities it does not seem at all likely. Wholesale operators generally sign up for a product delivery and withdrawal service to and from delivery and reception points in the CLH system. While a wholesale operator could admittedly block access to certain CLH facilities by over-booking their capacity, these bookings are merely accounting entries. In the event of a lack of capacity at a particular facility (because it has been booked) CLH can either use the nearest facility for storage or assign this capacity booking '*purely for accounting purposes*' to the nearest facility. CLH could

detect this problem easily by means of the company's monthly transport and supply plans, and could solve the problem before it arises.

129. So far, according to information provided by CLH, no operators have had problems accessing CLH infrastructure, which does not necessarily mean there will never be any or that operators are not inclined to report them.

II.4.2.3. Substitution among the various storage facilities

130. The existence of import depots with available capacity is a necessary but not a sufficient condition for the viability of fuel imports into the Spanish market. In other words, while it may be physically possible to store imported fuels at storage facilities, the associated logistical costs will determine whether the import facilities can be considered as close substitutes and therefore whether the operators can compete nationally from any storage facility.
131. The following map shows the geographical locations of the hydrocarbon storage facilities located in Spain. The majority of them are connected to CLH's pipeline network and are close to import depots and/or Cepsa, Repsol or BP refineries. Although not all the storage facilities shown on the map can store petrol and diesel, the majority of non-airport storage facilities can do so.

Map 2: Oil and gas storage facilities in Spain



Source: CNMC

132. As in the case of import ports, for import depots to be considered close substitutes, they must offer similar services and terms. As regards services, we may conclude that the services offered by CLH and third-party facilities meet the necessary technical conditions and offer similar storage and distribution services.

133. However, the financial terms of the storage facilities vary considerably. The following table shows the price that CLH applies to each storage facility from point of origin to destination when the goods are received by oil tanker. The table includes all the terminals, including those with import capabilities.

PRECIOS AÑO 2014 "CLH" ORIGEN DESTINO PARA GASOLINAS Y GASÓLEOS (1)

Euros/litro

INSTALACIONES DE DESTINO	RECEPCIÓN EN CLH POR BUQUE TANQUE													
	CORUÑA (2)	TARRAGONA (3)	CARTAGENA	BILBAO	CASTELLÓN (3)	HUELVA	BARCELONA	ROTÁ (4)	GIJÓN	MOTRIL	IBIZA	MAHÓN	PALMA	
Alava (Iturballosa)	17,20	15,51	19,10	8,25	19,53	18,41	17,38	18,77						
Alicante	19,11	16,90	8,75	19,57	13,05	17,59	16,93	17,41						
Asturias (Gijón)	13,71	16,77	16,23	13,68	16,75	15,45	16,84	15,65	4,64					
Badajoz (Mérida)	26,99	24,28	25,85	25,85	26,34	13,94	26,19	14,78						
Baleares (Ibiza)	29,34	21,77	21,56	31,43	21,59	24,92	21,39	24,71			13,83			
Baleares (Mahón)	37,42	23,83	24,93	36,43	24,38	30,43	22,55	29,94				13,83		
Baleares (Palma)	24,20	20,77	21,18	24,47	20,86	22,29	20,52	22,27					13,83	
Barcelona	14,94	7,82	12,02	15,26	11,58	13,15	3,86	13,05						
Burgos	19,50	17,14	21,40	10,58	21,85	20,72	18,99	21,09						
Cádiz (Rota)	14,39	13,78	13,28	15,07	13,78	11,53	13,84	4,64						
Cádiz (San Roque)	18,51	17,92	17,39	19,21	17,92	13,49	17,97	8,73						
Castellón	15,38	11,60	12,68	15,84	4,64	13,84	12,36	13,78						
Córdoba	20,58	19,93	19,44	21,25	19,93	11,53	20,02	10,77						
Coruña	4,64	15,41	14,93	13,48	15,38	14,29	15,73	14,39						
Ciudad Real (Alcázar de San Juan)	26,20	19,37	16,11	20,91	17,74	17,18	21,24	16,40						
Gerona	20,24	10,72	17,30	20,57	16,86	18,43	8,36	18,37						
Granada (Motril)	14,64	12,98	12,45	15,21	12,92	12,85	13,02	12,60			4,64			
Huelva	14,29	13,86	13,41	14,74	13,84	4,64	13,93	11,53						
León	16,27	20,81	25,09	14,27	25,53	24,43	22,69	24,77						
Lérida	18,27	7,83	15,58	15,77	13,98	16,73	10,55	16,62						
Madrid (Torrejón de Ardoz)	24,47	15,96	18,93	17,53	18,27	17,26	17,88	16,49						
Madrid (Villaverde)	24,98	16,48	19,45	16,02	18,76	17,78	18,37	17,00						
Málaga	21,24	20,63	20,14	21,96	20,63	12,20	20,69	11,47						
Murcia (Cartagena)	14,93	12,72	4,64	15,39	12,68	13,41	12,78	13,28						
Navarra	20,92	14,53	22,29	11,65	20,05	22,13	16,40	22,50						
Pontevedra (Puxeiros)	10,18	20,99	20,52	19,07	20,94	19,83	21,28	19,94						
Salamanca	20,69	21,57	25,85	15,01	25,57	22,57	23,45	24,82						
Sevilla	18,01	17,62	17,17	18,45	17,58	8,33	17,66	9,30						
Tarragona	15,02	4,64	12,36	15,47	11,60	13,47	8,29	13,38						
Valencia (Albuixech)	17,24	12,85	14,25	17,69	6,04	15,71	14,22	15,65						
Valladolid	20,44	19,41	23,70	12,87	23,70	23,02	21,29	23,38						
Vizcaya (El Callero)	13,55	15,90	15,43	4,64	15,88	14,77	16,07	15,11						
Zaragoza	21,90	11,47	19,21	13,00	14,95	20,31	13,34	20,24						

(1) La recepción en CLH de gasóleo A con biodiésel en su composición tendrá un suplemento de 0,1334 Euros/litro.

A toda la gasolina 95 recibida en CLH se le aplicará un componente fijo adicional por la disponibilidad del servicio de mezcla con bioetanol de 0,3894 Euros/litro.

(2) La descarga de buques se tendrá que realizar en puertos alternativos que designa CLH.

(3) No es posible la descarga de gasolinas.

(4) Requiere la utilización de instalaciones ajenas a CLH.

134. Two conclusions can be drawn from the price analysis:

- i. Firstly, prices differ substantially depending on the origin and destination of the goods. If product unloaded at a particular import facility has to be transported to a destination using CLH's pipeline network, the price increases significantly. The more segments of pipeline used to transport the product, the more the total cost increases.

This analysis is identical to that carried out in relation to import ports, although on this occasion it includes all CLH's terminals throughout Spain. The conclusion is the same: transporting a product from its storage of origin to a distant destination storage can increase the cost of distribution by more than 200%.

From this, we deduce that there is a clear lack of substitutability among storage facilities in Spain, and that the market is fragmented. This market fragmentation leads to a lack of uniformity in competitive conditions in the wholesale fuel market in Spain, creating local geographical markets in which operators can compete on equal terms. This fact has been ratified by the European Commission, which on numerous occasions has considered local geographical markets for the wholesale hydrocarbons segment. According to the Commission, depending on the infrastructure and functioning of each market, the wholesale market can be considered to be local (a radius of 100-150 km), national or supra-national in the case of countries with large flows of fuel imports/exports.⁵³ In Spain's case, as a result of the lack of imports and the lack of substitutability among storage and distribution facilities, the wholesale market seems to have clear local components. This shows the importance of regionality in this

⁵³ Cases: M. 3543 PKN Orlen/Unipetrol, paras. 18-19; M.1383 Exxon/Mobil, paras. 443, 445; M.4002 OMV/Aral, paras. 19-22; M.3516 Repsol YPF/Shell Portugal, para. 12; M.4348 -PKN / MAZEIKIU, paras. 25-28; C-0550-14 Repsol/Petrocat, C-0366/11 Cepsa/Chesa, S/0288/10 AOP, C-0005/7 Disa/Total, N-04073 Disa/Shell Peninsular/Shell Atlántica.

market. We will analyse and consider the wholesale fuel market as a market with national, regional and local dimensions.

- ii. The second conclusion that can be drawn from an analysis of the above table is the substantial increase in distribution costs that inland provinces have to bear when importing fuel, compared with coastal provinces. This fact again intensifies the fragmentation of the market.

II.4.2.4. Storage capacity at refineries

135. A large part of Spain's petroleum storage capacity is owned by operators with refining capabilities. Table 7 shows the storage capacity of each refinery by type of fuel.

Table 7: Storage capacity for petrol and diesel at Spanish refineries

Refinery	Owner	Petrol		Diesel	
		(Mm3)	%	(Mm3)	%
La Coruña	Repsol	[...].	[10-20%]	[...].	[5-10%]
Bilbao	Repsol	[...].	[10-20%]	[...].	[10-20%]
Tarragona	Repsol	[...].	[10-20%]	[...].	[10-20%]
Puertollano	Repsol	[...].	[10-20%]	[...].	[10-20%]
Cartagena	Repsol	[...].	[10-20%]	[...].	[10-20%]
Huelva	Cepsa	[...].	[5-10%]	[...].	[10-20%]
Algeciras	Cepsa	[...].	[10-20%]	[...].	[5-10%]
Castellón	BP	[...].	[10-20%]	[...].	[5-10%]
TOTAL		[...].	100%	[...].	100%

Source: CNMC

136. As can be seen, the three operators with refining capabilities in Spain, Cepsa, Repsol and BP, have [50-60%] of mainland storage capacity, while in diesel they have [40-50%] of storage facilities. These storage facilities are also not subject to the rules on third-party access to the network contained in Article 41 of Law 34/1998 on the Hydrocarbons Sector. Thus

nearly half the theoretical import capacity⁵⁴ is available exclusively to companies with refining capacity in Spain. Although the refineries must have sufficient storage capacity to ensure proper operation of their facilities, given the storage capacity in the hands of the three refining operators, neither Cepsa, Repsol nor BP would appear to depend on the infrastructure of third parties, in particular CLH, for storing their automotive fuels. This implies a possible comparative cost advantage over non-integrated wholesale operators that do not have their own storage facilities and have fewer alternatives, as they are unable to access the storage facilities of the three companies with refining capacity.

Conclusion on storage facilities in Spain

137. In view of the foregoing, we may conclude that at present there do not appear to be problems of availability of storage capacity in Spain. Similarly, given the unused capacity at storage terminals, any future increase in domestic demand is not expected to cause problems of availability at storage facilities in Spain.
138. However, the main problem with the storage facilities for the wholesale fuel market, both for import depots and for facilities as a whole, is the high cost of transporting the product within Spain. As a result, competitive conditions are similar in very small (local) markets with a radius of 100-150 km from the storage facilities.
139. Lastly, the refineries have their own storage terminals, and some of them have pipelines connecting them to port infrastructure or other refineries to which third parties have no access. The cost associated with this infrastructure is less than the cost of CLH's distribution services or of those provided by independent operators, which makes it difficult for wholesale operators with no refining capacity to compete in the wholesale fuel market.

⁵⁴ Part of the refineries' storage facilities are used for operational storage of the refineries' own output. Moreover, part of the total capacity (refineries and other) is needed for CORES to be able to store the minimum security stocks and strategic reserves.

II.4.3. Access and available capacity of the pipeline network in Spain

140. The distribution of refined products in Spain is organised from the refineries and import depots to the final point of sale of the petroleum products. The transport of the products from the refineries or port of import to the storage terminals nearest to the points of sale is known as primary distribution, and it is carried out using bulk transport means. In Spain distribution is carried out basically by pipeline. Secondary distribution comprises transporting and delivering the products to the points of sale or consumption, in this case service stations. It is carried out mainly by means of tanker trucks over short distances of 100-150 km.
141. In mainland Spain and the Balearic Islands, CLH owns and operates the main fuel pipeline networks connecting nearly all the storage facilities in much of the country in a fragmented manner and with no cross-border connections.⁵⁵
142. CLH also carries out the integrated handling of its logistical pipeline transport and storage services, so that customers do not need to own logistical assets. CLH can take charge of all the necessary logistics, from: (i) reception of the products at its facilities, (ii) through transport via its network of pipelines, and storage, (iii) to final delivery to customers by means of tanker truck loading facilities.⁵⁶
143. At present, CLH has the following logistical facilities connected to its pipelines:

⁵⁵ CLH's transport system does not cover the Canary Islands, Ceuta or Melilla.

⁵⁶ In the case of the Canary Islands, the logistics are determined by the geography, and primary distribution is by inter-island maritime transport. DISA is the only company providing this service, transporting the product from Cepsa's refinery in Tenerife or from the import port facilities to the secondary storage terminals on the other islands.

Map 3: CLH infrastructure



Source: CLH

- Nearly eight million cubic metres of storage capacity
- 4,019 Km. of pipelines
- The network of pipelines connects the eight refineries in mainland Spain, the port terminals and the majority of the 39 storage facilities.

144. The only refinery not connected to CLH's pipeline network is Cepsa's refinery in Tenerife. CLH is therefore a key operator in the automotive fuel supply chain.
145. CLH's integrated network of pipelines transports more than 35 million m³ of fuel a year. Through its dispatching centre, CLH controls and manages its entire network of pipelines in order to ensure its proper functioning and supervision of the fuel transportation.⁵⁷
146. The Dispatching centre is also responsible for calculating the pressure and maximum throughput of the pipelines. To set these parameters it has to carry out hydraulic calculations to exactly establish the safety limits of the pipelines forming the network.⁵⁸
147. Access to CLH's pipeline network, like storage facilities, is subject to the third-party network access rules laid down by Article 41 of Law 34/1998 on Hydrocarbons. In addition, according to CLH, there is sufficient available capacity in its network of pipelines for all operators needing its services.
148. Thus, there is no shortage of available capacity in the pipelines⁵⁹. Based on information in possession of the CNMC and information provided by CLH, there have not been any problems accessing CLH's infrastructure network to date. CLH's pipeline network offers a different service from that seen in other EU countries, covering much of the country and being the EU's only open logistical network. Other EU countries do not have integrated pipeline systems but a number of independent networks that are not interconnected and do not cover the whole country. This is the case of France, Germany and Italy, among others. Also, none of the other EU networks is obliged to publish the prices of its services as occurs in

⁵⁷ The control of the network involves a data flow from more than 70,000 sensors providing information on pressure, flow, temperatures, densities, tank levels, valve conditions, equipment, controls, etc.

⁵⁸ In certain circumstances, the transport capacity of a pipe can be increased by using additives to improve the flow, although sometimes it is necessary to install an additional pumping station or even to raise the maximum operating pressure (source: CLH Electronic Magazine).

⁵⁹ Publication by CLH of transport capacity by the network of pipelines.

Spain. Many of the networks are owned by operators from the petroleum sector, either individually or through consortia or joint ventures. Their prices are negotiated bilaterally, as are their conditions of service. They are subject only to the limitations imposed by national and EU competition law.

149. The biggest obstacle, as has already been indicated, is the cost associated with the transport of the product over long distances through CLH's pipeline network. As a reminder, the costs associated with CLH's storage facilities include the transport of product through its pipeline network. The analysis conducted on the storage terminal costs can then be applied to CLH's pipelines. In other words, the cost of using the network of pipelines/storage facilities for long distances is so high that it fragments the wholesale market, making the terms of competition similar in very small or local markets.
150. In fact, CLH indicates that the average distance covered by product from the point of origin to destination is only [...] km. By way of example, the company states that no customer transports fuel from the port of Barcelona to the port of Algeciras. In other words, customers do not use CLH's pipelines for long distances.

II.4.4. Wholesale distribution of automotive fuels to service stations in Spain: description and applicable legislation

151. Various Spanish and EU precedents⁶⁰ have defined the wholesale distribution market as an off-network market or direct sales market for petroleum products. Distinguishing among the different product markets, such as petrol, diesel, heating oil, asphalts, etc.

⁶⁰ case M.1383 Exxon/Mobil. SDC cases N-03002 Agip/Saras (Activos) and N-06035 Saras Energía/Estaciones Servicio Caprabo and Resolution C-0005/07 DISA/TOTAL, Case C/0366/11 CEPSA/CHESA.

152. The supply side of this market is composed of wholesale operators with large volumes of product available and operators with refining capabilities or access to product storage facilities.

153. The demand comes from the following categories of customers:

1. Retailers or service stations
2. Other independent resellers or distributors.
3. Major industrial customers⁶¹
4. Other wholesale operators.

154. Service stations are the main customers. The volume of automotive fuels sold through other customers is almost negligible compared with that supplied directly by operators through service stations or retail channels.⁶²

155. As has been remarked previously, this study will centre on the wholesale automotive fuel distribution in Spain via service stations. The underlying reason is the particular lack of effective competition in the service station channel. Many operators, both wholesale and retail, have detected an uncompetitive market dynamic, and in most cases they refer to the market power exercised by certain operators in all parts of the sector's value chain. This makes competition in the wholesale segment of fuel distribution through service stations in Spain especially difficult.

Legislation applying to the wholesale segment

156. The wholesale segment is governed by Article 42 of Law 34/1998, the Hydrocarbons Law, subsequently amended by Law 25/2009 of 22

⁶¹ Commercial and domestic: hospitals, urban transport or road haulage companies with large fleets of vehicles, electricity generating companies, owners' associations, etc.

⁶² Case C0366/11 REPSOL/PETROCAT

December amending various laws to bring them into line with the Law on the freedom of access to service activities and its exercise.

