

(Non-official Text)

5940 Act 3/2013 of 4 June 2013 creating the National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia).

I, JUAN CARLOS I.

KING OF SPAIN

Announce to all persons by these presents

That the Parliament has passed and I have ratified the following Act.

PREAMBLE

I

The efficient functioning of markets and the existence of effective competition are basic principles underpinning the market economy, which drives and encourages factor productivity and overall competitiveness of the economy to the benefit of consumers. Those principles are also of vital importance for the design and definition of policies regulating economic activities.

Against that background, the role of supervisory bodies is to ensure the correct functioning of specific sectors of economic activity, submit proposals on technical matters and resolve disputes between businesses and the authorities.

The existence of independent bodies is warranted by the complex nature — in certain sectors which are mainly characterised by the potential existence of market failures — of regulatory and supervisory tasks, and by the need to have authorities whose working methods are viewed by operators as being essentially technical and unaffected by any other type of motivation.

The origins of independent regulatory bodies date back to 1887, when the Congress of the United States of America conferred responsibility for regulation of the railway sector on an independent entity: the Interstate Commerce Commission (ICC). Thus, the creation of the Federal Trade Commission in 1914 and the push towards anti-monopoly policies ushered in a process that would subsequently become a permanent fixture. The American experience of independent regulatory commissions became entrenched as the standard form of administrative action in the United States, namely administration by agencies, and responded to the needs inherent in the US legal system and structure, needs which were not evident in European legal systems.

On this side of the Atlantic, European countries corrected failures in the operation of their markets through the nationalisation of undertakings providing public services or the creation of public companies for that purpose. Furthermore, European trends in the 1970s culminated in independent organisational structures in the search for neutrality and technical specialisation in sectors where very important social interests were present, such as the stock markets, the protection of IT information and the audiovisual area.

In convergence with the above trends, it was not until the 1980s and 1990s that a broad spectrum of countries from what is now the European Union, including Spain, driven by successive directives regulating specific network sectors, such as energy, telecommunication

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and transport, embarked upon an intense process of deregulation in the context of the single market, resulting in reforms aimed at ensuring effective competition in the marketplace, the provision of universal services and the removal of barriers to entry and price restrictions.

Against that background, a wide-ranging debate took place on the extent to which the new markets being opened to competition should be subject to national competition rules and authorities or whether, in contrast, new independent sectoral bodies should be responsible for supervision.

Spain opted for the separation of functions. The sectoral authorities assumed responsibility for ensuring the vertical separation of undertakings between regulated sectors and sectors open to competition and for resolving disputes arising between different operators, especially in cases where it was necessary to guarantee free access to key infrastructure. In addition, the new bodies were invested with inspection and penalty powers, as well as with various functions of proposing economic and technical legislation, and conducting studies and reports on the sector.

The Competition Authority, for its part, carried out what was known as *ex post* control of free competition, investigating and imposing penalties on conduct which contravened antitrust legislation, and *ex ante* control to scrutinise concentration operations.

Now that a number of years has passed since that system took root, which has undoubtedly been beneficial for the process of deregulation and transition to competition in regulated sectors, a review is now due.

The number of bodies has risen considerably since 2011. Until 2011, there were five in number: The National Energy Commission (Comisión Nacional de Energía), the Telecommunications Market Commission (Comisión del Mercado de las Telecomunicaciones), the National Competition Commission (Comisión Nacional de la Competencia), the Railway Regulation Committee (Comité de Regulación Ferroviaria) and the National Postal Commission (Comisión Nacional del Sector Postal). The Sustainable Economy Act 2/2011 of 4 March 2011 made provision for the creation of a sixth body to regulate the transport sector. At a later point in time, approval was secured to create the National Gaming Commission (Comisión Nacional del Juego) and the Airport Economic Regulation Commission (Comisión de Regulación Económica Aeroportuaria). Those bodies are in addition to the State Council of Audiovisual Media (Consejo Estatal de Medios Audiovisuales), regulated by General Audiovisual Communication Act 7/2010 of 31 March 2010.

When considering how to revise the system, the first element to be borne in mind is something that must be a basic feature not only of all markets but also of all sectors of economic activity: legal certainty and institutional trust. These are achieved by clear rules, a rigorous institutional framework and principles of conduct which all economic agents are aware of and can foresee. The larger the degree of proliferation of bodies with supervisory powers over the same activity, the greater the risk of unnecessary overlap in the monitoring of individual operations and of conflicting decisions on the same issue.

Secondly, and of particular importance given the climate of austerity in which public authorities currently find themselves, there must be exploited the economies of scale deriving from the existence of identical or comparable supervision duties, similar methodologies and procedures and, above all, knowledge and experience, the pooling of which is a must.

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Thirdly, institutions must adapt themselves to the changes that have taken place in the sectors under their supervision. An institutional response must be given to technological progress, to avoid the maintenance of obsolete authorities regulating specific aspects of sectors which, on account of having undergone radical technological or economic changes, should be regulated or supervised in an integrated comprehensive manner.

In recent years, there has been a clear trend at international level towards the amalgamation of authorities covering the same sector or closely related sectors, transitioning from a uni-sectoral model to a model of organisational, material or functional convergence in similar activities or a multi-sectoral model for sectors with network industries. The advantages that prompted the adoption of those models encompass the optimisation of economies of scale and ensuring that regulation consistently focuses on all network industries. It has also been argued that the risk of regulatory capture by both the private sector and by the Government is less in the case of multi-sectoral authorities, as the relative importance of a given sector or ministry for the authority is diminished.

Lastly, in some countries, such as the Netherlands, authorities regulating specific sectors have been integrated into the antitrust authority. Doing so increases efficiency in the supervision of market competition, due to the immediate availability of the knowledge held by sectoral regulators, which continuously oversee their respective sectors using more powerful data processing instruments.

The current situation in Spain — where approval was given for the creation of eight supervisory bodies for markets for goods and services and where the establishment of a further body was envisaged — has to evolve in the same direction as the models being implemented in neighbouring countries. The philosophy underpinning the existence of all of these bodies is essentially to ensure that markets are competitive and services are of a high quality, to the benefit of citizens. The presence of all of these individual entities, with their respective governing bodies and material resources, calls for an in-depth reform that takes account of the existence of functions, procedures, methodologies and know-how which given their similarity could be implemented or applied by a single institution.

European legislation makes provision for the existence of independent national regulators, endowing them with specific duties, objectives and powers. However, the powers of the Spanish commissions are wider than required under European law as regards sectoral policy, the grant and revocation of licences for the pursuit of certain activities, the provision of advice to the Government and studies on and research into sectors.

Accordingly, the purpose of this Act is to create the National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia), which will centralise functions relating to the proper functioning of the markets and sectors under the supervision of the National Energy Commission, the Telecommunications Market Commission, the National Competition Commission, the Railway Regulation Committee, the National Postal Commission, the Airport Economic Regulation Commission and the State Council of Audiovisual Media.

II

The Act comprises thirty-nine articles divided into five chapters, eighteen additional provisions, ten transitional provisions, one repealing provision, eleven final provisions and one schedule.

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Chapter I, 'Nature and legal regime', creates the National Markets and Competition Commission for the purpose of safeguarding, preserving and promoting proper market functioning, as well as transparency and the existence of effective competition across all production sectors and markets to the benefit of consumers and users. The Commission is structured as a public body of the kind provided for in Additional Provision Ten of Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government.

The Commission has separate legal personality and full public and private capacity. It shall be fully subject to the law, be structurally and functionally autonomous, and be fully independent of the Government, of public authorities and of all business and commercial interests. Notwithstanding its independence, the Commission shall safeguard the uniform application of sectoral and general legislation on competition in Spain through cooperation with Central Government, with the autonomous communities, with the courts, with the institutions and bodies of the European Union, especially the European Commission, and with the competent authorities and bodies of other Member States in the performance of their activities.

Chapter II, 'Functions', describes the functions of the National Markets and Competition Commission. Those functions can be divided into two main groups. First, the Commission shall exercise functions of a general nature across markets as a whole to defend and promote competition therein. Those functions involve supervision as well as arbitration and consultation.

It should be noted that the competition defence functions set out in Competition Act 15/2007 of 3 July 2007 are allocated, in their entirety, to the National Markets and Competition Commission. The present reform will not affect the substantive content of Act 15/2007 of 3 July 2007, which shall remain untouched except as regards the institutional scheme for its implementation.

