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REPORT ON COMPETITION WITHIN THE AUTOMOTIVE FUEL SECTOR

July 2009

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The automotive fuel sector is of great importance in the Spanish economy. It represents a major expenditure for households and a key input for the transport sector. Thus, competition in this sector is of great concern.

High oil prices during the first half of 2008 raised further concerns about this market. That is why this report has been prepared: to identify possible restrictions on competition in this market and to suggest some recommendations in order to correct these restrictions.

The report describes the functioning of the different markets, including the wholesale market, logistics and the retail market (service stations). The analysis identifies several factors that affect the level of competition in this market and proposes some recommendations to favour its appropriate functioning.

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Executive summary

1. From 2003 to 2008 there was a significant increase in the price of automotive fuel, in the context of increasing international energy prices, in particular the price of crude. This situation resulted in public debate within Spain regarding the degree of competition in the sector. Despite the fact that in the second half of 2008 the prices of crude and fuel fell, the questions regarding the existing level of competition are no less timely.

2. Various price and margin indicators reveal lack of competition in the Spanish sector. The pre-tax prices of lead-free 95 octane gasoline and automotive diesel are almost always higher than the Community average. The gross distribution margins for these fuels over recent years also have been higher than the Community average. The pre-tax price differential of the two fuels is very low, and the average price is near the maximum. And the transfer of changes in crude prices to the price of fuels is slower in Spain than in other nearby countries.

3. In the past this sector has drawn the interest of Spanish and Community competition authorities. They often have analysed the functioning of the sector, both with a view to promoting competition and when applying their sanctioning authority. This demonstrates the concern regarding lack of competition in the sector.

4. Based on the CNC's cumulative knowledge of the sector it appears that there are both structural and behavioural elements contributing to the lack of competition in the sector revealed by the foregoing indicators. The purpose of this report is to analyse the automotive fuel sector to identify structural elements that may restrict competition, and propose recommendations to correct them. To that end, the report concentrates on wholesale distribution of fuel and refining capacity in Spain, transport and storage logistics and retail distribution of fuel at service stations. The problems in the functioning of competition in each of these activities or markets will affect the entire sector, given the interrelationships among them and the high degree of vertical integration of the participating companies, particularly in the case of operators with refining capacity in Spain.

5. From the analysis it may be concluded that the combination of excessive business concentration, the result of the process of monopoly elimination, together with the strategies of the operators and the existence of entry and

expansion barriers in the wholesale and retail distribution markets results in little competitive pressure on the participating companies. In turn, the combination of the vertical integration and this heavy concentration facilitates the anti-competitive conduct sanctioned by the Competition Act (Ley de Defensa de la Competencia).

6. The lack of competition is reflected in the scant dynamism in this market over recent years. Despite the entry, after deregulation of the sector, of many operators with significant presence in other markets, many have not been able to strengthen their presence in Spain.

7. The operators that have refining capacity in Spain (Repsol, Cepsa and BP) have a significant advantage by comparison with other competitors in the sector that must import fuel and, therefore, assume the costs of transport. Given the difficulty of opening such large facilities, this limits their capacity to compete in the market.

8. In addition there are other problems deriving from the ownership structure of CLH. Its vertical integration with operators holding refining capacity affects management of the oil pipeline network. CLH is the largest logistical services company for the fuel sector. It owns the oil pipeline network and a significant part of the storage deposits. Given CLH's capacity to unilaterally set the price of access to the network, the presence in its shareholding structure of vertically integrated operators allows it to set a monopoly price. This shareholding composition also facilitates strategic behaviour and access to sensitive information that may favour wholesale operators with greater market share, to the detriment of competitors that are not shareholders of this company.

9. A solution for this problem in the case of other network monopolies is having the regulator set the access price. As an alternative the process of setting prices must be subjected to principles of transparency, objectivity and non-discrimination. If CLH does not choose this alternative it at least must disclose its methodology for setting prices for the oil pipeline network and separately account for the results of this business. In addition, as the case of other network monopolies in the Spanish energy sector, in order to prevent strategic behaviour it would appear to be preferable for market operators not to be shareholders and not to participate in management of the network monopoly.

10. Given the significance of the interrelationship of the various markets in this sector, the market power that may be given by vertical integration of refining capacity and the main transport infrastructure in part may be mitigated by greater competition in the retail fuel market (service stations), although that would require certain structural changes. Two types of participants can be identified that could encourage structural changes and

introduce greater price competition: service station networks of wholesale operators other than the leaders, and hypermarket service stations. But their entry and expansion in this market are limited by the existence of various barriers identified throughout this report.

11. The establishment or development of point-of-sale networks of wholesale operators could be accomplished by way of brand agreements (or simple supply agreements) of service stations owned by independent businessmen, by opening new service stations, or by acquiring service station networks from competing wholesale operators.

12. Given the restrictions on opening new service stations and acquiring branded service stations, wholesale operators over recent years have chosen to acquire service station networks from other companies in the sector. The effect of these transactions on the structure of the retail distribution market has been very limited, as it only marginally affects the position of the leading companies.

13. The opening of new service stations is very limited by reason of administrative barriers that prevent or delay the necessary authorisations and permits. Urban development plans tend to make land for new stations scarce, and municipal permitting is not transparent and allows a high degree of discretion.

14. To simplify and improve the procedure for granting permits to open new service stations it could be particularly useful in this area to apply the Plan for Reduction of Administrative Charges and Improvement of Regulation, in which all public agencies participate. This suggestion is consistent with the Services Directive and its transposition into Spanish law. It provides that the requirements for rendering a service must be non-discriminatory, necessary and proportionate.

15. In addition, in the procedure for authorisation or concession of service stations located in service areas on major roadways the competition criteria should be strengthened, to avoid excessive concentration of branded service stations of a single wholesale operator at the local level. On the one hand, in public bids for award of service areas including a service station, the favourable weighting of offers made other than by the wholesale operator at the immediately preceding or subsequent service area on the route, as contemplated by Royal Decree Law 15/1999 for national routes, should be extended to regional routes. On the other hand, it would be advisable that in any event there be no possibility of awarding multiple service stations as a block.

16. Hypermarket service stations compete strongly on prices in this market. But their expansion is slowed by the resistance of certain municipal

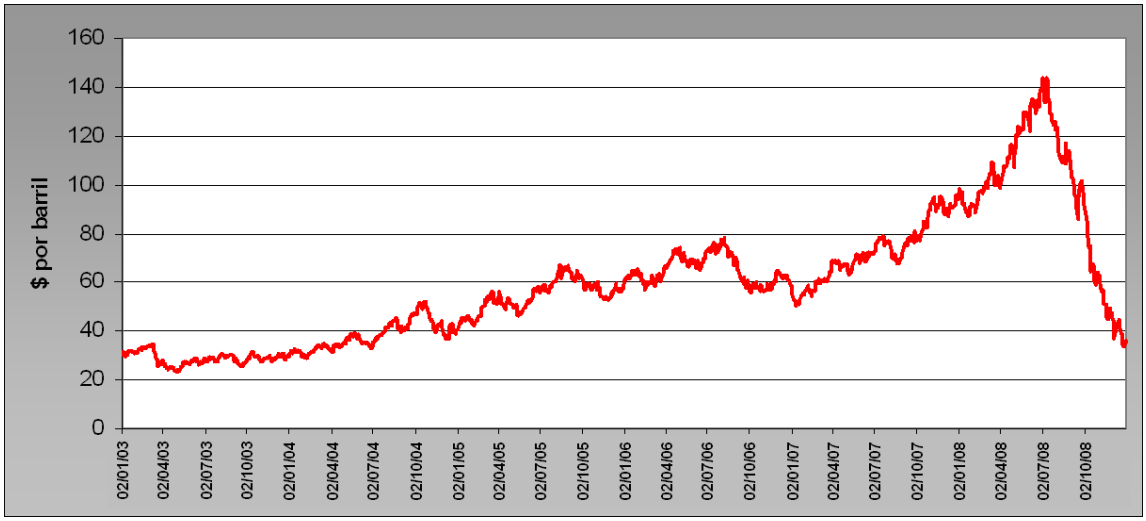
17. To achieve effective application of the provisions of Royal Decree Law 6/2000, it would be desirable for there to be more active participation of regional and national competition authorities, based on their respective jurisdictions, in administrative authorisation of service stations. The presentation of arguments on request of the interested parties in the public hearing phase of municipal permitting would allow the competition authorities to assert a proper interpretation of the advantages contemplated in this rule. In any event it must be recalled that the Competition Act in its Arts. 12(3) and 13(2) contemplates the possibility that the competition authorities may challenge administrative acts and regulations resulting in obstacles to the maintenance of effective competition in the markets.

I. INTRODUCTION

18. The automotive fuel sector is of great importance in the Spanish economy. According to the INE's Survey of Family Budgets, the "fuel and lubricants" item represents 4.29% of family spending, which in 2007 amounted to a total expenditure of more than €22.3 billion. The per-family expenditure was €1,372, and the per-person expenditure was €500. But beyond its direct contribution, its interrelationship with other sectors of the economy must be emphasised, particularly the transport by road sector.

19. Since the first years of this decade the international price of energy has increased significantly, for economic and geopolitical reasons. This increase has affected the price of Brent crude, particularly between 2004 and July 2008. Between July and December 2008 the price of crude decreased sharply. Although it has become more expensive in 2009, the level remains below the maximums in 2008.

Chart 1: Europe Brent Spot Price FOB (Dollars per barrel), 02/01/2003 to 31/12/2008



Source: Energy Information Administration

20. This crude price evolution in all nearby countries has resulted in increases of the sale price to the public (precio de venta al público - PVP) of automotive fuel, and concern among citizens and economic authorities regarding the existing degree of competition in this sector. Although starting in the summer of 2008 the price of fuel has fallen somewhat, analysis of the competition conditions in this market is still appropriate, because comparison with nearby countries shows that we have a less competitive environment.

21. Various price and margin indicators, drawn from recently-published reports and statistical sources, are consistent with a lack of competition in the sector:

- For years there has been a positive difference between the pre-tax price (precio antes de impuestos - PAI) of lead-free 95 octane gasoline (gasolina sin plomo 95 - GNA95) and automotive diesel (gasóleo de automoción - GOA) and the European averages.
- The gross distribution margin[1] in the Spanish fuel market is higher than the EU average.
- The PAI differential for GNA95 and GOA is small, and average prices are near the maximum values.
- In the Spanish market translation of crude price changes to the PVP of GNA95 and GOA is slower than in the other EU countries. This may reflect greater market power of the Spanish operators.

22. As early as its 1995 report "*Competition in Spain: Balance and New Proposals*", the Competition Court (Tribunal de Defensa de la Competencia) paid special attention to fuel distribution. Since then this institution, now the CNC, has received many complaints, some of which have resulted in sanctions of the principal operators for practices restrictive of competition, now upheld by the Supreme Court.

23. The purpose of this report is to analyse the automotive fuel sector to identify possible restrictions on competition, and propose recommendations to correct them.

24. The scope of analysis does not include upstream businesses or markets (ownership of crude reserves, their extraction and transport), which transcend the domestic market. The report concentrates on analysis of wholesale distribution of fuel and refining capacity in Spain, transport and storage logistics and retail distribution at service stations[2].

25. These markets are closely related. Vertical integration of the companies operating in them is common, as is their being a part of the same value chain. Therefore, the structural or behavioural features limiting competition in each of the analysed markets may result in restrictions in the others, facilitating anticompetitive conduct by the vertically integrated operators.

[1] The gross distribution margin is defined as the difference between the pretax price and the provisioning cost.

[2] This report does not include analysis of direct sale of fuel to large users (industrial customers, large transport companies, etc.), because their participation in retail distribution of gasoline and diesel, respectively, are marginal and minority.

26. The starting point for the report is analysis of the aforesaid price indicators. The competitive dynamics of the various markets are discussed below. Based on that information, the factors limiting the degree of competition are identified and analysed. Finally, the report makes a series of recommendations that would strengthen competition in the sector.

II. PRICES

27. The level and evolution of prices and margins[3] provide relevant information regarding the functioning of the market and the degree of competition therein. The evidence available from various sources of public information and analysis by other institutions reveals a lack of competition in the sector covered by this report.

II.1 PAI variation from community average

28. Since 2004 various sector monitoring reports and the information in the Oil Bulletin[4] have shown the persistence of a Spanish PAI differential for GNA95 and GOA by comparison with community averages.

29. The Information Proceedings of the National Energy Commission (Comisión Nacional de Energía - CNE) "*on the evolution of prices of automotive fuel in Spain by comparison with European averages*", of 23 July 2008 (2008 CNE Proceedings), identified the persistence of this differential from 2004 to 2007 by reference to the EU-6[5] and the EU-14[6]. It was the increase in this differential by reference to the EU-14 over the first 10 months of 2007 that led the CNE Board in November of that year to call for the aforesaid information proceedings. The fact that the pre-tax prices of sale to the public are higher than in other Member States suggests the existence of control by the operators importing from other Member States. This is consistent with the market structure identified in this report, with the principal wholesale operators having significant control over the retail distribution network.

30. The smaller PAI differential by comparison with nearby countries observed in 2003 coincides with the year the highest number of competitive networks operated in Spain. Since then there have been various departures from the sector by way of various acquisitions, resulting in a less competitive structure.

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[3] Using the approach typically employed in studies of this market, only the prices of GNA95 and GOA will be considered. They are the most-used fuels, and the prices of other fuels are highly correlated therewith.

[4] The Oil Bulletin gives information on prices of petroleum products in EU countries. It is prepared by the European Commission's Market Observatory for Energy based on information provided by the Member States. Its purpose is to improve market transparency and thus strengthen the common market.

[5] The EU-6 is comprised of the six EU countries (Germany, the United Kingdom, France, Belgium, Holland and Italy) the fuel prices of which were taken as the reference in the maximum price formula used in Spain before deregulation of the sector.

[6] The EU-14 includes all EU-15 countries other than Spain.

Table 1: Differential of PAI in Spain and EU14, 2003-2007

Diff. Spain-EU-14	PAI of GNA 95 (c€/lt)	PAI of GOA (c€/lt)
2003	-0.1082	0.0805
2004	0.5892	0.4768
2005	0.2520	0.6176
2006	0.4115	0.4159
2007	0.5098	0.6464

Source: 2008 CNE Proceedings

31. The notice of opening of the proceedings coincided with a reversal of the differential in November, and restoration of positive differences in the following months (charts 2, 3 and 4).

32. In fact, this PAI differential by reference to other nearby countries was not only maintained, but significantly increased in 2008.

Table 2: Differentials of PAI of GNA95 and GOA by reference to EU14 and Euro Area

	GNA95			GOA		
(c€/l)	**2006**	**2007**	**2008**	**2006**	**2007**	**2008**
Differential from PAI of EU-14	0.411	0.510	**1.47**	0.416	0.646	**1.13**
Differential from PAI of Euro Area	0.508	0.377	**0.809**	0.911	0.798	**0.960**

Source: 2008 CNE Proceedings and European Commission's Oil Bulletin

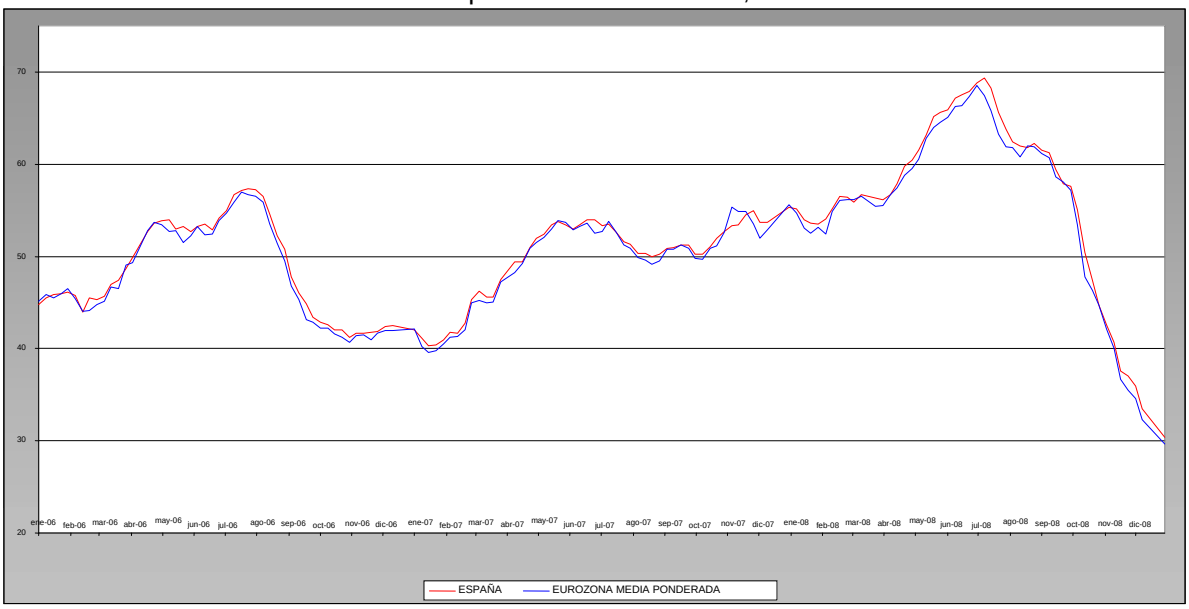
33. In fact, the 2008 price monitoring by the CNE and the Ministry of Industry, Tourism and Trade (Ministerio de Industria, Turismo y Comercio - MITYC), and the European Commission's Oil Bulletin information, except under exceptional circumstances, continues to show a positive pre-tax price differential, as regards both GNA95 and GOA, by reference to the various European averages, whether the EU-14 and EU-6 (used by the CNE) or the Euro Area (used by the MITYC and the Oil Bulletin). It nonetheless must be noted that there are differences in the amount and the trend when one uses the EU-14 arithmetic average, as in the 2008 CNE Proceedings, or the average weighted by volume of consumption in the Euro Area[7], as reported by the European Commission's Oil Bulletin[8].

[7] The Commission's Oil Bulletin publishes the average PAI in the Euro Area 16, weighted by domestic fuel consumption in 2007. It is this figure that is taken as the reference.

[8] An example of these differences can be seen in 2008. In that year the Spanish PAI differential by reference to a series of Member States with little influence on the weighted average (Austria, Denmark, Luxembourg) increased significantly. For this reason, the EU-14 arithmetic average is greatly affected, and the Spanish differential by reference to this average increases significantly. But the impact on the weighted average for the Euro Area is much less.

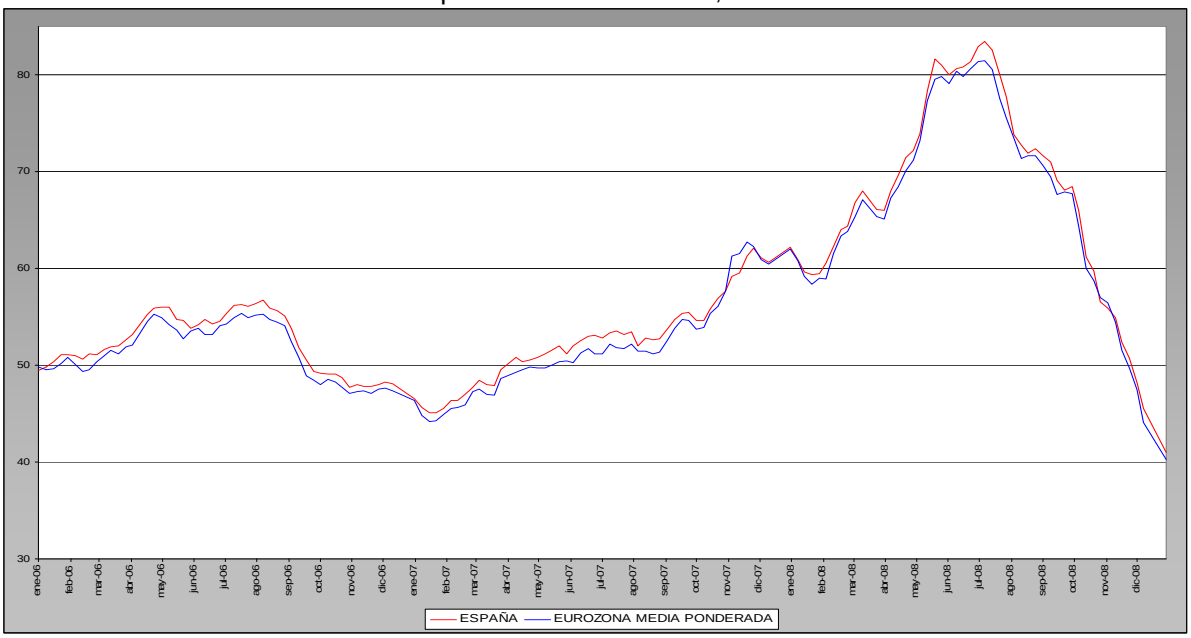
34. The following charts start from the weighted average for the Euro Area provided by the European Commission's Oil Bulletin, the assumption being that because it is an average weighted by volumes of consumption, it is more representative of the Community average.