157. According to Article 42 of the Law:

- i. Wholesale operators are entities that sell petroleum products for subsequent retail distribution.
- ii. Only companies meeting the legally established conditions for carrying on the activity can act as wholesale operators among these conditions is having sufficient technical capacity.
- iii. In any case, these companies must inform the Ministry of Industry, Energy and Tourism, which in turn will inform the CNMC and CORES, of the start or cessation of activity, and at the same time must submit a formal statement of compliance with the conditions referred to in the preceding paragraph.

158. The requirements for a company to be allowed to act as a wholesale operator for petroleum products are mainly contained in Royal Decree 2487/1994 of 23 December (published in the BOE (Official State Journal) of 21 January 1995) approving the statute regulating the activities of wholesale and retail distribution by means of direct supply to fixed facilities of petroleum-based fuels (as amended by Royal Decree 197/2010 of 26 February, published in the BOE of 18 March 2010). Articles 10 to 13 specify the conditions necessary for being allowed to carry on this activity:

- i. Sufficient legal, technical and financial capacity: Entities carrying on activities of wholesale distribution of petroleum-based fuels must be companies incorporated in Spain or another EU Member State. To prove their legal capacity they must be up to date with their tax and, if applicable, Social Security obligations. Their financial capacity will be

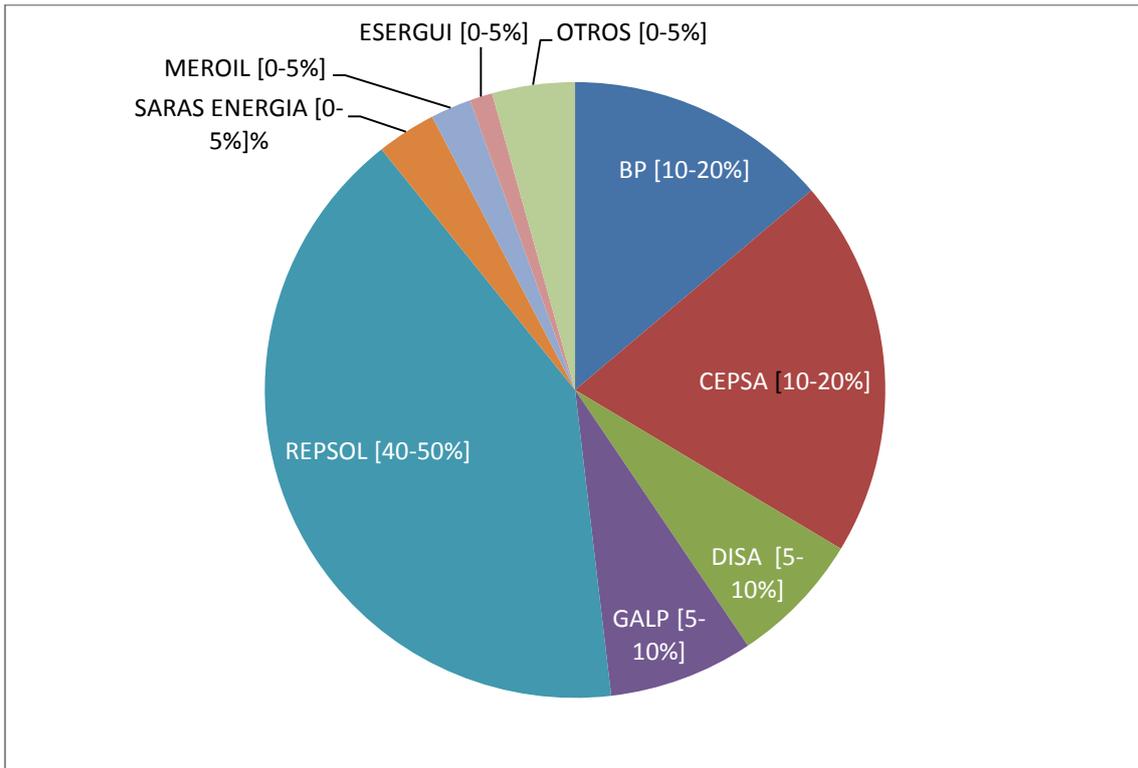
considered sufficiently evidenced if the operator has capital of at least three million euros allocated to wholesale distribution.

- ii. Security of supply: Wholesale operators must establish an annual supply plan including forecast purchases and sales for the first year of operation.
- iii. Means of reception, storage and transport: Operators must have at their disposal facilities and means of reception, storage and transport appropriate to their supplies.
- iv. Minimum security stocks: *Operators must maintain minimum security stocks for the products and in the quantity, form and geographical location established by Royal Decree 1716/2004 of 23 July regulating the obligation to maintain minimum security stocks, the diversification of natural gas supplies and CORES, the central stockholding entity for strategic reserves of petroleum products.*

Market Shares

159. The market shares of the major wholesale operators in the wholesale distribution market for 95 octane petrol and A-type diesel through service stations in Spain are shown below:

*Graph 19: Sales of 95 octane petrol through service stations in Spain (in tons)
 (2013)*



Source: Compiled by the authors, CNMC

160. The preceding graph shows the high degree of concentration in sales of 95 octane petrol through the service station channel. The three operators with refining capabilities in Spain have [70-80%] of the market, with Repsol representing [40-50%] of total sales. The oil companies' sales include both direct sales to their own service stations and sales to other, independent service stations. More than [90-100%] of the market is shared by just eight companies: Repsol, Cepsa, BP, Galp, Disa, Saras Energia, Meroil and Esergui.

161. These eight companies are vertically integrated in one or more business phases of the fuel market. Specifically, they carry on the following activities:

- i. Galp is the Portuguese incumbent and the only company with refining capacity in Portugal. Galp has an extensive network of service stations in both Portugal and Spain.
- ii. Disa is a company dedicated mainly to the distribution, wholesale and retailing of fuels and LNG. It also provides transport and storage services, these activities being centred on the Canary Islands. Disa also has a network of service stations in mainland Spain.
- iii. Saras Energy: forms part of the Italian Saras group, with a refinery in Sardinia. In Spain, Saras has hydrocarbon storage facilities, is a wholesale operator and has an integrated network of service stations.
- iv. Meroil: is a petroleum operator with no refining capacity, although it has “*close ties with a major refining company in the Mediterranean region, as well as a joint venture with Russia's Lukoil*”⁶³. Meroil also has fuel storage facilities, port terminals for the reception and distribution of fuels and a network of service stations in Spain.
- v. Esergui: belongs to the Avia Energía group. Avia has a fuel distribution network, storage terminals and a network of proprietary service stations.
- vi. Lastly, Cepsa, Repsol and BP are the main operators in the petroleum market in Spain. They are present in nearly all the business phases of the market: refining, supply, wholesale distribution and retail of fuels and, indirectly, in logistical distribution activities.

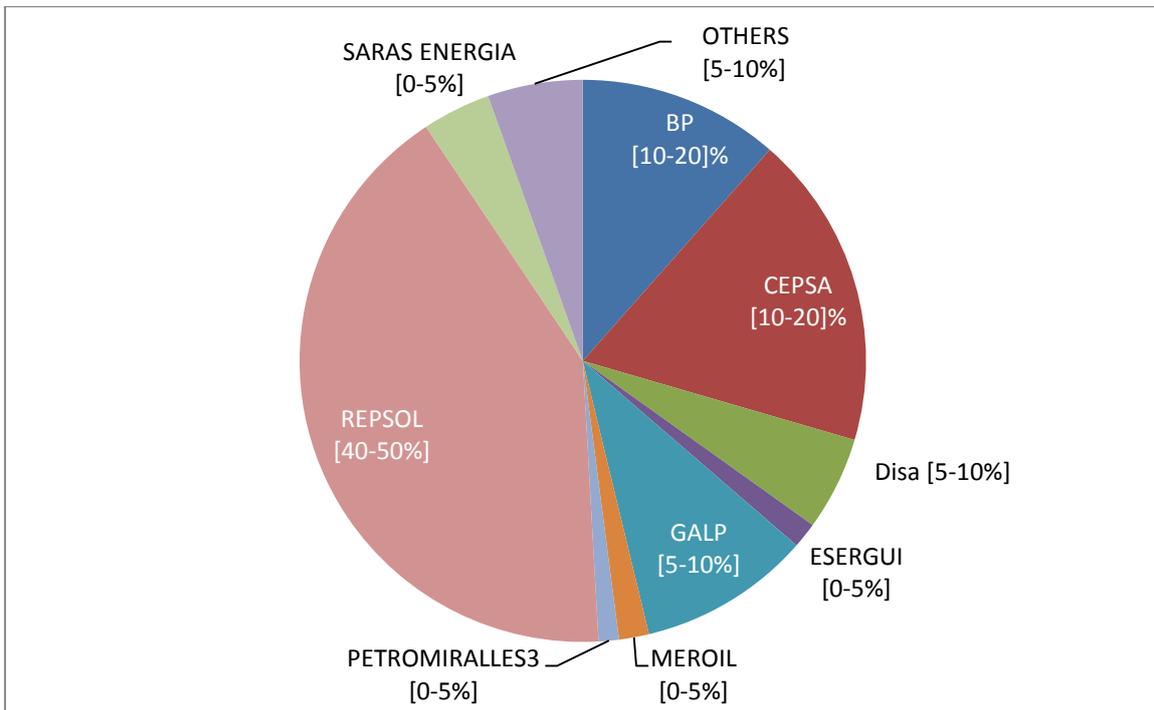
162. In Spain's wholesale fuel distribution market through service stations there is a strong presence of the major operators with refining capacities

⁶³ www.meroil.es

(especially Repsol) and, to a lesser extent, another five companies, all of them integrated downstream with their own networks of service stations. The remaining [0-5%] of the market consists of smaller wholesale operators, including some with ties to the retail segment (integrated with smaller networks of service stations). In other words, sales of fuel to independent service stations by non-integrated wholesale operators (or pure sellers) account for an insignificant part of the wholesale market. These independent wholesale operators do not have the ability to influence the market, unlike the major operators in the sector.

163. As regards auto diesel, the wholesale operators' market shares are very similar to those for 95 octane petrol:

Graph 20: Sales of Diesel A through service stations in Spain (in tons 2013)



Source: Compiled by the authors, CNMC

164. The only exception as regards wholesale distribution of diesel A is Petromiralles, which, in addition to its activities as a wholesale operator, is

also integrated downstream, with its own network of service stations. The percentage of the market in the hands of non-integrated wholesale operators is still very small (less than [5-10%] of total sales of diesel to service stations in Spain).

II.4.5. Vertical integration and market power

II.4.5.1. Upstream integration: refiners

165. Vertical integration among wholesale operators and operators with refining capacities has ambiguous effects on social well-being. Traditionally, this effect has been measured by reference to consumer well-being in terms of price, quality and the end consumer's ability to choose.
166. All vertical integration, including vertical integration of refiners with the wholesale fuel market, can involve benefits and costs⁶⁴. On the one hand, it may have positive effects on the market to the extent that this integration improves production efficiency and reduces costs of supply and production by leveraging any synergies and economies of scale deriving from the various activities. Vertical integration may also eliminate double margins and reduce uncertainty regarding supply.
167. However, in certain cases vertical integration may have pernicious effects on the market. Such would be the case if the operators with refining capacities, exerting their market power, had an incentive to restrict the supply of automotive fuels to their competitors in the wholesale segment, either by refusing to supply them or by charging more than the market price. In this case, wholesale operators not integrated with refining activities could find themselves (i) with no access to the supply of petrol or diesel, (ii) with access subject to certain conditions imposed by the

⁶⁴ (1986), "The costs and benefits of ownership: A theory of vertical integration" Grossman, Sanford J., and Oliver D. Hart. (1986) *Journal of Political Economy* 691.

vertically integrated operators with market power, or (iii) with access to the supply of fuel but at an inefficient price. This last strategy would consist of the refiners unilaterally increasing the prices of petrol and diesel, which are an essential input for wholesale fuel operators. This price increase would probably be passed on, as far as possible, to their customers, the service stations, and finally to the end consumer. For the independent service stations, this price increase represents an added cost with no increase in their product margins. For service stations integrated vertically with refining activities, the price increase would represent a transfer of revenue from the retail and wholesale segment to the upstream segment, the refining business.

168. Consequently, the effect of vertical integration on markets depends on the existence of market power at one or more levels of vertical integration, the ability of the independent operators to react and the market conditions, such as the elasticity of demand and barriers to entry to the market.

Market power of operators vertically integrated upstream

169. In terms of refining capacity, Spain is the EU Member State with the fifth largest refining capacity, behind Germany, France, Italy and the U.K. Since the 1970s, there have been nine refineries in operation producing automotive fuels: five belong to Repsol, three to Cepsa and one to BP, their shares of production being [50-60%], [30-40%] and [5-10%], respectively⁶⁵. Moreover, these market shares have remained stable over time.
170. As we have seen, the three operators together supplied almost 100% of domestic demand for petrol, whereas diesel accounted for more than 80% of the country's consumption in 2013. This high degree of market

⁶⁵ The Spanish market for the distribution of petrol and diesel through service stations, CNE, 2012 and [...]

concentration does not look as though it will change substantially in the medium to long term.

171. Although the last refinery built in Spain dates from 1970, the capital expenditure needed to install a refinery is very high, and this constitutes a serious barrier to entering the market. Apart from this, commissioning a refinery in Spain requires numerous administrative procedures, including building and environmental permits, which can delay construction and commissioning for several years. However, the most significant barrier to entry at present seems to be the excess capacity in the Spanish refining industry. Not only has Spain overhauled its refineries in the past few years, but it has followed an inverse path to that of the European refining industry, which has closed a large number of refineries in the same period, coinciding with the fall in European domestic demand. Spain therefore finds itself with a problem of excess available capacity in its refineries and the increased fixed costs that this excess capacity entails. Although long-term expectations of demand for petroleum derivatives, including automotive fuels, are positive, the future of Spain's refining industry will have to involve exporting some of its products. It therefore seems very unlikely that in the short to medium term any new operator will wish to build a petrochemical complex or refinery in Spain.
172. Also, as was explained in point II.2.2, imports do not appear to be exerting effective competitive pressure on the domestic automotive fuel market, nor does this trend seem likely to change in the short to medium term. Quite the contrary, the role of imports in the market has gradually declined in the past few years. Given Spanish refiners' excess capacity and independent wholesale operators' limited ability to import, this trend will presumably continue for the next few years.
173. From this we presume that the structure of the refining market will probably not change much in the medium to long term.

Effects of market concentration in refining on the wholesale market

174. Spain's refining market is not only highly concentrated in a very small number of players, but is also vertically integrated with the downstream market, i.e. with the wholesale automotive fuel market. It should be remembered that Repsol, BP and Cepsa supply, as wholesale operators, 70-75% of 95 octane petrol and diesel A at service stations throughout Spain. There is thus a strong vertical relation which could have consequences by reducing the incentives of new competitors to enter the market, thereby leading to a reduction in effective competition.
175. The operators with refining capabilities could opt to restrict or block wholesale operators' access to fuels if they had: (i) the ability to close the market and (ii) economic incentives to do so.
176. The three operators, or any one of them individually, by means of its presence along the whole length of the value chain, could become capable of limiting other independent wholesale operators' access to sources of supply of petrol and diesel (given that the fuel imports cannot immediately replace the domestic supply of petrol to service stations).
177. As for the operators' economic incentives, there are two factors that, while not confirming the existence of these practices, since it has not been possible to make an accurate calculation of the economic benefits deriving from a hypothetical limitation of supply (or increase in price), do need to be borne in mind when analysing the potential incentives of operators with refining capabilities in vertically connected markets. On the one hand, Spanish refiners, since they are also integrated vertically with the wholesale and retail segment, have a certain volume of their petrol and diesel sales guaranteed. These sales are channelled directly through their own service stations. Also, there are only five wholesale operators in the case of petrol, and six in the case of diesel, with retail market shares of more than [0-5%] of total sales for both fuels. So the majority of wholesale

operators may not have sufficient negotiating power vis-à-vis the fuel producers.

178. Also, in view of the fragmentation of the market arising from the high cost of distributing fuel over long distances, we should analyse not just the nationwide elements but also the local market components. Bearing in mind these local market components, each refinery would have market power in its market of influence, so that wholesale and retail operators in that area of influence would depend on supplies from the refinery. In this regard, we should highlight the striking geographical positioning of Repsol, whose geographical coverage, due to its refineries being spread throughout mainland Spain, is far greater than that of its two competitors in the refining market: Cepsa has refineries in the south-east of the country (Huelva and Algeciras) and in Tenerife, whereas BP has just one refinery, in Castellón. Repsol, however, has five refineries spread around mainland Spain: Tarragona, Bilbao, Cartagena, Madrid and Coruña. Its market power is therefore much greater than that of Cepsa and especially that of BP. Despite this, Cepsa and BP are in a position to negotiate swap-type supply agreements with Repsol and thus assure themselves of supply from the Repsol refinery closest to their end customers in areas far removed from their refineries. Similarly, it is in Repsol's interests to reach supply or swap agreements in markets close to the areas of influence of Cepsa's and BP's refineries. In fact, as confirmed by the research carried out during the preparation of this report, these kinds of supply swap agreements are common in this industry.

179. The only operators who cannot benefit regularly from this type of agreement and in so doing reduce their distribution costs are the wholesale operators that are not integrated with refining activities. Although these operators could benefit from swap-type agreements on imported products in which, for example, a wholesaler would import a certain quantity to a specific port and from there would supply one of its competitors, receiving in exchange a given quantity of product at another

import port, in practice this type of agreement is difficult to implement. First, opportunities for importing into Spain are few and far between. Second, a swap agreement might not be possible between smaller operators if they do not have sufficient individual or combined sales volume to be able to import product.