Second, the Commission shall exercise functions of a special nature in specific regulated sectors and markets, where the application of antitrust legislation is not sufficient to safeguard the existence of effective competition. Those sectors or areas shall be as follows: electronic and audiovisual communications; the electricity and natural gas markets; the postal sector; airport charges; and certain aspects of the railway sector.

The functions that the Commission will exercise in those sectors were traditionally discharged by sectoral regulators, due to the need for independence vis-à-vis the public interests that may be present. In particular, the functions cover supervision and control, as well as dispute resolution functions, which are wider and more flexible than simple arbitration functions.

With respect to the functions to be performed by the new body, it should be pointed out that there has been a reorganisation of functions between the National Markets and Competition Commission and the relevant ministerial departments. Additional Provisions Six to Eleven lay down the specific functions for which each Ministry shall be responsible. With this functional restructuring, the Act seeks to ensure, above all, that public intervention is effective. As a general rule, the Ministries become responsible for all tasks of an administrative nature hitherto performed by the regulatory bodies, for which no special independence is required, as well as tasks which contribute only minimally to the achievement of the Commission's objectives. This enables the new National Markets and Competition Commission to concentrate on functions that really serve its fundamental purpose, to safeguard the proper functioning of markets and free competition.

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Chapter III, 'Organisation and functioning', regulates the composition, rules on appointment and vacation of office, and functions of the governing bodies of the Commission, comprising the Council and President of the Commission.

The Council is established as the collective decision-making body of the Commission and its functions include resolving and ruling on the matters assigned to the Commission and resolving infringement proceedings. The Council acts in plenum and in chamber, with one chamber dedicated to competition issues and another dedicated to regulatory supervision.

The Council comprises ten members: President, Vice-President and eight members. All members of the Council, including the President and Vice-President, are appointed by the Government by Royal Decree, with the Spanish Congress of Deputies (hereinafter, Congress) able to veto the appointment of proposed candidates. The introduction of this new requirement for the Congress' consent enhances the democratic legitimacy of the Commission. Council members shall hold office for six years and may not be re-elected.

Chapter III also regulates the basic structure of the managing bodies, establishing four investigations divisions: one for the investigation of antitrust cases and three for the investigation of regulatory supervision matters in the sectors of telecommunications and audiovisual services, energy and, lastly, transport and postal services.

It should be underscored that the Competition Division has been assigned all of the investigation functions set out in Act 15/2007 of 3 July 2007 which, as at present, shall continue to be exercised in a manner consistent with the integrity, coherence and horizontal nature of antitrust legislation.

Finally, Chapter III lays down the legal basis for the rules on the functioning of the Commission, which shall be implemented by the Government by Royal Decree, with the approval of the Organisational Charter of the National Markets and Competition Commission, and by the Council of the Commission itself, through the Regulations on internal functioning. The Charter shall determine the internal structure of the Divisions and other areas of responsibility, ensuring that investigation and resolution functions are properly separated.

Chapter IV, 'Rules of conduct and powers', regulates key aspects relating to inspection and supervision powers, penalty powers, the rules on contracts and staff, and economic-financial, asset and budgetary rules. Lastly, in order to safeguard the independence of the Commission's decisions, the Act provides that resolutions adopted by the Council, both in plenum and in chamber, shall exhaust administrative proceedings and may only be challenged before the judicial review courts.

Chapter V, 'Transparency and responsibility', lays down all of the matters that the Commission must make public and regulates the control to be exercised by the Lower and Upper Houses of the Spanish Parliament over the Commission. The issues regulated by this chapter are largely drawn from the new developments in this area introduced by Sustainable Economy Act 2/2011 of 4 March 2011.

The transparency of the Commission's actions is a factor which strengthens its legitimacy and contributes to creating the necessary climate of trust in the institution among citizens. In this connection, the Commission is required to publish all of its reports, including its annual report, and its yearly and multi-year plans. The Commission must also publish the resolutions and decisions adopted by the Council and the organisation and functions of each of its bodies. Moreover, it will have an internal supervision body. Parliamentary oversight takes the

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form of appearances by the President before the Congress, which must take place at least once a year.

The additional provisions regulate a series of additional matters designed to facilitate the institutional reform brought about by this Act. They provide for: the establishment of the National Markets and Competition Commission no later than four months after the entry into force of the Act; the closure of the bodies whose functions have been transferred to the Commission; the transfer of ownership of the remaining post-amalgamation assets to Central Government; the functions for which the different ministerial departments are responsible in respect of regulated markets; and the integration of staff from the bodies to be closed into the National Markets and Competition Commission or Central Government, as appropriate.

The transitional provisions, for their part, regulate specific aspects which are necessary for the launch of the new body. These concern: the first term of office of the Council members; the discharge of functions by the regulatory bodies to be closed until such time as the new Commission has entered into operation; the continuance of outstanding proceedings by the Commission or the competent Ministry, as appropriate; the budgets of the Commission; and staff rules.

The repealing provision and final provisions enact the repeals of and amendments to primary legislation affected by the entry into force of the Act. They also contain stipulations on implementation by secondary legislation, authorisation of powers and the entry into force of the Act.

The Schedule lays down the fees and payments of a public nature relating to the activities and services regulated under the Act, which must be paid over to the Public Treasury.

CHAPTER I

Nature and legal regime

Article 1. *The National Markets and Competition Commission.*

1. The National Markets and Competition Commission is established as a public body of the kind provided for in Additional Provision Ten of Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government.

2. The purpose of the National Markets and Competition Commission is to safeguard, preserve and promote the proper functioning, transparency and existence of effective competition across all production sectors and markets to the benefit of consumers and users.

3. For the purposes of the previous paragraph, the National Markets and Competition Commission shall exercise its functions across the whole of Spain and in relation to all economic sectors and markets.

Article 2. *Nature and legal regime*

1. The National Markets and Competition Commission has separate legal personality and full public and private capacity. It acts, in the pursuit of its activities and for the achievement of its aims, with structural and functional autonomy and is fully independent of the Government, of public authorities and of market actors. Moreover, it is subject to parliamentary and judicial oversight.

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2. The National Markets and Competition Commission shall be governed by the provisions of this Act, of Competition Act 15/2007 of 3 July 2007 and of the special legislation of the markets and sectors under its supervision referred to in Articles 6 to 11 of this Act and, secondarily, by Act 30/1992 of 26 November 1992 on Public Authorities and Common Administrative Procedure, by Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government, in accordance with Additional Provision Ten thereof, by General Budget Act 47/2003 of 26 November 2003, and by the remainder of the law.

3. The National Markets and Competition Commission shall have its headquarters in Madrid. The Royal Decree approving the Organisational Charter may make provision for the existence of other offices.

4. The National Markets and Competition Commission is attached to the Ministry of Economy and Competitiveness, notwithstanding its relations with the competent Ministries in each area in the exercise of the functions referred to in Articles 5 to 12 of this Act.

Article 3. Functional independence and relations with public and private entities.

1. The National Markets and Competition Commission shall act, in the pursuit of its activities and for the achievement of its aims, independently of all business or commercial interests.

2. In the performance of the functions conferred on it by legislation, and notwithstanding cooperation with other bodies and the powers of managing general policies of the Government exercised through its legislative capacity, neither the staff of nor members of the bodies of the National Markets and Competition Commission may seek or accept instructions from any public or private entity.

Article 4. Institutional coordination and cooperation.

1. The National Markets and Competition Commission shall safeguard the uniform application of sectoral and general legislation on competition in Spain through coordination with the competent bodies of the autonomous communities and cooperation with Central Government and the courts.

2. In addition, the National Markets and Competition Commission shall regularly and periodically cooperate with institutions and bodies of the European Union, especially the European Commission, and with competent authorities and bodies of other Member States, thereby encouraging coordination between their respective actions on the terms provided for in the applicable legislation. In particular, it shall encourage collaboration and cooperation with the Agency for the Cooperation of Energy Regulators and with the Body of European Regulators for Electronic Communications.

CHAPTER II

Functions

Article 5. Functions of the National Markets and Competition Commission of a general nature and to preserve and promote effective competition in all production sectors and markets.

1. In order to safeguard, preserve and promote the proper functioning, transparency and existence of effective competition in all production sectors and markets to the benefit of consumers and users, the National Markets and Competition Commission shall perform the following functions:

- a) To supervise and oversee all economic sectors and markets.

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b) To perform arbitration functions, both at law and in equity, which may be submitted to it by economic operators under Arbitration Act 60/2003 of 23 December 2003, and to perform such functions as may be entrusted to it by law, notwithstanding the powers of the competent autonomous community bodies in their respective fields.