Chart 2: Evolution of PAI of GNA95 in Spain and the Euro Area, 2006-2008



PAI in c€/litre
Source: European Commission's Oil Bulletin

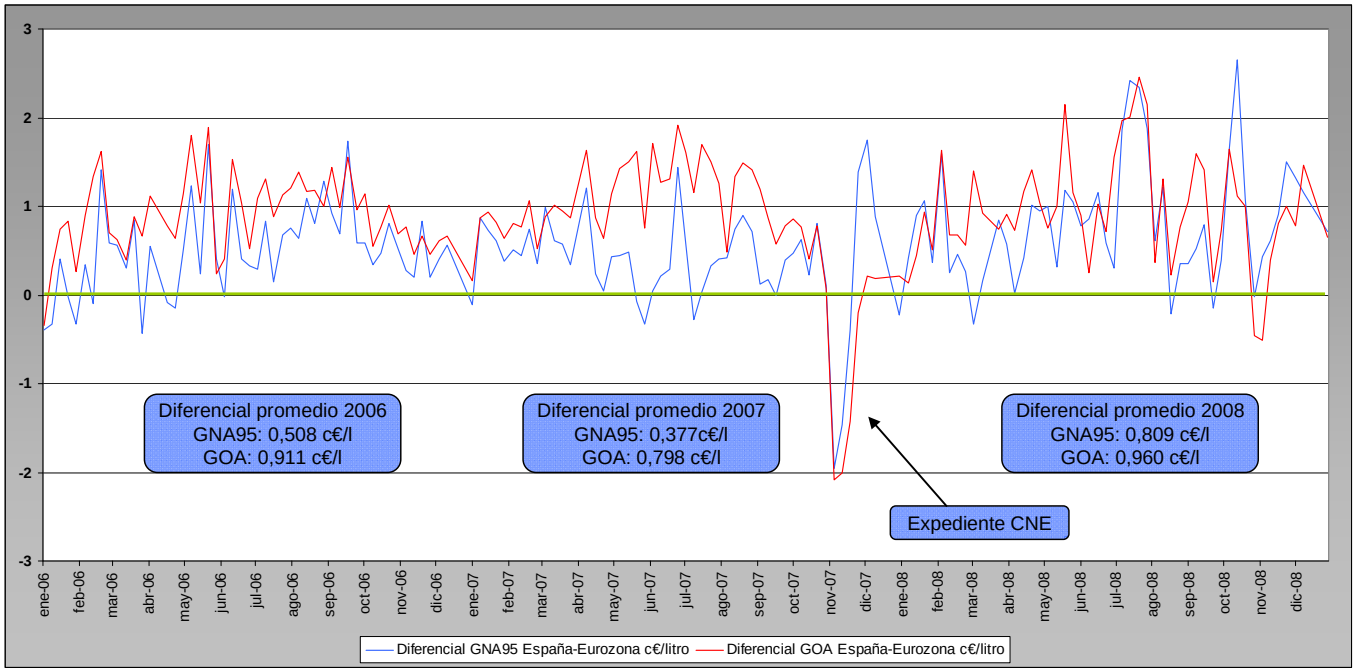
Chart 3: Evolution of PAI of GOA in Spain and the Euro Area, 2006-2008



PAI in c€/litre
Source: European Commission's Oil Bulletin

35. Analysis of the evolution over recent years of the differential of the Spanish PAI by reference to the Euro Area shows its high volatility, and that periods with a negative differential are exceptions. Notable is the fall of the differential after the CNE resolution to open the Information Proceedings, which ultimately were published in 2008.

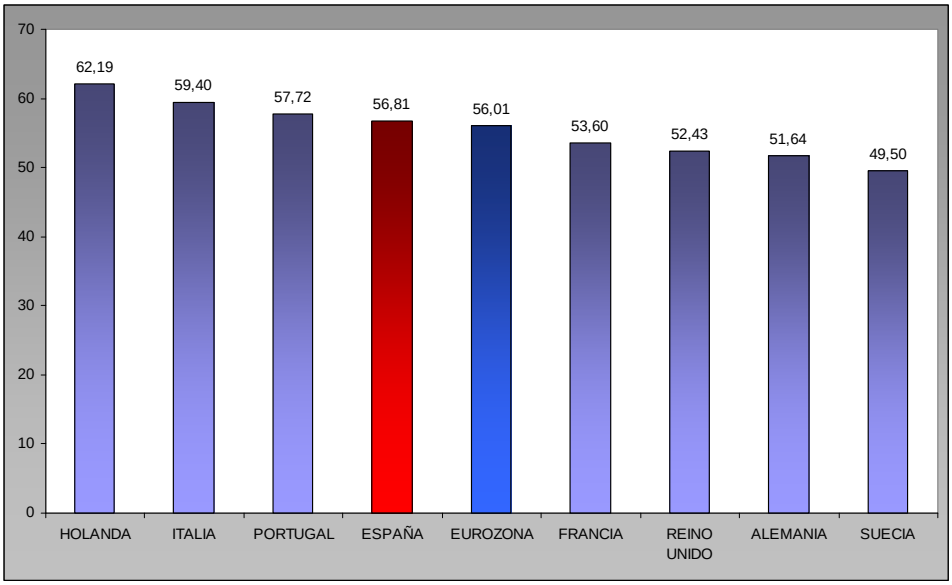
Chart 4: Evolution of differential of PAI (c€/litre) of GNA95 and GOA in Spain and the Euro Area, 2006-2008



Source: Internally prepared based on figures in the European Commission's Oil Bulletin

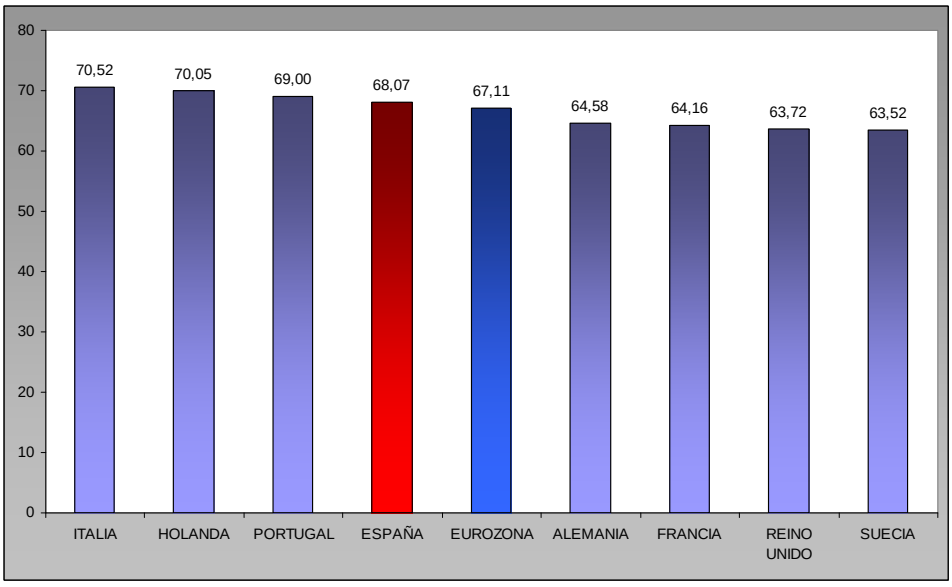
36. On a more detailed basis, comparison in 2008 of the average PAI of fuel with some of the principal European countries and the weighted average for the Euro Area shows that the level of the PAI in the Spanish market is higher than this average. It is particularly notable that in Spain the PAI is considerably higher than the average PAI of some of the most developed nearby countries such as Germany, France and the United Kingdom.

Chart 5: International comparison of average PAI (c€/l) of GNA95 in 2008



Source: European Commission's Oil Bulletin (7/01/2008 to 5/01/2009)

Chart 6: International comparison of average PAI (c€/l) of GOA in 2008



Source: European Commission's Oil Bulletin (7/01/2008 to 5/01/2009)

II.2 Differential of gross distribution margin from community average

37. There is not just a positive difference in the PAI of the two fuels. It is accompanied by an also positive differential in the gross distribution margin. In Spain it has been higher than the Community average over recent years.

Table 3: Evolution of Gross Distribution Margin

	2007		2008	
c€/l	GNA95	GOA	GNA95	GOA
Spain	11.21	11.07	13.29	13.27
E.U.	10.57	10.45	12.31	12.68
Differential	***0.64***	***0.62***	***0.98***	***0.59***

Source: Semi-annual reports on supervision of hydrocarbons market, CNE

II.3 Price differential among Gas Stations

38. The MITYC annual report on fuel prices, 2007-2008 comparison[9], sets forth the average data for PAI of GNA95 and GOA by province during 2008. The following conclusions are drawn from analysis of this information:

- The range of PAI among provinces is very low: 1.9 c€/l for GNA95 and 2.1 c€/l for GOA.
- This range is significantly less if the tails of the data distribution are eliminated. Between the 5th and 95th percentiles, the range is 0.9 c€/l for GNA95, and 1.1 c€/l for GOA.
- The variation in prices is very small. The standard deviation and Pearson variation coefficient[10] for both distributions are very low.
- For both fuels, particularly in the case of the PAI of GNA95, most of the observations are near the maximum recorded PAI.
- Prices at the provincial level do not appear to be influenced by the distance from fuel production and import sites. This may be seen in the following table, in which provinces where there are refineries are shaded. The situation apparently reflects a policy of uniform prices

[9] MITYC report on "*Fuel Prices. 2007-2008 Comparison*". The report does not include data on prices in Santa Cruz de Tenerife, Las Palmas, Ceuta or Melilla.

[10] The Pearson variation coefficient is a measure of relative dispersion, which shows the degree of representativeness of the arithmetic average. It is calculated as the quotient of standard deviation and arithmetic average, multiplied by 100 in order to be stated as a percentage. Values near zero indicate that the arithmetic average is very representative.

regardless of the cost of transport. The following table reveals certain inconsistencies with a competitive market. Madrid, where there is a volume of consumption immeasurably greater than in Soria, and infrastructure that allows reduced costs of transport, has the second-highest diesel prices in all of Spain, while Soria, with low levels of demand and greater provisioning costs, is the seventh cheapest. If one compares the price of gasoline, Soria is the third cheapest and Madrid the third most expensive. Similarly Jaén, near the Puertollano refinery, is the second most expensive province in Spain, behind the Balearic Islands. Such results show that a price-fixing policy is possible in areas where there is market power.

Table 4: Provisional PAI figures for 2008 (c€/l)

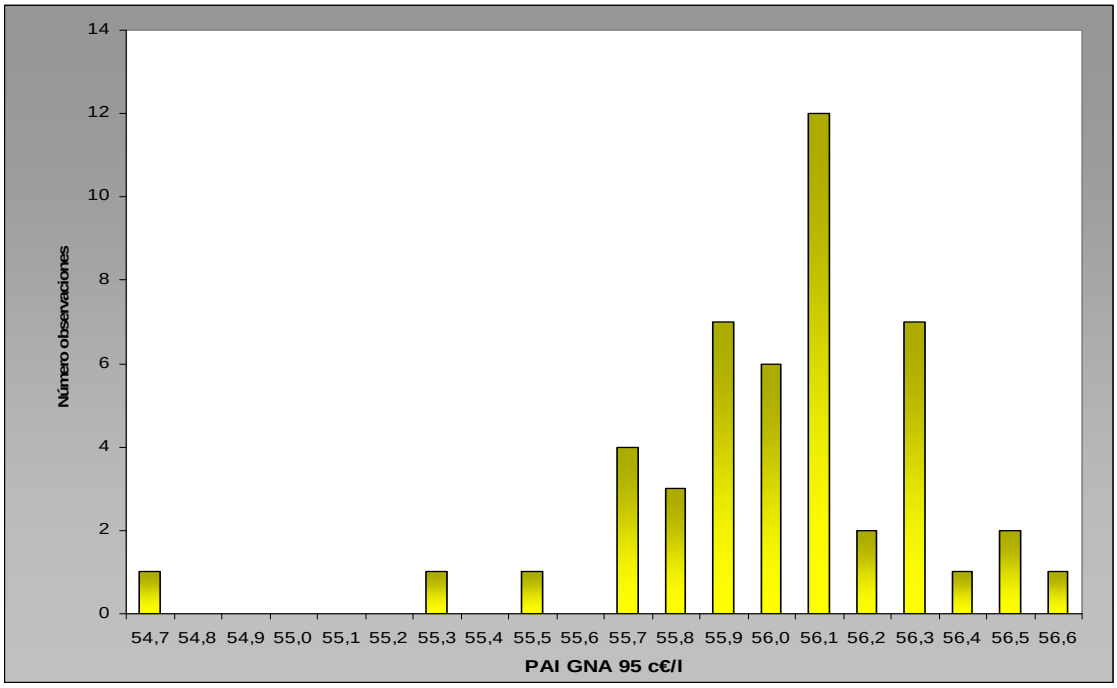
PAI GNA95 2008		PAI GOA 2008	
Lérida	54,67	Lérida	65,62
Huesca	55,30	Navarra	66,36
Soria	55,49	Huesca	66,39
Asturias	55,69	Asturias	66,69
Navarra	55,72	Zaragoza	66,81
Ciudad Real	55,73	Tarragona	66,87
Lugo	55,73	Soria	66,91
Tarragona	55,78	Burgos	67,05
Burgos	55,81	Ciudad Real	67,06
Palencia	55,82	La Rioja	67,14
La Rioja	55,87	Teruel	67,15
Zaragoza	55,88	Guadalajara	67,16
Segovia	55,88	Salamanca	67,19
Vizcaya	55,89	Murcia	67,19
Salamanca	55,90	Almería	67,20
Álava	55,92	Toledo	67,22
León	55,92	Zamora	67,23
Cantabria	55,99	Lugo	67,25
Guadalajara	55,99	Valencia	67,26
Valladolid	56,03	Albacete	67,26
Toledo	56,04	Cádiz	67,26
Guipúzcoa	56,05	Orense	67,26
Pontevedra	56,05	León	67,27
Teruel	56,07	Cantabria	67,27
Gerona	56,07	Huelva	67,28
La Coruña	56,08	Vizcaya	67,29
Ávila	56,10	Cuenca	67,29
Valencia	56,10	Gerona	67,30
Albacete	56,10	Álava	67,32
Huelva	56,10	Barcelona	67,34
Murcia	56,13	Valladolid	67,35
Zamora	56,13	Palencia	67,37
Cádiz	56,13	Córdoba	67,37
Orense	56,14	Guipúzcoa	67,38
Barcelona	56,15	La Coruña	67,40
Alicante	56,17	Granada	67,43
Córdoba	56,23	Sevilla	67,45
Cuenca	56,27	Segovia	67,47
Sevilla	56,30	Ávila	67,48
Badajoz	56,31	Pontevedra	67,51
Málaga	56,33	Alicante	67,54
Almería	56,34	Málaga	67,56
Cáceres	56,35	Jaén	67,57
Castellón	56,35	Cáceres	67,60
Granada	56,41	Badajoz	67,61
Madrid	56,49	Castellón	67,61
Jaén	56,50	Madrid	67,71
Baleares	56,56	Baleares	67,75
Media	56,022	Media	67,230
Desviación típica	0,325	Desviación típica	0,372
Amplitud del rango	1,890	Amplitud del rango	2,130
Amplitud rango excluyendo colas 5% distribución*	0,902	Amplitud rango excluyendo colas 5% distribución*	1,115
Coeficiente de variación de Pearson**	0,579%	Coeficiente de variación de Pearson**	0,554%

*Rango entre el percentil 5% y 95%. El 90% de la distribución se encuentra en este rango
-Los datos resaltados indican la existencia de una refinería en esa provincia.

Source: MITYC

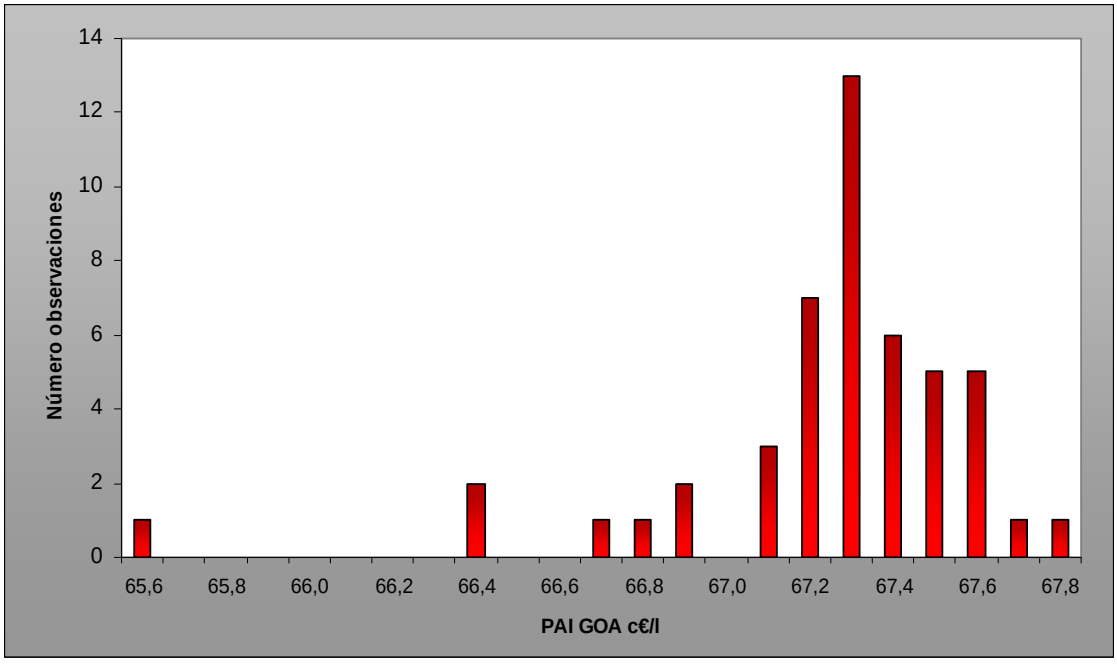
39. The histograms (charts that show the frequency of data in the sample) reflect the asymmetry in distribution of PAI and its limited dispersion.

Table 5: Histogram of distribution of PAI of GNA95 in Spanish provinces, 2008



Source: MITYC

Table 6: Histogram of distribution of PAI of GOA in Spanish provinces, 2008



Source: MITYC

40. The 2008 CNE Proceedings analyse PAI (including discounts) by operator[11], with results consistent with the earlier analysis at the provincial level using MITYC data. Based on the monthly prices, the CNE determined the minimum and maximum price for each of the months from 2003 to 2007, in order to identify the "price band" existing from time to time. It concluded that the price band is greater in the case of GOA, 3.36 c€/l, than in the case of GNA95, 2.80 c€/l. Regarding the average price weighted by volume, the CNE concluded that for both products it generally is near the monthly maximum price. That is, not only is the price variation among operators low, but the distribution of prices within it is concentrated on values near the maximum.

II.4 Transfer of changes in price of crude to fuel

41. Another element showing a less competitive market than in nearby countries is the different result in transfer of changes in price of crude to changes in the final price. The speed and intensity of transfer of changes in crude may be used as indicators of the level of competition in markets. A perfectly competitive market should transfer changes in this input as quickly as possible (speed) and do so completely (intensity). If a company in a competitive environment does not do so, it either loses market share in the event of a reduction in the price of crude, or is less profitable in the event of an increase. Therefore, less speed or intensity in transferring crude price changes is interpreted as an indicator of lower competition.

42. The Economic Bulletin of the Bank of Spain for November 2008 included the results of a recent study in this regard. The purpose of the study was to analyse the transfer of changes in the price of oil to the PAI of automotive gasoline and diesel in the international wholesale markets and in the retail markets of Spain, Germany, France and the United Kingdom during the period from 1999 to 2008. The main conclusion was that the transfer of changes in the price of crude to the PAI of fuel in the Spanish market is less intense than in other nearby markets.

43. The Bank of Spain confirms the existence of a high degree of competition in the international wholesale market, given the speedy transfer (more than 60% of the total effect occurs in the week of change of the price of crude) and its intensity (the maximum transfer is 81% for gasoline and 90% for diesel). By comparison with this behaviour of the international wholesale market, the Bank of Spain finds that the transfer occurs in domestic retail markets with less speed and intensity.

[11] The analysis in the Proceedings was based on information requested of 15 operators with overall market share of 96%.

44. The main difference between the Spanish market and the other markets analysed is the low intensity in the transfer of changes in crude to gasoline and diesel. For gasoline, the intensity in Spain is 57%, by comparison with 79% in Germany, 71% in France and 72% in the United Kingdom. For diesel, the intensity in Spain is 62%, by comparison with 78% in Germany, 65% in France and 58% in the United Kingdom.