180. Also, although non-integrated wholesale operators make purchase and sale agreements whereby one operator makes available to another a certain quantity of product in a given storage facility, these agreements are made only when an operator wants to sell product to obtain an attractive price or because it is not going to use the product, and only for a specific facility. So the possibilities of the operators exchanging or transferring contracted volumes are limited in terms of both time and the volumes made available. Admittedly CLH's system facilitates these kinds of occasional sales agreements, but the advantages derived from them are less significant than the flexibility enjoyed by operators with refining capabilities via the swap contracts.

181. Thus, unless or until imports start to exert sufficient competitive pressure on the refineries (and eight of Spain's nine refineries are located close to maritime import depots), operators who are not integrated upstream will not be able to compete on equal terms and will continue to be largely dependent on supplies from the refiners and the conditions they impose.

II.4.5.2. *Integration with logistics operators*

182. The refiners are also integrated, albeit indirectly, with the logistical infrastructure market through their shareholdings in CLH. CLH owns and operates the national fuel pipeline transport networks in Spain. In order to limit CLH's ability to exert its market power, given its monopoly over an essential service, the regulator has subjected CLH to an ex-ante regulation of its activities, contained in Article 1.1 of Royal Decree Law

6/2000 of 23 June on urgent measures to intensify competition in markets for goods and services, under which, *inter alia*: 1) there are limits on petroleum operators' shareholdings (no shareholder may hold more than 25%, and the aggregate shareholding of Spanish refiners may not exceed 45%); and 2) CLH is obliged to give third parties access to its network on transparent, objective and non-discriminatory terms.

183. The former CNC pointed out⁶⁶ that these rules might not be sufficient to ensure the competitive functioning of CLH's transport system. We must not forget that all three operators with refining capabilities, which after all are its most important customers, have a significant presence both in its shareholding and on its Board of Directors, and therefore a strong capacity to influence CLH. It is therefore necessary to carry out a more exhaustive analysis of the influence that these operators have or may have on CLH, in order to determine the real possibility to influence CLH's logistical activities to the detriment of other operators in the fuel market or to their own advantage.

184. Before continuing with this analysis, it is necessary to point out that the former CNE, and now the CNMC, is obliged, by various legal provisions, to monitor the investment policy and the functioning of some of the governing bodies of CLH. The purpose of this monitoring is to verify that CLH complies with the legal requirements, not to assess its suitability or its effects on competition in the market.

185. In order to determine Repsol's, Cepsa's and BP's ability to influence CLH, it is necessary to examine CLH's shareholding structure and its governing bodies. It should be borne in mind that Article 3, section 2 of the EC

⁶⁶ The Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain (2012) pointed out: *"This inadequate regulation makes it possible for operators with refining capabilities in Spain and operators that are strong in distribution to have the ability to influence CLH. Given its nature as the monopoly provider of an essential and irreplaceable service, CLH has significant market power, which must be controlled in order to prevent its increasing the costs of the system and obtaining excessive income with its tariffs or endeavouring to perpetuate its position by stifling competition in storage"*.

Merger Regulation explains that shareholders have control of a company if they exercise decisive influence on it. Decisive influence is understood as the ability to block actions that determine a company's competitive strategy, such as the appointment of senior management, the drawing up of the annual budget or business plan and the setting of the investment policy. The European Commission's Consolidated Jurisdictional Notice also indicates that minority shareholders can exercise de facto control of a company, albeit exceptionally. Such is the case when minority shareholders with significant common interests carry out concerted actions with a view to taking advantage of their ability to influence the investee company.

186. This could be the case of CLH, where three of the shareholders have a strong commonality of interests, being vertically integrated in the hydrocarbons sector and the only operators with refining capabilities in Spain. It is therefore necessary to carry out a more in-depth study of the power of influence of Repsol, Cepsa and BP on CLH and of their possible concerted actions on the distributor's governing bodies. In summary, the presence of the refiners at its AGMs and on its Board of Directors could distort CLH's decision making, leading to commercial measures or measures related to the planning of infrastructure that, instead of seeking efficiency in the functioning of the network, would seek to impede the entry of new operators into the market. Moreover, these three operators could have access to sensitive market information, giving them a competitive advantage over other operators.

187. In this regard, it should be remembered that Repsol, Cepsa and BP together hold 24.15%⁶⁷ of CLH's capital, and that of the 21 current board members, five are direct representatives of the three refiners.

188. Accordingly, we will analyse the functioning of CLH's governing bodies, and specifically the composition, organisation and functions of the Board

⁶⁷ CLH Group Annual Report

of Directors, i.e., the number and composition of the board members, their direct and indirect relations with shareholders, voting patterns, voting methods (in person or remote), etc.

189. CLH's shareholders mainly comprise twelve companies, three of which (Repsol, Cepsa and BP) are operators in the Spanish industry and the rest either financial investors with no assets related to the hydrocarbons sector or companies with assets related to the industry but in other countries, as is the case of Oman Oil. The remainder (0.85%) is spread among various shareholders.

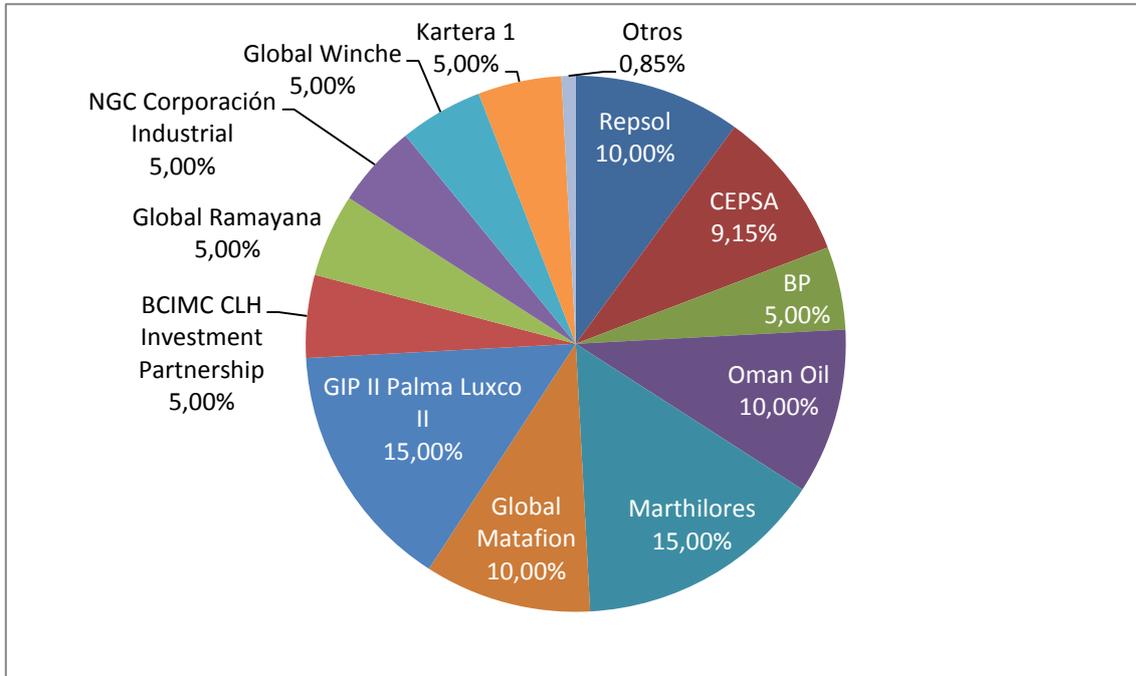
190. The percentages held by each major shareholder of CLH are shown in the following table:

Table 8: Shareholders of CLH

Shareholders	2014
Repsol	10
Cepsa	9.15
BP	5
Oman Oil	10
Marthilores	15
Global Matafion	10
GIP II Palma Luxco II	15
BCIMC CLH Investment Partnership	5
Global Ramayana	5
NGC Corporación Industrial	5
Global Winche	5
Kartera 1	5
Others	0.85
Total	100%

Source: CLH

Graph 21: Shareholders of CLH



Source: CLH

191. In accordance with the provisions of Articles 172 and 519 of the Corporate Enterprises Act, shareholders representing at least 5% of the share capital may ask for one or more points to be included on the agenda of the AGM, providing they are justified. We infer from this that each of the twelve shareholders referred to above could exercise this right. However, in order to be able to vote in the AGM of CLH on the points included in the agenda, the shareholder must be physically present, since CLH does not provide for the possibility of remote voting. Votes must be either exercised directly or delegated.

The composition, organisation and functions of the Board of Directors

192. The Board of Directors consists of 21 members, its structure being as follow:

- A CEO, who is also Chairman of the Board.

- 19 proprietary directors, of whom three represent Cepsa, one Repsol and one BP.
- One independent director, who does not appear to have ties with companies with refining capabilities or with the industry.

193. In total, five of the 21 directors are linked to the operators with refining capabilities in Spain. The Board of Directors is CLH's main governing body, in which the policies and strategies guiding the company's actions are approved.

194. Specifically, the following policies are approved by the Board of Directors:

- I. Investment and financing policy
- II. Corporate governance policy
- III. Strategic business plan
- IV. Annual expenses and budgets
- V. Policy on remuneration and senior managers' performance
- VI. Risk control and management policy, including monitoring of information systems
- VII. Dividend policy

195. The shareholders who control the Board of Directors will control the company's fundamental decisions – control being understood as the ability to influence the company's decisions. While no kind of *de jure* or *de facto* control by the refining companies can be determined, we cannot exclude the possibility of a certain ability to influence the other shareholders. After all, they are the shareholders with the most information on the Spanish hydrocarbons market, since they are the only ones with refining capabilities and the only ones vertically integrated. Moreover, their presence on the company's governing bodies could enable them to have access to significant information on the market and on their competitors, which would give them a fundamental competitive advantage over other operators in the market. Also, the directors with

ties to the three companies with refining capabilities could have an incentive to propose and persuade other shareholders to vote for decisions aimed at strengthening their position in the market, to the detriment of new operators' access to it. This would be against the company's basic objectives, which should be to facilitate third-party access to its infrastructure and to ensure the efficient functioning of the system.

196. Apart from this, the mere fact that the three operators with refining capabilities are shareholders and take part in the decisions of CLH could discourage greater participation by operators in the wholesale market if they perceive a possible lack of impartiality in its governing bodies, regardless of whether or not there is *de jure* or *de facto* control of CLH by these shareholders.

II.4.5.3. Downstream integration: retail distribution through service stations

197. As has been commented already in section **¡Error! No se encuentra el origen de la referencia.**, Repsol, Cepsa and BP are all vertically integrated with the wholesale and retail segment (or the automotive fuel service station distribution segment). Also, there are wholesale operators in the market, such as Esergui, Meroil, Saras and Disa, which are also integrated with the retail segment, although they do not have refining capacities in Spain.

198. This vertical integration finds expression in the following contractual ties between wholesale operators and retail distributors:

- i. COCO (Company Owned-Company Operated): a system in which the operator owns the service station or holds a long-term lease on it. The operator also manages the point of sale, either directly or through a specialised subsidiary. The operator's degree of control over the facility is total.
- ii. CODO (Company Owned-Dealer Operated): facilities for which the wholesale operator holds the freehold or leasehold on the point of sale but contracts out the operation to a third party by means of a leasing contract for the supply of the operator's products. The degree of control of the operator on the point of sale is less than with COCO type stations, given that the facility is operated by a third party. It does however guarantee exclusivity of supply for as long as the manager of the point of sale operates the service station. Negotiating power for determining the sales policy at the point of sale is high, especially in cases of commission-based supply.
- iii. DODO (Dealer Owned-Dealer Operated): supply facilities owned by a natural or legal person tied to the wholesale operator by an exclusive supply contract which usually includes branding, the station with distinctive signs and the supplier's brand image. The degree of control by the operator is the weakest of the three cases, since it is limited to the exclusive supply of its products for the duration of the contract, which was previously limited to a five-year maximum and is now limited to three years for new contracts signed after the entry into force of Law 11/2013.
- iv. DOCOC (Dealer Owned-Company Operated): facilities owned by a dealer who signs an exclusive contract with a wholesale operator for the latter to operate the point of sale itself or through a specialised subsidiary. As for the degree of control, it is the same

as for a COCO, since in both cases it is the operator who manages the facility, although the tie is limited in time by the duration of the direct leasing contract.

- v. Independents: service stations with no exclusive supply agreement with a wholesale operator. The owner of the facility can procure supplies freely from the operator of its choice (generally based on case-by-case weekly offers). They do not display the brand of any wholesale operator. They usually have their own name and image.

199. Service stations are considered to form part of an operator's distribution network and as such to be vertically related when they are tied to the operator by means of an exclusive supply contract, irrespective of whether such ties are "strong" (COCO, CODO and DOCO) or "weak" (DODO), given that the existence of this contractual agreement allows the operator to supply its products to the service station to the exclusion of all others.

200. The former CNE estimated that 83% of service stations are linked to wholesale operators' distribution networks and only 17% are independent⁶⁸. 20% of wholesale operators' service station network are COCO, 38% CODO and 34% DODO.⁶⁹

201. According to AOP data, the relative positions of the three major operators (Repsol, Cepsa and BP) by number of service stations have remained more or less stable over time, with the most significant changes occurring through mergers and acquisitions. These levels of supply concentration are replicated at the provincial level, with Repsol, Cepsa and BP together having more than 60% of the market by sales in nearly all provinces, and in several cases more than 80%⁷⁰. In nearly all provinces the relative positions of strength among the three operators are repeated: 1) Repsol,

⁶⁸ Case C-0550/14 REPSOL/PETROCAT

⁶⁹ Case C-0550/14 REPSOL/PETROCAT

⁷⁰ Case C-0550/14 REPSOL/PETROCAT

2) Cepsa 3) BP. It is also striking that Repsol and Cepsa have nationwide networks, while BP is relatively confined to the Mediterranean coast, where its only Spanish refinery is located.

202. Also, as regards contractual ties, the Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain (2012) by the former CNC established that:

“These long-term exclusive contractual relations with service stations may have a foreclosure effect, making it difficult for operators to establish or expand their base of branded service stations (RCNC case 2697/06 Cepsa). When a significant portion of the market is covered by these kinds of exclusive agreements, operators’ possibilities of expanding their networks of branded service stations are seriously restricted, since competition among operators for capturing points of sale is limited to a small part of the market”.

203. There are furthermore other barriers to entry to the retail segment of the market which were listed in the same report by the former CNC⁷¹, and subsequently alluded to by the legislator, who included some of these recommendations in Law 11/2013 with a view to simplifying the administrative procedures for opening new service stations, establishing a single approval procedure and a maximum period for resolving the procedure (eight months). Maximum duration was also introduced for certain supply contracts, reducing them from five years to three. Additionally, in accordance with the new Article 43 b) of the Hydrocarbons Law 11/2013, exclusive contractual supply ties may not contain clauses setting, recommending directly or indirectly the price at which fuel is sold to the public, except when the contractual goods or

⁷¹ Among them, (i) administrative difficulties exist with opening new service stations, (ii) the ties between the operators reduces competition and (iii) information is asymmetrical.

services are sold by the buyer from land and buildings fully owned by the supplier. The aim is to lower the barriers to entry to the retail segment.

204. However, the barriers due to the vertical integration of the major retail operators with markets upstream persist. Repsol, and to a lesser extent Cepsa, are the leaders in retail distribution of fuels in Spain, with Repsol far ahead of the other operators. The supply structure of service stations is also much more concentrated in Spain than in other EU countries of a comparable size, which limits the number of alternatives available to independent service stations for automotive fuel supply. The refining operators (Repsol, Cepsa and BP) have advantages over the rest of the operators due to their vertical integration, their structural ties with the transport network monopolist (CLH) and the extent and stability of their retail service station networks⁷². Swap contracts confer an additional advantage on operators, which enjoy regular matched supplies and reduced distribution costs. These kinds of contracts benefit not only the three Spanish operators but also companies such as Galp and Saras who can make use of them. Both these companies have refineries abroad (Galp in Portugal and Saras in Italy). It is for this reason that Spanish refiners with assets in these two countries might be interested in signing swap contracts with Galp and Saras in order to reduce fuel distribution (and import) costs. All these factors could make it easier for the operators with refineries to behave independently of competitive market forces, especially Repsol, given its privileged geographical position and large market share in both the wholesale and retail segments.

205. In this regard, and specifically as regards Repsol, the indisputable leader along the whole length of the value chain in the automotive fuel market, one of its competitors gave the following opinion in the context of case C-0550/14 REPSOL/PETROCAT:

⁷² See "Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain (2012)" by the former CNC.

“Repsol’s large market shares, the structure of the network of service stations described and its refining capabilities configure it as an operator that can remain immune to (or largely mitigate) competitive market forces, while at the same time being able even to modulate price trends (in all phases of the production chain) nationwide.”

III. FACTORS LIMITING THE DEGREE OF COMPETITION IN THE SECTOR

III.1. *Problems deriving from CLH’s position in the fuel distribution and transport market*

206. CLH’s infrastructure is an *essential facility*⁷³ for Spain’s automotive fuel market.

207. Essential facilities are defined as infrastructure or facilities that are indispensable for companies to be able to carry on their activities and have access to their customers⁷⁴.

