

## DG Sanco Consumers and Competition Project

### Project Partner Survey 2<sup>1</sup>

#### Competition Law and Policy

*Q1. What is the name of your government's competition act and when was it last amended?*

- LAW 16/1989, of 17th July, on Defence of the Competition. Official Gazette 18/7/89). Modified by the Royal Decree 7/1996, of 7th June.
- ROYAL DECREE-LAW 6/99, 16/4/99. On Urgent Measures of Liberalization and Increase of the Competition. Official Gazette 17/4/99.
- LAW 52/99, 28/12/99. Reform of Law 16/89, 17/7/89, on Defence of the Competition. Official Gazette 29/12/99.
- ROYAL DECREE 6/2000, 23/6/00. On Urgent Measures of Intensification of the Competition in Markets of Goods and Services. Official Gazette 24/6/00.
- ROYAL DECREE-LAW 2/2001 of 2th Feb. (modification disp. trans. 6.<sup>a</sup> L 54/1997 of 27th Nov., electric sector and L 16/1989 of 17th Jul., Defence of the Competition).
- ROYAL DECREE 1443/2001, 21/12/01. Official Gazette 18/1/02. On which it is developed the Law 16/89, 17/7/89, on Defence of the Competition, regarding the control of the economic concentrations. Official Gazette 18/1/02.
- ROYAL DECREE 378/2003 of 28th Mar. (development L 16/1989 of 17th Jul., Defence of the Competition, about exemptions by categories, single authorization and register of competition defence).
- ROYAL DECREE 864/2003, 4/7/03. Official Gazette 10/7/03. Through which the Statute of the Court of Competition Defence has been approved. Official Gazette 10/7/03.
- ROYAL DECREE 2295/2004, of 10th December, regarding the application of the community norms of competition in Spain. Official Gazette 23/12/2004.

*Q2. Which body / bodies are given the authority to supervise and make decisions based on the competition act?*

The Court of Competition Defence founded in 1964.

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Q3. *Is there specific mention of consumer interests in your national competition act?*

Yes.

3a. *If so, please describe*

- For the authorization of certain agreements, it is required, as preceptive, to request information to the Council of Consumers and Users.
- It is being regulated the possibility of authorizing some agreements and practices in case they contribute to improve the production or the marketing of goods and services or to promote the technical or economic progress whenever they permit the consumers and users to participate in an adequate form of their advantages.
- It is defined as abuse of a dominant position, among others, the limitation of the production, the distribution or the technical development to the unjustified detriment of the consumers.
- The quantity of the sanctions, to which the law is referring, is fixed attending to the importance of the infraction for which it is taken into account the effect of the competition restriction to the effective or potential competitors, to other parts in the economic process and to the consumers and users.
- The Court of Competition Defence has to emit its reports attending, among others, to the election possibilities of the consumers or users.
- The Court of Competition Defence can be consulted on the subject of competence by the organizations of consumers and users.
- The Service of Competition Defence can address reports and/or recommendations about competition defence subjects to the organizations of consumers and users.

Q4. *Does your government have a separate agency for consumer protection?*

Yes

4a. *If yes, what is its name and when was it established?*

Instituto Nacional del Consumo (National Institute of Consumer Affairs) created in the year 1975 and transformed into Autonomous Organism in 1977.

*Q5. Are there any provisions in your national competition law which are stricter than those proscribed under EC law?*

In Spain is forbidden:

Each agreement, decision or collective recommendation, or concerted or consciously parallel practice that has as objective, produces or is able to produce the effect of blocking, restricting or falsifying the competition in the whole or part of the national market and, specially, those that consist in: fixing in a direct or indirect form the prices or other commercial conditions or services, limiting or controlling the production, distribution, technical development or investments, sharing the market or the supplying sources, applying in business relations or services, unequal conditions for equivalent services that place competitors in disadvantageous situations against other competitors and subordinating the celebration of contracts at the acceptance of supplementary services that, by its nature or according to ways of business, do not correspond to the objective of such contracts.