Table 7: Speed and intensity of transfer of oil price changes to automotive fuels

	Wholesale market	**Retail markets**			
		Spain	Germany	France	United Kingdom
Automotive gasoline					
Full impact	81%	57%	79%	71%	72%
Weeks to reach full impact	1	7	8	7	10
Automotive diesel					
Full impact	90%	62%	78%	65%	58%
Weeks to reach full impact	5	10	8	6	10

Source: Bank of Spain, Economic Bulletin for November 2008

45. Based on these results, the analysis in the Economic Bulletin of the Bank of Spain indicates that "*there appears to be less competition*" in the Spanish market. The study also indicates that over recent years there has been a trend to increasing intensity of transfer, more pronounced in the other markets than in Spain.

46. Finally, the study does not find asymmetries in the transfer of decreases and increases of oil prices, in either international wholesale markets or retail markets. Other studies dealing with possible asymmetries in the Spanish market do not allow a single conclusion:

- Perdiguero (2006b) finds empirical evidence of an asymmetry in transfer of changes in crude prices to the PAI. The transfer appears to be faster as regards increases than decreases.
- Contín-Pilart (2006) finds a symmetrical reaction of changes in retail prices of gasoline in response to changes in the international price of gasoline, and a slowdown in the adjustment after the first phase of market deregulation, once the maximum prices system was eliminated.

47. Ultimately we have a market that over the years has maintained levels of PAI and distribution gross margin higher than the Community averages. There is little variation in pre-tax prices. The distribution is concentrated on values near the maximum. Changes in crude are transferred to the price of fuel to a lesser extent than in other nearby countries.

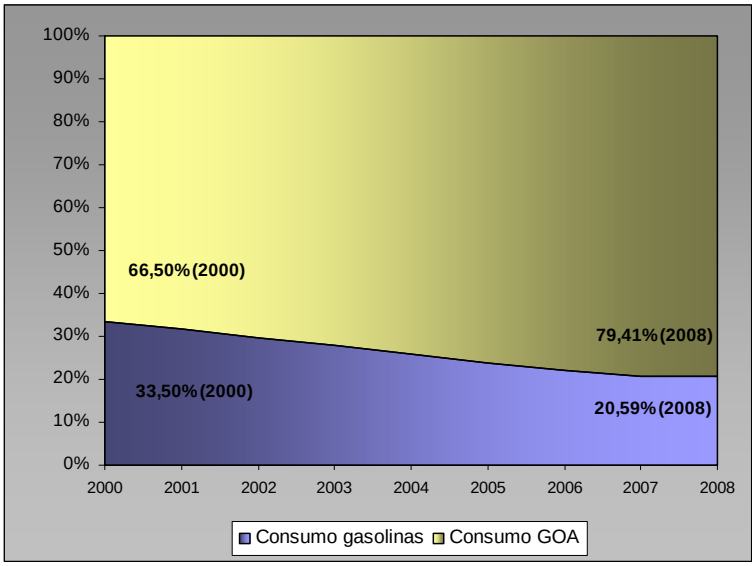
48. This set of indicators suggests the existence of reduced competition in this sector. This may be the result of both lack of competitive pressure deriving from the structure of the sector, and certain anticompetitive behaviours of the agents operating in it. This study analyses the structural features contributing to this lack of competitive pressure among agents in the sector.

III. STRUCTURAL ANALYSIS OF SECTOR

49. National consumption[12] of GNA95 in 2008 in Spain was 5.578 million MT, a decrease of 4.63% by comparison with 2007. In the case of GOA, consumption was 24.822 million MT, a decrease of 3.69% by comparison with the prior period.

50. The evolution of the relative weight of consumption of the two fuels reflects the process of "dieselisation" of the Spanish automobile fleet, more intense than in other nearby countries.

Chart 7: Evolution of relative weight of consumption of various kinds of fuel, 2000-2008



Source: CORES

51. On the supply side, in the process that occurs from production of automotive fuel until it reaches the final consumer, three activities or markets may be distinguished:

- Wholesale distribution: the supply comes from the production of Spanish refineries and imported fuels, and the customers are the retail distributors serving final consumers.

- Transport and storage logistics: the wholesale fuel operators, in order to reach a sufficient number of customers, need to use efficient means of transport, and storage facilities.

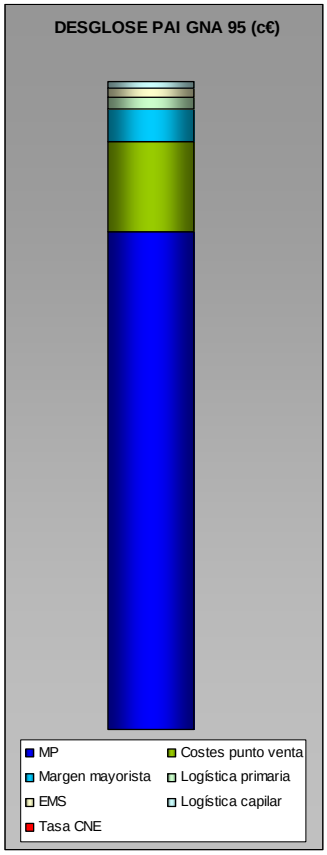
- The retail distributor network acquires fuel from the wholesale distributors, and ultimately makes it available to consumers.

[12] CORES data.

52. The contribution of the three activities to the value of automotive fuel can be seen by breaking the PAI down into its various components:

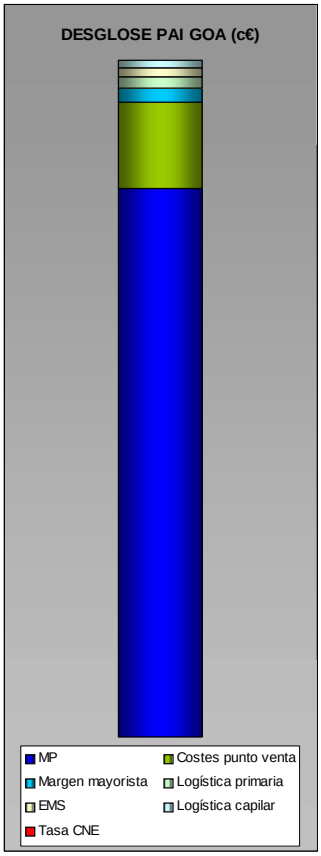
- Provisioning cost: provisioning depends on national refinery production and fuel imports. The cost therefore depends on the international price of fuel and the price of fuel from the national refineries. It constitutes more than 75% of the PAI.
- Logistics: a distinction is drawn between primary logistics (long-distance transport and storage) and secondary or capillary logistics (transport in tank trucks). Together they account for around 3% of the PAI.
- Wholesale margin. In relative terms this component is more significant in the case of gasoline (around 5%) than in the case of diesel (around 2%).
- Point of sale cost: it includes the costs of association, branding and the retailer's profit. After the cost of provisioning, it is the most significant component of the PAI, from 12% to 14%.
- Minimum Security Stocks (Existencias Mínimas de Seguridad - EMS) and CNE Fee: these two components have little effect on the PAI.

Chart 8: Breakdown of PAI into Provisioning Cost and the components of Gross Distribution Margin. 2007 figures



	GNA95	
	c€	% PAI
PAI	49,7400	100,00%
MP	38,2300	76,86%
Costes punto de venta	6,9442	13,96%
Margen mayorista	2,4791	4,98%
Logística primaria	0,8649	1,74%
EMS	0,6937	1,39%
Logística capilar	0,5176	1,04%
Tasa CNE	0,0106	0,02%
	GOA	
PAI	52,3800	100,00%
MP	42,4500	81,04%
Costes punto de venta	6,6434	12,68%
Margen mayorista	1,0902	2,08%
Logística primaria	0,9008	1,72%
EMS	0,6917	1,32%
Logística capilar	0,5882	1,12%
Tasa CNE	0,0119	0,02%

•**MP**: coste aprovisionamiento.
•**Costes punto de venta**: costes de vinculación, abanderamiento y retribución al canal.
•**Margen mayorista**: calculado antes de otros costes (estructura, marketing y sistemas de información, básicamente).
•**EMS**: existencias mínimas de seguridad.
•**Tasa CNE**: tasa definida en la Ley 12/2007, de 2 de julio .



Source: 2008 CNE Proceedings

53. The PVP is completed by the addition of fuel taxes (VAT and special taxes on hydrocarbons). Together in 2007 they represented 60% and 52% of the PVP of GNA95 and GOA, respectively.

54. Regarding business structure, one of the most significant features in this sector is the intensity of vertical relationships among the companies present in the various indicated markets. On the one hand, it is typical for companies engaging in wholesale distribution of fuel to have their own networks of service stations. Often they also own storage facilities. The best example is that of the three largest companies operating in the country. They are the only ones with refining capacity within Spain. To a greater or lesser degree, they have vertically integrated all activities in the sector. On the other hand, a significant number of independent companies that own and operate service stations enter into long-term arrangements with the wholesale distributors by way of exclusive supply or branding agreements.

55. The principal characteristics of the wholesale, logistics and retail markets, and their implications for competition in the sector, are discussed below.

III.1 Wholesale market

56. The business of a wholesale automotive fuel distributor or wholesale operator consists of sale of fuel to the service stations[13].

57. Companies authorised to engage in this business appear in a MITYC register of wholesale operators of petroleum products. Currently there are 90 companies in this register, in addition to the subsidiaries of the refineries[14]. But from the information in the register and in other public sources it is not possible to know which wholesale operators currently are active in this market.

58. The requirements for engaging in this business are set forth in Arts. 10 to 13 of Royal Decree 2487/1994 of 23 December 1994, which cover sufficient technical and financial capacity, safety of supply, availability of receiving, storage and transport resources, and compliance with the Minimum Security Stocks (EMS) rules.

59. The wholesale operators may secure their supply from refineries located in Spain, or may import fuel. These imports may be from international fuel markets, or from refineries owned by the wholesale operators outside Spain. In this wholesale market the product is basically homogeneous, although the geographical location of the refineries or ports of entry of the fuel may contribute to differentiation of product and have effects on the play of competition in this market.

60. Public information regarding the national network of service stations reveals that wholesale operators distribute fuel using their own brands in service stations. A first classification of these companies may be made based on their vertical integration with refinery production, inside or outside Spain:

- Wholesalers with refining capacity in Spain:
  Repsol-YPF, Cepsa and BP.
- Wholesalers with refining capacity in other countries:
  Agip, Galp, Erg, Tamoil, Saras, Shell, ExxonMobil (Esso), Chevron (Texaco), Kuwait Petroleum International (Q-8), Total.

[13] The wholesale operators also supply retail distributors that have small tanks for resale to final customers, known as direct sale. As stated in the introduction, this kind of business is not within the scope of this report.
[14] See Annex 1.

- Wholesalers without refining capacity:
  Disa, Meroil, Esergui.

61. As regards demand in the wholesale market, a significant number of the customers are service station networks branded by wholesale operators, with which they have medium-term exclusive supply agreements. This segment of demand therefore is closed to other competitors during the terms of the branding arrangements. The other customers are the so-called white service stations and those tied to hypermarkets. Given the widely dispersed ownership of white service stations and the small scale of hypermarket service station networks, the countervailing power of these customers in the wholesale market is very limited.

62. The competition in the wholesale market is between the operators of national refineries and the importers of fuel produced abroad. The fact that an operator does or does not have capacity to control the final price of sale to the public is crucial, because it gives the operator leverage. An operator having such capacity may make a credible threat that it will respond by reducing the final price of sale to the public as a means of discouraging an attempt of any importer to introduce imported product at low prices and lower the final price of sale to the public. Thus the possibility of independent operators engaging in real competition with traditional operators holding market power is lost.

Production of automotive fuel in Spain

63. Repsol-YPF, Cepsa and BP own the 10 refineries in Spanish territory. Among them is the ASESA refinery, which will not be discussed further because it produces only asphalt.

64. The refining capacity and geographical distribution of the three companies having refining capacity in Spain is very asymmetrical. Repsol-YPF, with almost 2/3 of the refining capacity, has its five refineries dispersed along the coast of the Bay of Biscay, Catalonia, Cartagena and in the interior (Puertollano). Cepsa has its three refineries concentrated in the southwest and the Canary Islands. BP has its only source of production on the Mediterranean coast.

65. Spanish refinery gasoline production in 2007 amounted to 9.1 million MT, of which 3.2 million were exported. As for diesel, national production amounted to 23.7 million MT, to which it was necessary to add 14.4 million MT of imports.

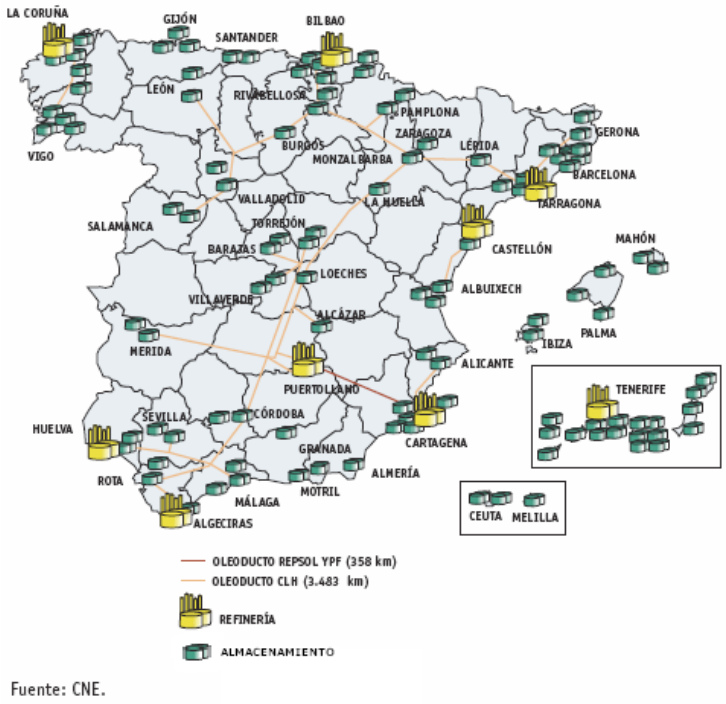
Table 8: Production of gasoline and diesel in 2007; production shares

t/yr. (2007)	Refineries	Gasoline			Diesel		
		Production	% of total	Share per company	Production	% of total	Share per company
Repsol-YPF	*Cartagena*	400,100	4.40%	61.80%	1,329,600	5.61%	63.22%
	La Coruña	1,001,600	11.02%		2,690,400	11.36%	
	Puertollano	941,400	10.36%		3,416,600	14.42%	
	Tarragona	1,225,800	13.49%		3,861,400	16.30%	
	Petronor (Somorrostro)	2,047,000	22.53%		3,676,000	15.52%	
Cepsa	*Gibraltar-San Roque*	1,332,300	14.66%	25.71%	3,816,300	16.11%	28.98%
	La Rábida	515,600	5.67%		1,771,200	7.48%	
	Tenerife	488,800	5.38%		1,275,800	5.39%	
BP	*Castellón*	1,134,500	12.48%	12.48%	1,849,000	7.81%	7.81%
TOTAL		**9,087,100**	**100.00%**	**100.00%**	**23,686,300**	**100.00%**	**100.00%**

Source: National Oil, Petrochemicals and Natural Gas Encyclopaedia, 2008, Oilgas

66. Eight of the nine new fuel production refineries are located on the coast, which favours maritime supply. The only one located in the interior, Puertollano, receives crude through a Repsol-YPF oil pipeline that connects it to the Cartagena refinery.

Map 1: Refineries in Spain



Source: CNE

67. Ownership of the existing refineries by Repsol, Cepsa and BP gives these operators a significant advantage over other competitors that must import fuel and, therefore, assume the costs of transport to Spain. This cost advantage constitutes a structural barrier that affects the competitive capacity of other wholesale operators that have no refining capacity in Spain and seek to operate in this market.

Imported fuel

68. The principal fuel import ports in Spain are Bilbao, Barcelona, Cartagena, Castellón and Huelva. Table 9 shows "fuel movements", which include both imports and exports and national movements (coasting trade). It also shows "unloading from abroad", which corresponds to imports.

Table 9: Movements of gasoline and diesel at Spanish ports

	Gasoline Movements	Diesel Movements	Total movements	Unloading of gasoline from abroad	Unloading of diesel from abroad	Total unloading from abroad
Bilbao	1,305,748	3,897,330	5,203,078	88	3,513,661	3,513,749
Barcelona	1,159,307	2,777,315	3,936,622	689,046	2,593,724	3,282,770
Sta. Cruz de Tenerife	1,563,569	1,504,532	3,068,101	179,514	391,839	571,353
Bahía de Algeciras	1,778,560	849,161	2,627,721	587,451	143,721	731,172
Las Palmas	736,866	1,537,870	2,274,736	115,218	680,265	795,483
Cartagena	215,927	2,027,808	2,243,735	86,739	1,528,218	1,614,957
Castellón	1,107,439	1,116,138	2,223,577	194,845	917,023	1,111,868
Tarragona	658,451	1,188,176	1,846,627	297,291	592,669	889,960
Balearic Islands	757,482	1,079,401	1,836,883	374,644	556,799	931,443
Huelva	231,043	1,155,722	1,386,765	112,625	904,954	1,017,579
Motril	213,842	1,118,406	1,332,248	126,638	750,447	877,085
A Coruña	350,574	686,042	1,036,616	0	203,880	203,880
Gijón	127,514	767,538	895,052	0	543,537	543,537
Valencia	102,372	534,831	637,203	96,499	461,116	557,615
SAMPLE TOTAL	10,308,694	20,240,270	30,548,964	2,860,598	13,781,853	16,642,451
SPAIN TOTAL	10,328,718	20,914,137	31,242,855	2,860,598	14,067,285	16,927,883
Representativeness of sample	99.81%	96.78%	97.78%	100.00%	97.97%	98.31%

Figures in MT; Movements include fuel loaded and unloaded, both in the coasting trade and internationally.
Source: Puertos del Estado, 2007

Provisioning cost

69. GNA95 and GOA automotive fuels are quoted on international markets, to which the various refineries index their prices. In Europe there are two reference international markets for gasoline and diesel, MED

(Mediterranean, centred in Genoa) and NWE (North West Europe, centred on the Amsterdam-Rotterdam-Antwerp axis). The CNE is of the view that the international reference price for fuel imported by the Spanish market is a weighted average of the two aforesaid markets, consisting of a combination of 70% of the MED market and 30% of the NWE market.

70. The provisioning cost of fuel in the sector derives from purchases of fuel at national refineries and the cost of imports. According to the 2008 CNE Proceedings, the provisioning cost in Spain correlates with the international reference price for the national market. In addition, the CNE finds that the international reference price for the Spanish market correlates with the international reference price for the EU-14.

71. But this correlation of the international reference prices does not mean that the provisioning cost is the same in Spain as in the EU-14. In fact, based on the information used earlier in this report regarding differentials of the PAI and the Gross Distribution Margin (Margen Bruto de Distribución - MBD) in Spain by comparison with the EU-14, one may calculate an approximation of the differential of provisioning cost in Spain by comparison with the EU-14, breaking the differential in the PAI down into its components, gross distribution margin and provisioning cost.

Table 10: Provisioning cost differential in Spain by reference to EU-14

	GNA 95		GOA	
	2007	2008	2007	2008
PAI differential	0.51	1.47	0.65	1.13
MBD differential	0.64	0.98	0.62	0.59
Provisioning cost differential	-0.13	0.49	0.03	0.54

Source: Internally prepared based on CNE data

72. The existence of a higher provisioning cost in Spain by comparison with the Community average is an indicator of the existence of market power of incumbents, which may be operating under the protection of certain barriers that disincentivise or prevent entry of wholesale operators that import fuel. These disincentives may be the result of the favourable cost status of operators with refineries in Spain, which have assets that have already been amortised, or the barriers they confront, as will be seen below, both in the logistics phase (if their purpose is only wholesale distribution of fuel) and in the service station distribution market (if their purpose is retail distribution of fuel in a service station network).

III.2 Logistics

73. The logistical activities most relevant to analysis of the functioning of the sector are transport of fuel through the oil pipeline network and its storage in large tanks. Both services, which comprise the so-called primary logistics, are used by wholesale operators to make fuel available to service stations.

Transport by oil pipeline

74. Oil pipelines are the most efficient means of transporting fuel at the national level. The possible alternatives (railroad, tank trucks and cabotage) may be appropriate for certain routes, but involve much higher cost if used for logistics throughout the market.

75. The oil pipeline network may be recognised as a natural monopoly by reason of economies of scale and network economies. The network monopolies, which provide a necessary input for the sector, may be operated by public or private companies. In the latter case proper regulation is required to provide appropriate incentives to invest in development of infrastructure and provide service at a reasonable price.