208. The essential facility doctrine asserts that the owner of a basic infrastructure may have an incentive to restrict access to it in order to monopolise the market for retail products for which the production process requires this infrastructure. This explains the regulation of Article 41 of the Hydrocarbons Law, which refers to access to CLH’s infrastructure on objective, transparent and non-discriminatory terms.

209. Both CLH’s pipeline network and a large part of its storage facilities (particularly those located at sites where there are no alternative storage facilities) can be considered essential facilities. In other words, there are

⁷³ Lafont and Tirole (1996),

⁷⁴ The concept of “essential facility” is very bound up with the development of the “essential facility doctrine”, which originated with the 1912 lawsuit “United States v. Terminal Railroad Association of St. Louis”.

no technically and economically viable alternatives to the logistical services offered by CLH.

210. CLH's pipeline network can also be considered a natural monopoly. A natural monopoly exists in markets in which a single company can produce all the output that the market needs at a lower cost than if there were several companies competing⁷⁵.
211. This situation is seen in some markets where companies have to undertake substantial initial capital expenditure in order to obtain economies of scale (as is the case of pipelines). Incentives for other companies to enter the market are non-existent, and in any case it is more efficient for the market to have only one company in the sector, since average costs fall as the quantity produced increases.
212. As a result, users of CLH's pipeline network are captives - CLH could increase the price of its services without losing these captive customers.
213. Similarly, CLH could have some incentive to favour operators with which it has certain ties, bearing in mind that its main customers are Repsol, Cepsa and BP, who are also shareholders. According to Adams and Brock (1983)⁷⁶ and Coburn (1982), companies could use certain strategies to restrict access to their pipelines, such as: (i) imposing minimum quantities, (ii) requiring certain unnecessary standards, (iii) programming the transport of goods in an irregular manner, etc.

III.1.1. High logistical costs

214. In Spain regulation of the tariffs was included in Article 41 of the Hydrocarbons Law 34/1998, as subsequently amended by Law 11/2013 of

⁷⁵ The subadditivity of costs is a sufficient condition for the existence of a natural monopoly.

⁷⁶ Adams, W. and Brock, J. (1993): "Deregulation or divestiture: the case of petroleum pipelines" (Wake Forest Law Review) and Coburn, L. (1982): "Petroleum pipeline regulation: a competitive analysis" (U.S. Department of Energy).

26 July on measures to support entrepreneurs and stimulate growth and job creation and by Law 8/2015 of 21 May amending Law 34/1998 of 7 October on the Hydrocarbons Sector and regulating certain tax and other measures relating to oil and gas exploration, investigation and operation. According to this article:

- i. The Government may set access rates and conditions for island territories and for those areas of the country where no alternative transportation and storage infrastructure exists or where this infrastructure is considered to be insufficient. For practical purposes, and for mainland Spain, this means that the government will seldom be able to establish tolls and conditions, since there is normally alternative transport by tanker truck, and alternative storage, albeit it far away from the preferred storage location and at a very high price.
- ii. Owners of fixed storage and transport facilities for petroleum products must:
 - a) Inform the CNE (National Energy Commission, now replaced by the CNMC) of the requests and the list of prices for the use of the facilities concerned, as well as any changes made to them, within one month.
 - b) Submit to the CNMC the methodology applied to tariffs, including the different types of discounts applicable, the system of third-party access to their facilities and the annual investment plan, which will be published in the form the CNMC determines in a Circular. The CNMC may make recommendations on this tariff methodology. The CNMC will also submit an annual report to the Ministry of Industry, Energy and Tourism with its observations and recommendations on these methodologies as well as the degree of implementation of its recommendations from previous years.

215. Despite the fact that Article 41 of Law 34/1998 mentions the obligation to apply (and publish) non-discriminatory tariffs, the retrospective observation

of an inappropriate relationship between prices applied and operating costs will not however prevent the presence of temporary distortions in the market. We must therefore look at how CLH calculates its tariffs and on what terms it applies them.

216. According to information provided by CLH, the prices it applies for its basic logistics or regulated services are objective, transparent and non-discriminatory. Thus:

- Prices for the same service are the same for all operators.
- There is a single price, which includes all the services provided from delivery of the product to CLH to dispatch. CLH's tariffs are annual, and cannot be renegotiated or changed.
- Contracts are reported to the CNMC and their prices published.
- There are discounts only for town councils, and these are adjusted annually. These discounts are the same for all market operators.
- Prices are established based on international references and the costs of the service.⁷⁷ Following the split-off of CAMPSA's logistical services, CLH's tariffs fell significantly before stabilising in 2000. Since then, CLH's tariffs have been adjusted annually using a CPI-X system (corresponding to 80% of the CPI for October of the previous year).⁷⁸

217. As for tariffs for services not regulated by Article 41 of the Hydrocarbons Law, such as additivation or pumping, these should also be calculated by reference to costs.

218. In principle, the conditions referred to above should be sufficient to ensure competition in the wholesale automotive fuels segment, since CLH applies the same prices to all operators for any particular service and this price is calculated on the basis of costs. Nonetheless, the tariffs applied by CLH lack transparency in regard to the costs associated with the different

⁷⁷ Corporate Presentation of CLH, August 2014.

⁷⁸ Source: CLH

services (transport and storage). CLH should increase its transparency vis-à-vis its end customers and disclose the cost of each logistical service in its invoices. In this way, operators would have more information on the costs they will have to incur and therefore on how to reduce these costs.

219. Moreover, the prices and contracts applied by CLH are not free of problems, which could constitute an obstacle to competition in the wholesale segment. These potential problems will now be analysed.

Lack of incentives to set efficient tariffs for services provided by CLH

220. As the monopolist in the logistical distribution market, CLH has an incentive to raise its tariffs in order to extract monopoly income. If CLH's tariffs were too high, they would constitute a barrier to entry for all operators and an excess cost that would be difficult to face for some non-integrated operators with less ability to reduce logistical costs.

221. In this regard, it is instructive to note how CLH's profits have grown almost without interruption over the past five years, increasing again in 2014⁷⁹, while volumes transported over the same period declined due to the economic crisis and the consequent decline in activity. One possible explanation for this phenomenon could be a reduction in its operating costs, with these savings not being passed on, or only partly, in prices. Therefore, the reduction in operating costs would have contributed to boosting the company's margins. We might infer from this that CLH has insufficient incentive to set tariffs based on costs, with cost reductions being reflected in lower prices for its services. Such conduct is compatible with its status as a monopolist.

222. Given this possible lack of incentive, it would be appropriate for the CNMC to carry out an in-depth analysis of CLH's tariffs, especially those relating

⁷⁹ CLH Group annual reports and press releases. In particular, CLH's pre-tax profit for the first half of 2014 was 15.2% more than in the same period of 2013. Net profit for 2013 was 11% up on 2012. In 2012 it had fallen by 4% relative to the year before. In 2011 CLH posted net profit 7.7% up on 2010 and lastly in 2010 net profit was 9.9% up on 2009.

to long-distance transport by pipeline, which could be acting as a barrier to entry for non-integrated and/or smaller wholesale operators, and of its cost structure, in order to determine whether these tariffs are inefficient and limit competition in the market.

223. Another important aspect that needs to be analysed is CLH's possible ability as sole owner of the pipeline network and storage terminals to charge for a service that has not been provided. For example, if a wholesale operator wishes to transport a certain quantity of petrol (X) from Barcelona to Bilbao using CLH's services, and another wholesaler wishes to transport that same quantity of petrol (X) from Bilbao to Barcelona, i.e., the same route in reverse, CLH will charge the operators for the service of storage and transport by pipeline of the petrol through the Barcelona-Bilbao and Bilbao-Barcelona sections respectively. However, the petrol will not have moved physically through CLH's pipeline network. It will simply have been supplied directly to the two operators from CLH's storage terminals in Bilbao and Barcelona, and CLH will merely have posted an accounting entry reflecting the transaction. It would not be rational for CLH to transport a product from Barcelona to Bilbao if it has it available at its facilities in Bilbao, or vice versa. However, both wholesale operators will pay for the full transport between the two points, among other reasons because they might not have the information about the product that CLH has available at each of its facilities, given that the only relevant public information concerns the available capacity at its storage terminals.
224. The CNMC should also analyse this matter and determine whether or not it is appropriate to modify the tariff regime so as to base it on services really provided.

Possible discriminatory conditions

225. CLH applies a series of rebates and penalties linked to the volumes stored or transported that are contracted in its long-term supply contracts.
226. Rebates of €0.0564 per m³ (or €1.1283 /1,000 m³ x km) are applied if a volume equivalent to 100% of the guaranteed quantities is reached, and a rebate of €0.4513 per m³ (or €2.8208 /1,000 m³ x km) on the excess over the guaranteed quantity up to a maximum of 120%.⁸⁰
227. As regards penalties, if the volumes reached by the contracting party, in m³ and/o m³ x km, are below 95% of the guaranteed quantities, it must pay CLH the following compensation: €1.6249 for each m³ guaranteed and not withdrawn and €0.0113 for each m³ x km guaranteed and not achieved.
228. In principle, these rebates and compensation to CLH do not seem discriminatory, since they apply to all operators equally. However, if we analyse the repercussions that these rebates/penalties have on the various wholesale operators, we find that:
- i. the operators at the greatest risk of not reaching the guaranteed quantities are the non-integrated wholesale operators. The operators with refineries, if they find themselves in danger of breaching the contract, can decide to inject (from their own output) the necessary quantity to avoid such a breach. Being integrated vertically with a critical mass of service stations, they will be unlikely to have problems in quickly placing this “excess” product.
 - ii. Similarly, the non-integrated and smaller operators have less chance of benefiting from rebates on long-term contracts. Firstly, because they are more cautious when

⁸⁰ According to CNMC data.

committing to volumes of product since they are less able to "place" the surplus product, since they do not have a network of service stations as extensive as other operators. Secondly, because the non-integrated and smaller operators will tend to sign short-term contracts (renewable annually) with CLH. These contracts do not have volume rebates.

229. Lastly, in respect of short-term contracts signed between wholesale operators and CLH, these contracts include a termination clause that may be considered excessive. In order to terminate a one-year contract, CLH must be given [...] months prior notice, i.e., half the total term of the contract. Wholesale operators should be able to terminate the contract with CLH subject to a shorter notice period, or at least they should be able to renegotiate key aspects of the contract without their being tacitly renewed after [...] months from signing. From this, we conclude that there is a lack of flexibility in the contracts signed by CLH with operators in the wholesale market.

III.1.2. Lack of distribution alternatives in Spain: problems of storage and transport by pipeline

230. There are no economically viable alternatives to the services offered by CLH in many Spanish regions. The following table shows the alternative import depots to CLH. As can be seen, there are alternatives only in Catalonia, Murcia, Andalusia (and then only Huelva) and the Basque Country.

Table 9: Import depots in the hands of third parties

Operator	Petrol (Mm3)	Diesel (Mm3)
Decal Barcelona	32	292
CLH Barcelona	6	174
Terquimsa Barcelona	0	38
Tradebe Barcelona	50	55
Meroil Barcelona	240	681
Euroenergo Tarragona	77	255
Terquimsa Tarragona	0	101
Saras Cartagena	13	98
Decal Huelva	80	170
Esergui Vizcaya	18	200
CLH Vizcaya	4	218
TOTAL SPAIN	802	3850

Source: compiled by the authors, CNMC

231. If we study the fuel storage facilities located in inland autonomous regions, we find the same lack of alternatives to CLH. In the autonomous regions of Aragón, Castile la Mancha, Castile León and Extremadura the only terminals are those of CLH; there are none owned by independent companies. In the Madrid region too, CLH seems to be the only available solution, since neither of the two independent operators established in Madrid offers its services to wholesale operators.

232. As regards CLH's pipeline network, there is no economically viable alternative in Spain. There are three ways of transporting petroleum products over long distances: pipelines, inland waterways and the railway network. In Spain there are no networks of inland waterways with the capacity to transport petroleum products. Transport of these products by train is also practically non-existent. In fact, none of the wholesale operators consulted during the preparation of this study has used rail to transport automotive fuels. CLH itself has used rail transport only once, and that was for reasons of force majeure. In 2003 a fire broke out at the

Puertollano refinery, and CLH had to supply products using more expensive alternatives including transport by rail. The company informed us that this was the only time it had used this means of transport, given that it is the most expensive in Spain. Also, the International Energy Agency (IEA) has called attention to the risks inherent in the transport of petroleum products by rail. According to the IEA, transport of these products by rail entails a greater risk of explosion and spillage (a six times greater risk than with transport by pipeline). In this regard, in 2013 alone in the US 4.3 million litres of crude oil were spilled in railway accidents⁸¹. Apart from this, pipelines have lower operating costs (just one third of those associated with rail), are more efficient from an energy point of view and produce less atmospheric pollution.

233. The only real alternative is CLH's pipeline network. There are also pipelines connecting the refineries to import depots or interconnecting two refineries. These pipelines are owned by Repsol, Cepsa or BP and cannot be used by other market operators.

234. In conclusion, there are no alternatives to the network and logistical services of CLH in the Spanish market, and the biggest problem is the high cost of transport over long distances. As has been analysed in the previous section, the prices of CLH's services (storage and transport by pipeline included) differ greatly depending on the points of origin and destination of the goods, and specifically the number of pipeline sections used or distance covered.

⁸¹ The US is one of the countries with most transport of petroleum products by rail. In 2014, 38% of transport of these products was by rail.

III.1.3. Problems arising from CLH's power structure

III.1.3.1. Shareholding structure and corporate governance: decision making

235. CLH's two most important governing bodies are the AGM, in which Repsol, Cepsa and BP together hold 24.15% of the shares, and the Board of Directors, on which five of the 21 members have ties with one or other of the companies with refining capabilities in Spain.
236. Having analysed the governing bodies of CLH and the decisions taken in these meetings, we may conclude that the real power, in terms of decision making regarding CLH's commercial activity rests with the company's Board of Directors. This does not mean that the AGM does not take important decisions, but rather that it has delegated the commercial and strategic functions to the Board of Directors.
237. In any case, the Board of Directors of CLH, which consists of 21 members, closely reflects the composition of the AGM as regards shareholders with voting rights (or with 5% or more of the share capital of CLH). This is not always the case in all companies. For example, the shareholders' meeting may comprise a large number of minority shareholders while the board of directors consists of a very small number of members representing a small number of shareholders, and not necessarily those with the largest stakes. In other words, the control or influence exercised by shareholders is not confined to the composition of the shareholding or its representation in the shareholders' meeting. Shareholders' influence on decisions is very often exerted in other governing bodies, particularly the Board of Directors.
238. In regulating CLH's shareholding, in view of its monopolistic nature, the regulator imposed limits on the shareholdings of petroleum operators (no shareholder may hold more than 25%, and the sum of Spanish refiners' holdings may not exceed 45%). However, merely limiting the number of

shares does not guarantee that these shareholders cannot have a significant influence on the company's commercial activities.

239. Also, as has been mentioned, the very fact that these three refiners are shareholders in CLH could lead to reduced confidence in the neutrality of its business, without their necessarily having any kind of control over CLH. The mere fact that they are shareholders could discourage some operators from entering the market or exert less competitive pressure.

240. Thus, if the regulator wishes to make sure that no operator has control of or significant influence on a company that provides an essential service, such as CLH, it is necessary to eliminate or considerably curtail any current or potential influence on decision making within the company. To this end, the potential ability to control or influence decisions and the risk attached to the presence of certain shareholders in CLH must be established.

241. In the case of CLH, we have seen that the three refiners have common interests (strategic in this case), and could therefore have an incentive to form coalitions, aligning their proposals and votes on the Board of Directors.

242. However, the board representatives of shareholders without refineries have a diversity of profiles. This could make it difficult for stable coalitions to exist among them when proposing new measures or aligning their votes on any given matter, since there is no commonality of interests to underpin such coalitions. The non-refiner shareholders' ability to influence decisions is thus very limited in industrial matters, and they are unlikely to be able to exert sufficient influence on CLH's strategic decisions. However, the refiner's greater knowledge of the market and their common interests as refiners and wholesale and retail market operators could facilitate the alignment of these shareholders in the company's decision making. Although the ability to influence decisions does not give them control over

CLH, their knowledge of the Spanish market is likely to lead to their having some influence on the other shareholders in taking certain decisions.⁸²

243. In accordance with the foregoing analysis, the three Spanish refiners are the only shareholders that operate in the market and have similar profiles and interests, and therefore the only ones that might have an incentive to support certain industrial decisions on CLH's Board of Directors in a collegiate manner.
244. In this context, it is very likely that the three operators will together try to support decisions that favour their common interests, such as policies that may discriminate against other operators in the market. For example, through the rebates linked to certain volumes of business and contracts, providing access to confidential information on their competitors (concerning volumes and type of product transported from one point to another, etc.), increasing the cost of certain storage facilities (since the refiners normally have their own facilities and are not totally dependent on those of CLH), or providing an inadequate logistical service to certain operators (such as a lack of flexibility in providing its services to certain operators).
245. Lastly, CLH, as the monopoly provider of petroleum product transport in the Spanish market, has an incentive to keep Repsol as a shareholder. Repsol owns crude oil and petroleum product pipelines running between the Cartagena and Puertollano refineries. Keeping Repsol on CLH's governing bodies eliminates any incentive that Repsol might have to develop an alternative transport network in response to changes in the

⁸² In this regard we would highlight BP's asymmetric market position relative to Cepsa and particularly Repsol. The question arises as to whether this asymmetry eliminates BP's power of influence as regards its possible alignment of interests with Repsol and Cepsa within CLH, or whether BP might even find itself forced into coalition with Cepsa and Repsol in order not to lose what little influence it has on the hydrocarbons distribution company's policies. It could even be concluded that, despite the common interests among the three refiners as the only companies integrated in all phases of the business in Spain, BP is in a weaker position, with less market power and with only one refinery in Spain. Its power of influence on CLH's Board of Directors is thus very limited, and may be limited to following the recommendations and indications put forward by Repsol and Cepsa.

market, albeit not replicating CLH's network given the high cost this would involve, which could compete locally with the service provided by CLH.