The exercise of this arbitration function shall not be of a public nature. Arbitration proceedings shall be governed by Royal Decree and shall be consistent with the basic principles of fair hearing, freedom of evidence, adversarial process and equality.

c) To apply the provisions of Act 15/2007 of 3 July 2007 on conduct which impedes, restricts and distorts competition, notwithstanding the powers of the autonomous community competition authorities in their respective fields or those inherent in the competent jurisdiction.

d) To apply the provisions of Act 15/2007 of 3 July 2007 on the control of economic concentrations.

e) To apply the provisions of Act 15/2007 of 3 July 2007 on State aid.

f) To apply, in Spain, Articles 101 and 102 of the Treaty on the Functioning of the European Union and the law deriving therefrom, notwithstanding the relevant powers within the remit of the competent jurisdiction.

g) To adopt measures and decisions to apply cooperation and case allocation mechanisms with the European Union and other national competition commissions of the Member States as laid down in Community legislation and, in particular, in Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (now Articles 101 and 102 of the Treaty on the Functioning of the European Union) and in Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and its implementing legislation.

h) To promote and conduct studies and research work on competition and to prepare general reports on economic sectors.

i) To perform any other functions that may be conferred on it by Act or Royal Decree.

2. The National Markets and Competition Commission shall act as a consultative body on matters relating to the maintenance of effective competition and the good functioning of economic sectors and the markets. In particular, it may be consulted by legislative chambers, the Government, ministerial departments, the autonomous communities, local government corporations, professional associations, chambers of commerce, business associations and organisations of consumers and users. In the exercise of this function, it shall take the following action:

a) To participate, through the issuance of reports, in the process for drawing up rules which affect the scope of its powers in sectors under its supervision, competition legislation and its legal regime.

b) To report on the criteria used for quantifying the compensation that perpetrators of the conduct provided for in Articles 1, 2 and 3 of Act 15/2007 of 3 July 2007 must pay to complainants and third parties who have been harmed as a result of such conduct, when called upon to do so by the competent court.

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c) To report on all of the matters referred to in Article 16 of Act 15/2007 of 3 July 2007 and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty on the Functioning of the European Union with regard to the mechanisms for cooperating with national courts.

d) To report on any other matters in respect of which it is obliged to report, in accordance with the provisions laid down in the legislation in force.

3. Notwithstanding the provisions of paragraphs 1 and 2, in the electronic and audiovisual communications markets, in the electricity and natural gas sectors, in the railway sector, in the area of airport charges and in the postal market, the National Markets and Competition Commission shall apply Articles 6 to 11 of this Act.

4. In discharging its functions, the National Markets and Competition Commission has standing to challenge, before the competent courts, acts of public authorities subject to administrative law and general provisions of subordinate legislation which impede the maintenance of effective competition in the markets.

5. For the exercise of its functions, the National Markets and Competition Commission shall have, in accordance with the provisions of Chapter IV of this Act on budgetary matters, adequate funding and human resources, including those necessary to participate actively in and contribute to the activities of the Agency for the Cooperation of Energy Regulators and the Body of European Regulators for Electronic Communications.

Article 6. *Supervision and oversight of the electronic communications market.*

The National Markets and Competition Commission shall supervise and oversee the proper functioning of the electronic communications markets. In particular, it shall exercise the following functions:

1. To define and analyse the relevant markets relating to electronic communications networks and services, including the relevant wholesale and retail markets, and their geographical scope, whose characteristics may warrant the imposition of specific obligations, on the terms set forth in General Telecommunications Act 32/2003 of 3 November 2003 and its implementing legislation.

2. To identify the operator or operators that possess significant power in the market when the analysis of the relevant markets shows that a climate of effective competition is not being developed.

3. To establish, where appropriate, specific obligations for operators with significant power in the relevant markets, on the terms set forth in Act 32/2003 of 3 November 2003 and its implementing legislation.

4. To resolve the disputes in the electronic communications markets referred to in Article 12(1)(a) of this Act.

5. To perform the functions conferred by Act 32/2003 of 3 November 2003 and its implementing legislation.

6. To perform any other functions that may be conferred on it by Act or Royal Decree.

Article 7. *Supervision and oversight in the electricity sector and the natural gas sector.*

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The National Markets and Competition Commission shall supervise and oversee the proper functioning of the electricity sector and the natural gas sector. In particular, it shall exercise the following functions:

1. To establish, by means of circulars issued under Article 30 of this Act, after a hearing stage and employing criteria of economic efficiency, transparency, objectivity and non-discrimination:

a) The methodology for calculating the portion of the tolls for access to electricity networks relating to transmission and distribution costs, as established in Article 17(1) of Electricity Sector Act 54/1997 of 27 November 1997, in accordance with the tariff and remuneration framework set out in that Act and in its implementing legislation.

For that purpose, the toll calculation methodology is understood to mean the efficient allocation of the transmission and distribution costs to consumers and generators.

b) The methodology relating to access to cross-border infrastructure, including procedures to allocate capacity and manage congestion, in accordance with the legislative framework for access to infrastructure and for the functioning of the electricity production market and such criteria as may be determined by secondary legislation.

c) Methodologies relating to the provision of balancing services between systems managed by different system operators, which, from the standpoint of lower costs, in a fair and non-discriminatory manner, provide suitable incentives to encourage network users to balance their production and consumption, in accordance with the legislative framework for the proper functioning of the electricity system.

d) The methodology for the calculation of tolls and levies for the basic services of access to gas facilities: transmission and distribution, regasification, storage and tank filling, within the tariff and remuneration framework set out in Hydrocarbon Sector Act 34/1998 of 7 October 1998 and in its implementing legislation.

e) The methodology relating to the provision of balancing services which provide suitable incentives to encourage network users to balance their gas system incomings and outgoings within the legislative framework for access and the functioning of the system defined in Act 34/1998 of 7 October 1998 and in its implementing legislation.

f) The methodology relating to access to cross-border infrastructure, including procedures to allocate capacity and manage congestion, within the legislative framework for access and the functioning of the system defined in Act 34/1998 of 7 October 1998 and in its implementing legislation.

2. To supervise the management and allocation of connecting capacity, the time spent by transmission and distribution companies in carrying out connections and repairs, as well as the mechanisms designed to ease congestion in network capacity.

For those purposes, it shall ensure that those who manage the transmission network and, where appropriate, distribution network suitably publish the information necessary on connections, the use of the network and the allocation of capacity to interested parties.

3. To supervise and, where appropriate, certify the separation of activities of transmission, regasification, distribution, storage and supply in the gas sector, and of the activities of generation, transmission, distribution and supply in the electricity sector, and, in

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particular, their functional separation and the actual separation of accounts in order to avoid overlapping subsidies between those activities.

4. To ensure compliance with the legislation and procedures that may be established in relation to switching supplier.

5. In the natural gas sector, to supervise the conditions for access to storage pools, including underground storage pools, liquid natural gas (LNG) tanks and gas stored in pipelines, as well as other auxiliary services. Moreover, it shall supervise compliance by owners with the requirements that may be established for non-basic storage pools of natural gas.

6. To supervise the conditions and charges for connection applicable to new producers of electricity.

7. To supervise the investment plans of transmission network managers, in particular as regards their adaptation to the network development plan in the European Union, with authority to issue recommendations for their amendment.

8. To safeguard freedom of contract as regards interruptible supply contracts and long-term contracts provided that they are compatible with the legislation in force and with European Union law.

9. To ensure compliance with the rules on safety and reliability of networks.

10. To ensure that transmitters and distributors and, where appropriate, network owners and those who manage transmission and distribution networks comply with the obligations imposed by the applicable legislation, including on cross-border matters. Moreover, it shall ensure that actors in the gas and electricity markets correctly apply the provisions of European Union law.

11. To supervise the adaptation of prices and conditions of supply to end consumers to the provisions of Act 34/1998 of 7 October 1998 and Act 54/1997 of 27 November 1997 and their implementing legislation and to publish recommendations, at least once a year, in order to adapt the prices of supplies to public service obligations and to consumer protection.

12. To ensure that customers can access data on their consumption in an understandable and harmonised format and in a speedy manner.

13. To identify those responsible for shortcomings in the supply to users, proposing the measures that should be adopted.

14. To guarantee transparency and competition in the electricity sector and in the natural gas sector, including the level of wholesale prices, and to ensure that gas and electricity companies comply with their obligations of transparency.