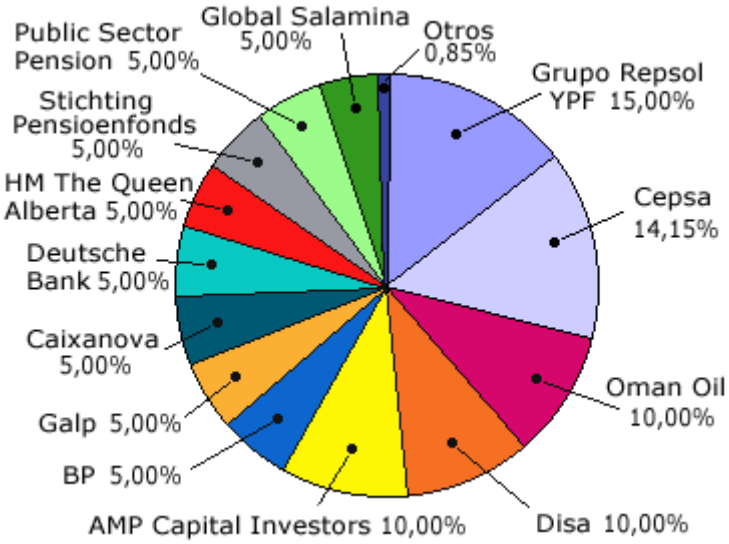
76. Compañía Logística de Hidrocarburos (CLH) has a decisive role in access to primary logistical infrastructure in Spain. It is the monopoly provider of oil pipeline transport services, and has a significant share of the fuel storage capacity. This situation derives from allocation to it of the logistical assets owned by the former legal monopoly, CAMPSA, in the process of opening and deregulation of the sector in the 1990s[15].

77. The shareholding structure of CLH, from the beginning dominated by the large wholesale operators with refining capacity (Repsol-YPF, Cepsa and BP), was subject to a liberalisation process after approval of Royal Decree Law 6/2000 of 23 June 2000 on urgent measures to strengthen competition in markets for goods and services. Given the concern regarding the effects from a competition point of view that could result from refining companies holding control of the infrastructure, this regulation, in its Art. 1, limited the interest of each individual shareholder to 25%, and limited the combined interest of companies with refining capacity in Spain to 45%.

78. The current shareholding structure of CLH is as follows:

[15] Act 15/1992 of 5 June 1992 on urgent measures for progressive adaptation of the oil sector to the Community framework.

Chart 9: Shareholdings in CLH



Source: CLH

79. Financial investors currently hold a majority, although companies with refining capacity in Spain continue to have a significant percentage (34.15%)[16]. Although other wholesale operators (Disa and Galp) have become shareholders of CLH, there still are operators in the Spanish wholesale market that are not shareholders, such as Meroil, Erg, Esergui, Esso, Chevron, Q-8, Tamoil and Saras.

Table 12: CLH shareholder groups

	% share
Companies with refining capacity in Spain	34.15%
Other wholesale operators	15%
Financial investors and others	50.85%

Source: Internally prepared based on CLH data

80. With the exception of a section built by Repsol-YPF to connect its Cartagena and Puertollano refineries, CLH owns the entire 3,835 Km Spanish oil pipeline network. This company provides other primary transport services using two tankers to transport fuel to the Balearic Islands and, on a residual basis, to some storage centres not connected to the oil pipeline network.

[16]Repsol in 2007 reduced its interest from 25% to 15%, selling 5% of its shares to Deutsche Bank and another 5% to Global Ramayana S.L. In the Revista CLH (CLH Magazine) for the first quarter of 2008, Repsol reaffirmed "*its intention to remain as the largest Spanish industrial shareholder and largest customer of the logistics company*".

Map 2: CLH oil pipeline and storage facility network

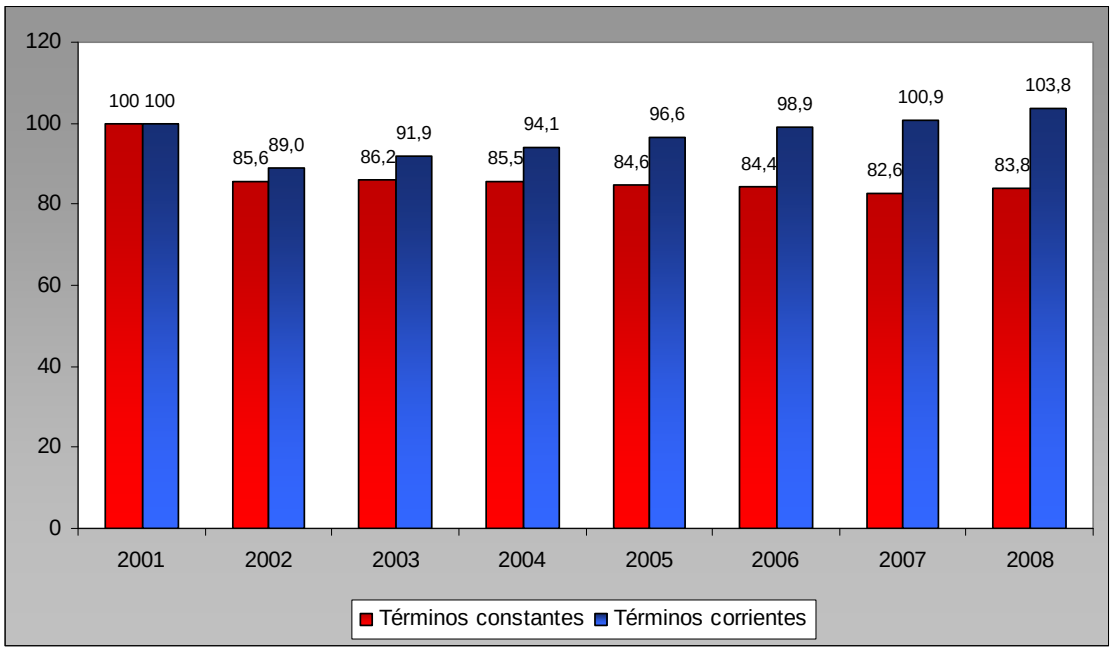
Source: CLH

81. CLH offers its customers a basic contract pursuant to which it provides its logistic services at a single price or tariff, which includes receipt at origin (refinery, port of import or connected third party terminal), operational storage, transport and delivery to the destination facility. Such additional services as an operator may request are provided by CLH at the corresponding prices.

82. Article 1(2) of Royal Decree Law 6/2000 of 23 June 2000 on urgent measures to strengthen competition in markets for goods and services, titled "*Expansion of shareholdings in Compañía Logística de Hidrocarburos (CLH)*", provided that CLH was to present a confidential action plan to the State Secretariat for the Economy, Energy and Small and Medium-Sized Businesses. According to the information released by CLH, one of the commitments under this action plan is the price structure applied by the company starting November 2001.

83. Notable upon review of the evolution of the integrated tariff for logistics services is the significant drop in 2002 after application of the new price structure. Starting in that year the tariff increases progressively in nominal terms, but falls slightly in real terms.

Table 11: Evolution of prices of CLH services. Year 2001=100



Source: CLH. The price includes receipt, storage, transport, shipment and loading of tank trucks. Average price in 2008: 7.645€/m^3

84. Regarding the provision of transport and storage services in Spain, Hydrocarbons Sector Act 34/1998 of 7 October 1998 (Ley del Sector de Hidrocarburos - LSH) establishes certain common regulatory criteria for two kinds of activities. The requirements imposed by the LSH concentrate on:

- Allowing third party access to these services.
- Ensuring that the access, technical and economic conditions are not discriminatory.

85. Specifically, Art. 41(1)(1) provides that: *"Owners of fixed facilities for storage and transport of petroleum products (...) must allow third party access by way of negotiated processes, on technical and economic conditions that are non-discriminatory, transparent and objective, applying prices that must be made public. Nevertheless, the Government may establish access fees for insular territories and the areas in national territory where there is no alternative transport and storage infrastructure, or it is inadequate."*

86. To lend transparency to this access obligation, Art. 41(1)(2) provides that *"Owners of fixed facilities for storage and transport of petroleum products that (...) must allow third party access must, within a maximum term of three months, advise the National Energy Commission of the contracts they sign, the prices for use of the aforesaid facilities, and the changes*

occurring in respect thereof. The National Energy Commission will publicise this information (…)." The CNE publishes these prices on its webpage[17].

87. Art. 41 of the LSH also specifies the limited circumstances under which owners of transport and storage facilities may deny access: lack of storage capacity, breach of payment obligations, and absence of reciprocity with other countries.

88. Ultimately the regulatory framework applicable to operation of the oil pipeline network monopoly is limited to establishing non-discriminatory conditions of access to the oil pipeline transport services. But it does not establish conditions or criteria regarding matters relevant to appropriate functioning of this transport network. Specifically:

- Although the shareholding composition of CLH has changed over recent years, some of the companies that are also its customers continue to participate in its management.
- The methodology for setting prices is not approved or supervised by the ministry having jurisdiction over the sector, or by the CNE.
- Nor is the price that CLH sets for this service approved or supervised by the ministry having jurisdiction over the sector, or by the CNE.
- Nor is the planning of infrastructure for development and maintenance of the oil pipeline network approved or supervised by the ministry having jurisdiction over the sector, or by the CNE.

89. The absence of claims before the CNE sometimes is offered as an argument to show that there are no problems in access to these facilities.[18] But this lack of conflicts is a questionable indicator. It is more likely that the current CLH model of ownership and operation lacks sufficient transparency to discard the possibility of strategic behaviour that may result in a restriction of competition in the wholesale fuel market, with consequences throughout the sector.

Fuel storage

90. Although CLH operates exclusively as the supplier of gas pipeline transport, regarding storage it competes in the market with other

[17] http://www.cne.es/petroleo/nivel1.htm

[18] The CNE Regulation in Royal Decree 1339/1999 of 31 July 1999 establishes the procedure for giving notice of such disputes as may arise in negotiation of contracts for access to the transport or storage facilities.

companies that over recent years have built storage tanks, all near the coast.

Map 3: Storage centres alternative to CLH

Source: AOP 2007 Annual Report

91. The capacity of these storage tanks not owned by CLH in 2007 amounted to 4.3 million m^3, 24% of the total storage capacity in the country. According to the AOP 2007 Annual Report, this capacity since 2000 has grown by 118%.

92. A significant part of those that have decided to invest in storage alternative to that of CLH is comprised of companies that operate (or have operated) in the wholesale segment of the fuel market (Disa, Agip, Decal, Saras, Shell, Esergui, Meroil, Chevron). The others are companies that specialise in this large tank fuel storage business.

93. The wholesale companies that use this storage in general distribute to customers located relatively nearby, using means of transport alternative to the CLH oil pipeline, because it is economically more advantageous.

94. These storage companies other than CLH, like it, are subject to the access obligations under Art. 41(1) of the LSH. This requirement does not apply to all operators with storage capacity, specifically the refineries. In relative terms, the storage capacity of these storage companies amounts to 42% of the total capacity subject to the access obligation.

95. Nevertheless, when determining the total fuel storage capacity in Spain, it is necessary to add the tanks that Repsol-YPF, Cepsa and BP have within

their refineries. As has already been indicated, they benefit from asymmetrical treatment, since they are not required to provide access to third parties. The storage capacity for petroleum products in the nine refineries in Spain in 2007 amounted to 7.46 million m^3 (about 42% of national storage capacity). It also is necessary to add the CLH tanks, with 6.04 million m^3 of capacity, almost 34% of total capacity and 58% of capacity subject to the access obligation.

Table 13: Petroleum product storage capacity within the sector

COMPANY	Facilities	000s m^3	% of total	% of total subject to access obligation
REFINERIES	9	7,464	41.91%	
Repsol-YPF				
• Cartagena		1,152		
• La Coruña		667		
• Puertollano		817		
• Tarragona		1,052		
• Bilbao		1,029		
Repsol-YPF Total	5	4,717	26.49%	
Cepsa				
• Tenerife		665		
• Algeciras		817		
• La Rábida		481		
Cepsa Total	2	1,963	11.02%	
BP				
• Castellón		784		
BP Total	1	784	4.40%	
CLH	38	**6036**	**33.80%**	**58.06%**
INDEPENDENT COMPANIES TOTAL	35	**4360**	**24.41%**	**41.94%**
• DECAL	2	715	4.00%	6.88%
• MEROIL	1	705	3.95%	6.78%
• T. PORTUARIAS	2	391	2.19%	3.76%
• EUROENERGO	1	333	1.86%	3.20%
• FORESTAL ATL	1	265	1.48%	2.55%
• TERQUIMSA*	1	233	1.30%	2.24%
• DISA	7	198	1.11%	1.90%
• DUCAR	2	194	1.09%	1.87%
• PETROCAN	2	193	1.08%	1.86%
• Tel. CANARIOS	4	176	0.99%	1.69%
• FELGUERA	2	175	0.98%	1.68%
• ESERGUI	1	150	0.84%	1.44%
• PTROVAL	1	139	0.78%	1.34%
• SARAS	1	103	0.58%	0.99%
• ATLAS	2	79	0.44%	0.76%
• SHELL	1	62	0.35%	0.60%
• AGIP	1	56	0.31%	0.54%
• CHEVRON	1	55	0.31%	0.53%
• FORESA	1	51	0.29%	0.49%
• CMD	4	45	0.25%	0.43%
• TERQUISA	1	41	0.23%	0.39%
• GASTECO	1	1	0.01%	0.01%
TOTAL STORAGE CAPACITY		**17,860**	100%	-
TOTAL WITH ACCESS OBLIGATION		**10,396**	58.21%	100%

Source: Internally prepared based on CNE data, Basic information on the energy sectors, 2008

* 50% CLH ownership

96. As has been noted, the LSH regulates third party access to storage facilities and access to transport by oil pipeline in the same way. That is, the purpose is to allow third party access to these services, and ensure that the access, technical and economic conditions are non-discriminatory.

97. Although CLH and the companies with refining capacity control 75% of the storage capacity within Spanish territory, the fact that the share of other storage companies has reached almost 25% of installed capacity rather quickly seems to indicate that there are no serious restrictions on the entry of new competitors in this logistics business.

Minimum security stocks (EMS)

98. The fuel supply is an energy policy priority. By way of EMS it seeks to ensure certain fuel storage and network planning requirements[19].

99. Wholesale operators are subject to the obligation to maintain EMS. The LSH so provides in its Art. 50: *"Any operator authorised for wholesale distribution of petroleum products within the national territory, and any company that engages in a retail distribution business for fuel not acquired from the operators regulated by this Act, at all times must maintain minimum security stocks of the products in such amount, form and geographical location as the government determines by way of regulation, up to a maximum of 120 days of its annual sales".*

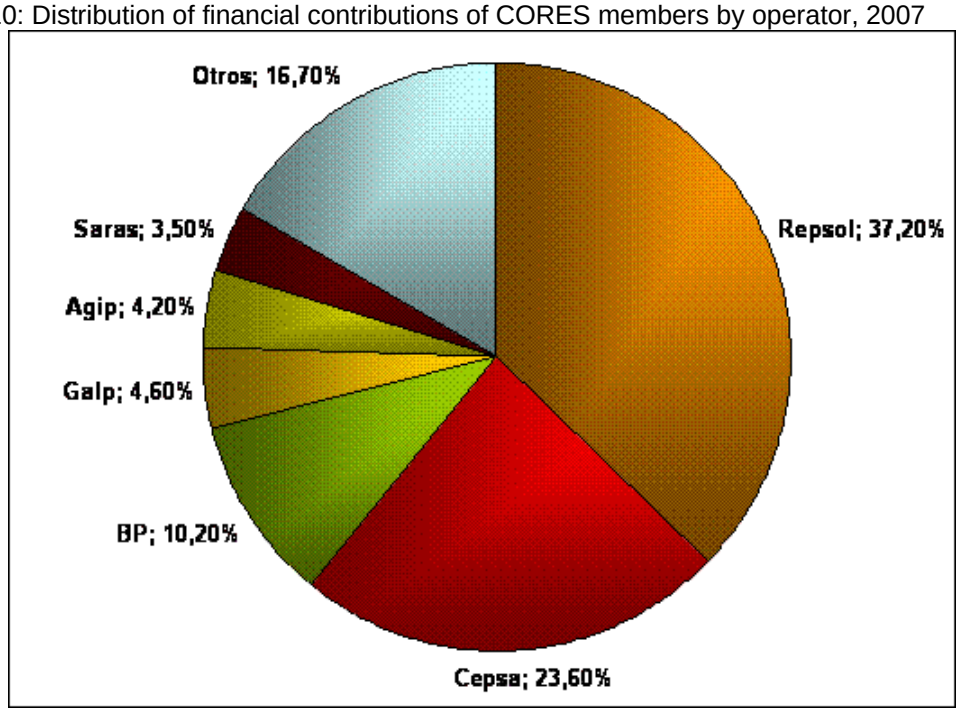
100. Within the EMS we may distinguish between Strategic Reserves, which are maintained by Corporación de Reservas Estratégicas de Productos Petrolíferos (CORES), and Minimum Stocks, maintained by the wholesale operators and controlled and supervised by CORES. EMS currently are equivalent to 90 days of sales or consumption (92 days starting in 2010), as established by Royal Decree 1716/2004 of 23 July 2004 on the obligation to maintain minimum security stocks, diversification of supply of natural gas and CORES.

101. CORES is the entity responsible for controlling compliance with the EMS requirements. It is in the form of a public corporation acting under private law, and is subject to supervision by the MITYC. Those required to be members are the operators authorised to engage in wholesale distribution

[19] Art. 4 of the LSH, "Hydrocarbons planning", provides that planning is to be undertaken by the government with the participation of the autonomous communities, and must cover matters such as *"establishment of general criteria to determine a minimum number of facilities for the retail supply of petroleum products based on the density, distribution and characteristics of the population and, if applicable, the level of vehicle traffic".* Art. 11 of Royal Decree Law 15/1999 expands on the criteria to be used in this planning.

of petroleum products and other natural gas sector companies. Its functions related to automotive fuel are the constitution, maintenance and management of strategic reserves, control of the EMS and preparation of statistical information. Regarding its financing, the principal source is the amounts that must be paid by its members based on the amount of fuel sold or consumed. These financial contributions determine voting rights in the General Meeting. In 2007 they were distributed as follows:

Chart 10: Distribution of financial contributions of CORES members by operator, 2007



Source: CORES

102. CORES is required[20] to disclose on its webpage the part of the minimum safety reserve obligation it assumes under Royal Decree 1716/2004. A part of such reserves must be maintained by CORES. Another part must be maintained by the one subject to the obligation. Another part may be requested of CORES, but its maintenance is not guaranteed.

[20] Resolution of 30 March 2009 of the Directorate General for Energy and Mining Policy on obligations of Corporación de Reservas Estratégicas de Productos Petrolíferos and those subject to the obligation to maintain minimum security stocks of petroleum products.

Table 14: Maintenance of EMS by category of operator, May 2009

Category of company subject to obligation	Mandatory CORES maintenance	CORES maintenance on request of interested party	CORES Total	Maintenance by company subject to obligation	Total obligation
Category 0	40	50	90	0	90
Category 1 (2008)	40	24	64	26	90
Category 1 (2009)	40	15	55	35	90
Category 2	40	0	40	50	90
Category 3	40	0	40	50	90
Non-applicants	40	0	40	50	90

- *Category 0:* Companies subject to the obligation that are not operators, as regards the part of their annual sales or consumption in the domestic market not supplied by the wholesale operators, with sales or consumption less than 0.5% of the total volume of each group of petroleum products, sold or consumed within national territory.
- *Category 1 (2008)*: Companies subject to the obligation that belong to groups of companies without refining capacity in Spanish territory or any other Member State of the EU with which an intergovernmental agreement has been signed regarding storage of minimum security stocks, who apply for coverage of their obligations starting in 2008.
- *Category 1 (2009)*: Companies subject to the obligation that belong to groups of companies without refining capacity in Spanish territory or any other Member State of the EU with which an intergovernmental agreement has been signed regarding storage of minimum security stocks, who apply for coverage of their obligations starting in 2009.
- *Category 2*: Companies subject to the obligation that belong to groups of companies without refining capacity in Spanish territory but with refining capacity in any other Member State of the EU with which an intergovernmental agreement has been signed regarding storage of minimum security stocks (France, Italy and Portugal).
- *Category 3*: Companies subject to the obligation that belong to groups of companies with refining capacity in Spanish territory.
- *Non-applicants*: Companies subject to the obligation that, although belonging to the foregoing categories, have not applied to CORES for coverage of their obligations regarding storage of minimum security stocks.