246. We therefore see that risks do arise from the shareholding of BP, Cepsa and Repsol in CLH. To prevent these risks materialising, it is necessary to eliminate the refiner shareholders' ability to influence the company's decisions.

III.2. Structural factors

247. The position of one or more companies in a market is a significant indicator of the possibility of companies with market power being able to abuse their position and limit effective competition in the market.

248. To determine the position of one or more companies in a market, a number of structural factors are studied with a view to assessing the market power wielded. Notable among these factors are:

- i. market shares and degree of market concentration;
- ii. the probability of demand power of counteracting market power;
- iii. the likelihood that new competitors entering the market will preserve effective competition in the market.
- iv. the probability of efficiencies counteracting the adverse effects of market power.

III.2.1. Concentration of supply

249. At present, the market shares of Repsol, Cepsa and BP in each of the automotive fuel markets are as follows:

Table 10: Market shares of operators with refining capabilities in Spain in the automotive fuel market.

Operator	Refining Market (% of total)	Wholesale Market (% of total)	Retail Market (% of total)
Repsol	[50-60%]	[40-50%]	34%
Cepsa	[30-40%]	[10-20%]	15%
BP	[5-10%]	[10-20%]	4%

Source: Compiled by the authors, CNMC

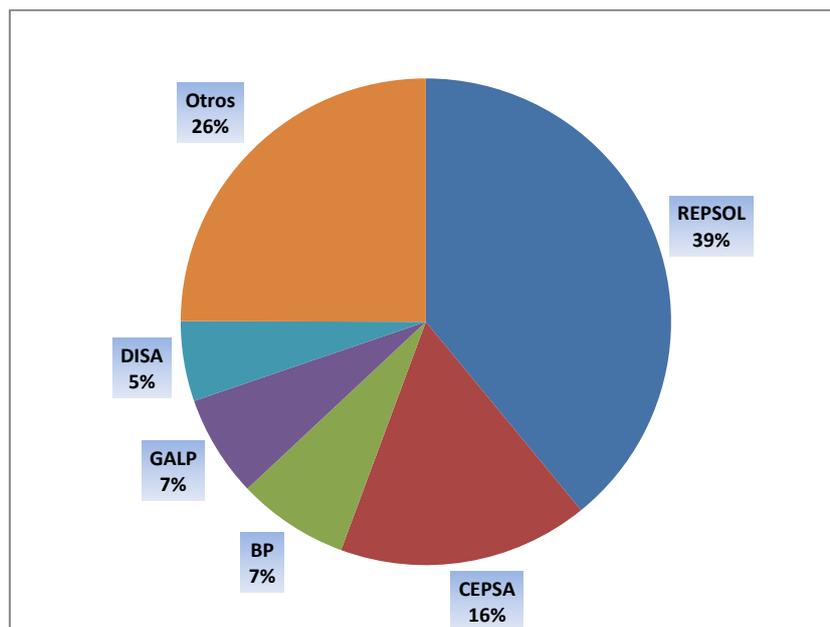
250. The fuel refining market is highly concentrated, with only three refining operators. Their market shares however are clearly asymmetrical. Whereas Repsol is the indisputable leader, dominating the market with a [50-60%] share, BP accounts for just [5-10%].
251. The same structure is repeated in the wholesale segment: Repsol is the company with the greatest market power, with a [40-50%] market share, more than twice as much as that of the second operator, Cepsa, and followed by BP with [10-20%] ([...] times less than Repsol's market share). Despite the difference between the second and third operators relative to Repsol, for both Cepsa and BP it is relatively easy to sign swap-type contracts with Repsol, or between them, and thus reduce the cost of transporting fuel. As has been explained previously, the non-integrated wholesale operators find it more difficult to enter into these kinds of contracts. The refiners thus have a competitive advantage over other wholesale operators in the market that are not integrated upstream.
252. Lastly, as regards the retail segment of the fuel market, supply is once again characterised by the presence of the three refiners, and specifically

of Repsol, which controls one third of the market. Once again, and even more strikingly, we see the modest market share of BP (4%). Supply from these three operators accounts for 53% of the market. It is accordingly the least concentrated segment, but also the segment in which demand is least able to exert influence. End-customer demand at service stations is fragmented and elastic, i.e., customers do not exhibit brand loyalty to any great extent. Competition occurs mainly in the selling price of fuel, leaving aside other services offered at filling stations. In this way, despite having information on prices at every service station in Spain through the price portal of the Ministry of Industry, Energy and Tourism, end customers have very little influence on the price of fuels. For many customers, automotive fuels are essential goods. Consequently, final demand for fuel does not appear to exert a counteracting force on the power of the supply market, particularly for Repsol and to a lesser extent Cepsa.

III.2.2. Vertical integration and market power of operators with refining capabilities

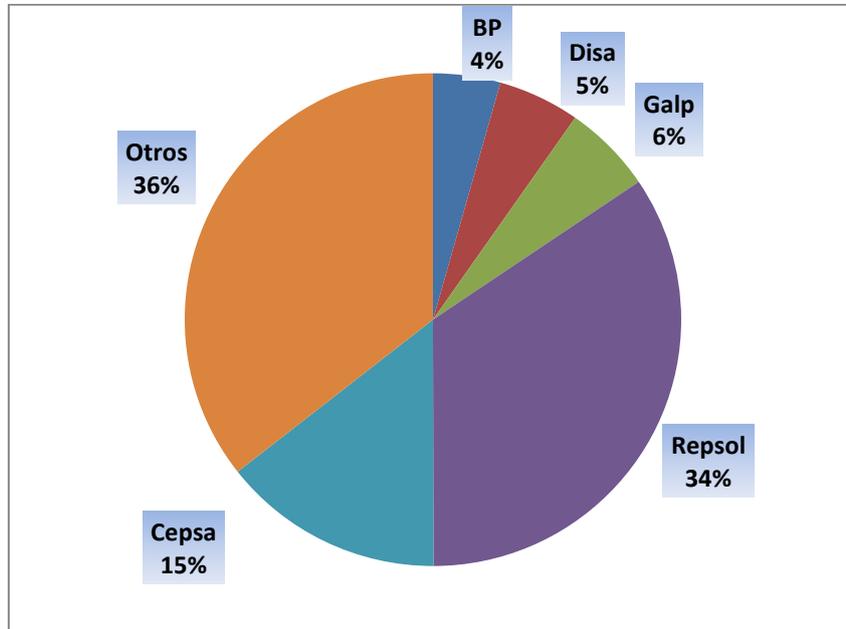
253. Progress towards a automotive fuel market that works for the benefit of consumers requires special attention to the vertical relationships among refineries, wholesale operators and service stations.
254. In order to analyse the current structure of the retail market and so determine whether the measures introduced by Royal Decree Law 4/2013 have had any effect on market verticality and concentration, we will look at how the market shares of the main retail operators in the Spanish fuel market have evolved over the period 2010-2015.

Graph 22: Market Shares by number of service stations in 2010



Source: Compiled by the authors, CNMC

Graph 23: Market Shares by number of service stations in January 2015

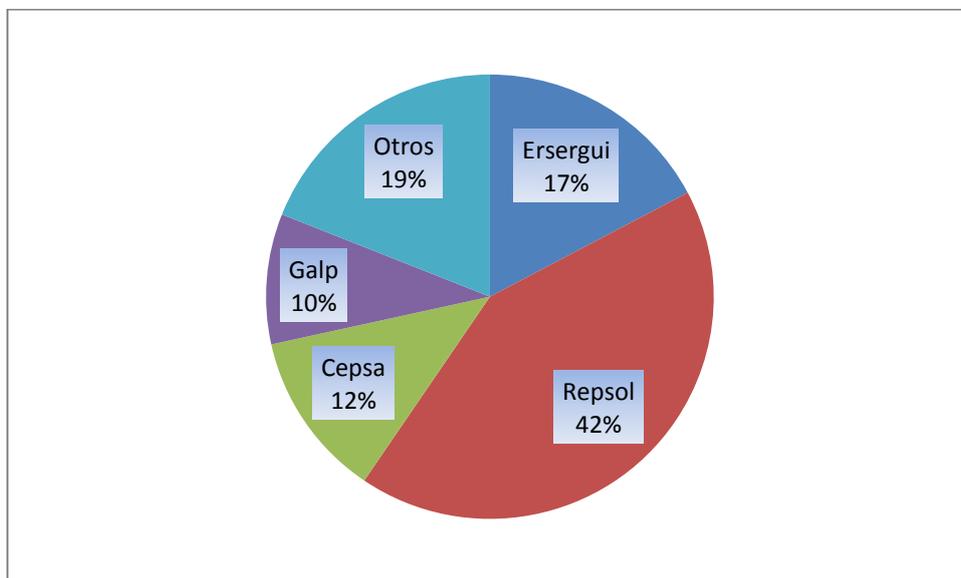


Source: Fuel Price Portal, Ministry of Industry

255. From 2010 to 2015, the structure of the retail market has undergone certain changes. The three refiners have lost market share, especially BP, which has lost nearly 50%. Cepsa has remained at a similar level, losing just 1%, and Repsol's market share has fallen by 5%. Nonetheless, it has retained its leading position in the retail channel.
256. At the other extreme we find the market share associated with independent operators, which has grown in the past five years from 26% to 36% of the retail market. This increase, which comes from the opening of new service stations by operators who are not integrated with refining, could be due in part to the recent measures introduced by Law 11/2013.
257. However, this increase in market share has not had the hoped-for effect on the pre-tax price of fuel in Spain. Pre-tax prices have continued on a more or less constant rising path during the past few years. Only in the last few months of 2014 did petrol and diesel prices fall, basically as a result of the sharp fall in internationally quoted prices, not of any increase in effective competition in the sector.

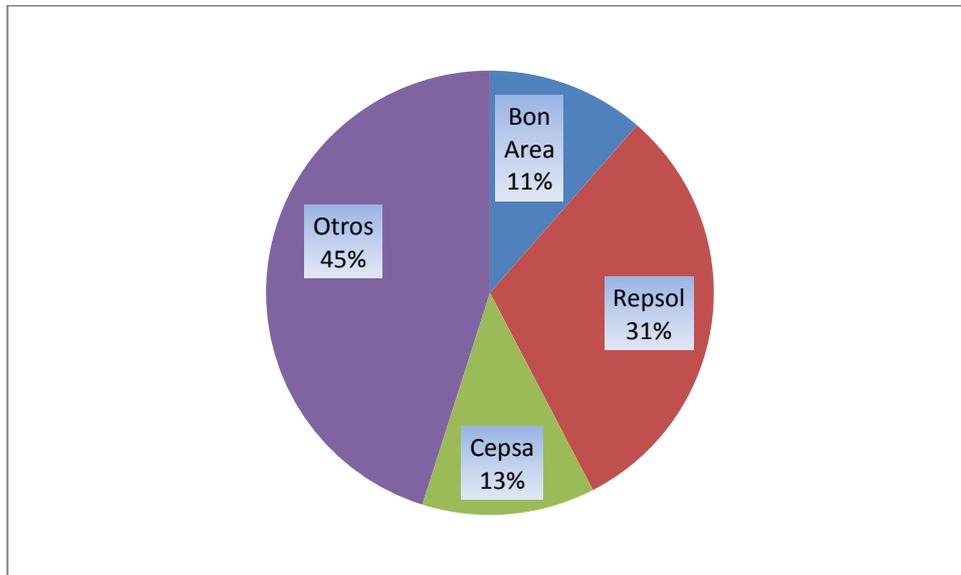
258. The question arises as to why, despite the increase in the number of independent service stations, including a new low-cost business model, pre-tax prices in Spain are still higher than in neighbouring countries. The answer could lie in the market power that the refiners, and especially Repsol, continue to exercise.
259. As an indicator to establish whether the position of the upstream integrated operators determines the prices charged at service stations, we now go on to analyse the market structure in the province with the highest pre-tax prices throughout 2014 and to compare it with the province posting the lowest pre-tax prices.
260. During 2014 Lleida was the province with the lowest pre-tax prices for both fuels, while Guipúzcoa was the province most often posting the highest pre-tax prices in mainland Spain.

Graph 24: Market shares in the province of Guipúzcoa (2014)



Source: Compiled by the authors, CNMC

Graph 25: Market shares in the province of Lleida (2014)



Source: Compiled by the authors, CNMC

261. In the province of Guipúzcoa, Repsol is the operator with the greatest market power, with a 42% market share, followed by Cepsa with 12%. The two operators together have more than half of the market. Bearing in mind that Cepsa's nearest refinery is in the South of Spain (Huelva or Algeciras), there is a possibility that Cepsa has entered into a supply contract or swap with Repsol whereby Repsol supplies it from its Bilbao refinery, and in exchange Cepsa supplies Repsol with other products at a point close to Cepsa's refineries. The problem in this case could be Cepsa's excessive dependence on Repsol for supplying its service stations in the Basque Country. This could affect its incentive to compete with Repsol, since Cepsa might have an incentive to reduce the intensity of competition with a view to Repsol's guaranteeing supply on appropriate or even favourable conditions. This situation is not specific to the Basque Country but can be extrapolated to other parts of Spain.

262. The presence of independent retail operators in Guipúzcoa is very limited, accounting for just 19% of the market, well below the national average. These independent operators, based on principles of efficiency, could

receive their supplies, if not totally at least in part, from the Petronor (Repsol) refinery. We do not discount the possibility of their supplying themselves through the port of Bilbao, which is close at hand, although due to the volume required, Esergui and Galp would be in a better position to make use of this possibility.

263. From the foregoing analysis, we can conclude that Repsol not only dominates the retail market in Guipúzcoa but also has market power in the wholesale market (as the main supplier). It should also be remembered that the import and logistical infrastructure of the port of Bilbao is very costly compared with the other facilities studied, so the possibility of exerting competitive pressure on Repsol through imports to the Basque Country would appear to be even more limited than it is in other parts of Spain. All this might explain the high prices of fuel in Guipúzcoa, the highest in Spain in 2014.

264. The market structure in the province of Lleida is at the opposite extreme. In this province, Repsol has a significantly smaller market share, 31%, and Cepsa has 13%. The rest of the market is composed of other operators, all of which are independent and non-integrated, with the exception of two Shell and three Galp service stations (Shell and Galp both being vertically integrated outside Spain). In other words, of the 83 service stations that represent 56% of the market, only five are owned by integrated companies. The rest form part of small cooperatives, retail networks, service stations linked to hypermarkets and unbranded service stations. Moreover, 11% of the market in Lleida corresponds to the Catalan group BonÀrea. This company has succeeded in increasing its market share by offering lower prices and establishing itself as a wholesale operator. It is not integrated upstream.

265. The Lleida market is thus a retail market formed by independent operators not integrated with refining activities, who offer the most competitive prices in the Spanish market. Its wholesale market also enjoys advantages with respect to other Spanish regions. It is not surprising therefore to find that

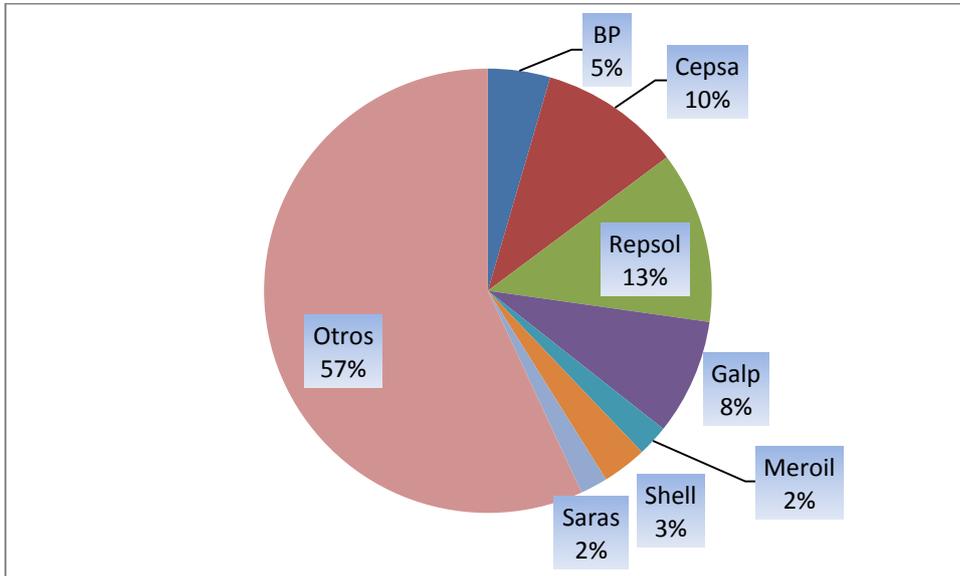
Catalonia is the autonomous region with the greatest concentration of independent logistics operators (i.e., not belonging to the CLH network or the refiners). As we have seen, the import depots are also the most competitive in the Spanish market⁸³. All this makes it possible for Lleida, and the provinces of Catalonia in general, to offer end consumers lower pre-tax fuel prices.

266. This same analysis can be extrapolated to other provinces such as Barcelona and Girona, which, after Lleida, posted the lowest pre-tax prices for automotive fuels during 2014, and Orense and Pontevedra, which posted the highest after Guipúzcoa.