*Q6. Please list any exceptions to EC law which are permitted under Article 81(c) of the EC Treaty.*

Infractions to art. 81 of the Constituent Treaty of the European Community

- Contracts that permit the fixing of fuel retail prices on the part of Repsol.
- Agreements for the cession of the transmission rights of football matches subscribed between the National League of Professional Football and various TV channels or between different TV channels.
- Different sugar companies that have agreed on the sugar prices, have modified them simultaneously, have shared the customers and the geographical places of the market.
- Entities that negotiate the rights of copyright of different holders, EGEDA (producer), AISGE (actors) and AIE (musical interpreters), have taken unfair advantage of their position in demanding to the hotels certain tariffs arguing that, as there are televisions available in the rooms, they use rights of public communication that are managed by these companies. Unilateral imposition of discriminatory and unfair tariffs because of its quantity as well as the arbitrary increase.
- Conduct contrary to the free competition by Glaxo Welcome, S.A. because of setting up a pact with the distributors in order to fix a double price list.
- Disa Red de Servicios Petrolíferos, S.A. (DISARED), dedicated to the distribution of oil-bearing products, because of including to their contracts of exclusive concession with the retail owners of service stations certain restrictive competition clauses: clauses regarding the

excessive duration of the contracts, the sole right of sales, the fixing of resale prices of fuel and lubricants, the recognition of the unlimited ability of inspecting the facilities of the retailer and the prohibition of non-authorized industrial activities.

*Q7. How many competition cases has your competition authority brought since 2000?*

Finished competition cases:

*Year 2000: 86*

*Year 2001: 166*

*Year 2002: 199*

*Year 2003: 141*

*Year 2004: 112*

*7a. What are the major cases and their outcomes*

- ASOCIACIÓN ESPAÑOLA DE COMPAÑÍAS AÉREAS (AECA), SPANAIR S.A. (SPANAIR), AIR EUROPA S.A. (AIR EUROPA), COMPAÑÍA HISPANO IRLANDESA DE AVIACIÓN S.A. (FUTURA), LTE INTERNATIONAL AIRWAYS S.A. (LTE), VIVA AIR S.A. (VIVA AIR) e IBERIA LÍNEAS AÉREAS DE ESPAÑA S.A. (IBERIA) due to supposed forbidden conducts by article 1 of the Law 16/1989, of 17th July, on Competition Defence (LDC), consisting of the coordinated and simultaneous increase of the prices of charter flights: payment of the fine 90.151,81 EUR.
- Agreement between the companies Enagás, S.A. and Gas Natural Comercializadora, S.A., integrated in the group Gas Natural, due to supposed forbidden conducts regarding the articles 6 of the Law of Competition Defence and 82 of the Treaty of the European Union, consisting of the abuse of the dominant position: Imposition to the parent company and head of the Group Gas Natural, Gas Natural SDG, the fine amounts to eight millions Euro.
- Complaint of the ASOCIACION DE PRENSA PROFESIONAL (association of professional press) against the SOCIEDAD ESTATAL DE CORREOS Y TELEGRAFOS, S.A. (state post company) due to infraction of the articles 1, 6 and 7 of the Law of Competition Defence: Imposition to the SOCIEDAD ESTATAL CORREOS Y TELÉGRAFOS (state post company) a penalized fine of 900.000 EUR.