Source: CORES

103. The EMS system set forth in Royal Decree 1716/2004 was questioned by reason of the unfavourable treatment it gave operators without refining capacity by comparison with those having it. In February 2005 the Unión de Petroleros Independientes (UPI) made an inquiry of the CNE in which it criticised the various consequences of the system. The UPI emphasised that the system resulted in discrimination favouring companies with refining capacity, given their large storage capacity in the refineries. Because companies without refining capacity have smaller operating reserve levels, they could not use it in the same manner as companies with refining capacity to satisfy the EMS obligations. The CNE analysed the inquiry and proposed a solution that was set forth in Royal Decree 1766/2007, together with other changes in the system. This appears to have satisfied the demands of the affected operators.

104. Thus, after approval of Royal Decree 1766/2007, companies having EMS obligations are allowed[21] to apply to CORES for expansion of the level of strategic reserves it maintains on behalf of the operators (40 days). If such expansion is applied for the commitment must be adopted for a minimum term of three years. If the applications exceed the storage capacity available to CORES, the capacity will be shared based on a series of rules giving priority to companies that have no refining capacity. In addition, companies that have no refining capacity in Spain but do have such capacity abroad have preference in the allocation over companies with refining capacity in Spain. Finally, companies the annual sales or consumption of which do not reach 0.5% of the market may apply for maintenance by CORES of 100% of the EMS corresponding to them, with preference over others having the EMS obligation.

105. CORES as a practical matter has no storage capacity. It therefore maintains the strategic reserves in the tanks of companies in the sector. Among them, CLH has a principal role, as it maintains a majority of the strategic reserves controlled and maintained by CORES.

Table 15: Strategic reserve storage by company, 2007

Storage company	Gasoline	%	Diesel and Kerosene	%	Total	%
CLH	368,904	55.15%	1,853,452	53.68%	2,222,356	53.92%
Repsol	185,948	27.80%	410,776	11.90%	596,724	14.48%
Cepsa	69,204	10.35%	316,047	9.15%	385,251	9.35%
Meroil	0	0.00%	364,412	10.55%	364,412	8.84%
CORES*	0	0.00%	200,000	5.79%	200,000	4.85%
BP	44,826	6.70%	120,107	3.48%	164,933	4.00%
Decal	0	0.00%	118,119	3.42%	118,119	2.87%
Forestal del Atlántico	0	0.00%	29,028	0.84%	29,028	0.70%
Petronor	0	0.00%	21,000	0.61%	21,000	0.51%
Disa	0	0.00%	12,253	0.35%	12,253	0.30%
Saras	0	0.00%	7,705	0.22%	7,705	0.19%
Total	*668,882*	*100.00%*	*3,452,899*	*100.00%*	*4,121,781*	*100.00%*

Figures in cubic metres
*It has storage capacity in Repsol facilities
Source: CORES, 2007 annual report of activities

III.3 Retail distribution through Gas Stations

Demand and product

106. Retail demand for fuel at service stations comes from two kinds of customers: users of private vehicles and professional carriers. Ultimately it is demand that is very fragmented among the sellers, which makes it

[21] Article 1(11) of Royal Decree 1766/2007 (amendment of Art. 14 of Royal Decree 1716/2004).

difficult to coordinate their purchase strategies. This compensates for the market power held by the market operators.

107. There is little price elasticity in the demand for fuel[22], given the practical non-existence of alternatives to hydrocarbon fuels for transport by road.

108. It is customary to maintain that in this sector the consumer confronts a homogeneous product. But the spatial differentiation associated with the specific location of each service station, and the product differentiation strategy that has been developed by the industry, make it necessary to qualify the statement.

109. The importance to the consumer of the geographical location of the service station at the time of making the purchase decision makes it clear that it is a product with a high degree of spatial differentiation, which translates to reduction of the geographical scope of competition among service stations.

110. The relevant market is analysed in the 2008 study of competition in distribution of gasoline in Catalonia published by the Catalan Competition Court[23]. It is concluded that it is defined by isochronal[24] 6-7 minute stretches of interurban roads, and 12 minute stretches of motorways. The presence of competitors at greater distances does not sufficiently control distribution margins.

111. The significance of the local dimension of competition among service stations is the starting point for the service station supervision reports by micro area that have been undertaken by the CNE since September 2007.

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[22] " (fuel is a product) *of little price elasticity because there are no alternatives and society depends on private vehicles*", Report of the Competition Court, Economic concentration case C86/04 DISA/SHELL. Also in FEDERAL TRADE COMMISSION (USA). (2005) *Gasoline price changes: the dynamic of supply, demand and competition*: "*Consumers often lack adequate short-run substitutes for gasoline to power their cars. Thus, prices may have to rise substantially to reduce consumer demand in order to restore the balance between the quantity supplied and the quantity demanded. As noted earlier, a substantial body of empirical literature has shown that, even if the price of gasoline increases relatively quickly and sharply the short-run demand for gasoline does not decline much. In other words, short-run demand for gasoline is very inelastic. This inability to substitute other products for gasoline in the short run at the retail level results in higher price increases than if consumers could easily reduce their demand when prices rise*".

[23] Catalan Competition Court (Spain). (2008) "Competència i distribució de gasolina a Catalunya". The Court does not necessarily share the opinions stated by the authors.

[24] Isochrones are lines joining all points in space that are equally distant in time from a reference point. In this case, the point of reference is a service station and the isochrone joins all places located 7 minutes therefrom, thus defining the relevant market for that service station.

They analyse the evolution of prices by operator and form of contract in a limited geographical area[25].

112. The importance of a local element has been stated on various occasions by the CNC[26]. Final consumers typically use service stations near their customary locations. But there is a degree of overlap of service station areas of influence. There are competitive interactions among nearby stations and links of areas of influence of more remote service stations. In addition, many service stations belong to national chains, and many decisions on the supply side are adopted at the national level (range of products, business practices, etc.). For this reason, despite recognising the local component in competition among service stations, we believe the geographical market to be analysed is of a national scope.

113. The business strategies of operators have resulted in product differentiation including other aspects. These, although having less impact than spatial location on the dynamics of competition, also affect consumer decision-making. Some wholesale operators have attempted to differentiate on the basis of quality of fuel. To this end they have launched advertising campaigns emphasising the benefits of the fuel for engines or the environment (sulphur content, additives, compliance with standards, etc.).

114. Also, the differentiation implemented by the operators affects the overall services offered by each service station. They have ceased to be just points of sale for gasoline and diesel, becoming automobile service centres (e.g. car washes, toilets, garages) and general customer service centres (e.g. meals, food products, magazines, gifts, etc.).

115. Also relevant is the differentiating effort by way of loyalty cards offered by the operators: Repsol's Solred, Cepsa's "*Porque tú vuelves*", BP's Premierplus and Galp's Fast, among others. These cards offer the possibility of accumulating points redeemable for gifts or discounts on the purchase of fuel or items from the service station shops. Typically the cards for individual consumers have conditions different than those for professional customers. Some networks have reached agreement with financial institutions to offer benefits to users of certain credit or debit cards. This loyalty strategy for final consumers attempts to take advantage of having a broad network of service stations, so that customers that typically use a station will use service stations in that network in their occasional travel to places other than where they customarily fill up.

[25] Up to this point the CNE has published micro supervision reports for Benavente, Vigo, Jerez de la Frontera, Vitoria, the Barcelona-La Junquera Motorway, Valladolid, the Madrid-Zaragoza Dual Carriageway, La Coruña, Benavente and the Don Benito area of influence.

[26] N-276 AGIP/PETROGAL/TFE, N-155 SARINT/CONTINENTAL OIL and N-03002 AGIP/SARAS (Assets).

116. This differentiation changes the conditions of competition in the market. But this process of transformation of service stations (typically called "modernisation" of the network) is seen both in Spain and in nearby countries, and does not by itself explain the price differential in our country discussed above.

Market structure

117. Three different kinds of companies compete in the market for retail distribution of fuel at service stations. The relationships of the various service stations with the wholesale operators that supply them allow classification of these competing companies, because this relationship affects the operating independence of the point of sale and therefore the way it competes for the final customer or consumer.

118. Based on this relationship service stations may be classified as follows:

- Type I: service stations vertically integrated with an oil operator that manages and supplies them.
- Type II: service stations operated by retail fuel distribution companies, with exclusive supply agreements with oil operators that involve branding of the facility with signs identifying the supplier's trademark.
- Type III: the so-called independent service stations, which are not integrated with oil operators, and are not tied to them by way of branding agreements.

119. Type I and II service stations in turn may have various contractual arrangements with their wholesale operators, marketing the fuel using their brands. The following classification may be made based on who owns and manages the point of sale:

120. Type I - Vertically Integrated service stations may be:

- COCO (company owned-company operated): This is the most direct form of vertical integration, since the oil operator is the owner and operator of the service stations.
- DOCO (dealer owned-company operated): the facility is owned by a third party that assigns operation to a wholesale operator, which also supplies the fuel.

121. Type II - Branded service stations may be:

- DODO (dealer owned-dealer operated): ownership and operation of the service stations is in a company that associates with a wholesale operator by way of an exclusive supply agreement.

- CODO (company owned-dealer operated): ownership of the service stations is in the wholesale operator. It assigns operation to a third party by way of a business lease agreement with exclusive supply.

122. Type I and Type II service stations are the point of sale networks of the wholesale operators established in Spain. Based on their degree of vertical integration in the sector, in a manner similar to the classification used in describing the wholesale market, the following may be distinguished:

- Networks of wholesale operators with refining capacity in Spain: Repsol-YPF, Cepsa and BP.
- Networks of other wholesale operators with refining capacity outside Spain: Galp, Agip, ERG, Esso, Chevron-Texaco, Q-8, Tamoil, Saras.
- Networks of wholesale operators without refining capacity, but having their own storage: Disa, Meroil, Esergui.

123. Notable among the Type III service stations are those owned by three large commercial complex groups: Carrefour, Eroski and Alcampo. The other independent service stations are the so-called white service stations, which are owned and operated by small independent businessmen that market the fuel without the branding of a wholesale operator.

124. At 31 December 2007 the Spanish service station network consisted of 8,974[27] points of sale, classified as follows based on the wholesaler brands used in distributing the fuel.

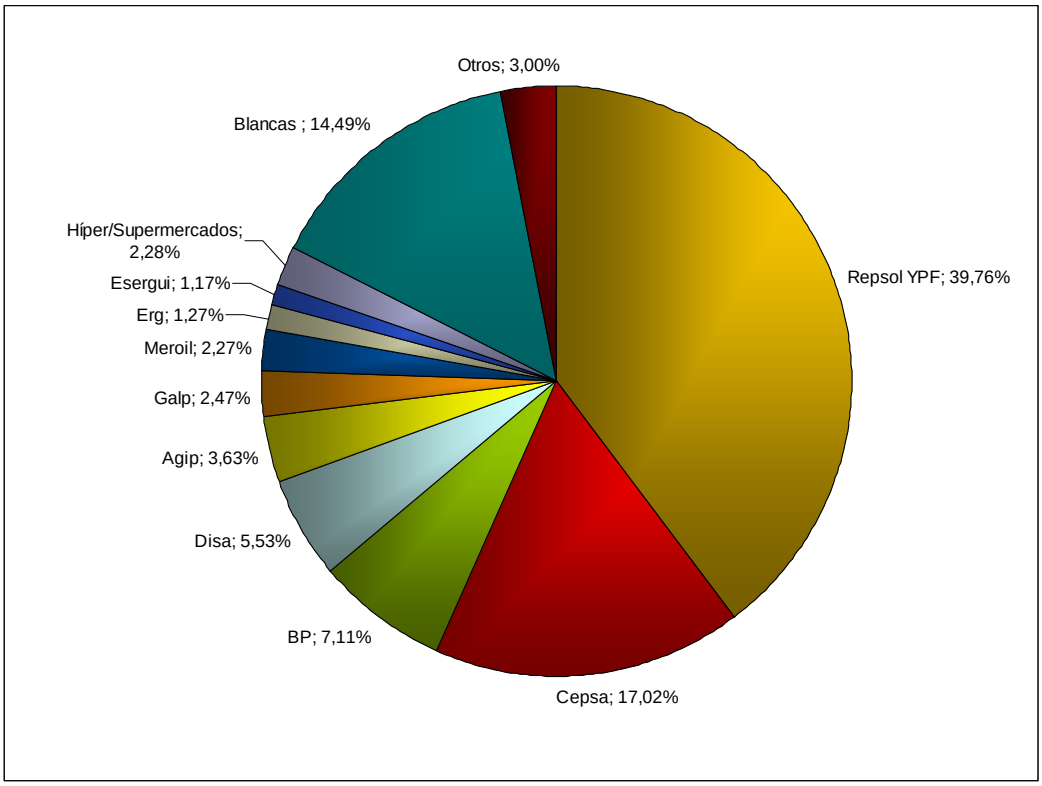
[27] According to data from the Confederación Española de Empresarios de Estaciones de Servicio (CEEES), in 2008 there were more than 9,000 service stations.

Table 16: Evolution of number of service stations and market shares

	2001	2002	2003	2004	2005	2006	2007	01-07 change
Repsol YPF	3,704	3,653	3,611	3,616	3,618	3,606	3,568	-3.67%
Cepsa	1,710	1,674	1,517	1,550	1,521	1,525	1,527	-10.70%
BP	582	583	618	649	635	637	638	9.62%
Disa	142	146	147	420	485	492	496	249.30%
Agip	127	130	295	297	313	310	326	156.69%
Galp	179	168	233	233	223	222	222	24.02%
Meroil	181	186	199	204	200	199	204	12.71%
Erg	24	62	134	122	124	118	114	375.00%
Esergui	64	67	72	79	92	100	105	64.06%
Esso	67	73	77	89	86	87	85	26.87%
Chevron-Texaco	57	57	56	57	60	61	61	7.02%
Q-8	25	29	36	42	37	40	45	80.00%
Tamoil	43	46	47	44	43	43	41	-4.65%
Saras	134	130	0	0	0	38	37	-72.39%
Total	187	187	56	25	14	5	0	-100.00%
Shell	302	316	338	66	0	0	0	-100.00%
Hyper/ Supermarkets	80	121	157	194	187	185	205	156.25%
White	916	1000	1000	1,000	1,000	1,000	1,300 (1)	41.92%
Total	8,524	8,622	8,593	8,687	8,638	8,668	8,974	5.28%
Market shares								**Change in percentage points**
Repsol-YPF (CR1)*	43.45%	42.37%	42.02%	41.63%	41.88%	41.60%	39.76%	-3.69
Repsol-YPF, Cepsa (CR2)	63.51%	61.78%	59.68%	59.47%	59.49%	59.19%	56.78%	-6.73
Repsol-YPF, Cepsa and BP (CR3)	70.34%	68.55%	66.87%	66.94%	66.84%	66.54%	63.88%	-6.46
Other wholesalers	17.97%	18.45%	19.67%	19.32%	19.41%	19.79%	19.34%	1.37
Hypermarkets	0.94%	1.40%	1.83%	2.23%	2.16%	2.13%	2.28%	1.34
White	10.75%	11.60%	11.64%	11.51%	11.58%	11.54%	14.49%	3.74

(1) According to the source, the increased number of white service stations in 2007 was almost wholly the result of more accurate estimation, not the opening of new service stations. This updating of white service station data by itself results in a reduction of the market shares of other operators in 2007, by comparison with the prior year.
*CRi denotes the market share of the i largest companies in the market.
Source: Internally prepared based on AOP annual reports

Chart 11: Market share by points of sale in 2007



Source: Internally prepared based on AOP annual reports

125. Leadership in points of sale is in the companies with refining capacity in Spain: Repsol-YPF, Cepsa and BP, with 63.88% of the total in 2007. This situation is the result of the process of deregulation of the sector. The result, as contemplated in Royal Decree Law 4/1991 of 29 November 1991, was splitup and assignment to these three companies of the CAMPSA service station network. Until 1985 it owned the only existing service station network. The CAMPSA brand at that time became the property of Repsol-YPF.

126. One of the information problems in this sector is in the data regarding the Spanish service station network. The CNE in its monitoring reports for the sector does not include the total number of service stations or break them down by wholesale operator. The MITYC price database covers data for only 7,800 service stations, and the sizes of the networks of the largest operators are significantly different from the sizes published by the AOP[28] and the figures stated by the companies themselves on their webpages.

[28] In the MITYC database (accessed on 30/06/09) there are 7,837 service stations, of which 2,861 are Repsol, Campsa or Petronor; 1,314 Cepsa and 316 BP. Repsol on its webpage refers to a network of 3,600 service stations. Cepsa on its webpage refers to a network of 1,700 service stations. BP refers to a network of more than 650 service stations.

This makes analysis of the geographical distribution of the networks of the various operators more difficult.

127. Starting with the deregulation of the sector in 1992 other companies entered the retail service station distribution market to sell fuel imported from refineries outside national territory, or from the international markets. Although some of them, such as Galp, Meroil and Disa, have strengthened their presence in the market, the effect on market structure, and in any event on the position of the largest companies, has been limited. Other more significant wholesale operators that are parts of large vertically integrated energy groups, such as ExxonMobil (with the Esso brand), have very small shares of the Spanish retail distribution market, or have decided to abandon it, as in the case of Avanti and Shell.

128. It is significant that, instead of opting to open new service stations, the principal form of entry and expansion in this market has been acquisition of service stations from competitors. The most significant transactions over recent years were as follows

- Cepsa acquired the Avanti network (61 service stations, mainly in the north of Spain) in 2002, and sold 60 service stations (basically in Andalusia and Catalonia) to ERG in 2003.
- Disa in 2004 reached an agreement with Shell to acquire all of its network (339 service stations, on the peninsula and in the Canary Islands) and operate under a license to distribute Shell lubricants.
- Galp in 2002 acquired a part of the Total network (some 165 service stations). The remainder of that network was acquired by Agip. In 2008 it made two important purchases, the Agip network (326 service stations) and the Esso network (130 service stations), becoming one of the largest market agents as measured by number of points of sale.
- Saras, after abandoning the market in 2002 (sale of the network to Agip), in 2008 acquired a part of the ERG network (81 service stations) and the Caprabo network (37 service stations).

129. The service station network purchase transactions undertaken in 2008 as yet are not reflected in the available statistics for the sector. When they are taken into account, the Galp service station network may be the third largest, with a number comparable to that of the BP network.

130. This strategy of acquiring networks already established by other operators allows overcoming barriers that would prevent entry by alternative means, such as opening new service stations or associating with service stations theretofore branded by competitors.
131. Among independent service stations the category that has developed most over recent years is that of hypermarket service stations. They have revitalised competition in the local areas where they have been

established. But white service stations have barely increased market share, since the typical increase of 300 service stations in 2007 must be qualified by the comment made in the consulted source itself, to the effect that it is almost exclusively the result of more accurate estimates, not the opening of new points of sale. The lesser financial capacity of these companies to overcome entry barriers in the market may be one of the factors explaining the stagnation.

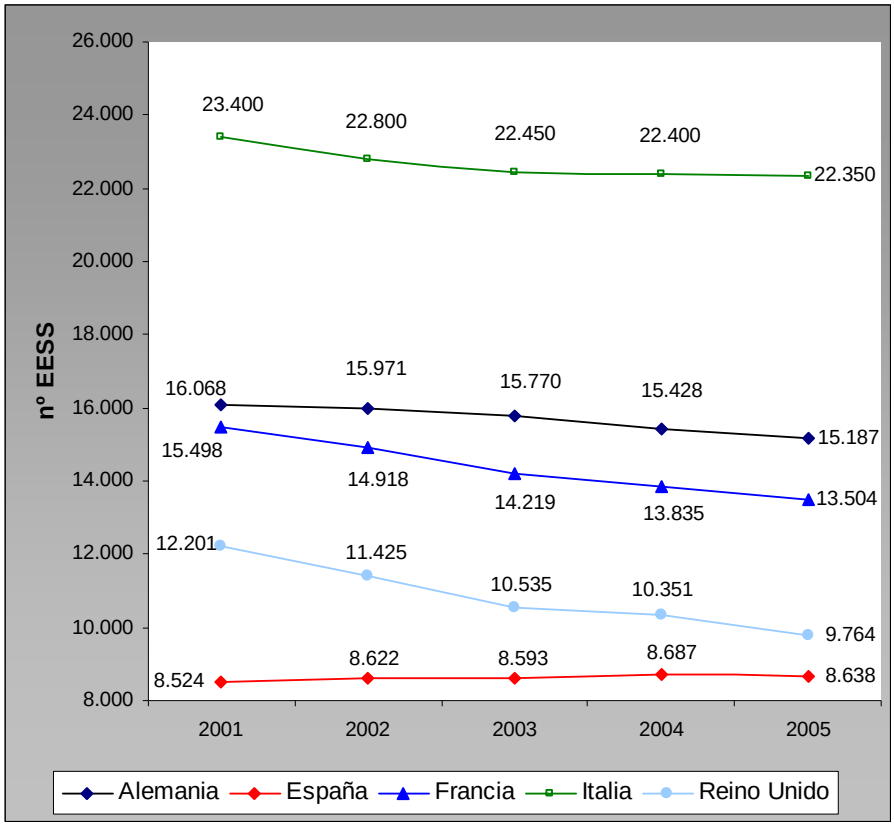
International comparison

132. A first difficulty in comparative analysis of the Spanish market for retail distribution in service stations is the lack of official or homogeneous statistics at the European level. Most of the statistics are prepared by industrial associations or consultants specialised in this sector. Obtaining reliable, complete and current information therefore is complicated.