267. From the market shares in these four provinces seen below, we draw the same conclusions: in the provinces with the lowest prices, the presence of non upstream integrated operators is very significant (57% and 45% respectively), while Repsol's market share is modest in the case of Barcelona (13%) and moderate in that of Girona (29%). At the other extreme are the provinces with the highest pre-tax prices: Repsol controls more than half the market in Pontevedra and 47% in Orense, whereas the non-integrated independent operators represent 23% and 27% respectively. We should also highlight the fact that the port infrastructure in Galicia is not connected to CLH's network, so imports are very difficult in this region, which further strengthens Repsol's market power in these provinces.

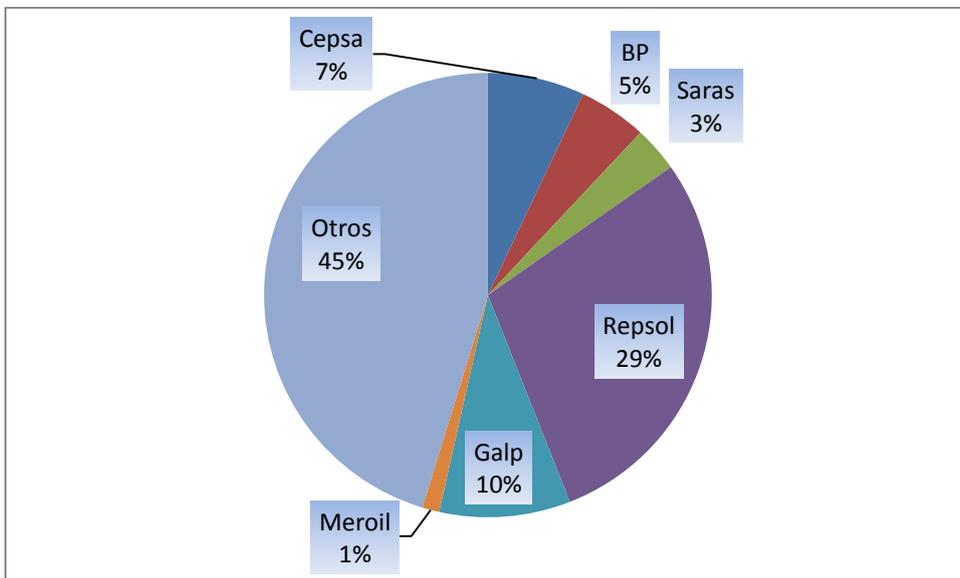
⁸³ Despite the fact that the logistics may be more expensive in some provinces because of their isolation, this factor alone cannot entirely explain the price differences.

Graph 26: Market shares in Barcelona province (2014)



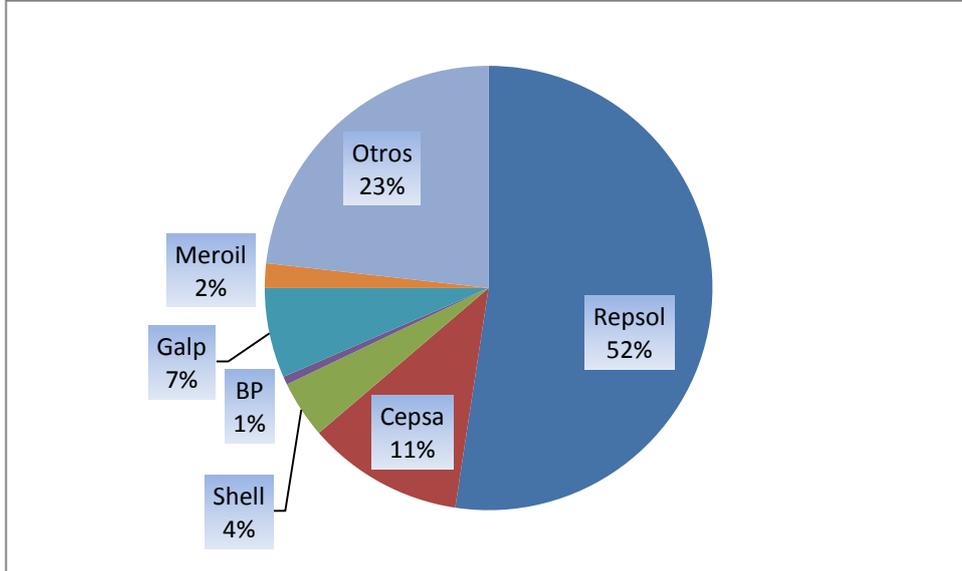
Source: Compiled by the authors, CNMC

Graph 27: Market shares in Girona province (2014)



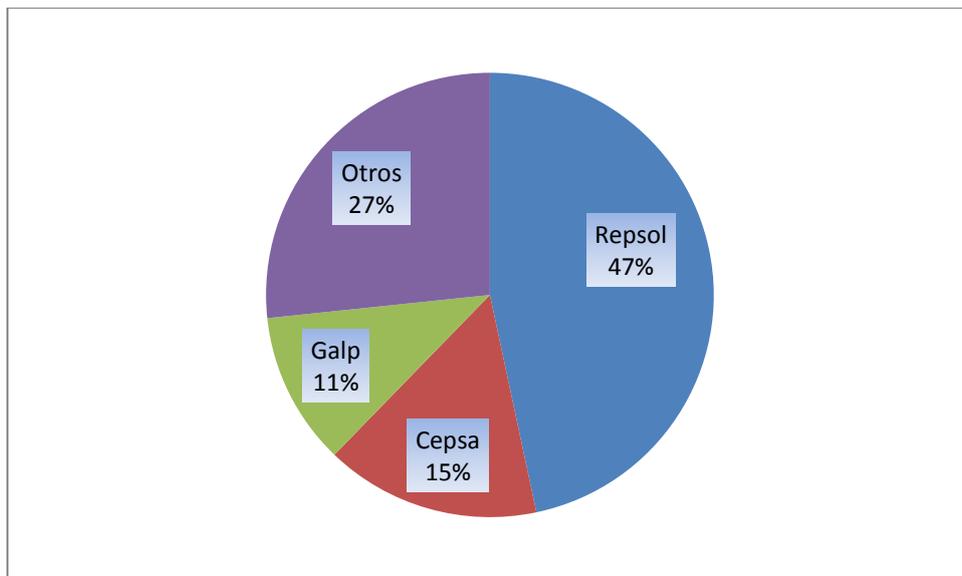
Source: Compiled by the authors, CNMC

Graph 28: Market shares in Pontevedra province (2014)



Source: Compiled by the authors, CNMC

Graph 29: Market shares in Orense province (2014)



Source: Compiled by the authors, CNMC

268. From the above we see that not only is it important to reduce or eliminate barriers to entry in the retail automotive fuel market, it is also necessary to reduce or eliminate barriers to entry in the wholesale fuel market in order to make the market more dynamic and achieve a more competitive retail market. In other words, if only the problems of competition in the retail sector are solved, without addressing the problems arising from the verticality of the refining-wholesale-retail market, the main objective of introducing greater competition to the market for the benefit of end consumers will not be achieved.

III.2.3. Barriers to entry and expansion of wholesale fuel operators in Spain

269. As we have seen from the analysis of the structure of the automotive fuel market, there are four main barriers to entry to the wholesale segment of the market:

1. Lack of competitiveness of imports of automotive fuels

As we saw in section II.2.2, imports of automotive fuels to Spain are non-existent in the case of petrol and limited in that of diesel. This low volume might not be exerting sufficient competitive pressure on the market and therefore on product prices. In a competitive market, imports would discipline the market and reduce the price differential with certain neighbouring countries.

One of the reasons for the low volume of imports to Spain seems to stem from the fact that the operators with the greatest ability to import, i.e., with the biggest market shares in the retail sector, are the operators with refining capacity. Moreover, these operators have undertaken major capital

expenditure in the past few years and now have surplus refining capacity, which increases the incentive to boost domestic supply and in some cases to offer prices that are competitive relative to internationally quoted prices.

The question also arises as to why the independent wholesale operators hardly import any fuels, despite there being windows of opportunity when internationally quoted prices are lower than domestic ones. Many of them are unable to consider importing due to lack of volume, since high minimum volumes apply. Others, while having a sufficient volume of customers downstream, are physically far removed from the import depots, meaning that the high cost of transport would make the final cost of the product too expensive. As we have seen, the wholesale automotive fuel market is a market with certain significant local components that encourage its fragmentation. Given current tariffs, the transport of product within Spain would considerably increase the logistical costs, so that end prices would not be sufficiently competitive. Furthermore, there are costs associated with seeking import opportunities, as well as the increasing difficulty of finding traders that offer regular import services for Spain. Due to the above, only a limited number of wholesale operators have a real ability to import product on a regular basis. In general terms, they are those that have a sufficient critical mass of customers in the retail segment, concentrated in a given geographical area and with the resources and incentive to monitor import opportunities.

2. *Supply dependency on operators with refining capabilities in Spain*

The second barrier to entry to the wholesale segment results directly from the first one. The non-integrated wholesale operators depend almost entirely on supplies from Repsol, and to a lesser extent de Cepsa and BP. Moreover, depending on their geographical location, they will also depend on one of these three companies for supplies. Whereas Cepsa's area of influence is centred on the Canary Islands and south-western mainland Spain (its refineries being in Huelva and Cadiz), BP's area of influence is around its refinery in Castellón. The rest of mainland Spain has as its nearest supplier one of the five refineries owned by Repsol, which has by far the most extensive geographical coverage. As a result, many wholesale operators depend on Repsol as their only local source of supply. In these circumstances, it would hardly be surprising if some wholesale operators with the ability to import were to decide against doing so in order to avoid possible reprisals on the part of one of the refiners.

3. *Vertical integration of the three operators with refining capacity in Spain*

This barrier to entry stems from the two previous ones. The high degree of vertical integration of the Spanish market for fuels makes this market impermeable. This impermeability to potential new entrants or to the potential disciplining effect of imports may give rise to: (i) structures with high and uncompetitive prices in the retail segment, (ii) restrictions to free competition, and (iii) weakening of competitors, impeding operators' entry and development.

The problems arising from this verticality must be addressed by creating sufficient competitive supply alternatives in the wholesale market, so that they can offer better terms and more efficient prices to their retail customers. It would also be necessary to make the independent service station a more dynamic part of the retail segment, so that non-integrated wholesale operators could have sufficient customers downstream to be able to grow, and to make the Spanish market more cohesive so that fuels could be supplied competitively in wider markets, not just local ones.

4. *Requirements for becoming a wholesaler of automotive fuels*

Lastly, there are barriers to entry of a regulatory kind. In order to set up as a wholesaler of petroleum products, it is necessary to have sufficient legal, technical and financial capacity, which is limited to establishing a company and having €3 million in equity⁸⁴. It is also necessary to have appropriate resources and facilities for the supply, and to hold minimum security stocks. However, these barriers are not significant in the majority of cases. The €3 million of equity and the need to have appropriate facilities are intended to ensure that companies entering the market are capable of carrying on the activity on an ongoing basis and guaranteeing supply. The obligation to hold minimum security stocks becomes an added, ongoing cost that may constitute an additional barrier to entry for new entrants to the Spanish market. In Spain, the non-integrated wholesale operators find it difficult to compete with integrated

⁸⁴ Royal Decree 2487/1994 of 23 December (published in the BOE (Official State Journal) of 21 January 1995) approving the statute regulating the activities of wholesale and retail distribution by means of direct supply to fixed facilities of petroleum-based fuels (as amended by Royal Decree 197/2010 of 26 February, published in the BOE of 18 March 2010), Articles 10 to 13.

wholesale operators on equal terms. If the cost associated with minimum security stocks were eliminated or reduced, this would remove one of the barriers to entry to the wholesale segment.

Also, as in other markets with a certain technical complexity and international dimension, know-how constitutes a significant barrier to entry for new operators. Not only it is necessary to have an in-depth knowledge of how trading markets and internationally quoted prices work, but in-depth technical knowledge of Spanish and international product legislation, logistics and market operators are also required.

5. *Administrative barriers*

There are administrative barriers to setting up as a wholesale operator and entering and operating in the Spanish automotive fuel market. The basic barrier to setting up as a wholesale market operator is the lack of information (and training) available to retail operators and/or new market operators wishing to become wholesale operators. The procedures to be followed are not transparent, nor are they easily accessible for new entrants, which makes it difficult for companies to set up in the market and in so doing make it more dynamic⁸⁵. The lack of responsiveness of the Administration in answering queries and consultations, and the complexity and diversity of the laws and regulations could be one of the main barriers to entry.

Another barrier to entry is the cost arising from the promotion of the use of biofuels. Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the

⁸⁵ In regard to this point, the CNMC has experience in attending to consultations by telephone and in person from companies wishing to enter the wholesale fuel market or to break loose from an operator's network.

promotion of the use of energy from renewable sources establishes that each Member State by 2020 energy from renewable sources should account for at least the equivalent of 10% of fuel consumption of all types of transport. This Directive establishes the energy content of transport fuels for these purposes. Order ITC/2877/2008 of 9 October establishes the mechanism for promoting the use of biofuels for transport, regulating the energy content per unit volume of biofuels that can be certified for each type of biofuel. Biofuels are considered to be fuels of plant origin that can be used alone or mixed with petroleum products in internal combustion engines of vehicles. Although there are other kinds of biofuels, the main ones are ethanol and its derivatives and biodiesel⁸⁶. The production costs of both biodiesel and ethanol are higher than those of conventional fuels, so production costs of mixed fuels are higher too. Biofuels are mixed with conventional fuels either in the refineries or at logistic centres or storage parks. These logistic centres have the technical resources to carry out the blending and control the quality of the components and the specifications of the end product. There are currently enough operators offering this blending service in mainland Spain, the biggest being CLH. The obligation to use biofuels in automotive fuels falls on the following: (i) Wholesale petroleum product operators governed by Article 42 of Law 34/1998 of 7 October on the hydrocarbons sector, for their annual sales in the domestic market, excluding sales to other wholesale operators, (ii) companies engaged in the retail distribution of petroleum products, governed by Article 43 of Law 34/1998 of 7 October, for the portion of their annual sales in the domestic market that is not supplied by wholesale operators. And lastly, (iii)

⁸⁶ [...].

consumers of petroleum products, for the portion of their annual consumption that is not supplied by wholesale operators or by companies engaged in retail distribution of petroleum products. In short, the cost associated with the use of biofuels falls largely on the wholesale operators in the market, representing a considerable increase in the total cost of their activities. This additional cost constitutes a barrier to entry which has to be borne in mind by potential entrants.⁸⁷

Lastly, since 2014 there has been an additional barrier in the automotive fuel market: the contribution to the National Efficiency Fund. This contribution constitutes an additional cost for all operators, an amount that new entrants must take into account when deciding to enter the market. The common framework for promoting energy efficiency in the EU is established in Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012, which includes specific actions aimed at achieving the considerable potential savings not yet realised. Article 7 of the Directive establishes the obligation to prove a quantity of energy saving by 2020 and determines that each Member State will establish a system of obligations in respect of energy efficiency by means of which the parties subject to the obligation will have to reach the savings objective indicated equivalent to 1.5% of their annual energy sales. Royal Decree-Law 8/2014 of 4 July, on the approval of urgent measures for growth, competitiveness and efficiency, passed as a Bill and adopted as Law 18/2014 of 15 October approving urgent measures for

⁸⁷ In the Canary Islands production of ETBE is not currently possible, due to the closure of the islands' only refinery. Thus the operators subject to the obligation find themselves having to import ethanol to blend with conventional petrol. Access to blending infrastructure is also limited in the Canary Islands, since CLH is not present in the islands and DISA, the main logistics operator, does not have the appropriate infrastructure for blending biofuels.

growth, competitiveness and efficiency, establishes the national system of obligations in respect of energy efficiency by virtue of which an annual nationwide energy saving quota will be assigned to wholesale petroleum product operators.

In order to make compliance with the annual energy saving obligations effective, parties subject to the obligation must make an annual financial contribution to the National Fund for Energy Efficiency. The purpose of this Fund is to implement economic and financial support mechanisms, technical assistance, training and information or other measures for increasing energy efficiency in the various sectors and helping to achieve the savings objective established. Since about half of final energy corresponds to petroleum, the wholesale petroleum product operators carry the major part of the obligation and of the cost deriving from the energy efficiency imposed by the European Directive. This contribution therefore constitutes another barrier to entry to be taken into account by potential new entrants to the automotive fuel market in Spain.

III.3. Problems arising from the obligation to maintain minimum security stocks

270. Imported crude oil and petroleum products represent an important place in the EU's supply of energy products. Any difficulty, even a fleeting one, that has the effect of reducing the supply of these products from abroad, or a significant increase in their price on the international markets, could cause serious disruption to the economic activity of the European Union, and consequently it is necessary to be able to compensate or at least mitigate the harmful effects of such an eventuality.

271. For this reason, it is necessary to strengthen the security of the Member States' supply of crude oil and petroleum products by creating and

maintaining a minimum level of storage of the most important petroleum products, which include automotive fuels (petrol and diesel).