15. To supervise the degree and effectiveness of market openness and competition, in both the wholesale and retail markets, including, among others, claims raised by electricity and natural gas consumers and regulated auctions of forward contracts for electricity.

For those purposes, it may take account of information provided by the Ministry of Industry, Energy and Tourism, to which reference is made in Additional Provision Eight.

16. To supervise investments in generation capacity so as to ensure security of supply.

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17. To supervise relations between the Independent Network Manager and the owner of the facilities, to act as a body for the resolution of disputes between them, and to approve the investments of the Independent Network Manager.

18. To supervise technical cooperation between managers of electricity and gas transmission networks and managers from third countries.

19. To supervise measures adopted by managers of the distribution network in order to ensure that discriminatory conduct is excluded.

20. To contribute to the compatibility of systems for the exchange of information in market processes at regional level.

21. To determine, on an annual basis, the main and dominant operators, as well as the remaining functions relating to those operators in accordance with the provisions of Royal Decree-Act 6/2000 of 23 June 2000 on Urgent Measures to Boost Competition in the Markets for Goods and Services.

22. In relation to the deficit of regulated activities and their financing mechanisms, to maintain and provide such information as may be determined, to issue reports, statements, certifications and communications as may be required, and to perform the calculations necessary in coordination with the Ministry of Industry, Energy and Tourism, as well as to provide technical advice to the Inter-Ministerial Committee of the Electricity System Tariff Deficit Securitisation Fund in accordance with the provisions of Additional Provision Twenty-One of Act 54/1997 of 27 November 1997, and the legislation implementing the regulation of the process of management and securitisation of the electricity system deficit.

23. To manage the system for guaranteeing the origin of electricity from renewable sources and from high-efficiency cogeneration.

24. To publish the end prices of the electricity market, based on information from the market operator and system operator.

25. In the area of consumer protection, to manage the system for comparing prices for supplies of electricity and natural gas on the basis of offers made by wholesalers, and to prepare reports comparing and tracking the performance of electricity and gas prices and of the retail markets.

26. To act as supervisory body in relation to auctions for the acquisition of natural gas for the establishment of the last resort tariff, the minimum gas reserve of tanks and pipelines and the cushion gas of underground storage pools, as well as the capacity of basic storage pools, when the legislation in the field so provides.

27. To draw up standard form formal applications for access to gas system facilities and access contracts, which it will submit to the Directorate-General for Energy Policy and Mining for approval or amendment.

28. To draw up standard forms for publication of the contracted and available capacity, as well as the methodology for the determination thereof, which it will submit to the Directorate-General for Energy Policy and Mining for approval or amendment.

29. To approve contracts between the owners of facilities and the Independent Network Manager laying down the contractual conditions and responsibilities of each of them.

30. To process applications for exempting third-party access to gas facilities.

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31. To issue the mandatory report and proposal in authorisations for the sale of natural gas in the cases provided for in Article 80 of Act 34/1998 of 7 October 1998.

32. To monitor compliance with the requirements incumbent on natural gas and electricity wholesalers, as well as on charging station managers and direct consumers in the market.

33. To calculate, on an annual basis, the balance of supply losses in each transmission network.

34. To issue reports in applications for authorisation, amendment or closure of facilities, in the process of energy planning, in applications for approval or authorisation of economic or remuneration regimes (island and non-mainland electricity systems, distribution, transmission, extraordinary facilities, among others), in the area of supply quality and losses, as well as when required in the area of electricity measures in accordance with the provisions of Act 54/1997 of 27 November 1997 and its implementing legislation. Moreover, as regards transmission and distribution activities, to report on proposals for the remuneration of activities.

35. To report on applications for authorisation, amendment, transfer or closure of facilities of the basic natural gas network, as well as on procedures for their award. To issue reports on the conditions of quality of supply and quality of service, as well as the consequences of non-compliance with such conditions, the Rules on Technical Management of the System and its Detailed Protocols, the remuneration costs of facilities and the processes for the planning of facilities in accordance with the provisions of Act 34/1998 of 7 October 1998 and its implementing legislation.

36. To issue circulars to implement and enforce the rules contained in Royal Decrees and Orders of the Ministry of Industry, Energy and Tourism which authorise it for that purpose and which are handed down in implementation of legislation on energy.

37. To perform any other functions that may be conferred on it by Act or Royal Decree.

Article 8. Supervision and oversight of the postal market.

The National Markets and Competition Commission shall supervise and oversee the proper functioning of the postal market. In particular, it shall exercise the following functions:

1. To guarantee the existence of a universal postal service, in compliance with postal legislation and free competition in the sector, exercising the functions and powers conferred on it by the legislation in force, notwithstanding the provisions of Additional Provision Eleven of this Act.

2. To verify the analytical accounting of the appointed operator and the net cost of the universal postal service and to determine the level of the unfair financial burden involved in the provision of that service in accordance with the provisions of Chapter III of Title III of Act 43/2010 of 30 December 2010 on the Universal Postal Service, on the Rights of Users and on the Postal Market, and the provisions of its implementing legislation.

3. To manage the fund for financing the universal postal service and the obligations of a public nature attached to its financing in accordance with the provisions of Chapter III of Title III of Act 43/2010 of 30 December 2010, and the provisions of its implementing legislation.

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4. To supervise and oversee the application of the legislation in force on access to the network and to other infrastructure and postal services, in accordance with the provisions of Title V of Act 43/2010 of 30 December 2010, and the provisions of its implementing legislation.

5. To monitor and measure the conditions of the provision of the universal postal service, in accordance with the provisions of Chapter II of Title III of Act 43/2010 of 30 December 2010, and the provisions of its implementing legislation.

6. To manage and monitor the use of the promotional census as defined in Article 31 of Organic Act 15/1999 of 13 December 1999 on the Protection of Personal Data, in accordance with such provisions as may be established by secondary legislation.

7. To issue circulars for entities operating in the postal sector, which shall be binding following publication in the Official State Gazette.

8. To issue the report provided for in Additional Provision Two of Act 43/2010 of 30 December 2010, for monitoring the conditions of the provision of the universal postal service.

9. To perform any other functions that may be conferred on it by Act or Royal Decree.

Article 9. Supervision and oversight of the audiovisual communication market.

The National Markets and Competition Commission shall supervise and oversee the proper functioning of the audiovisual communication market. In particular, it shall exercise the following functions:

1. To monitor compliance by providers of State-wide television communication services, and by other providers to which they may apply, with the obligations relating to the annual broadcast of European works and advance financing for the production of works of this kind on the terms set forth in Article 5 of General Audiovisual Communication Act 7/2010 of 31 March 2010.

2. To monitor compliance with the obligations imposed in order to ensure transparency in audiovisual communications, in accordance with the provisions of Article 6 of Act 7/2010 of 31 March 2010.

3. To monitor compliance with the obligations imposed in order to give effect to the rights of minors and persons with disability, in accordance with the provisions of Articles 7 and 8 of Act 7/2010 of 31 March 2010. In the exercise of this function, the Commission shall coordinate with the ministerial department with competence in the area of gaming with respect to its powers in the area of advertising, sponsoring and the marketing of gaming activities, for the purposes of giving effect to the rights of minors and persons with disability.

4. To supervise the compatibility of audiovisual content with the rules in force and the codes of self-regulation on the terms set forth in Article 9 of Act 7/2010 of 31 March 2010.

5. To ensure compliance with the codes of self-regulation on audiovisual content, verifying their conformity with the legislation in force, on the terms set forth in Article 12 of Act 7/2010 of 31 March 2010.

6. To monitor compliance with the obligations, prohibitions and limits on the exercise of the right to carry out commercial audiovisual communications imposed by Articles 13 to 18 of Act 7/2010 of 31 March 2010.

(Non-official Text)

7. To supervise compliance with the obligations and limits imposed by the exclusive contracting of audiovisual content, the broadcast of content included in the catalogue of events of general interest and the sale and purchase of exclusive rights to ordinary Spanish football competitions, on the terms provided for in Articles 19 to 21 of Act 7/2010 of 31 March 2010, notwithstanding the provisions set forth in Additional Provision Twelve of this Act.

8. To supervise fulfilment of the public service mission entrusted to providers of the public service of audiovisual communication at State level, as well as the sufficiency of public resources allocated for that purpose, in accordance with Title IV of Act 7/2010 of 31 March 2010.