133. The CNE has so stated. In the 2008 CNE Proceedings it proposes fostering a greater degree of transparency at the European level by way of European institutions, or by greater coordination of the national sector authorities. Despite the limitation of the statistical data, the information available allows drawing certain conclusions.

134. When comparing recent evolution of the sector with that of nearby countries, we must start from the fact that Spain only deregulated its sector after joining the EEC. At that time the service station network characteristics were very different from those of other European networks, as were those of the country's network of major roadways. This different starting point explains the fact that the number of service stations has increased in Spain, while decreasing in other countries. This occurred in the context of modernisation of the network and elimination of less profitable points of sale.

Chart 12: Evolution of number of service stations in Spain and other EU countries



Source: Internally prepared based on annual reports of the AOP, National Petroleum Industry Association of France (UFIP)

135. The ratios of private vehicles and pumps per service station in Spain in 2005 were similar to those of comparable countries.

Table 17: Ratio of Private Vehicles and Pumps per Service Station in 2005

	Service Stations	Pumps	Pumps per service station*	Private vehicles	Private vehicles per service station	Private vehicles per pump
Germany	15,187	95,678	6.3	45,375,500	2,988	474
United Kingdom	9,764	67,372	6.9	27,820,700	2,849	413
Spain	8,638	52,692	6.1	20,250,400	2,344	384
France	13,504	56,717	4.2	30,497,000	2,258	538
Italy	22,350	98,340	4.4	34,636,400	1,550	352
Average			5.6		2,398	432

Source: Internally prepared based on Eurostat, AOP, and National Petroleum Industry Association of France (UFIP)

136. The presence in the market of service station networks tied to wholesale operators also is high in nearby countries. In Germany[29] the sales networks of the five largest companies (Shell, BP/Aral, Esso (ExxonMobil), Total and ConocoPhillips/Jet) account for 50% of service stations and 72.5% of market sales. In Portugal[30] the sales networks of the three largest operators (Galp, Repsol-YPF and BP) account for more than 70% of the service stations. In the United Kingdom[31] the point-of-sale networks of the five largest operators (BP, Texaco, Esso, Total, Shell) comprise 50% of all service stations. In the Spain the sales networks of the three and five largest operators account for 63.88% and 73.04%, respectively, of all points of sale.

137. One of the most significant differentiating aspects of the Spanish market is the minimal participation of commercial complex companies in the retail fuel distribution sector. From the scant comparative data available it appears, particularly in France, but also in the United Kingdom, that service stations of such companies have achieved market shares much higher than in Spain. Specifically, in these two countries market shares in terms of stations are around 32% and 11%, respectively, while in Spain that share does not even reach 2% (2003 data).

Table 18: Proportion of service stations in hypermarkets in other European countries

	No. of service stations (1)	No. of service stations in Hypermarkets (2)	Ratio (2)/(1)
France	14,219	4,590	32.2%
United Kingdom	10,535	1,126	10.7%
Germany	15,405	650	4.2%
Spain	8,593	157	1.8%

Source: National Petroleum Industry Association of Italy (Unione Petrolifera), WPC Workshop, Contemporary trends in the Oil Product Retail Trade, 2005. AOP 2004 Annual Report. 2003 figures.

Regulation

138. The opening of new service stations is subject to extensive urban development, technical and environmental regulation. Various local, regional and national authorities participate in its design and application. In addition, the public authorities, aware of the limited competition in the

[29] *Working Paper No.2 on Competition and Regulation. Roundtable on Competition Policy for Vertical Relations in Gasoline Retailing. Germany*. 20 October 2008. OECD DAF/COMP/WP2/WD (2008)18.
[30] *Report by the Competition Authority on the Fuel Market in Portugal. Autoridade da Concurrencia*. 2 June 2008.
[31] The United Kingdom consultant Energy Institute, 2005 data.

sector, at the end of the 1990s approved two deregulatory statutes: Royal Decree Law 15/1999 and Royal Decree Law 6/2000.

Procedure for opening new service stations: administrative permits

139. The opening of new service stations is subject to administrative requirements having their main justification in public safety, land use, stability of supply and environmental protection.

140. Most of the processing of openings occurs at the level of municipalities and the ministries of industry of the autonomous communities. The jurisdiction of the central government (Administración General del Estado) centres on preparing basic legislation, granting permits for service stations on major national roadways and providing a central register of service stations based on regional data. The regulatory development and implementation of the basic legislation is performed by the autonomous communities and municipalities.

141. The main permits and authorisations that must be obtained to open a new service station are as follows:

- Municipal permit for construction and classified activity.
- Authorisation by the ministry of industry of the autonomous community of the plan for an oil facility.
- Permit from the owner of the public roadway for access thereto.
- Municipal permit for opening the classified activity.
- Authorisation from the ministry of industry of the autonomous community for startup and operation of the business.

142. Opening a service station requires compliance with technical rules designed to minimise the risk of accidents and guarantee provisioning. Some of the most significant requirements are as follows:

- Requirement of a tank with a minimum capacity of 20,000 litres for each of the three kinds of fuel that, as a minimum, must be sold by a service station.
- Requirement of presentation of a three-year forecast of business and provisioning ensuring compliance therewith. In the case of a service station supplied by an authorised wholesale operator, the latter is presumed to guarantee provisioning thereof.

143. A basic element of the procedure for authorisation of new service stations is their classification as urban or non-urban.

144. Urban service stations may only be established on parcels specified for that purpose in the General Plans for Urban Land Use (Planes Generales de Ordenación Urbana - PGOU) of the municipalities. In some cases there are additional provisions regarding the minimum size of the parcel, certain uses of the surrounding parcels, etc. Because municipal urban planning generally does not reserve a sufficient amount of land for this purpose, there is a shortage of land that may be used for service stations.

145. For their part, the opening of non-urban service stations (located on the network of major roadways) requires authorisation of the entity owning the route. There are both national and regional rules governing access from the public roadway, designed to preserve traffic safety. They establish various requirements for installing service stations. The administrative permitting procedure is different depending on whether the service station is or is not located in a service area[32].

146. Under the General Road Regulation (Royal Decree 1812/1994), the award of service areas on nationally-owned routes is by way of bids administered by the Directorate General for Roads of the Ministry of Development. This regulation allows for both concession of operation of service areas on an individual basis, and concession of multiple areas as a block. It also allows for separate award of each component of the service area. As regards toll motorways, Act 8/1972 on construction, maintenance and operation of motorways by way of concession allows the concessionaire of the route to decide on award of its service areas.

147. In an attempt to promote competition in this regard, Royal Decree Law 15/1999 of 1 October 1999, approving measures for deregulation, structural reform and increased competition in the hydrocarbon sector, introduced a favourable weighting in the award of service stations located in service areas on nationally owned routes for bids involving supply other than by the immediately preceding or following service station operator on the route[33]. Likewise, prior to the call of a bid, ex officio or on request of

[32] Art. 56 of the General Road Regulation (Royal Decree 1812/1994) defines service areas as areas adjoining major roadways, expressly designed to house facilities and services to meet the needs of drivers. They may include fuel supply stations, hotels, restaurants, repair shops and other similar services to provide safety and comfort to roadway users.

[33] *Art. 8. Preference in award of service areas. In bids that, in accordance with the applicable regulations regarding major national roadways, contemplate concession of retail distribution facilities for petroleum products, including those in service areas, offers will be weighted favorably if they do not involve exclusive supply from the same wholesale operator or an operator in the same group of companies that exclusively supplies the immediately preceding or following service station in the same direction of traffic as the one covered by the bid.*

any interested party, for the opening of multiple service stations in the same service area.[34]

148. In addition, the procedure for establishing non-urban service stations outside service areas is regulated, and the authorisation of applications in the case of national routes is issued, by the Directorate General for Roads based on the conclusions deriving from public hearings, from certain information that must be provided by the interested party, and on the internal report in the specific case.

Most recent deregulation measures: Royal Decree Law 15/1999 and Royal Decree Law 6/2000

149. After the intense process of deregulation at the beginning of the 1990s, at the end of that decade a series of additional measures was introduced with the purpose, inter alia, of stimulating competition in the fuel sector. These were the aforesaid Royal Decree Law 15/1999 and Royal Decree Law 6/2000.

Royal Decree Law 15/1999

150. The principal measures in it to promote competition in the market are as follows:

- Greater price transparency, by way of signs on motorways and major national roadways.
- The possibility of opening new service stations in service areas on major national roadways where service stations already exist.
- Preference in the award of service areas on major national roadways for those offers promoting greater diversity of operators in the relevant market[35].

151. In addition, the Royal Decree Law in its Art. 11 develops the criteria to be taken into account by the government in planning regarding service

[34] *Art. 9. Concession of new service stations. The Ministry of Development, ex officio or on request of any interested party, when the location and characteristics of the service areas on major national roadways so permit, will call bids for the grant, within the same area, of independent concessions for construction and operation of other retail distribution facilities for petroleum products.*

[35] In scoring of offers in bids for concession of construction and operation of service areas on national dual carriageways, criteria that cannot be scored by way of formulas will be assigned a maximum of 100 points. Of those 100 points, 10 will be given to offers including a commitment that the supply of hydrocarbons will not be from any wholesale operator or operator in the same business group that exclusively supplies or owns the preceding or following service station in the same direction of traffic on the roadway itself, with direct access thereto, or intersecting therewith.

stations, already contemplated in Art. 4 of the LSH: the density, distribution and characteristics of the population, the density of vehicle traffic, and such other parameters as may be deemed to be required.

152. The effects of these measures regarding competition in non-urban service stations have been very limited. The concentration of service stations of this kind supplied by the same wholesale operator continues to be a characteristic feature. No opening of multiple service stations in a single service area has occurred.

Royal Decree Law 6/2000

153. Among other objectives, the measures in Royal Decree Law 6/2000 seek reduction of the share of service stations held by the wholesale operators with the largest presence in the market, an increase in the number of service stations opened by hypermarkets, and the aforesaid change in the limits on interests in CLH.

154. In its Art. 3[36], the Royal Decree Law establishes an obligation to open at least one service station in new large commercial complexes, preferably without exclusive supply from a wholesale operator. The grant of the municipal permit for the business activity implicitly must result in grant of all such authorisations and permits as may be necessary for establishment of the service station, provided that the applicable technical standards are satisfied. This avoids the processing of an additional urban development permit, it being understood that satisfaction of the urban development regulation in respect of the large commercial complex implies that the land also is suitable for establishment of a service station. But this does not constitute an exemption from compliance with the other regulations.

155. Finally, the First Transitional Provision allowed large commercial complexes already in operation under a municipal permit to add service stations, providing that:

[36] *Article 3 of Royal Decree Law 6/2000: Vehicle supply facilities in large commercial complexes.*
1. Establishments that, under article 2(3) of Retail Trade Act 7/1996 of 15 January 1996, are classified as large commercial complexes, within their facilities will include at least one facility for supply of petroleum products to vehicles. For such provisioning, on a preferential basis, they may not enter into exclusive supply agreements with just one petroleum products wholesale operator. These facilities must comply with the required technical safety conditions, and the other current regulations that, in each case, are applicable, in particular regulation of metrology and measurement technology and protection of consumers and users.
2. Under the circumstances referred to in the preceding paragraph, the grant of municipal permits required by the establishment will imply grant of the permits necessary for supply of petroleum products.

- *"The space occupied by the facilities and equipment necessary to supply fuel will not be taken into account for purposes of buildable or usable volume."*
- *"Municipal permits necessary for construction of facilities and their startup will be deemed to have been granted by way of positive administrative silence if an express resolution is not notified within 45 days following the date of presentation of the application".*

156. Data on opening of new hypermarkets of the three large hypermarket chains show that, despite the opening obligations incorporated in the new regulation, the percentage of service stations opened in new hypermarkets since the regulation became effective in 2000 has been limited. Only 39% of newly-established hypermarkets have service stations.

Table 19: Opening of service stations in hypermarkets since effective date of Royal Decree Law 6/2000

	New hyper openings	With service stations	% of new hypers with service stations	Opening of service stations in existing hypers
Alcampo	10	5	50.00%	9
Eroski	74	32	43.24%	7
Carrefour	58	18	31.03%	41
TOTAL	142	55	38.73%	57

Source: Alcampo, Eroski, Carrefour

157. Currently before the Spanish parliament is a bill to amend various laws to adapt them to Act .../... on free access to service activities and engaging therein (called the Omnibus Bill), to adapt various Spanish laws to Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in the interior market (the Services Directive). This bill, in its Art. 44, amends Royal Decree Law 6/2000, eliminating the requirement of adding a service station in newly-created large complex facilities (because the requirement of engaging in a given business in order to obtain authorisation to engage in another services business is contrary to the Services Directive), but maintaining the facilities contemplated for opening service stations that will be applicable for commercial complexes.

158. In addition, Art. 4 of Royal Decree Law 6/2000 established that operators holding a point of sale share higher than 30% (Repsol-YPF) could not increase the number of service stations in their distribution networks over the five following years. The term was set at three years for those having shares between 15% and 30% (Cepsa).

Table 20: Evolution of number of service stations of Repsol-YPF and Cepsa after Royal Decree Law 6/2000

	2001	2001 share	2002	2003	2004	2005	2005 share*	Percentage point change
Repsol YPF	3,704	43.45%	3,653	3,611	3,616	3,618	41.88%	-1.57
Cepsa	1,710	20.06%	1,674	1,517	1,550	1,521	17.61%	-2.45
Other wholesale operators	2,114	24.80%	2,174	2,308	2,327	2,312	26.77%	1.96
Hyper/Supermarkets	80	0.94%	121	157	194	187	2.16%	1.23
White	916	10.75%	1000	1000	1,000	1,000	11.58%	0.83
Total service stations	8,524	100%	8,622	8,593	8,687	8,638	100%	-

Source: AOP annual reports

* The referenced Royal Decree Law imposed the restriction on opening new service stations until 2005 for Repsol-YPF and until 2003 in the case of Cepsa

159. The effectiveness of these measures on the competitive dynamics of the market were greater than in the case of Royal Decree Law 15/1999. But the effect was limited by other problems, not with the regulation, but rather with application thereof, resulting in restrictions on opening new service stations, those of both hypermarkets and wholesale operators. They are discussed below.

IV. FACTORS LIMITING DEGREE OF COMPETITION

160. The analysis of the sector shows that there is a high concentration of business in the wholesale, logistics and retail markets, the result of the process of elimination of the monopoly. In addition, based on their retail market strategies, operators have increased both vertical integration and the degree of concentration. The final combination of vertical integration and increased concentration facilitates the anticompetitive conduct sanctioned by the Competition Act. This concentration, combined with the existence of entry barriers and expansion of the most efficient competitors, results in weak competitive pressure among market participants, as shown by the price indicators.

IV.1 Degree of concentration in the industry

161. One of the most characteristic elements of this industry is the high degree of business concentration in the refining, logistics and distribution activities. This situation is not unique to the Spanish market, because the industry has characteristics (inter alia, significant fixed costs) that favour the appearance of a degree of market power.

162. In addition, vertical integration of the three companies with refining capacity within national territory transfers the concentration in the refining activity to the other markets: wholesale distribution, logistical services and retail distribution.

163. In the Spanish case, the concentration in the retail distribution market at service stations is accentuated as a result of the process of deregulation of the sector undertaken in the 1990s. The three companies with refining capacity within Spanish territory became owners of the service stations in the network of the former state monopoly.

164. Although the publicly-available information does not allow calculation of the shares of the largest operators in the wholesale market, an approximation thereof can be derived from the financial contributions the CORES members must make based on the amount of fuel sold. As appears from Chart 10, Repsol-YPF contributes 37.2%, Cepsa 23.6%, and BP 10.2% of the total, which add up to 71% of the total.

165. Furthermore, Repsol-YPF, Cepsa and BP hold significant interests in CLH, the company that wholly controls the oil pipeline network, and through their refineries and CLH itself own and operate a substantial part of the storage capacity.

Table 21: Market shares of Repsol-YPF, Cepsa and BP in the industry

	Repsol-YPF	Cepsa	BP	**Total**
CLH shareholding interest	15%	14.15%	5%	34.15%
• *CLH share of the oil pipeline network*				*100%*
• *CLH storage capacity as percentage of national total*				*33.80%*
Storage capacity at its refineries as percentage of national total*	26.41%	11%	4.4%	41.79%
Market share by points of sale	39.76%	17.02%	7.11%	63.88%

Source: Internally prepared based on: CNE, Basic information on the energy sectors, 2008; CLH; 2007 AOP Annual Report.
*Excluded from the computation is the storage capacity of the Asesa refinery (asphalt).

166. This high degree of concentration in refining and logistics is transferred to the retail distribution market at service stations in two ways. First, by way of the vertical integration of the wholesale operators in this market, by way of their ownership and operation of the points of sale. Second, and to a much greater extent, by way of the branding agreements that result in exclusive supply of fuel to service stations operated and/or owned by independent businesses.

167. The concentration indicators of the market by number of service stations show that, despite a slight decrease from 2001 to 2007, the retail market continues to be very concentrated.

Table 22: 2001-2007 evolution of market concentration indexes, by number of service stations

	2001	**2007**	**Change (percentage points)**
CR1	43.45%	39.76%	-3.69
CR2	63.51%	56.78%	-6.73
CR3	70.34%	63.88%	-6.46

Source: Internally prepared based on AOP annual reports

168. The stability of the market shares of the three largest operators is notable if one views the evolution of shares after excluding the data corresponding to the white service station category. The total number of white service stations takes a big jump from 2006 to 2007, because of the better estimate of this kind of establishment.

Table 23: Market shares excluding the white service station category

	2001	2002	2003	2004	2005	2006	2007
Repsol	48.69%	47.93%	47.56%	47.04%	47.37%	47.03%	46.49%
Repsol and Cepsa	71.16%	69.89%	67.54%	67.20%	67.28%	66.91%	66.39%
Repsol, Cepsa and BP	78.81%	77.54%	75.67%	75.65%	75.60%	75.22%	74.71%
Other wholesalers	20.14%	20.87%	22.26%	21.83%	21.96%	22.37%	22.62%
Hypermarkets	1.05%	1.59%	2.07%	2.52%	2.45%	2.41%	2.67%

Source: Internally prepared based on AOP annual reports

169. The regulator's concern with this concentration, in particular the high retail market share of the two largest operators, was reflected in Royal Decree Law 6/2000, which for periods of 3 and 5 years following the effective date restricted the opening of new service stations by Cepsa and Repsol-YPF, respectively.

170. The data in Table 20 show that during those years both operators went beyond what was contemplated in the legislation, slightly reducing the size of their networks. This must be seen as a strategic restructuring, probably maintaining the most profitable establishments and closing others of less commercial interest. This resizing of their networks was the principal reason for reduction of the joint share of Repsol-YPF and Cepsa (CR2) by almost 7 percentage points from 2001 to 2007.

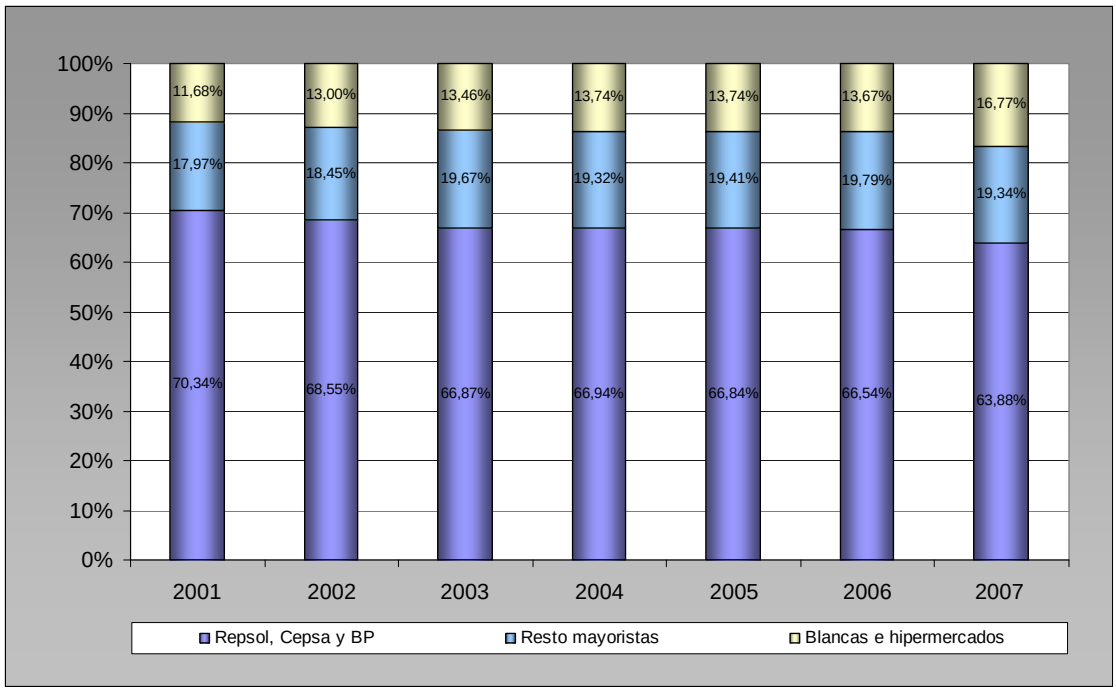
171. But the share of the retail market of other wholesale operators did not significantly increase in the years following the Royal Decree Law. Their market share went from 17.97% in 2001 to 19.34% in 2007. In this group of companies there have been more acquisitions of service stations from competitors than openings of new service stations. This process had already been noted in 2002 by Competition Service Report N-276 AGIP/PETROGAL/TFE. It indicated that the existence of barriers to the opening of new service stations "*explains the fact that the principal form of access to and growth in the market is purchase of gas station networks*".