272. The International Energy Program Agreement and Directive 2006/67/EC of the Council of 24 July 2006, updated by the Directive 2009/119/EC of the Council of 14 of September 2009, regulate these minimum reserves, obliging Member States to maintain a minimum level of reserves of crude oil and/or petroleum products.
273. In order to comply with the requirements of this Directive, Member States may opt to make use of a central stockholding entity that will be responsible for holding all or part of the reserves. The Directive, however, confines itself to giving a series of guidelines to Member States, leaving them free to choose the system they wish to adopt in order to comply with the obligation to hold minimum security reserves. For example, the European legislation stipulates a maximum of 120 days and a minimum of 90 days. Within these limits each State decides how many days' worth to hold. In the case of Spain, it was decided to hold 92 days' worth, adding specific requirements as to which products to hold depending on whether it is summer or winter. These extra two days over the minimum required by the Directive represent an added cost for the market operators.
274. The Directive also establishes the possibility, although not the obligation, of creating a body dedicated to the management of the reserves. Each State member has opted for a different model. At one extreme is the UK, which opted not to create a responsible body, so that the industry operators themselves (in this case the operators with refining capabilities and importers of petroleum products) assume the responsibility for maintaining the reserves. At the other extreme is Germany's EBV, a public entity that does not hold its own reserves, but which in the event of a crisis in supply would turn to the market to supply itself. Half-way between is Ireland, where the operator who manages the minimum security reserves, NORA, is a private sector operator. Lastly, although not in the European

Union, in the USA there is a public body, SPR, dedicated to holding the security reserves, the cost of which is financed through federal budgets.

275. The obligation to hold minimum security stocks of petroleum products in Spain currently stands at 92 days' equivalent of sales or computable consumption, and must be held at all times. Out of this total of 92 days' worth of obligatory stocks, CORES, Spain's Central Stockholding Entity, holds 42 days' worth (strategic stocks) while the industry holds the remaining 50 days' worth (industry reserves).
276. Also, Royal Decree 1716/2004 of 23 July regulates the obligation to maintain minimum security stocks, the diversification of natural gas supplies and CORES, the central stockholding entity for strategic reserves of petroleum products. CORES is the public corporation charged with guaranteeing the security of hydrocarbons supplies in Spain by maintaining reserves of petroleum products and controlling stocks.
277. The purpose of this Royal Decree is to develop the provisions of Law 34/1998 of 7 October on the Hydrocarbons Sector as it relates to the obligation to hold minimum security stocks of hydrocarbons on the part of the various actors in the petroleum sectors, among others.
278. In accordance with the provisions of Article 50 of Law 34/1998 of 7 October on the Hydrocarbons Sector, the following are obliged to hold, at all times, minimum security stocks of petroleum products:
- i. operators authorised to distribute wholesale the petroleum products regulated by Article 42 of Law 34/1998 of 7 October, for their annual sales in the domestic market, excluding sales to other wholesale operators.
 - ii. Companies engaged in retail petroleum fuel distribution, regulated by Article 43 of Law 34/1998 of 7 October, for the portion of their annual sales in the domestic market not supplied by wholesale operators regulated by Article 42 of the aforementioned law.

- iii. Consumers of petroleum fuels for the portion of their annual consumption not supplied by wholesale operators regulated by Article 42 of Law 34/1998 of 7 October, or by companies engaged in retail distribution of petroleum products regulated by Article 43 of the aforementioned law.

III.3.1. Costs associated with minimum security stocks

279. The costs of holding the minimum security stocks are borne essentially by the wholesale operators, which reduces their margins and may constitute an additional barrier to entry to the Spanish market. The cost associated with the obligation to hold minimum security stocks could affect wholesale operators to a greater extent, given the narrow profit margins on their business.
280. Of the overall obligation to hold minimum security stocks in Spain, CORES holds 42 days' worth. Some parties subject to the obligation may ask CORES to hold additional days stock in accordance with an established procedure:
- i. The parties subject to the obligation who are not operators with a market share of less than 0.5% can ask CORES to hold their entire obligation.
 - ii. Others can ask CORES to hold, under fixed three-year contracts, an additional 35 days on top of the 42 it already holds in accordance with the allocation of days. These additional 35 days for the operators are regulated in Royal Decree 1716/2004 of 23 July regulating the obligation to maintain minimum security stocks, the diversification of natural gas supplies and CORES, the central stockholding entity for strategic reserves of petroleum products.

281. The cost of the reserves held by CORES, in accordance with the legislation, is the same for all operators. For maintaining these reserves, CORES has agreements with operators with storage facilities.
282. The operators with refining capacity hold their reserves in their own facilities or in facilities of logistics companies across the country. Wholesale operators that are not vertically integrated either sign storage contracts with CORES for the 35 additional days to which they are entitled according to the law, keeping the rest in terminals belonging to third-party companies, or else opt to hold their reserves in storage terminals belonging to CLH or other companies providing these services. The cost is therefore likely to be higher for wholesale operators that are not vertically integrated, since they do not have the option of storing in their own facilities.

III.3.2. Problems arising from the application of European legislation in Spain

283. EU law obliges Member States to hold minimum security reserves of oil and certain petroleum derivatives. The European Directive does not however indicate the model that each Member State must implement, leaving it to the States to decide on the system. As a result, not all countries have the same or even similar models. In the UK, the differentiation of parties subject to the obligation (between refiners and non-refining importers) can be judged positively since it would lead to a greater balance in the sharing of the financial burden associated with holding minimum security stocks. In the UK the cost of holding minimum security reserves is borne not by the wholesale operators but by the producers, who hold the reserves and in turn have access to their own storage facilities with lower operating costs. This frees the wholesale operators from the costs of the reserves and from managing them.

284. Other Member States such as France have a considerable degree of flexibility as regards the number of days' worth of stock to be held by parties subject to the obligation, complying in any case with the volumes required at the national level; whereas in Spain, Royal Decree 1716/2004 limits CORES' flexibility by not allowing it to offer fewer than 35 additional days or contracts with terms of less than three years. The Spanish system is therefore less flexible than that of other European partners, and this may lead to higher costs for parties subject to the obligation to hold the reserves.
285. In some of these Member States, such as France and Germany, there have been signs of possible restrictive effects on competition due to the way the obligation to hold minimum stocks is shared among the various groups or categories of parties subject to the obligation, with differing volumes of operating stocks for operators with refining facilities and independent wholesale operators without refining facilities⁸⁸.
286. For this reason it is necessary to consider whether the current system of maintaining minimum security stocks might be impeding the attainment of an optimum level of competition in the Spanish automotive fuel market. If such were the case, it would be necessary to change the model to cater to the peculiarities of the parties operating in the market that are subject to the obligation. In particular, it would be possible to look at the operational differences between refining and non-refining operators and to determine whether a change in the obligation to hold minimum reserves would result in an increase in effective competition in the wholesale segment of the automotive fuel market.
287. In light of the differences between refiners and non-refiners as regards operating stocks, a new, alternative system more appropriate to the Spanish market could be proposed.

⁸⁸ Report on the consultation lodged by Union of Independent Petroleum Companies on the possible restrictive effects on competition of the Spanish system of minimum safety stocks of liquid hydrocarbons (CNE, 2005)

288. In the case of Spain, the following circumstances pertain:

- i. The fuels market has a high level of concentration and is vertically integrated. With a reduced number of companies, control of the reserves might also prove easier.
- ii. Logistical costs are high, and limit the ability to compete of all operators, especially for smaller wholesale operators that are not vertically integrated. Wholesale operators could be freed of this obligation so as to reduce the obstacles to competition that they face.
- iii. The European Directive has been entirely transposed into Spanish law. However, the Spanish regulations currently in force have not been completely brought into line with the European Directive. These regulations require, among other things, a bilateral treaty or agreement between States in order for the reserves of one State to be held in another. Such treaties are not required by the European Directive. Both CORES and other Spanish logistics operators face an additional difficulty of having to sign bilateral agreements in order to hold reserves of other countries in Spain (or vice versa, if the case were to arise).

As regards the costs of the minimum security reserves:

- i. Costs are higher for independent wholesale operators that are not integrated with refining activities, since they do not have their own storage terminals.
- ii. Margins are tight in the wholesale segment, and the cost of holding reserves represents a significant barrier

to entry and expansion. There are also administrative and time costs associated with the management of the minimum security reserves.

- iii. CORES contracts are not flexible enough. In the first place, the minimum period for a contract is three years. Secondly, the storage prices charged by CORES are currently the highest in the whole industry, but since the operators have signed long-term contracts (for a minimum of three years), they cannot terminate the contracts with CORES and sign with new operators offering lower prices. Thirdly, it is not possible to contract fewer than 35 additional days of reserves, which is inflexible and unjustified from any point of view.

289. We deduce from the foregoing that, in the case of Spain, in order to increase effective competition in the wholesale automotive fuel market and achieve efficient sharing of the financial burden in the fuels market, the obligation to hold security stocks should be amended. If this obligation were to fall on the operators in the industry with refining capacity (and the importers), the aggregate costs associated with the minimum security reserves could be reduced since these operators would use their own storage terminals. Thus, even if the cost of holding the reserves were to be passed on in full in the price of fuel to the wholesale segment, this cost would be less on aggregate.

290. In addition, the conditions laid down in Royal Decree 1716/2004, which limit CORES' flexibility in providing its services, should be amended. It would also be advisable to carry out an annual review and update of the tariffs applied by CORES for providing its services for storing minimum security reserves, so as to make sure that its services are not priced above the market to the detriment of wholesale operators that do not have their own storage facilities.

291. Lastly, an effort must be made to bring Spanish legislation into line with the European Directive and facilitate the holding of other countries' reserves in Spain (or vice versa), given that this could benefit CORES and enable it to charge less for its strategic reserve holding services.

III.3.3. Risk of coordinated effects

292. CORES is the entity that receives confidential information on developments in the Spanish wholesale automotive fuel market from the market operators themselves. The members of CORES with seats on its governing bodies, which include Repsol, Cepsa and BP, might have access to this highly sensitive information, and have an incentive to facilitate tacitly coordinated behaviour in the market.

293. One of CORES' most important functions since its creation in 1995 has been the preparation of statistical reports on the hydrocarbons sectors based on data provided by the market operators. CORES, as a Statistical Body, is jointly responsible with the Ministry of Industry, Energy and Tourism for the energy statistics contained in the National Statistics Plan, also collaborating with the Ministry on preparing the hydrocarbons statistics sent to various international bodies such as the IEA and EUROSTAT.

294. This statistical or information function would not raise problems of competition if CORES were an independent entity. However, the governing bodies of CORES contain representatives of all the wholesale automotive fuel market operators, including vertically integrated operators with refining activities.

295. The main governing bodies of CORES and their members are as follows⁸⁹:

- i. The **Management Board** of CORES, its highest governance body, is formed by the Chairman, appointed by the Minister for Industry, Energy

⁸⁹ Source: CORES

and Tourism, and eleven members. Four members are appointed by the Minister for Industry, Energy and Tourism, while the other seven are industry representatives, with the following composition:

- Operators with refining capacity and wholesalers: two members appointed by Repsol, one by Cepsa and one by BP.
- Wholesale hydrocarbons operators without refining capacity: two vacancies (currently not appointed).
- Gas distributors: one member appointed by Gas Natural

The functions entrusted to the Management Board are implemented in Article 12 of Royal Decree 1716/2004 of 23 July regulating the obligation to maintain minimum security stocks, diversification of natural gas supplies and CORES, the central stockholding entity for strategic reserves of petroleum products. According to this Article, it is for the Management Board to:

- a) determine the general policy for CORES' actions and deliberate on matters of importance to it.
- b) approve the rules and procedures for CORES' internal organisation and functioning, in accordance with the regulating principles of its legal regime.
- c) control the activity of CORES, except as regards specific inspection tasks or matters relating to individualised information on the parties subject to the obligation to hold reserves.
- d) approve proposals to set quotas for submission to the Ministry of Industry, Tourism and Trade.
- e) draw up and approve the annual accounts of CORES.
- f) perform such other functions as may be assigned by legal provisions or these statutes.
- g) approve an inspection manual containing the basic principles to be followed by inspectors and the procedures for carrying out inspections.

- h) establish the domicile of CORES and any branches or representative offices considered necessary for the fulfilment of its purposes.
- i) all other competencies not reserved to the General Assembly or to the Chairman of CORES.

In other words, the functions of the Management Board consist mainly of controlling CORES' activities, defining its general policy and drawing up budgets and action plans.

The Management Board adopts its resolutions by majority, although the Ministry of Industry, Energy and Tourism, through the Chairman of CORES, can exercise a right of veto on any decision contrary to the public interest.

- ii. The **General Assembly** is composed of the representatives of all the members of CORES, which are the companies operating in the Spanish wholesale hydrocarbons market. The functions of the General Assembly consist mainly of approving the annual accounts and the proposed quotas. It generally meets twice a year. Resolutions of the General Assembly are passed by a majority of three quarters of the votes present, although the Ministry of Industry, Energy and Tourism can impose its veto in cases it deems contrary to the general interest. Voting rights are assigned to the members in proportion to their financial contributions to CORES. In other words, Repsol, Cepsa and BP, as CORES' main customers, have more voting rights than the smaller wholesale operators. In practical terms, this means that the only resolutions passed by three quarters of the assembly's votes will be those proposed or voted for by the three operators, unless the Ministry exercises its right of veto.

296. Given the involvement of the wholesale operators in the organisation and governance of CORES, the possibility of these operators having access to

the market information held by this body cannot be completely dismissed. The risk of access to information is even greater in the case of members of CORES that are not only in the General Assembly but also on the Management Board. Such is the case of Repsol, BP and Cepsa.

Information sent by market operators to CORES

297. The parties subject to the obligation to hold minimum security stocks of petroleum products in accordance with the provisions of Article 50 of *Law 34/1998 of 7 October* must send the following information to CORES on a monthly or quarterly basis in accordance with the *Resolution of 29 May 2007 of the General Directorate for Energy Policy and Mines*:

- a precise statement of the movements in the products of each obligated party by type of product;
- entry and exit of petroleum products by import/export and intra-Community trade;
- monthly purchases by raw material and product;
- quantities and destinations of sales to the domestic market by distribution channel and market sector;
- levels of and changes in stocks by raw material and product.

298. The parties subject to the obligation include all petroleum product wholesalers in Spain, owners of refineries and retail distributors of petroleum products not purchased from operators regulated by the Hydrocarbons Law. CORES thus receives sensitive commercial information from most of the operators in the Spanish wholesale automotive fuel market. In its statistics, CORES presents only aggregated data of some of the market variables, such as production, imports and exports. However, the data it receives from the various operators are

detailed, disaggregated and provided monthly or quarterly. In other words, they are highly confidential and permit an almost perfect reconstruction of the market and the individual behaviour of each operator.

299. Due to the organisational structure of CORES, its members, or those on its Management Board, which include Repsol, Cepsa and BP, may have incentives to access this confidential information on their competitors.

300. In order to give an idea of the level of disaggregation of the information received by CORES from the industry, we attach an appendix with some of the standard questionnaires sent by market operators to CORES.

Oligopoly and risk of tacit coordination

301. The probability of coordination occurring is greater in markets in which it is relatively easy to reach agreement on the terms of such coordination. To do this, three conditions must be met:

1. The companies coordinating must be able to exercise sufficient control on compliance with the conditions for coordination.
2. There must be credible dissuasion mechanisms that can be activated if any deviation is detected from what has been agreed.
3. The expected results of the coordination must be protected against the reactions of both current competitors and potential entrants.

302. In the Spanish wholesale automotive fuel market the following conditions exist.

303. Firstly, the market for automotive fuel in Spain is characterised by high concentration and the existence of three operators with refining capabilities and market power in the refining market. These operators are also integrated vertically downstream with the wholesale and retail

markets, in which they also have market power. The three operators with refining capabilities are also members of the Management Board of CORES.

304. This kind of oligopolistic market is characterised by (i) a limited number of producers and (ii) the interdependence of their behaviours. These two elements facilitate the coordination of prices (and/or of any other variable) by the oligopolists, so as to obtain jointly supra-competitive profits without the need to sign an agreement or resort to a concerted practice included in Article 101 of the EU Treaty. In terms of its effects, this tacit coordination in the market would work as if there were collusion.
305. Secondly, as well as an oligopolistic structure, the Spanish wholesale automotive fuel market could have a level of internal transparency that, thanks to CORES, would create incentives for the operators with refining capacity (Repsol, Cepsa and BP) to control compliance with the conditions of coordination and be able to determine when and how to retaliate. In this regard, (i) the final prices of petrol and diesel are published at Spanish service stations, which also increases transparency for end consumers, who benefit from being able to compare the prices of different service stations, and (ii) through CORES, the coordinated operators might have access to complete and recent information on all flows of purchases and sales, import/export, movements of produce, etc. of the various wholesale operators in the Spanish market. This means that nearly all the different market variables can be reconstructed, their trends monitored and any deviations from a coordinated oligopolistic equilibrium detected. This market monitoring and reconstruction can be carried out in great detail, given the disaggregation of the data received by CORES, which show the precise individual performance of each competitor in the market.
306. Thirdly, the wholesale fuel market presents high barriers to entry for potential entrants, as shown by the decline in imports of automotive fuels to Spain in the past few years and the differential in prices and gross distribution margins between Spain and the EU-6 countries. The existence

of these barriers could mean that the hoped for results of tacit coordination are not under threat from potential competitors' reactions.

307. From the above, we see that the Spanish wholesale automotive fuel market presents structural characteristics that would facilitate tacit coordination, since the information sent to CORES by operators in the sector is an element facilitating possible coordinated behaviour by some members of CORES with market power. All this once again produces an inefficient result from the point of view of effective market competition, with the consequent negative implications in terms of the functioning of the market and, ultimately, general well-being.