9. To guarantee the freedom to receive, in Spain, audiovisual services whose holders are established in a Member State of the European Union, adopting the measures provided for in Article 38 of Act 7/2010 of 31 March 2010, when those services seriously and repeatedly infringe legislation on the protection of minors in view of the audiovisual programming schedule or incite hatred on the grounds of race, gender, religion or nationality.

10. To adopt measures to safeguard Spanish legislation when the provider of a televised audiovisual communication service established in another Member State of the European Union entirely or mainly directs its service at Spain and has established itself in the Member State in question to circumvent stricter Spanish rules, in accordance with the procedure provided for in Article 39 of Act 7/2010 of 31 March 2010.

11. To decide on the non-advertising nature of public service advertisements or charitable advertisements, following an application by the interested parties, in accordance with the provisions of Additional Provision Seven of Act 7/2010 of 31 March 2010.

12. To perform any other functions that may be conferred on it by Act or Royal Decree.

Article 10. *Supervision and oversight of airport charges.*

The National Markets and Competition Commission shall exercise the following functions in the area of airport charges.

1. To supervise performance of the transparency and consultation procedure carried out by the airport manager, in accordance with the provisions of Articles 98 and 102 of Air Safety Act 21/2003 of 7 July 2003, and to declare the proposals of the airport managing entity to be inadmissible or to declare the modifications to the charges established by the airport managing entity to be inapplicable, where appropriate, when the proposal or the modifications to the charges were carried out without the procedure in question having taken place.

2. To ensure that proposals for the modification or revision of airport charges submitted by the airport manager are in accordance with the provisions of Article 101 of Act 21/2003 of 7 July 2003.

3. To perform any other functions that may be conferred on it by Act or Royal Decree.

Article 11. *Supervision and oversight in the railway sector.*

The National Markets and Competition Commission shall supervise and oversee the proper functioning of the railway sector. In particular, it shall exercise the following functions:

(Non-official Text)

1. To safeguard the plurality of offer in the provision of services on the General Interest Railway Network and its areas of railway service, and to ensure that such services are provided in objective, transparent and non-discriminatory conditions.
2. To ensure the equal treatment of companies and candidates in the conditions for access to the railway services market.
3. To supervise negotiations between railway companies or candidates and infrastructure administrators on levies and charges and to intervene in such negotiations when it is foreseen that their outcome could to contravene the legislative provisions in force.
4. To ensure that railway levies and charges comply with the provisions of Railway Sector Act 39/2003 of 17 November 2003 and are not discriminatory.
5. To determine, at the request of the competent authorities or of railway companies or interested candidates, that the main purpose of an international passenger railway transport service is to transport passengers between stations in Spain and stations in other Member States of the European Union.
6. To determine whether the economic balance of contracts for public railway services may be upset when the stations in Spain where passengers are to board and alight are affected by the carrying out of international railway passenger transport services.
7. To report on proposed resolutions, when so requested by the Ministry of Public Works and Infrastructure (Ministerio de Fomento), in procedures for the award of authorisation for the provision of railway transport services declared to be of public interest.
8. To perform any other functions that may be conferred on it by Act or Royal Decree.

Article 12. *Resolution of disputes.*

1. The National Markets and Competition Commission shall resolve disputes raised before it by economic operators in the following cases:
 - a) In the electronic communications markets, the National Markets and Competition Commission shall resolve disputes arising in relation to the obligations existing pursuant to Act 32/2003 of 3 November 2003, and its implementing legislation, between operators or between operators and other entities which, in conformity with the provisions of that Act, benefit from the obligations of access and connection, in accordance with the definition of the concepts of access and connection in Schedule II to that Act. In particular, it shall resolve:
 - i) Disputes concerning access, connection and interoperability deriving from obligations which, as the case may be, are the result of the steps referred to in Article 11(3) and (4) of Act 32/2003 of 3 November 2003, as well as the specific obligations referred to in Article 13 of that Act.
 - ii) Disputes between operators concerning the manner in which to defray costs as a result of retaining the telephone numbers referred to in Article 18 of Act 32/2003 of 3 November 2003.
 - iii) Disputes between operators in relation to the conditions of shared used referred to in Article 30 of Act 32/2003 of 3 November 2003.
 - iv) Disputes arising between providers of telephone hotline services and operators of fixed public telephone networks, in accordance with Order CTE/711/2002 of 26 March 2002

(Non-official Text)

establishing the conditions for the provision of telephone hotline services covering listed subscribers.

v) Disputes arising on the conditions under which the wholesale service of access to frequency bands shall be offered in accordance with Article 4(6) of Royal Decree 458/2011 of 1 April 2011 on actions in relation to the radio spectrum for the development of digital society.

vi) Disputes concerning roaming.

vii) Cross-border disputes between providers of networks or services of electronic communications where one party is based in another Member State of the European Union, as referred to in Article 14(2) of Act 32/2003 of 3 November 2003.

viii) Disputes concerning the management of digital multiplexers between providers of audiovisual communication services.

b) In the electricity and gas markets, the National Markets and Competition Commission shall resolve the following disputes:

i) Disputes raised before it involving contracts concerning third-party access to transmission and, as the case may be, distribution networks, on such terms as may be established by secondary legislation.

ii) Disputes raised before it concerning the economic and technical management of the system and transmission, including connections between facilities.

c) In the area of airport charges, the National Markets and Competition Commission shall resolve appeals against decisions taken by companies holding concessions for airport services concerning modifications to the system or the level of their airport charges. Those appeals may be filed by associations or organisations representing companies which use the airport or, on such terms as may be implemented by secondary legislation, they may be filed by individual companies which use the airport. The resolution shall include the appropriate revised modification of the charge in question, which shall replace the content of the decision of the concession-holder and, as the case may be, the standards in respect of indicators and levels of service quality deemed to be acceptable and consistent with the revised modification of the charge.

In this procedure, the Commission shall check that the decision of the company holding the concession for airport services was taken in accordance with the procedure established in Article 102 of Act 21/2003 of 7 July 2003, that it meets the requirements set forth in Article 103(1) of that Act, and that it is compliant with the principles of non-discrimination, objectivity, efficiency, transparency, cost recovery and maximum flexibility for setting charges within the limits imposed by the revised modification of the charge.

When establishing the revised modification of the charge, the Commission shall seek to avoid excessive fluctuations in airport charges, provided that this is compatible with the other principles set forth in the foregoing paragraphs.

If irregularities are detected in the consultation and transparency procedure set forth in Article 102 of Act 21/2003 of 7 July 2003, which do not result in a review of the modification of the charge, recommendations may be drawn up on the measures to be adopted in future consultations, including the need to extend them to cover companies not represented by representative associations or organisations.

d) In the postal market, the National Markets and Competition Commission shall:

(Non-official Text)

i) Resolve disputes, in accordance with the provisions of Article 48 of Act 43/2010 of 30 December 2010, between the operator appointed to provide the universal postal service and other postal operators providing services in the area of the universal postal service concerning access to the postal network and to other elements of infrastructure and postal services.

ii) Decide on the establishment, in accordance with the provisions of Article 45(3) of Act 43/2010 of 30 December 2010, at the request of the interested operator, of the conditions for access to the postal network if the negotiations between holders of individual authorisations and the appointed operator have not concluded with the execution of a contract.

iii) Resolve disputes, in accordance with the provisions of Article 49 of Act 43/2010 of 30 December 2010, arising between postal operators not appointed to provide the universal postal service.

e) In the audiovisual communication market, the National Markets and Competition Commission shall resolve the following disputes:

i) Disputes arising between agents involved in the audiovisual communication markets concerning matters in respect of which the Commission has competence.

ii) Disputes arising in relation to the transfer of radio and television channels, as referred to in Article 31 of Act 7/2010 of 31 March 2010.

iii) Disputes arising in relation to access to stadiums and sports complexes by providers of radio audiovisual communication services referred to in Article 19(4) of Act 7/2010 of 31 March 2010.

f) In the railway sector, the National Markets and Competition Commission shall be responsible for hearing and deciding on claims filed by railway companies and other candidates concerning the conduct of the railway infrastructure administrator, railway companies and other candidates relating to:

i) The award and use of the safety certificate and compliance with the obligations it entails.

ii) The application of the criteria contained in statements on the network.

iii) The procedures for awarding capacity and their outcome.

iv) The level, structure or application of levies and charges that are or may be demanded from them.

v) Any discriminatory treatment in access to infrastructure or services linked to such infrastructure which arises as a result of acts performed by other railway companies or candidates.

vi) The provision of services in international railway corridors for the transport of goods.