172. Analysis of market shares indicates not only a high degree of concentration. It also shows the stability of the market structure since 2001.

173. In fact, after an entry of new operators in the 1990s, as a part of the deregulation process that was undertaken, in more recent years significant operators on the international scene have abandoned the Spanish market.

174. Both the absence of change in the dynamics of the market and the limited expansion in the Spanish market of significant operators in other markets may be taken as indicators of the existence of barriers to entry and expansion of other operators and possible anticompetitive strategic behaviour.

Chart 13: Evolution of number of service stations by brand name



Source: Internally prepared based on AOP annual reports
* It must be recalled that practically all of the increase in white service stations and hypermarkets in 2007 was the result of a more accurate estimate of the number of white service stations, not the opening of new service stations.

IV.2 Entry barriers in the wholesale market

175. The first comment to be made is that, as already noted above, ownership of the existing refineries in Spain by Repsol, Cepsa and BP gives these operators a significant advantage over other competitors that must import fuel and, therefore, assume the costs of transport to Spain.

176. Logically, that could constitute a structural barrier limiting the competitive capacity of other wholesale operators that have refining capacity in Spain, given the difficulties in opening these large facilities.

177. In addition, given the efficiency of oil pipelines by comparison with alternative means of transport, a wholesale operator wishing to engage in distribution of national scope must contract for oil pipeline transport

services from CLH, which has the monopoly of this service. Therefore the conditions of access to this network and its ownership structure must be evaluated particularly carefully, to avoid operations resulting in distortions of competition.

178. This evaluation is hindered by the single price CLH charges for the bundle of logistics services it provides to wholesale operators. Providers other than CLH have entered into some of these businesses, as in the case of storage. But this price includes payment for access to an essential service provided under monopoly conditions, the oil pipeline. In addition to this lack of information regarding the price set for use of the oil pipeline it is impossible to know CLH's profits from operation of this network. It does not prepare separate analytical accounting of the oil pipeline network operation and storage functions.

179. The absence of regulatory measures other than the obligation under the LSH to provide non-discriminatory access, together with the composition of the CLH shareholdings, may result in anticompetitive behaviour in the wholesale market. This cannot be ignored given the lack of information regarding the price of access to the oil pipeline.

180. CLH has the obligation to establish non-discriminatory prices, to disclose them through the CNE, and to allow access except under limited circumstances specified in the regulation. But the regulation of the sector leaves its shareholders free to determine the price they wish to pay for use of its facilities. Even if we accept the fact that the action plan presented by CLH to the government and the CNE in 2001 in compliance with Art. 1 of Royal Decree Law 6/2000, "*Expansion of shareholdings in Compañía Logística de Hidrocarburos (CLH)*", includes a price scheme that is still in effect, it cannot be maintained that the price of its services is thereby regulated.

181. In addition, the CLH shareholders include financial investors and some of the wholesale operators in Spain. Its position as the only provider of oil pipeline transport services allows it to maintain a monopoly price. This price is paid by all wholesale operators requiring service and generates high dividends to the CLH shareholders.

182. But those wholesale operators that also are shareholders of CLH may transfer income among the various levels of their business structures, by way of dividends partially compensating for the higher price paid for access to the oil pipeline. Indeed, the income statement of the CLH Group[37] for 2007 indicates profit for the fiscal year of 287.2 million euros.

[37] 2008 Financial Statements of the CLH Consolidated Group

The Ordinary General Shareholders Meeting of CLH[38] held in 2008 approved application of 285.7 million from the closed 2007 fiscal year to an interim dividend, already distributed, in the amount of 219.3 million, and distribution of a supplementary dividend of 66.4 million.

183. The consequence is a cost disadvantage for any wholesale operator that is not a shareholder of CLH. This may constitute a barrier to entry of potential competitors and a restriction on the expansion of those already established.

184. The International Energy Agency[39] (IEA) appeared to refer to this situation in its 2005 Report on Energy Policy in Spain, characterising the CLH shareholding structure as being "*unusual*", because the principal operators have a "*quasi-monopoly*" of distribution. Also, in its 2001 report, the IEA called attention to the risk arising from excessive dividends for the shareholders.

185. A possible solution to the incentives generated by the current model of management of CLH would consist of regulation of the price of access to the gas pipeline by the sector authorities, as is the case for other network monopolies. In the cases of Red Eléctrica Española (transmission of high-voltage electricity) and Enagás (transport of natural gas by pipeline) fees for access to the network are set by the ministry having jurisdiction over the sector, on proposal of the CNE[40].

186. Until such regulation of the price of the oil pipeline is adopted, when offering its integrated logistics services CLH at least should be required to state the price fixed for use of the oil pipeline and the methodology for calculation of that price. It also should be required to prepare separate accounting disclosing the profits of that business it conducts on a monopoly basis.

187. The possibility of setting an inappropriate price for use of the oil pipeline network is not the only problem deriving from the current structure of CLH management. The presence of the principal wholesale operators among the shareholders of this entity may facilitate their access to relevant

[38] Interim Management Report, January-December 2008. CLH.
[39] The IEA is an intergovernmental organisation that advises its 28 member countries on energy policy matters. The purpose is ensuring environmentally sustainable energy supply at an affordable price.
[40] Act 54/1997 of 27 November 1997 on the electricity sector; Royal Decree 871/2007 of 29 June 2007 adjusting electricity tariffs starting 1 July 2007; Royal Decree 949/2001 of 3 August 2001 regulating third party access to natural gas facilities and establishing an integrated economic system for the natural gas sector; Act 12/2007 of 2 July 2007 amending Hydrocarbons Sector Act 34/1998 of 7 October 1998 to adapt to it to the provisions of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas.

information regarding the business practices of all operators in the sector. Access to this information may favour the appearance of collusive behaviour, and further constitute a disadvantage for other competitors and potential entrants.

188. In the cases of other network monopolies in the Spanish energy sector, the market participants have progressively withdrawn from the shareholding groups of these entities. Currently the shareholders of REE include the State Industrial Ownership Corporation (Sociedad Estatal de Participaciones Industriales - SEPI), which holds 20%. The remaining 80% is traded on the exchange. In the case of Enagás, Gas Natural currently holds 5%, as does SEPI. Financial investors hold 20%, with the remaining 70% traded on the exchange. In its Resolution of 11 February 2009[41], the CNC approved the merger of Gas Natural and Unión Fenosa with a series of commitments, among which was sale of Gas Natural's interest in Enagás.

[41] Resolution of Case C- 0098/08, GAS NATURAL/UNIÓN FENOSA.

IV.3 Entry barriers in the service station retail distribution market

189. Given the characteristics of the retail market discussed above, there are two groups of competitors the development of which could introduce substantial changes regarding competition in this market: distribution networks of wholesale operators other than the market leaders, and service stations in hypermarkets.

Restrictions on development of point-of-sale networks of wholesale operators

190. As has been explained, the degree of penetration of networks of wholesale operators that compete with Repsol-YPF, Cepsa and BP has been very small. Their market share has barely increased since 2001, despite regulatory measures, such as those in Royal Decree Law 6/2000, that were intended to promote their expansion.

191. Given the importance of competition among networks of service stations in this market, the most direct means of achieving changes in the current structure of the retail market lie in entry or expansion of point-of-sale networks of other wholesale operators.

192. As has been noted, a first entry barrier is in access to the wholesale market, because the current system for operation of the oil pipeline network may result in strategic behaviour against potential entrants or operators that are not shareholders of CLH.

193. In addition, as has already been stated, there are obstacles to an operator establishing or expanding its service station distribution network by opening new service stations, or by signing exclusive supply agreements with service stations theretofore operating under brand arrangements with competitors. These obstacles explain the series of purchases of service station networks by operators with low market shares, which allows limited changes in the structure of the market.

Competition among the operators through branded service stations

194. Excessive terms of exclusive supply agreements result in restrictions on competition in the market, because for that term they eliminate the possibility of other wholesale operators competing by entering into brand arrangements with the service stations. If such long-term agreements are in effect for a significant part of the networks for fuel distribution in service stations, the effect is closure of the market to new entrants.

195. Former Regulation (EC) 1984/83 on exemption of vertical agreements contemplated a maximum term of 10 years for these exclusive supply agreements. It included an exception to allow longer terms in the case of CODO agreements entered into on the basis of a surface right or right of usufruct.

196. In the Spanish market the latter type of CODO agreement was used to document very long-term relationships between wholesale operators and their branded retailers. These are contracts pursuant to which the wholesale operator, although it is not the outright owner of the land where the service station is located, holds an in rem surface right or right of usufruct[42] in it. In turn, operation of the service stations is documented by way of an industrial lease agreement with exclusive supply, for a term equal to that of the in rem right.

197. Commonly the owner of the land on which the in rem right is constituted also is the operator the service station. This legal arrangement has been analysed by the CNC[43], since it may constitute an artifice to take advantage of the exception in the Regulation, extending the term of the exclusive supply agreement beyond the limit contemplated in the Regulation for exemption of vertical agreements.

198. Current Regulation (EC) 2790/1999, on the application of Article 81(3) of the TCE (Tratado constitutivo de la Comunidad Europea - Treaty establishing the European Community) to categories of vertical agreements and concerted practices, generally reduces the maximum term of exclusive supply agreements from ten to five years. This facilitates entry of new wholesale operators acquiring service stations previously branded by competitors.

199. The Regulation only allows an exception to the general five year maximum for such CODO agreements in which "*the contract goods or services are sold by the purchaser from premises and land owned by the supplier, or leased by the supplier to third parties not related to the purchaser, provided that the term of the noncompetition clause does not exceed the term of occupation of the premises and land by the purchaser*". As recognised by the Commission Guidelines on vertical restraints (2000/C 291/01), it would not be logical for a supplier to allow sale of competitive products from premises on land owned by it. Nevertheless the European Commission in those Guidelines warns that "*artificial ownership*

[42] By constituting a surface right or right of usufruct on land in favor of the wholesale operator, it obtains the right to build a service station on the property, maintaining temporary ownership of what is built. When the term of the in rem right expires, the owner of the land becomes the owner of the service station.

[43] The most recent decisions of the CNC regarding excessive terms of agreements are in Case 2740/06, TOTAL; Case 2739/06, AGIP; and Case R691/06, DISA.

constructions intended to avoid the five-year limit cannot benefit from this exception".

200. The complex legal arrangements used for very long term contracts are being analysed by the competition authorities and the ordinary courts to determine whether they are sufficiently justified given the possible effect of closure of the market that may arise.

201. This new focus of Community competition policy has had an effect in the Spanish market. In 2004 the European Commission preliminarily evaluated the agreements of Repsol-YPF with its service station network. It noted that in CODO contracts including a service right or right of usufruct there were clauses that "*could significantly contribute to creating an exclusionary effect in the Spanish market*".

202. Thereafter, the Commission Decision of 12 April 2006[44] included Repsol commitments to amend its contracts to overcome the European Commission's objection. The principal components of the commitment are as follows:

- Offering service station operators the option of early termination of their long-term contracts, in exchange for compensation to the wholesale operator for the investment made in the land. In this way a service station could negotiate a DODO agreement with any operator, or become a white service station.
- Not signing new contracts of this nature in the future.
- Not acquiring DODO service stations not being supplied by it. This would avoid its compensating for the loss of CODO service stations under the prior point by acquiring DODO service stations.
- Disclosing the expiration dates of branding agreements and agreements with service stations supplied by it involving in rem surface rights or rights of usufruct.

203. Limiting the term of exclusive supply agreements would allow more frequent competition among wholesale operators in reaching agreements with service stations theretofore tied to other operators. The result would be expansion of the point-of-sale networks of the most efficient wholesale operators.

204. In a competition among various wholesale operators to brand service stations, the service stations that are owned and operated by independent companies, but branded by other operators under DODO agreements,

[44] Commission Decision of 12 April 2006, regarding proceedings under Art. 81 of the TCE (COMP/B-1/38,348 – REPSOL C.P.P.).

would appear to be the most attractive option, since in the past they already have chosen long-term agreements with other operators.

205. Despite the fact that this competition for branded service stations has been facilitated by limiting the term of exclusive supply agreements, operators wishing to attract branded service stations also confront significant costs. On the one hand, the cost deriving from identification of the service stations that may be attracted, in particular the expiration dates of their exclusive supply agreements; and on the other hand what may be called the "switching cost" of the branded service stations, which must overcome the inertia favouring renewal of the agreement with the prior supplier, the operating system of which is already known.

Administrative barriers to opening new service stations

206. If a wholesale operator wishes to enter or expand its service station network by opening new service stations, it must confront a series of administrative barriers making this strategy more difficult and costly.

207. As stated in the aforesaid 2005 report of the IEA on energy policy in Spain *"marketing suffers from lack of competition. This is mainly because local urban development regulation prevents establishment of new service stations. To achieve strong retail competition, the entry of hypermarket chains and other new entrants must be promoted, and the opening of new service stations must be simplified."*

208. As noted above, in the permitting of new urban service stations the municipal governments, and to lesser extent the autonomous communities, play a decisive role. The design of the administrative permitting process described above does not favour the opening of new service stations, even when the legislative requirements are satisfied. As was already recognised by the Competition Court in its evaluation of the fuel market in its 1995 report titled "*Competition in Spain: Balance and New Proposals*", *"the complicated system of permits issued by various authorities favours lack of transparency, discriminatory treatment and even corruption."*

209. The evaluations of the Competition Court in 1995 and the IEA in 2005 remain valid. The administrative procedure for opening new service stations lacks transparency and, in any event, does not sufficiently take competition in the market into account.

210. The most significant criteria in authorisation or denial of permits may be grouped into two categories: compliance with technical conditions and municipal urban planning. The technical conditions may represent a cost of entering the market, but they may be justified by reason of safety and

guarantee of supply. In addition they involve compliance with objective conditions in respect of which the degree of discretion in granting approval appears to be small. Urban development rules potentially may give rise to greater problems as regards the retail market for distribution of fuel in service stations, because sometimes they involve discretionary actions of little transparency that unjustly prevent establishment of new service stations.

211. The available information on service stations located on major roadways indicates that there is a high degree of concentration in this category. The micro reports that the CNE has prepared regarding this kind of route, the Barcelona-La Junquera (C-33/AP-7) Motorway and the Madrid-Zaragoza Dual Carriageway (exit R2 to Z40[45]), show the following:

- On the section of the Barcelona-la Junquera motorway analysed there are three operators (Repsol-YPF, Cepsa and Agip) that occupy all of the service areas with service stations owned and operated by the operators under the COCO system.
- On the analysed section of the Madrid-Zaragoza dual carriageway, Repsol-YPF concentrates its service stations in two segments of 31 and 68 kilometres, where there are service stations only of this network.

212. An extreme case of concentration is the concentration that appears as a result of the existence of a succession of service stations exclusively supplied by a single operator. The Ministry of Industry, Tourism and Trade database of fuel prices and service stations confirms that, on recently commissioned toll motorways, there are situations such as the following:

- On the AP-36 Madrid-Levante motorway (145 kilometres) there are three service areas in each direction. All belong to Cepsa points of sale network.
- On the R-5 arterial motorway (located in the Autonomous Community of Madrid) there are two service stations in each direction, belonging to the Repsol-YPF network (with Repsol and Campsa brands).

213. The aforesaid 2008 study published by the Catalan Competition Court indicates that *"toll motorway concessionaires have authority to allow or deny the opening of new service stations. In most cases, this results in the concessionaire awarding all service stations as a block, creating monopolies on the various toll motorways"*.

214. As has already been stated, in the case of non-urban service stations the owner of the route or, if applicable, the concessionaire of the toll motorway

[45] Approximately 300 kilometres in length.

has the final decision. In the case of bids for concession of service stations in service areas on major national roadways, the favourable weighting contemplated in Art. 8 of Royal Decree Law 15/1999 appears to have limited successive service stations supplied by a single operator. From 1999 to date the Ministry of Development has held 21 bids to award service stations in service areas on state-owned routes. In only a minority of cases is the successful bidder exclusively supplied by the operator that supplies the preceding or following service station.

215. But a significant part of the concessions of service stations in service areas has occurred on routes owned by autonomous governments and on toll motorways, the award of which does not contemplate the favourable weighting. This facilitates the appearance of spatial monopolies, as discussed above.

216. In short, the current administrative procedure for opening service stations is excessively complex and time-consuming and allows too much discretion. To facilitate private investment in new service stations, greater transparency and simplification of the process are required. In the case of service stations on major roadways, competition criteria should be strengthened in the grant of the corresponding concessions and permits.

Barriers to opening service stations in hypermarkets

217. Although entry or expansion of service station networks of wholesale operators can change market structure, it is the service stations tied to hypermarkets that have shown that they can more aggressively compete on price in the local areas where they are located.

218. The intense price competition in hypermarket service stations is reflected in the CNE's service station supervision reports by micro areas. In those reports that include hypermarket service stations[46], the CNE states that it is always such service stations that offer the best pre-tax prices after applying discounts and, sometimes, even before including the discounts.

219. The special characteristics of these companies and the fact that they have no long-term ties to wholesale operators give them the capacity to introduce greater price competition. They may be considered "mavericks[47]" in this market.

220. This characteristic was already noted by the Competition Court in its 1995 report. It stated that "*The only medium-term possibility of commencement of price competition in the gasoline market is allowing establishment of*

[46] Don Benito, Vigo, Valladolid, Vitoria, Jerez de la Frontera.
[47] This term is applied to those companies that compete aggressively in the market.

service stations in large complexes that, in France, have been the true engines of competition in the form of low prices".

221. Their entry and expansion in the market was supported by the provisions of Royal Decree Law 6/2000, discussed above. After its effective date, there was an increase in the number of service stations opened in hypermarkets. But despite being interested in opening more service stations in their commercial complexes, as they have stated to the CNC, the hypermarkets have not been able to open all service stations they wished, due to administrative restrictions, basically urban development restrictions, that prevented application of the measures contemplated in the legislation.

222. In particular, the resistance of certain municipal governments to applying the facilities set forth in this legislation has resulted in their effects not being as initially contemplated. Only 39% of hypermarkets opened thereafter have service stations in their facilities, despite the fact that the legislation required that they include service stations in newly-opened hypermarkets. In addition, many of the large commercial complexes existing when the legislation became effective have not been able to benefit from its facilities for the opening of service stations.

223. This situation has led the hypermarkets to apply to the courts to seek compliance with the provisions of Royal Decree Law 6/2000. Analysing the case law[48] in this regard, one sees the following questions in the judgments of the regional Superior Courts of Justice (Tribunales Superiores de Justicia - TSJ) and the Supreme Court (Tribunal Supremo - TS):

- The central question in most cases is the urban development question. There have been barely any problems in respect of technical standards (judgment of the TSJ of Castilla y León, Burgos; no. 108/2008) or environmental standards.

- The Supreme Court (judgment of the Contentious Administrative Branch (Sala de lo Contencioso Administrativo), section 5, of 16 July 2008) held that the Royal Decree Law prevails over urban development legislation. It restates the requirement of including at least one service station in each shopping centre. Only objective requirements of a technical, environmental, traffic safety or similar nature may prevent authorization of an opening. The permit may not be affected by the General Plan for Urban Land Use. With the

[48] See Annex 2.

exception of the case law of the TSJ of Catalonia[49], the other judgments of the TSJs are consistent with this holding of the Supreme Court.

- Sometimes the municipal authorities appear to extend the litigation, exhausting appeals without offering arguments in addition to those that have already been rejected (judgment of the TSJ of the Community of Valencia of 23 January 2003[50]) or arguing without sufficient justification (judgment of the TSJ of Andalusia, Seville, of 4 April 2003[51]).