- Complaint against the Official Schools of Doctors of various Autonomous Communities due to a supposed forbidden conduct by the Law 16/1989, of 17th July, on Defence of Competition consisting of the distribution and sales of the official medical certificates from the part of the complaint schools at a higher price than those set up by the Medical School Organization: payment of the fine of 6.010 EUR to some Community that failed to fulfil the sentence of the National High Court.
- Realization of a restrictive practice of the competition, forbidden by the article 1 of the Law 16/1989, on Defence of Competition, consisting of the collective recommendation of some minimum prices in the rates charged by the driving schools of the province of Santa Cruz de Tenerife in order to obtain the driving licence type B-1: payment of the fine of 9.000 EUR.
- Practice of abuse of the position of domain forbidden by the article 6.2.c of the Law 16/1989, of 17th July, on Defence of Competition, consisting of the unjustified refusal and delay in supplying the telephone lines to 3C Communications de España S.A., whose author is Telefónica de España S.A.: payment of a fine.
- Restrictive conduct of the competition, forbidden by the article 1 of the Law 16/1989, of 17th de July, on Defence of Competition, the Asociación Nacional de Empresas de Fabricación Automática de Envases de Vidrio (ANFEVI) consisting of the geographical division of the “calcín” (scrap glass) market between 1982 and 2001: fine of 600.000 EUR.
- Interventions of the Unión Española de Entidades Aseguradoras (in short, UNESPA) (Spanish Union of Insurance Entities) and the President of the Technical Committee of Vehicle Insurances of the Executive Committee of UNESPA, consisting of the joint estimation of the possible effects of some legal modifications (scale of compensations due to damages to the persons) introduced in the Project of the Law of Accompaniment of the National Budget for 1999 in the increases of the vehicle insurance costs that could have the objective and the possible effect of homogenizing the increases of the vehicle insurance premiums. The said conducts could be forbidden by the article 1 of the Law 16/1989, of 17th July (Official Gazette of 18th), on Defence of Competition: Imposition to the Spanish Union of Insurance Entities of a fine of 80 millions of Pesetas.

**Q8. Were these cases publicized in the media, e.g. general or specialist newspapers and magazines, television and radio? Please provide examples if possible.**

**Yes, for example the cases of:**

- *the driving schools,*
- Enagás, S.A. and Gas Natural,
- Telefónica

- Unión Española de Entidades Aseguradoras (Spanish Union of Insurance Entities).

*Q8a Does the media ever cover competition issues?*

*Yes*

*Q9. Does the Competition Act include merger control?*

*Yes*

*9a If so, what is the threshold?*

*- Market value?*

*When, as consequence of the transaction, a share of exact or more than 25% of the national market, or of a geographic market defined within the same market, of a precise product or service is acquired or increased.*

*- Market share?*

*When the global sales volume in Spain of the joint participants exceeds in the last fiscal year the amount of 40.000 millions of Pesetas (240 millions EUR) as long as at least two of the participants achieve individually a sales volume of more than 10.000 millions Pesetas (60 millions EUR) in Spain.*

*Q10. Please list any major merger investigations since 2000 and their outcomes to date.*

*Year 2000: CAJA DE NAVARRA and CAJA DE PAMPLONA; CARREFOUR and PROMODES; UNIÓN FENOSA and HIDROCANTÁBRICO; SOLVAY and EVCI; PROSEGUR and BLINDADOS DEL NORTE; MAHON and SAN MIGUEL; ENDESA and IBERDROLA; BANCO HERRERO and BANCO DE SABADELL; ROCA and LAUFEN.*

*Year 2001: NUTRECO and AGROVIC; IBERDROLA and BERRUELA; REPSOL, RACE and AUTOCLUB; GRUPO CORREO and PRENSA ESPAÑOLA.*

*Year 2002: LEGISTA and BURGAL; CAPRABO and ENACO; IER and THALES-ATB; DANA AUTOMOCIÓN and GKN AYRA CARDAN; DELOITTE and ANDERSEN; SOGECABLE and VIA DIGITAL; ACCIONA and TRASMEDITERRÁNEA;*

*Year 2003: LOGISTA and BURGAL; ENDESA and HIDROFAMICELL; IBERNOVA and GAMESA; LEROY MERLIN and BRICO; DIA and EL ÁRBOL; GAS NATURAL and IBERDROLA; ABERTIS TELECOM and RETEVISION; IBERDROLA and DISTRIBUIDORA VILLATOYA; CAPRABO and ALCOSTO;*

*Year 2004: BALEARIA and UMAFISA; INTUR and EURO STEWART; DISA and SHELL;*