Claims must be filed within one month from the date of the relevant event or decision.

2. In resolving the disputes referred to in the foregoing paragraph, the Commission shall decide on all complaints and shall adopt, at the request of any of the parties, a resolution to bring an end to the conflict as soon as possible and, in any event, no later than three months from the date on which all information was received.

(Non-official Text)

The resolution handed down by the National Markets and Competition Commission in the cases provided for in the foregoing paragraph shall be binding on the parties, notwithstanding any appeals that may be lodged in accordance with Article 36 of this Act.

CHAPTER III

Organisation and functioning

Article 13. Governing bodies

The National Markets and Competition Commission shall exercise its functions through the following governing bodies.

- a) The Council of the National Markets and Competition Commission.
- b) The President of the National Markets and Competition Commission, who shall also be the President of its Council.

Article 14. The Council.

1. The Council is the collective decision-making body in relation to the resolution, consultation, competition advocacy, arbitration and conflict resolution functions conferred on the National Markets and Competition Commission, notwithstanding any delegations it may make.

In all cases, the following powers of the Council cannot be delegated: the approval of the preliminary draft budget of the Commission, its annual report and its yearly or multi-year action plans setting out its objectives and priorities; the approval of the Regulations on internal functioning; the appointment of management staff; the bringing of challenges to acts and provisions referred to in Article 5(4) of this Act; and, as the case may be, the issuance of circulars and communications of a general nature to agents operating in markets subject to regulation or supervision in each case.

2. The Council of the National Markets and Competition Commission is composed of ten members.

3. Council meetings may be attended in a speaking but non-voting capacity by the management staff of the Commission and by any member of non-management staff as may be determined by the President, in accordance with the general criteria that may be decided by the Council by resolution. Council meetings may not be attended by members of the Government or by senior officials of public authorities.

Article 15. Appointment and term of office of Council members.

1. Council members and, among them, the President and Vice-President, shall be appointed by the Government by Royal Decree, at the proposal of the Ministry of the Economy and Competitiveness, from among persons of high standing and recognised professional expertise in the action area of the Commission, after the person proposed for the position has appeared before the relevant committee of the Congress. The Congress, acting through the competent committee and by resolution adopted by absolute majority, may veto the appointment of the proposed candidate within one calendar month from the date of receipt of the relevant communication. If, after the expiry of that period, the Congress has not issued any express statement, the appointments in question shall be deemed to be accepted.

2. Council members shall hold office for six years and may not be re-elected. The renewal of Council members shall take place partially every two years, so that no Council member may remain in office for more than six years.

(Non-official Text)

Article 16. *Functioning of the Council.*

1. The Council acts in plenum or in chamber. The attendance of Council members at Council meetings is obligatory, unless duly justified.

Decisions shall be adopted by majority vote of the attendees. In the event of a tie, the person who presides the meeting shall have the casting vote.

2. At the proposal of the President, the plenum of the Council shall elect a non-member Secretary, who must be a licentiate (licenciado) in law or hold such qualification as may replace that degree, and who must be a tenured civil servant belonging to a division of sub-group A1, at the service of Central Government. He/she shall have the right to speak but not vote and shall be responsible for advising the Council on matters of law, for reporting on the lawfulness of the matters submitted to his/her consideration, as well as for the functions inherent in the secretariat of collective bodies. The legal service of the Commission shall report to the Secretariat of the Council.

3. The rules on the functioning of the Council in plenum and chambers shall be implemented in the Regulations on internal functioning, which shall be approved by the plenum of the Council as provided for in Article 26(4).

Article 17. *The plenum of the Council.*

1. The plenum of the Council is composed of all Council members. It shall be chaired by the President of the National Markets and Competition Commission. If the office of President is vacant, or if the President is absent or ill, he/she shall be replaced by the Vice-President or, failing that, by the member with the longest length of service and, if there are identical lengths of service, by the eldest member.

2. The plenum of the Council shall be deemed to be validly convened with the attendance of the President or his/her replacement, the Secretary, and five members of the Council.

Article 18. *The Chambers of the Council.*

1. The Council shall have two chambers, one dedicated to competition issues and another dedicated to regulatory supervision.

2. Each chamber shall be composed of five members of the Council. The Competition Chamber shall be chaired by the President of the National Markets and Competition Commission and the Regulatory Supervision Chamber by the Vice-President. The plenum of the Council shall determine the assignment of Council members to each chamber and, on the terms established by secondary legislation, shall approve and publish the system of rotation of members between the chambers, including the selection criteria and periodicity of the rotations. Other measures may be adopted in order to ensure the proper functioning of the chambers in the event of exceptional circumstances warranting such action.

3. The President, acting on his/her own initiative or at the request of, at least, half of the Council members, shall be responsible for convening the chambers.

4. The chambers of the Council shall be deemed to be validly convened with the attendance of the President or his/her replacement, the Secretary of the Council and, at least, two Council members.

Article 19. *Functions of the President.*

(Non-official Text)

1. The President of the Council of the National Markets and Competition Commission shall have the following functions:

a) To exercise, in general, the powers conferred on the presidents of administrative collective bodies by Act 30/1992 of 26 November 1992 on Public Authorities and Common Administrative Procedure.

b) To convene the plenum of the Council on his/her own initiative or at the request of, at least, half of the Council members, and to chair the plenum.

c) To act as legal and institutional representative of the Commission.

d) To ensure proper implementation of the acts of the Commission, in accordance with the legal system.

e) To uphold good order and governance in the organisation of the Commission.

f) To promote the acts of the Commission and performance of the functions entrusted to it. In particular, the proposal of yearly or multi-year action plans setting out the Commission's objectives and priorities.

g) To exercise the function of head of staff of the Commission, in accordance with the powers conferred by the specific legislation in that regard.

h) To lead, coordinate, evaluate and supervise the different units of the Commission, notwithstanding the functions of the Council. In particular, to coordinate, with the assistance of the Council Secretariat, the proper functioning of the units of the Commission.

i) To report to the Minister of the Ministry to which the National Markets and Competition Commission is attached on the vacancies that may arise in the Council.

j) To approve acts implementing the Commission's budgets.

k) To exercise the powers for which he/she is responsible in relation to contracts of the Commission.

l) To exercise as many functions as may be delegated to him/her by the Council.

m) To submit the accounts of the Commission, in accordance with Act 47/2003 of 26 November 2003.

n) To appear before the Parliament on the terms provided for in this Act.

o) To chair the Competition Council.

p) To exercise any other functions conferred on him/her by the Charter referred to in Article 26 or the Regulations on internal functioning.

2. If the office of President is vacant, or if the President is absent or ill, he/she shall be replaced by the Vice-President.

Article 20. Functions of the Council of the National Markets and Competition Commission.

The Council of the National Markets and Competition Commission is the decision-making body in relation to the resolution, consultation, competition advocacy, arbitration and conflict resolution functions provided for in this Act. In particular, it is the competent body:

1. To resolve and rule on the matters assigned to the National Markets and Competition Commission under this Act and the legislation in force.

(Non-official Text)

2. To resolve the infringement proceedings provided for in sectoral legislation and in Act 15/2007 of 3 July 2007, and its implementing legislation, when they do not fall within the remit of other bodies of Central Government.

3. To request or order the sending of concentration control proceedings falling under the scope of Act 15/2007 of 3 July 2007 to the European Commission, as provided for in Articles 9 and 22 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

4. To order the lifting of the obligation requiring the execution of an economic concentration to be stayed, in accordance with the Article 9(6) of Act 15/2007 of 3 July 2007.

5. To resolve on compliance with resolutions and decisions on prohibited conduct and concentrations.

6. To adopt the communications provided for in Article 30(3) of this Act, as well as the declarations of non-application provided for in Article 6 of Act 15/2007 of 3 July 2007.

7. To approve the circulars provided for in this Act.

8. To request that cases be investigated.

9. To adopt the reports referred to in Article 5(2)(a), (b) and (c), the reports, studies and work on economic sectors and competition, and the reports on State aid.

10. To order that challenges be brought against the acts and provisions referred to in Article 5(4) of this Act.

11. To approve the Regulations on internal functioning, which will establish its administrative functioning and the structure of its services.

12. To decide on recusals and the disciplining of the President, Vice-President and Council members, and to make findings of incapacity or serious breach of their functions.

13. To appoint and order the removal of management staff, at the proposal of the President of the Council.

14. To appoint and order the removal of the Secretary, at the proposal of the President of the Council.

15. To approve the preliminary draft budget and prepare the accounts of the Commission.

16. To approve the annual report of the Commission, as well as the yearly or multi-year action plans setting out its objectives and priorities.