- Judicial proceedings are lengthy. They delay the entry of new competitors in the market, and make entry more expensive. An example is the judgment of the TSJ of Andalusia, Granada, of 30 December 2005: the first denial of the permit was on 21 May 1999[52]; Alcampo had to wait around seven years to open the service station.

- Even when a judgment is obtained favourable to the claims of a hypermarket, the opening of the requested service station has not always occurred within a reasonable time. This is the case of the judgments of the TSJ of the Basque Country of 27 November 2002 and 20 April 2005[53], regarding the opening of a service station in the

[49] Superior Court of Justice of Catalonia, judgment no. 878/2005 of 17 November 2005; judgment no. 58/2006 of 25 January 2005; judgment no. 677/2006 of 20 July 2006.

[50] "*The arguments the plaintiff, now appellant, has presented to this Court in essence are a mere reproduction of its complaint. They therefore lack any true critical analysis of the reasoning of the judgment appealed. It therefore ignores the fact that appeals (recursos de apelación) must contain arguments against the legal reasoning upon which the decision of the lower court is based. It is not acceptable at this stage of the proceedings, without more, to argue in the same terms as at the trial level as if there had been no decision at that level, since that is contrary to the nature of an appeal.*"

[51] "*The statements to the effect that its metrology and measurement technology requirements are not satisfied, and regarding protection of users and consumers, furthermore are not even minimally supported.*"

[52] In judgment 1975/2003 of the same Court the appeal of the first denial of the permit based on urban development considerations was rejected. Royal Decree Law 6/2000 had not yet entered into effect. Thereafter, Alcampo based its claim on Royal Decree Law 6/2000 in judgment no. 785/2005. This case demonstrates the importance of this legislation in promoting competition in the area.

[53] *"That the following question posed by the appellant refers to the fact that the judgment had already been enforced by the Municipality of Leioa by Mayoral Decree no. 438/03. This Court holds that this administrative act does not fully comply with the judgment, since what that Mayoral Decree (438/03, of 12 May 2003) does is to require Eroski to present a technical project comprised of a report, plan and budget, including the corrective measures it deems to be appropriate, within the context of the proceedings for grant of permits for opening and construction of a fuel service station in the parking area of the hypermarket located on Avda. Iparraguirre in Leioa. This only initiates the enforcement proceedings for the judgment. But it allows and requires review of the entire procedure followed by the defendant governmental authority in enforcement of the judgment, including full and proper handling of the administrative*

municipality of Leioa. In that case 5 1/2 years passed before the interested party could open the service station.

- The pressure groups allied with existing service stations appear as parties in many lawsuits. They present arguments in the administrative proceedings, appeal the permits granted or appear, sometimes together with the municipal government, when judgments are appeal by the hypermarkets.

224. In short, there is resistance to applying the provisions of the current legislation, which results in legal insecurity and extends terms. This delays or prevents the opening of new service stations in hypermarkets.

225. To these problems one may add that there is little development of this kind of complex in Spain, as a result of restrictive regulation in the Retail Trade Act[54] and in the regional trade laws. The current regulatory framework therefore limits proliferation of these service stations tied to hypermarkets, despite the desire of the large commercial complex companies to compete in the automotive fuel distribution market.

226. The large commercial complexes may have financial capacity and legal resources with which they can confront these difficulties in opening service stations in their facilities. But these difficulties in processing permits and licenses may be particularly burdensome for small investors, to the point of constituting an insurmountable barrier to entry into the market.

227. To limit such practices, it could be appropriate for there to be more active participation of regional competition authorities or, in some cases, the CNC, in procedures for grant of municipal permits for the opening of service stations in large commercial complexes. The presentation of arguments on request of interested parties in the public hearing proceedings would allow including an opinion favourable to application of Royal Decree Law 6/2000 in the file for granting of the municipal permit, thus facilitating application of the prevailing judicial interpretation regarding prevalence of the aforesaid Royal Decree Law 6/2000 over urban development rules, in particular the impossibility of denying a service station permit by arguing lack of compliance with the urban development plan.

228. In addition it must be recalled that the Competition Act in its Arts. 12(3) and 13(2)[55] gives the competition authorities authority to challenge

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proceedings. Thus the enforcement cannot be deemed to have been accomplished merely by an act that, in reality, just begins the proceedings."

[54] Retail Trade Act 7/1996 of 15 January 1996.

[55] Competition Act 15/2007 of 3 July 2007. Art. 12(3). *The National Competition Commission is legally authorised to bring actions before the competent jurisdiction against administrative acts*

administrative acts and regulations resulting in obstacles to the maintenance of effective competition in the markets.

and regulations resulting in obstacles to the maintenance of effective competition in the markets. Art. 13(2). *Without prejudice to the authority of the National Competition Commission, the competent bodies of the Autonomous Communities are legally authorised to bring actions before the competent jurisdiction against administrative acts and regulations issued by the autonomous or local authorities in their territories resulting in obstacles to the maintenance of effective competition in the markets.*

V. CONCLUSIONS

One. Competition in this sector is affected by the functioning of the markets for wholesale distribution of fuel, transport and storage logistics services, and the market for retail distribution in service stations. The relationships among these activities or markets, which are a part of a single value chain, and the significant degree of existing vertical integration, particularly in the case of operators with refining capacity in Spain, result in competition problems in one market having effects on the remainder of the sector.

Two. Analysis of the sector shows that the high degree of existing concentration, the result of the process of monopoly elimination, together with the strategies of the operators and the existence of entry and expansion barriers in the wholesale and retail distribution markets result in relaxation of the competitive pressure among the participating companies.

Three. The lack of competition is reflected in the scant dynamism in this market over recent years. Despite the entry after deregulation of the sector of many operators with significant presence in other markets, many have not been able to strengthen their presence in Spain. In turn, the combination of the vertical integration and this heavy concentration facilitates the anti-competitive conduct sanctioned by the Competition Act.

Four. The Spanish sector has very high concentration indexes. Only three companies have refining capacity in Spain: Repsol-YPF (with a 63% share of production), Cepsa (28%) and BP (9%). Their storage capacity constitutes 42% of the national total (Repsol-YPF: 26.5%; Cepsa: 11.0%; BP: 4.5%). In the retail distribution market in service stations, the Repsol-YPF points of sale network represents 40% of the total, the Cepsa network represents 17% and the BP Network represents 7%. Together they therefore control 64% of the service stations.

Five. The operators that have refining capacity in Spain (Repsol, Cepsa and BP) have a significant advantage by comparison with other competitors in the sector that must import fuel and, therefore, assume the costs of transport. Given the difficulty of opening such large facilities, this limits their capacity to compete in the market.

Six. In addition, the entry and expansion of operators may be limited as a result of the model for management of the oil pipeline network. It is a monopoly owned by CLH, and often is the most efficient transport alternative. Although the current legislation provides for access to these facilities on non-discriminatory conditions, this may not be sufficient to avoid possible distortions of market competition. On the one hand, the capacity to unilaterally set the price of access to the network allows setting a monopoly price. This not only makes the service more expensive, it also discriminates against those wholesale operators that, because they are not shareholders of CLH, cannot partially recover the higher cost by way of distribution of dividends. On the other hand, the presence of some wholesale operators among the shareholders of CLH may give them access to sensitive information that the operators could use for their own benefit.

Seven For their part, the barriers in the retail distribution market in service stations affect two categories of participants that have great potential to introduce structural changes and generate greater price competition: the service station networks of wholesale operators other than the dominant ones, and service stations in hypermarkets.

Eight. A wholesale operator that wishes to establish or expand its service station network has three choices: attracting service stations previously branded by competitors, opening new service stations, or acquiring service station networks from other operators. Over recent years expansion of these networks has been mainly by way of acquisition of service stations from competitors. This option derives from the existence of structural restrictions on establishment and development of networks by opening new service stations, and from the prior branding of service stations tied to other operators. These acquisition and concentration transactions have had a limited effect on the market structure, only marginally affecting the position of competitors with greater shares. The market share of points of sale of the wholesale operators, excluding the three market leaders, barely changed from 2001 to 2007, increasing by only 1.37 percentage points.

Nine. There are obstacles making effective competition "for branded service stations" by wholesale operators more

difficult. Over recent years this possibility has been facilitated by limitation of the terms of exclusive supply agreements in the current Community regulations exempting vertical agreements, and by CNC and European Commission oversight to avoid establishment of complex legal structures artificially extending the terms of such agreements. Nevertheless, some difficulties persist, such as the need to identify the service stations that can be attracted and determine the expiration dates of exclusive supply agreements. In addition there is what may be called the "switching cost" of the branded service stations, which must overcome the inertia favouring renewal of the agreement with the prior supplier, the operating system of which is already known.

Ten. Also, the administrative procedure for obtaining the municipal permits necessary to open new service stations in urban areas is a significant obstacle to market entry and development of service station networks. In addition to the scarcity of land dedicated to this purpose arising from the general plans for urban land use there is the discretionary nature and lack of transparency typically characterising such procedures.

Eleven. In the case of service stations on major roadways there is a high concentration of service stations exclusively supplied by a single wholesale operator in geographically small areas. Thus there is a need to strengthen the competition criteria in awarding service stations in service areas on non-urban routes, extending them to situations in which those criteria are not being applied.

Twelve. Service stations in hypermarkets are the market participants with the greatest capacity to compete on price. But their expansion in the Spanish market is being hindered by administrative barriers. On the one hand, the proliferation of such complexes has been limited as a result of restrictive regulation in the Retail Trade Act and regional legislation. On the other, there is resistance of some municipalities to application of the facilities afforded to hypermarkets by Royal Decree Law 6/2000 for opening service stations within their facilities. Although the hypermarkets state their desire to open service stations in all new large complexes, what is clear is that since the effectiveness of the aforesaid Royal Decree Law only 39% of new openings have included a service station within the facilities.

VI. RECOMMENDATIONS

The configuration of the automotive fuel sector is heavily affected by the process of privatisation and deregulation carried out during the 1990s. At the end of that decade it was necessary to adopt legal measures (Royal Decree Law 15/1999 and Royal Decree Law 6/2000) to increase the degree of competition in the sector.

Despite that, the intensity of competition continues to be low. Wholesale operators that have attempted to strengthen their presence in the Spanish market have confronted various problems preventing development of greater competitive pressure. This limited competitive pressure derives from both the structure of the sector and certain anticompetitive behaviours of the agents operating in it.

A new governmental effort allowing introduction of greater competition thus appears to be necessary. Following the Recommendations may be a starting point in this regard.

One. To avoid possible restrictions on competition deriving from the operation of the oil pipeline network by CLH, it should be revised. As is the case with other network monopolies, the Ministry of Industry, Tourism and Trade should set the network access tariff. If this alternative is not chosen, CLH at least should be subject to a legal obligation of transparency in its methodology for setting the price of access to the network. To verify that the price fixed by CLH is not distorting competition among wholesale operators, this measure must be complemented by an obligation to separate the accounting for its activities subject to competition (storage) from the accounting for its monopoly business (pipeline).

Two. As in the case of other network monopolies in the Spanish energy sector, the operating companies should not be shareholders of CLH or participate in its management. The presence of wholesale operators in the sector among the shareholders of CLH and their participation in management makes it possible for them to access relevant information that they can use to their benefit, when setting both their business strategies and those of CLH. Therefore, it appears to be advisable that these companies not be owners of or participate in management of CLH.

Three. Given the decisive influence of the actions of the governmental authorities in the opening of new service stations, and the problems identified regarding such proceedings, it appears to be necessary to simplify the process of application for opening new

service stations, and shorten the terms. In June of 2008 the Council of Ministers approved a Plan for Reduction of Administrative Charges and Improvement of Regulation, the objective being to reduce charges imposed on companies by 30%. Since this plan establishes mechanisms for cooperation with all of the regional governments and the Spanish Federation of Municipalities and Provinces, it may be an effective instrument for making the process of opening service stations simpler and more flexible.

Four. To reduce concentration in service stations located on major roadways, it would be desirable to strengthen competition criteria in the processes for concession or authorisation of service stations, extending to regional routes the favourable weighting, contemplated in bids for the award of service areas on national routes, of those offers that include the supply of fuel from wholesale operators other than those exclusively supplying or owning the immediately preceding and following service stations in the same direction on the route. Also, there in any event should be no possibility of awarding multiple service stations as a block.

Five. It is necessary that there be proper application of Royal Decree Law 6/2000 as regards the administrative facilities afforded to large commercial complexes for the opening of service stations in their facilities. To that end, it would be appropriate for the regional and state competition authorities, based on their respective jurisdictions, to present arguments on request of the interested parties in the public hearings within the process of grant of municipal permits for the opening of service stations in large commercial complexes. These arguments would be included in the file, facilitating application of the prevailing judicial interpretation: the prevalence of Royal Decree Law 6/2000 over municipal urban development rules. This would ensure proper application of the current rules in those cases that could particularly affect market competition. This would be without prejudice to the standing of the competition authorities, contemplated in Arts. 12(3) and 13(2) of the Competition Act, to challenge administrative acts and regulations resulting in obstacles to the maintenance of effective competition in the markets.

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ANNEX 1: Ministry of Industry, Tourism and Trade register of wholesale operators

- CEPSA
- REPSOL PETROLEO, S.A.
- BP. OIL ESPAÑA, S.A.
- PETROLEOS DEL NORTE, S.A. (PETRONOR)
- AGIP ESPAÑA, S.A.
- GALP ENERGÍA ESPAÑA, S.A.
- PETROLIFERA DUCAR, S.L.
- TOTAL ESPAÑA, S.A.
- SHELL ESPAÑA, S.A.
- CHEVRON ESPAÑA, S.A.
- ESSO ESPAÑOLA, S.L.
- REPSOL COMERCIAL DE PRODUCTOS PETROLIFEROS S.A.
- SOCIEDAT CATALANA DE PETROLIS S.A. (PETROCAT)
- ESERGUI, S.A.
- NOROIL, S.A.
- TAMOIL ESPAÑA, S.A.
- KUWAIT PETROLEUM (ESPAÑA), S.A.
- SARAS ENERGIA, S.A.
- MEROIL, S.A.
- DISA RED DE SERVICIOS PETROLIFEROS, S.A.
- TRANSPORTES Y SERVICIOS DE MINERÍA, S.A. (TRASEMISA, S.A.)
- FORESTAL DEL ATLANTICO, S.A.
- PETROLÍFERA MARE NOSTRUM, A.I.E. (PETROMAR)
- DYNEFF ESPAÑA, S. L.U.
- ERG PETRÓLEOS, S.A.
- PETROLIERS ASSOCIATS, A.I.E.
- PETROMIRALLES 3, S.L.
- STOCKS DEL VALLÉS, S.A.
- SIERRA CAMEROS, S.A.
- BIONOR BERANTEVILLA, S.L.U.
- VIA OPERADOR PETROLÍFERO, S.L.
- BIONET EUROPA, S.L.
- GRUPO ECOLÓGICO NATURAL, S.L. (GEN)
- GALP SERVIEXPRESS, S.L.
- DISA PENINSULA, S.L.U
- DISA RETAIL ATLANTICO, S.L.U.
- BIODIESEL CAPARROSO, S.L.
- DISTRIBUCIONES PETROLÍFERAS BERASATEGUI MURUZABAL HERMANOS, S.L.
- ECOCARBURANTES ESPAÑOLES, S.A.
- PETROAZUL, S.L.
- BIOCARBURANTES CASTILLA Y LEÓN, S.A.
- PETROLIFERA CANARIA, S.A.
- OPERADORES DE CASTILLA Y LEON, A.I.E.
- PETRO-NOVA OIL, S.A.
- BIODIESEL CASTILLA LA MANCHA, S.L.
- DISTRIBUCION INDUSTRIAL
- DERIVADOS DEL GASOLEO, S.L.
- BIOCARBURANTES ALMADEN, S.L.
- INSTITUTO PARA LA DIVERSIFICACION
- BIOCOMBUSTIBLES DE CUENCA, S.A.
- TINERFEÑA DE LUBRICANTES,

S.L.
- BECCO FUELS, S.L.
- RECUPERALIA NUEVAS ENERGIAS, S.L.
- ENTABAN BIOCOMBUSTIBLES DEL PIRINEO, S.A
- LINARES BIODIESEL TECHNOLOGY, S.L.U.
- CAMPA IBERIA, S.A.
- CARBURANTS AXOIL, S.L.
- BIOCOM ENERGIA, S.L.
- BIOCARBURANTES CASTILLA-LA MANCHA, S.L.
- ENERGES, S.L.
- MYTHEN MED, S.L.
- RONDA OESTE, S.L.
- EBCOM PARK GANDIA, S.L.
- BIOENERGETICA EXTREMEÑA 2020, S.L.
- BIOCOMBUSTIBLES Y ENERGIAS RENOVABLES DE CASTILLA-LA MANCHA
- ENTABAN BIOCOMBUSTIBLES DEL GUADALQUIVIR, S.A.
- ECOPRODUCTOS DE CASTILLA-LA MANCHA, S.A.
- BIOETANOL DE LA MANCHA, S.L.
- INFINITA RENOVABLES, S.A.
- MERCURIA ENERGÍA, S.L.
- COMBUSTIBLES ECOLÓGICOS DEL MEDITERRÁNEO, S.A.
- IMPORTADORA DE PRODUCTOS PETROLÍFEROS DE CANARIAS, S.L
- BIOCARBUROS DEL ALMANZORA, S.A.
- OPERADORA PETROLÍFERA DINOIL, S.A.
- BIOCARBURANTES DE CASTILLA, S.A.
- PETROIBERIA, S.L.
- BIOCARBURANTES DE GALICIA, S.L.
- ENERGÍA GALLEGA ALTERNATIVA, S.L.U.
- COMBUSTIBLES ECOLÓGICOS BIOTEL, S.L.
- ENTABAN BIOCOMBUSTIBLES DE GALICIA, S.A.
- BIOCOMBUSTIBLES DE ZIERBANA, S.A.
- ALBABIO ANDALUCÍA, S.L.
- BIO-OILS HUELVA, S.L.
- BIODIESEL ARAGÓN, S.L.
- HISPAENERGY PUERTOLLANO, S.L.
- ABENGOA BIOENERGÍA SAN ROQUE, S.A.
- COMBUNET, S.L.
- BIOETANOL GALICIA, S.A.
- BIODIESEL BILBAO, S.L.
- RECYOIL ZONA CENTRO, S.L.
- RECYOIL ZONA CENTRO, S.L.

ANNEX 2: Case law related to application of Royal Decree Law 6/2000

Case law related to concession of municipal and regional permits for opening new service stations and hypermarkets:

- Supreme Court (Contentious Administrative Branch, Section 5) Judgment of 16 July 2008.
- TSJ of the Basque Country (Contentious Administrative Branch, Section 2), judgment no. 1045/2002 of 27 November 2002.
- TSJ of the Basque Country (Contentious Administrative Branch, Section 2), judgment no. 163/2003 of 20 February 2003.
- TSJ of the Basque Country (Contentious Administrative Branch, Section 2), judgment no. 917/2004 of 9 December 2004.
- TSJ of the Basque Country (Contentious Administrative Branch, Section 2), judgment no. 320/2005 of 20 April 2005.
- TSJ of the Basque Country (Contentious Administrative Branch, Section 2), judgment no. 406/2007 of 31 May 2007.
- TSJ of Cantabria (Contentious Administrative Branch, Section 1), judgment no. 264/2004 of 2 April 2004.
- TSJ of Cantabria (Contentious Administrative Branch, Section 1), judgment no. 8/2007 of 12 January 2007.
- TSJ of Asturias (Contentious Administrative Branch, Section 1), judgment no. 1/2003 of 20 January 2003.
- TSJ of Madrid (Contentious Administrative Branch, Section 2), judgment no. 632/2005 of 17 May 2005.
- TSJ of Madrid (Contentious Administrative Branch, Section 2), judgment no. 910/2005 of 5 July 2005.
- TSJ of Andalusia, Granada (Contentious Administrative Branch, Section 2), judgment no. 1975/2003 of 7 July 2003.
- TSJ of Andalusia, Granada (Contentious Administrative Branch, Section 2), judgment no. 785/2005 of 30 December 2005.
- TSJ of Andalusia, Seville (Contentious Administrative Branch, Section 2), judgment of 4 April 2003.
- TSJ of Castilla y León, Burgos (Contentious Administrative Branch, Section 1), judgment no. 108/2008 of 22 February 2008.
- TSJ of Catalonia (Contentious Administrative Branch, Section 3), judgment no. 878/2005 of 17 November 2005.
- TSJ of Catalonia (Contentious Administrative Branch, Section 3), judgment no. 58/2006 of 25 January 2006.
- TSJ of Catalonia (Contentious Administrative Branch, Section 3), judgment no. 677/2006 of 20 July 2006.
- TSJ of the Community of Valencia (Contentious Administrative Branch, Section 3), judgment no. 104/2003 of 23 January 2003.