IV. CONCLUSIONS

308. In this report we have identified a number of factors that limit the proper functioning of the automotive fuel market in Spain and as such restrict effective competition. This situation could be explained by the low level of competitive pressure exerted by imports of automotive fuels, the high level of pre-tax prices and gross distributor margins existing in Spain and the price and margin differentials relative to other EU countries.

309. The very structure of the Spanish automotive fuel market gives rise to a highly concentrated market in which the vertical integration and market power of the three operators with refining capabilities, in particular Repsol, and to a lesser extent Cepsa, facilitate the extraction of economic income from end consumers. The concentration of companies and the vertical integration of the Spanish market are greater than in other EU countries of a comparable size. In Spain moreover, there is one operator, Repsol, with clear market power in the refining market and a leading position in both the wholesale and retail segments of the market. The barriers to entry faced by new operators are thus higher in the Spanish market than in other European markets.

310. Also, the operators with refining capacity in Spain could have a certain ability to influence CLH, being its main customers and holding shares in the company. This could lead to incentives to manage CLH infrastructure in such a way as to benefit the refiners to the detriment of other, smaller wholesale operators, thus creating barriers to entry to the import infrastructure and asymmetrical conditions among operators. Additionally, the prices of CLH's storage and long-distance pipeline transport services fragment the market and make it difficult for operators with a smaller market presence to compete.
311. In order to resolve the problem of high pre-tax prices and gross distribution margins in the Spanish automotive fuel market, it is essential to introduce more effective competition into all market segments. The Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain included recommendations aimed basically at introducing competition into the retail segment of the automotive fuel market. These measures were aimed at facilitating the establishment of service stations and strengthening the presence of alternative operators to previously existing ones.
312. In order for the measures introduced in the retail segment by Law 11/2013, and subsequently by Law 8/2015 of 21 May⁹⁰, to have the desired effect on effective competition in the market, it is necessary to increase competition in the wholesale segment so as to limit the benefits that the refiners, who are integrated with the wholesale and retail segments, derive from their verticality. It is therefore an indispensable requirement that the barriers to entry to the wholesale automotive fuel market be reduced in order to encourage the entry of new operators and

⁹⁰ Article 2 of Law 8/2015 amends section 1 of Article 43 of the Hydrocarbons Act and adds a new section 5 in the following terms: “operators of retail distribution facilities for petroleum products that do not belong to the distribution network of a wholesale operator may provide information on the origin of the fuel by publicising the wholesale operator from which they acquire the fuel”.

facilitate the expansion of independent wholesalers already operating in the Spanish market.

313. The following recommendations are of an asymmetrical nature in that they seek to favour the entry of new operators and thereby to mitigate the significant market power wielded by operators with refining capabilities in Spain along the entire value chain of the fuel market. It is essential to favour the existence of effective alternatives to the incumbent operators in order to genuinely galvanise the market. To that end, it is necessary to guarantee the non-vertically integrated wholesale operators available fuel supplies on competitive terms and a technically and economically efficient fuel distribution network.

V. RECOMMENDATIONS

Recommendations relating to the wholesale segment of the market

314. These recommendations are addressed to the public authorities, as they have the powers in the areas of planning and basic regulation in the hydrocarbons sector and of organising economic activity in general.

V.1. One: governing bodies and shareholding of Compañía Logística de Hidrocarburos (CLH)

315. CLH owns and operates the pipeline network in mainland Spain and owns the majority of storage facilities. Both these assets are essential for the distribution of automotive fuels in Spain, as there is no alternative to the services provided by this company. The following recommendations are aimed at eliminating the control of or influence on CLH by companies operating in the refining and fuel sales and distribution segments in Spain.

- i. Limit direct or indirect shareholdings in CLH by any natural or legal person involved in activities in the refining market in Spain to 4.99% of CLH's share capital. In no case may shareholders with a shareholding of less than 5% propose points for consideration on the agenda of shareholders' meetings, nor shall they have the right to vote on the matters discussed.
- ii. Prohibit the presence of operators with refining capabilities in Spain on the Board of Directors of CLH. Neither Repsol, nor Cepsa, nor BP, nor any future operator in the Spanish refining market may have any representation on the Board of Directors or any other governing body or committee of the Board of Directors.

V.2. Two: control of CLH's storage and transport business

316. The distribution through CLH's network of storage facilities and pipelines constitutes an essential infrastructure for wholesale operators in the Spanish market. The following recommendations are aimed at developing and completing the principles contained in Article 41 of the Hydrocarbons Law, to ensure the proper functioning of CLH's pipeline network and reduce the costs associated with the transport of fuels by pipeline. We will also put forward a number of recommendations aimed at ensuring that access to CLH's facilities is afforded under objective, transparent and non-discriminatory conditions.

- i. Tariffs for the use of CLH's transport network:
 - a. These must be subject to prior authorisation by the CNMC, and this authorisation must apply to both the initial setting and subsequent updating of the tariffs;
 - b. They must be established on the basis of the cost of providing the service and efficiency improvements in the transport service;

- c. They must include the calculation and application of the volume rebates guaranteed in the contracts between the wholesale operators and CLH, including both short-term and long-term contracts (those with a duration of more than one year).
 - d. They must include, as a minimum, the basic logistical services of reception, storage, transport and dispatch;
 - e. An objective, transparent and non-discriminatory methodology for establishing the tariffs must be drawn up and published following an in-depth analysis by the CNMC;
 - f. They must be broken down on the basis of the costs of the services provided (storage, transport by pipeline and other activities needed to provide the service). This breakdown must be included with the invoices issued by CLH to its end customers.
- ii. Access to services such as logistical services of pumping, withdrawal of product, additivation, and such logistical services as may be necessary to ensure provision of the basic services of product reception, storage, transport and dispatch, must also be governed by tariffs based on costs that must be submitted annually to the CNMC for supervision. Also, CLH must justify any changes, delays or cancellations to the provision of these logistical services and bear any costs arising from such a cancellation or delay.
- iii. CLH must be obliged not only to publish information on available transport capacity at its storage facilities and pipeline sections and keep it up to date at all times, but also to propose alternatives to bottlenecks (if possible) and to specify the circumstances in which the storage capacity of its terminals can be expanded to meet demand.

- iv. In the case of congestion at storage terminals or sites where there are no alternatives to CLH's terminals, the competent authority must facilitate the construction of new storage tanks by private initiative, making arrangements for the necessary land to be made available.
- v. CLH must be obliged to prove the impossibility of unloading automotive fuels at its port facilities, and to offer alternative services (if there are any) and determine the period during which unloading of fuel is not possible at each of its port facilities that has limitations as regards unloading.
- vi. CLH must promote the physical connection of Spain's pipeline networks with those of other countries.

V.3.Three: control of minimum security stocks

317. The IEP (*“International Energy Program Agreement”*) and Directive 2006/67/CE of the Council, updated by Directive 2009/119 of the Council, regulate the minimum security reserves of petroleum products in the European Union. Although the European Directive leaves Member States free to establish on whom the obligation will fall, in Spain this obligation to hold minimum stocks falls basically on the wholesale fuel operators. As we have seen in this report, the cost of holding minimum security stocks are asymmetric, falling disproportionately on wholesale operators in Spain with a smaller market presence and constituting a barrier to entry and expansion for operators. For this reason, a change in Spain's model could lead to an increase in effective competition in the wholesale fuel market.

318. Also, CORES receives highly confidential information from wholesale operators that allows a total reconstruction of the market and increases the risk of coordination among the operators with refining capacity. The following recommendations propose solutions to the problems referred to and linked to the management of the minimum security stocks and their stockholding agency CORES.

- i. Establish a new entity, totally independent of operators in the petroleum industry, to manage the minimum security stocks. It would not be possible for the governing bodies of CORES to include any member directly or indirectly linked with the petroleum industry, whether by means of holding shares in or representing companies in the sector on their governing bodies or holding positions with management responsibility in a company related to the petroleum or derivative products markets.
- ii. If a new independent entity is not established, it will be necessary to limit the ability of operators with refining capabilities in Spain to influence the governing bodies of CORES. To this end:
 - a. The voting system at CORES' General Assemblies must be changed. Voting rights must not be calculated on the basis of the quota of minimum security reserves held by each wholesale operator, which favours Repsol, Cepsa and BP. Each member of CORES must have just one vote, so that all wholesale operators have the same ability to influence CORES.
 - b. A system of rotation must be introduced for members of CORES to appoint the members of its Management Board. This would ensure that no wholesale operator has control of the Management Board permanently.
- iii. Spain's model of minimum security reserves must decidedly be improved. The obligation to maintain minimum security reserves must fall to the operators with refining capabilities and the importers of automotive fuels. Wholesale operators in the Spanish automotive fuel market would thus be freed from this obligation.

- iv. Make CORES contracts more flexible in terms of duration and early termination. CORES must offer the possibility of signing contracts for short and long terms (one year) with the parties subject to the obligation to hold minimum security reserves, offering the possibility of storing less than 35 days worth of additional reserves. It will therefore be necessary to amend the conditions set forth in Royal Decree 1716/2004 of 23 July regulating the obligation to maintain minimum security stocks, diversification of natural gas supplies and CORES, the central stockholding entity for strategic reserves of petroleum products. CORES' contracts with wholesale operators must include a voluntary early termination clause if the contracts have a duration of more than one year. The termination clause must include a prior notice period of not more than three months.
- v. CORES must revise the tariffs it applies for providing storage services for minimum security reserves. CORES' tariffs:
 - a. must be sent to the CNMC, for information purposes, as well as their subsequent updates;
 - b. the tariffs for CORES' logistics activity must be revised and established in accordance with market prices;
 - c. A methodology for the objective, transparent and non-discriminatory setting of tariffs must be developed. This methodology will have to be published;
- vi. Information provided to CORES by wholesale operators must be limited to that strictly necessary for calculating and supervising the minimum security reserves. Such statistical information must be developed by an independent authority with supervisory and regulatory powers.

V.4.Four: limit the influence of vertically integrated operators with refining capacity

319. The operators with refining capacity in Spain are also the operators with market power in the wholesale and retail segments of the market. In order to limit, as far as possible, the influence of the refining activities on those carried out in the wholesale and retail segments, we recommend separating the management of the wholesale operations from the rest of the activities. To do so, we propose the following measures:

- i. Promote the independence of the wholesale activity by separating management, administrative and financial control, accounts, assets and budgets at the parent company level.
- ii. Develop a regime of incompatibility for personnel employed by operators with refining capabilities in Spain who work in management positions related with wholesale automotive fuel activities. The management personnel in charge of the wholesale activity would not be allowed to hold positions of responsibility in other areas of the company or any directly related with the wholesale activity.
- iii. The legal organisational segregation of the parent company will be encouraged. The wholesale activity could be hived off from the parent as an independent subsidiary with its own resources, independent management, separate accounting and its own management personnel.

V.5.Five: competition in the refining activity

320. As has been pointed out, the last refinery installed in Spain dates from the 1970s. The construction of a refinery is not only very costly, but may also encounter significant difficulties in terms of sites and permits.

- i. A maximum period must be established for processing all the necessary permits for the construction of refining facilities, as provided in Article 39 of Law 34/1998 on the Hydrocarbons Sector.
- ii. Options must be established for the alternative use of refineries that are not in use or that have surplus capacity, for example, for storage, regulating third-party access with FRAND (fair, reasonable and non-discriminatory) clauses.

BIBLIOGRAPHY

Adams, W., Brock, J. (1993): *Deregulation or divestiture: the case of petroleum pipelines*, Wake Forest L.

International Energy Agency (IEA), *Refining Fitness Check* (2014).

Asociación Española de Operadores de Productos Petrolíferos (AOP), *Cuadernos de Energía: La Industria del refino en España y Portugal* (2013)

Aviv Nevo (2010) *Empirical Models of Consumer Behavior*, Working Paper 16511, National Bureau of Economic Research.

European Commission, *Energy Market Observatory* (2015).

Bacon, R. W. (2001), *Rockets and feathers: the asymmetric speed of adjustment of UK retail gasoline prices to cost changes*, Energy economics 13, 211-218.

Borenstein, S., Cameron, C. A. and R. Gilbert (1997), *Do Gasoline Prices Respond Asymmetrically to Crude Oil Price Changes?*, Quarterly Journal of Economics, 112(1): 305-339.

Borenstein, S. and Shephard, A. (2002), *Sticky prices, inventories, and market power in wholesale gasoline markets*, The RAND Journal of Economics, 33 (1), 116-139.

Coburn, L. (1982): "Petroleum pipeline regulation: a competitive analysis" (U.S. Department of Energy).

European Commission Cases: COMP/M.1628 – TotalFina/Elf, para. 103; COMP/ M. 3543 PKN Orlen/Unipetrol, paras. 18-19; COMP/M.1383 Exxon/Mobil, paras. 443, 445; COMP/M.4002 OMV/Aral, paras. 19-22; COMP/M.3516 Repsol YPF/Shell Portugal, para. 12; COMP/M.4348 -PKN / MAZEIKIU, paras. 25-28.

Report on the consultation lodged by Union of Independent Petroleum Companies on the possible restrictive effects on competition of the Spanish system of minimum safety stocks of liquid hydrocarbons (CNE, 2005)

Comisión Nacional de la Energía (CNE), *Expediente informativo sobre la evolución de los precios de los carburantes de automoción en España en relación con las medias europeas* (2008)

CNC (National Competition Authority) (2009), *Report on competition in the automotive fuels sector.*

Comisión Nacional de la Energía (CNE), *El mercado español de la distribución de gasolina y gasóleo a través del canal de estaciones de servicio* (2012)

CNC (National Competition Authority) (2011), *Report on competition in the automotive fuels sector.*

CNC (National Competition Authority) (2012), *Follow-up report on the CNC report on automotive fuels.*

CNC (National Competition Authority) (2012), *Report on the consultation lodged by the State Secretariat for Economy and Business Support on the automotive fuel market in Spain.*

CNC (National Competition Authority) Cases: C/0366/11 Cepsa/Chesa, C-0550-14 Repsol/Petrocat, S/0288/10 AOP, C-0005/7 Disa/Total, N-04073 Disa/Shell Peninsular/Shell Atlántica, C-0583/14 CEPSA/SIS, C-0550/14 REPSOL/PETROCAT

Contín-Pilart, I., Correljé, A. and Palacios, M. B. (2009), *Competition, regulation and pricing behaviour in the Spanish retail gasoline market*, Energy Policy 37, 219-228.

Corporación de Reservas Estratégicas de Productos Petrolíferos (CORES), *Boletín Estadístico* (2014).

Chesnes, M. (2012) *Asymmetric Pass-through in U.S. Gasoline Prices*, Federal Trade Commission, Bureau of Economics.

Damien Geradin, Dr. Anne Layne-Farrar and Nicolas Petit (2012) *EU Competition Law and Economics*, Oxford University Press

Deloitte, *Study of the UK petroleum retail market*, Report for DECC (2012)

Geweke, J. (2004) Issues in the “Rockets and Feathers” Gasoline Price Literature, Report to Federal Trade Commission, University of Iowa.

Grossman, Sanford J., and Oliver D. Hart. (1986), *The costs and benefits of ownership: A theory of vertical integration*, Journal of Political Economy 691,

Justine S. Hastings (2000), *Vertical Relationships and Competition in Retail Gasoline Markets: An Empirical Evidence from Contract Changes in Southern California*, UC Berkeley Competition Policy Center Working Paper No. CPC00-10 Revision.

Justine S. Hastings, Richard J. Gilbert (2005), *Market power, vertical integration and the wholesale price of gasoline*, The Journal of Industrial Economics.

Lafont and Tirole (1996), *Creating competition through interconnection: Theory and practice*, Journal of Regulatory Economics, Kluwer Academics.

Maskin E. Tirole J., (1988), *A Theory of Dynamic Oligopoly, II: Price Competition, Kinked Demand Curves, and Edgeworth Cycles*, Econometrica: Journal of the Econometric Society

Noel, M. (2009), *Do retail gasoline prices respond asymmetrically to cost shocks? The influence of Edgeworth Cycles*, RAND Journal of Economics, Vol. 40(3), Autumn, pp. 582-595.

Noel, M., Lewis M., (2011), *The Speed of Gasoline Price Response in Markets with and without Edgeworth Cycles*, MIT Press Journals.

Noel, M., (2011), *Edgeworth Price Cycles*, University of California at San Diego.

OECD Policy Roundtables, Competition in Road Fuel, 2013.

Office of Fair Trading (OFT), UK petrol and diesel sector (2013)

Perdiguero, J. (2006), *Dinámica de precios en el mercado español de gasolina: un equilibrio de colusión tácita*, Documento de Trabajo, nº 256. Fundación de las Cajas de Ahorros.

Peter Davis and Eliana Garcés (2010), *Quantitative Techniques for Competition and Antitrust Analysis*, Princeton University Press.

Puertos del Estado, Anuario Estadístico (2012)

SDC (Defence of Competition Service), Cases: N-03002 Agip/Saras (Assets) and N-06035 Saras Energía/Estaciones Servicio Caprabo.

Tappata, M. (2009), *Rockets and feathers: Understanding asymmetric pricing*, RAND Journal of Economics, 40(4), Winter, pp.679-687.

Turner, A., J. Farrimond and J. Hill (2011), *The oil trading markets, 2003 – 2010: analysis of market behaviour and possible policy responses*, Oxford Review of Economic Policy, Vol. 27(1), Autumn, pp. 33-67.

Villas-Boas, S. (2007), *Vertical Relationships Between Manufacturers and Retailers: Inference With Limited Data*, The Review of Economic Studies, Vol. 74, 2, pp. 625-652