Article 21. *Powers of the plenum and chambers.*

1. The plenum of the Council of the National Markets and Competition Commission shall deal with the following matters.

a) Matters that, in accordance with the provisions of Article 14(1) of this Act, cannot be delegated by the Council, with the exception of challenging the acts and provisions referred to in Article 5(4).

b) Matters in respect of which there is a difference of opinion between the Competition Chamber and the Regulatory Supervision Chamber.

(Non-official Text)

c) Matters that, on account on their special impact on the competitive functioning of the markets or activities subject to supervision, are expressly claimed by the plenum for itself, by a majority of six votes and at the proposal of the President or three Council members.

2. The chambers shall deal with the matters that are not expressly assigned to the plenum. Secondary legislation shall determine the circumstances in which responsibility for a matter falls to one of the chambers the other chamber must be informed thereof. In any event, a report must be issued in the following cases:

a) By the Competition Chamber, in the proceedings provided for in Articles 6 to 11 of this Act which affect the degree of openness, the transparency, the proper functioning and the existence of effective competition in the markets.

b) By the Regulatory Supervision Chamber, in the competition defence proceedings provided for in Article 5 of this Act which are related to the sectors referred to in Articles 6 to 11.

Article 22. Functions and incompatibilities of Council members.

1. Members of the Council of the National Markets and Competition Commission shall exercise their functions on an exclusive basis and shall be regarded as senior officials of Central Government.

2. Council members may not individually assume executive or management functions in respect of specific areas of the National Markets and Competition Commission, responsibility for which lies with the management staff of the Commission.

3. Council members shall be subject to the rules on the incompatibility of activities established for senior officials of Central Government in Act 5/2006 of 10 April 2006 regulating Conflicts of Interest of Members of the Government and Senior Officials of Central Government, and in its implementing provisions.

4. For a period of two years following their vacation of office, the President, the Vice-President and Council members may not engage in any private professional activities whatsoever related to regulated sectors and the activities of the National Markets and Competition Commission.

Pursuant to that restriction, the President, the Vice-President and the members of the Commission, upon vacating office due to resignation, expiry of their term of office or permanent incapacity for the exercise of their functions, shall be entitled to receive, as from the month after their vacation of office and for a term equal to that during which they held office, subject to a maximum limit of two years, monthly economic compensation equal to a twelfth of eighty percent of the total remuneration allocated to the office in question in the budget in force during the indicated term.

No entitlement to receive that compensation shall arise in the event of the remunerated performance of any job position, office or activity in the public or private sector on the terms provided for in Article 1 of Royal Decree 20/2012 of 13 July 2012 on Measures to Safeguard Budget Stability and Boost Competitiveness.

Article 23. Grounds for vacation of office.

1. Council members shall vacate office:

a) Due to resignation accepted by the Government.

(Non-official Text)

- b) Due to expiry of their term of their office.
- c) Due to an unforeseen incompatibility.
- d) On account of having been convicted of a crime of wilful misconduct.
- e) Due to permanent incapacity.
- f) Due to removal, ordered by the Government, on account of a serious breach of the duties inherent in their office or breach of the obligations on incompatibility, conflict of interest and the duty of confidentiality. Removal shall be ordered by the Government, independently of the penalty rules that may, as the case may be, apply, following an investigation by the Minister of Economy and Competitiveness.

2. If a given Council member vacates office during his/her term of office, his/her successor shall be appointed for the remaining duration of the departing member's term of office. The foregoing restriction shall not apply if the vacation of office occurs four years after appointment, in which case the successor shall be appointed for the term of six years provided for as a general rule.

3. Council members to whom the grounds for vacation of office set out in letters a) and b) of paragraph 1 apply shall continue in office until the appropriate Royal Decree of vacation of office is published in the Official State Gazette.

Article 24. *Obligation to report and safeguards for impartiality.*

1. The President, Vice-President, Council members, managers and employees, or their representatives, who have provided professional services at entities in a market or sector under the supervision of the National Markets and Competition Commission, must notify the Council of any power or right, irrespective of its designation, to the retention or reinstatement of professional relations, to indemnification or to any advantages of a financial nature. In the case of Council members, that information must be made public.

2. In application of the principles of independence and objectivity, the National Markets and Competition Commission shall ensure that its employees are subject, in their acts and in the proceedings in which they are involved, to objective, predetermined rules which correctly define their responsibilities.

Article 25. *Managing bodies.*

1. The National Markets and Competition Commission shall have four investigations divisions which shall be responsible for exercising the functions indicated in this article, in addition to any other functions that may be delegated to them by the Council, except for the functions of legislative implementation and of delivering resolutions and rulings conferred in accordance with Article 20 of this Act:

- a) The Competition Division, which shall be responsible for investigating cases relating to the functions provided for in Article 5 of this Act.
- b) The Telecommunications and Audiovisual Sector Division, which shall be responsible for investigating cases relating to the functions provided for in Articles 6, 9 and 12(1)(a) and (e) of this Act.
- c) The Energy Division, which shall be responsible for investigating cases relating to the functions provided for in Articles 7 and 12(1)(b) of this Act.

(Non-official Text)

d) The Transport and Postal Sector Division, which shall be responsible for investigating cases relating to the functions provided for in Articles 8, 10, 11 and 12(1)(c), (d) and (f) of this Act.

2. The Divisions referred to in the foregoing paragraph shall exercise their investigation functions independently of the Council.

3. The heads of the investigations Divisions shall exercise their functions on an exclusive basis and shall be subject to the rules on the incompatibility of activities established for senior officials in Act 5/2006 of 10 April 2006 and in its implementing provisions.

The rules on their appointment and vacation of office shall be those established for management staff, in accordance with the provisions of Article 26(3) of this Act.

Article 26. Organisational Charter and Regulations on internal functioning.

1. The Government shall approve, by Royal Decree, the Organisational Charter of the National Markets and Competition Commission.

2. The Organisational Charter shall determine the distribution of matters in the Council between the plenum and chambers and the functions and internal structure of the investigations Divisions and other areas of responsibility, irrespective of their designation, to which management staff shall be appointed.

3. The management staff shall be responsible for the management, organisation, promotion and performance of the functions entrusted to the area to which they are appointed, in accordance with the instructions of the Council and the President of the Commission, without prejudice to the proper separation between the functions of investigation and resolution in infringement proceedings.

Management staff in areas of responsibility other than the investigations Divisions shall be appointed and removed by the plenum of the Council of the National Markets and Competition Commission, at the proposal of its President. Recruitment shall be by public announcement and shall be subject to procedures based on the principles of equality, merit and ability, in accordance with the provisions of Article 13(2) of Act 7/2007 of 12 April 2007 on the Civil Servant Basic Statute and Article 31(5) of this Act.

4. The plenum of the Council of the National Markets and Competition Commission shall approve the Regulation on its internal functioning, which shall regulate — observing the provisions of the Organisational Charter of the National Markets and Competition Commission — the work of its bodies, staff organisation, the rules on transparency and confidentiality and, in particular, the functioning of the Council, including the rules on calls of meetings and sessions of the plenum and the chambers, and internal procedures for the submission of matters for its consideration and adoption. Approval of the Regulation shall require the favourable vote of, at least, six Council members.

CHAPTER IV

Rules of conduct and powers

Article 27. Powers of inspection.

1. Tenured civil servants of the National Markets and Competition Commission, duly authorised by the relevant director, shall have the status of an agent of the authority and

(Non-official Text)

may conduct as many inspections as required at companies and associations of companies for the proper implementation of this Act.

2. Staff authorised for that purpose shall have the following powers of inspection:

a) To access any premises, facilities, land and means of transport belonging to companies and associations of companies and the private dwellings of traders, directors and other members of company staff. Moreover, they may check the items used in the services or activities of the operators or the persons who carry out the activities referred to in this Act, the networks they install or operate and as many documents as they are required to possess or retain.

b) To check the books, registers and other documents relating to the activity in question, regardless of its material format, including computer programmes and files of a magnetic, optical or any other nature.

c) To make or obtain copies or extracts, in any format, of such books or documents.

d) To retain, for a maximum period of 10 days, the books or documents referred to in letter b).

e) To seal all premises, books or documents and other company property for the time and to the extent necessary for the inspection.

f) To ask any representative or member of staff at the company or association of companies for explanations on acts or documents related to the aim and purpose of the inspection and to record their answers.

The exercise of the powers described in letters a) and e) shall require the express prior consent of the affected party or, failing that, appropriate judicial authorisation.

3. Companies and associations of companies are required to submit to inspections authorised by the competent body.

4. If a company or association of companies objects an inspection, or if there is a risk of such an objection, the competent body of the Commission shall, if the inspection entails a restriction on fundamental rights, apply for the appropriate judicial authorisation from the judicial review courts, which shall issue a decision within a maximum period of 48 hours. Public authorities shall provide the necessary protection and assistance to the staff of the National Markets and Competition Commission for the exercise of their inspection functions.

5. The tenured civil servants with responsibility for the inspection shall draw up a report on their actions. The reports drawn up shall have the status of public documents and, unless proven otherwise, shall evidence the facts underpinning their formalisation.

6. The data and information obtained may only be used by the National Markets and Competition Commission for the purposes set forth in this Act and in Act 15/2007 of 3 July 2007.

Article 28. Requests for information, duty of secrecy and access to State registers.

1. All natural or legal persons and bodies or entities of all public authorities are subject to the duty to cooperate with the National Markets and Competition Commission in the exercise of its function to protect free competition. They shall be obliged to provide, at the

(Non-official Text)

request of the Commission and on time, all types of data and information in their possession which may be necessary for the discharge of the Commission's functions.

Requests for information must be reasoned and be proportionate to the aim pursued. To that end, requests for information shall provide a detailed and specific description of the content of the information sought and shall specify, giving reasons, the function the discharge of which requires such information and the use to be made of the information.

2. Data and information obtained by the National Markets and Competition Commission in the performance of its functions — except as provided for in Article 5(1)(c), (d), (e) and (f) of this Act — which are confidential as they concern matters protected by commercial, industrial or statistical secrecy, may only be transferred to the competent Ministry, autonomous communities, European Commission and the authorities of other Member States of the European Union within the scope of their powers, as well as to the courts in the context of the relevant judicial proceedings.

Persons with knowledge of such data shall be bound to keep them confidential. Notwithstanding any criminal or civil liability that may arise, breach of the duty of confidentiality shall be regarded as a very serious disciplinary infringement.

3. The National Markets and Competition Commission shall have access to the registers provided for in State legislation regulating the sectors falling within the scope of this Act. Central Government shall also have access to the databases in the possession of the National Markets and Competition Commission.

To that end, the appropriate IT upgrades will be implemented in order to facilitate the electronic access referred to in the previous paragraph, so that the information contained in the databases and registers can be consulted in conditions which ensure the security, confidentiality and integrity of such information.

Article 29. *Penalty powers*

1. The National Markets and Competition Commission shall exercise its inspection and penalty powers in accordance with the provisions set out in Chapter II of Title IV of Act 15/2007 of 3 July 2007, in Title VI of Act 7/2010 of 31 March 2010, in Title VIII of General Telecommunications Act 32/2003 of 3 November 2003, in Title X of Act 54/1997 of 27 November 1997, in Title VI of Act 34/1998 of 7 October 1998, in Title VII of Act 43/2010 of 30 December 2010, and in Title VII of Railway Sector Act 39/2003 of 17 November 2003.

2. For the exercise of penalty powers, steps shall be taken to ensure that there is proper functional separation between the investigation stage, responsibility for which shall lie with the staff of the appropriate division depending on the subject-matter, and the resolution stage, responsibility for which shall lie with the Council.

3. The procedure for the exercise of penalty powers shall be governed by this Act, by the acts referred to in paragraph 1 and, in so far as not provided for in the foregoing instruments, by Act 30/1992 of 26 November 1992 on Public Authorities and Common Administrative Procedure and its implementing legislation. In particular, infringement proceedings in competition matters shall be governed by the specific provisions set out in Act 15/2007 of 3 July 2007.

4. The resolution of a case shall exhaust administrative proceedings and may be challenged by means of an appeal for judicial review.

(Non-official Text)

Article 30. *Circulars, information circulars and communications of the National Markets and Competition Commission.*

1. The National Markets and Competition Commission may pass the implementing and enforcement provisions of such Acts, Royal Decrees and Ministerial Orders as may be approved in relation to sectors under its supervision when those instruments expressly authorise it to do so. Those provisions shall take the form of circulars of the National Markets and Competition Commission.

The circulars shall be binding on the parties affected by their scope of application, following publication in the Official State Gazette.

In the procedure for drawing up the circulars, the holders of legitimate interests and rights who are affected by the circulars shall be heard, directly or through organisations and associations recognised by law which bring them together as a group or represent them and whose aims are directly related to the purpose of the circular. Furthermore, in general terms, citizen participation will be encouraged.

2. Notwithstanding the provisions of the foregoing paragraph, the National Markets and Competition Commission may issue requests for periodic information addressed to the affected parties as a whole. These requests shall take the form of information circulars.

Information circulars must be reasoned and be proportionate to the aim pursued, and must observe the confidentiality of the information provided, in accordance with the provisions of Article 28 of this Act.

They shall provide a detailed and specific description of the content of the information sought and shall specify, giving reasons, the function the discharge of which requires such information and the use to be made of the information.

3. The National Markets and Competition Commission may issue communications clarifying the principles guiding its work.

Article 31. *Legal regime for staff.*

1. Staff who work at the National Markets and Competition Commission shall be civil servants or employees, on the terms established in Central Government, in accordance with the provisions of secondary legislation and in conformity with paragraph 4 of this article.

2. Civil service staff shall be governed by the rules governing the civil service applicable to all civil servants of Central Government.

The filling of civil servant posts shall be carried out in accordance with the procedures governing same set forth in the legislation on the civil service applicable to civil servants of Central Government.

3. Non-civil service employees shall be governed by the Revised Workers' Statute, approved by Legislative Royal Decree 1/1995 of 24 March 1995, the applicable contractual provisions, and the provisions of Act 7/2007 of 12 April 2007, which expressly apply.

The recruitment of non-civil service employees shall be carried out, in accordance with the offer of public employment of Central Government, by public announcement, subject to the principles of equality, merit and ability, as well as the principle of access to public employment for persons with disability.

(Non-official Text)

4. The National Markets and Competition Commission shall have a list of job positions which must be approved by the Ministry of Finance and Public Authorities. That list shall, in all cases, specify the positions that must be filled exclusively by civil servants, as they entail the exercise of functions involving direct or indirect participation in the exercise of public powers and the protection of the general interests of the State and public authorities.

5. Notwithstanding the provisions of Article 25 of this Act, the Organisational Charter shall determine the job positions that, due to the special responsibilities they entail, the technical ability required or the importance of their duties, are of a managerial nature. Management staff shall be tenured civil servants from sub-group A1 and, in exceptional cases, these positions may be filled by non-civil service employees under senior management employment contracts, provided that the positions do not entail the exercise of public powers or functions falling within the scope of Article 9(2) of Act 7/2007 of 12 April 2007. These positions shall be covered on the terms provided for in Article 26(3) of this Act.

Senior management employment contracts shall be subject to the provisions of Additional Provision Eight of Act 3/2012 of 6 July 2012 on Urgent Measures to Reform the Labour Market and Royal Decree 451/2012 of 5 March 2012 regulating the Remuneration Regime of Senior Managers and Executives in the Public Business Sector.

6. The establishment and modification of the remuneration conditions for both management staff and other staff shall require a favourable prior report from the Ministry of Finance and Public Authorities. Management staff shall be subject to the provisions of Royal Decree 451/2012 of 5 March 2012 and such other rules, especially budget rules, as may be apply.

In addition, the Ministry of Finance and Public Authorities shall carry out, at appropriate intervals, special checks on the evolution of staff costs and human resources management costs, in accordance with the criteria established for that purpose.

Article 32. *Recruitment regime.*

Contracts entered into by the National Markets and Competition Commission shall be in conformity with the legislation on public sector recruitment and the recruiting body of the Commission shall be its President.

Article 33. *Economic-financial and property regime.*

1. The National Markets and Competition Commission shall have its own assets which shall be independent of the assets of Central Government.

2. In order to perform its duties, the National Markets and Competition Commission shall have the following assets and economic resources:

- a) The funds allocated each year from the State Budget.
- b) The assets and rights making up its net worth as well as the proceeds and yields therefrom.
- c) Any other assets and economic resources allocated to it by law.

3. The economic and financial supervision of the National Markets and Competition Commission shall be carried out in accordance with the provisions of General Budget Act 47/2003 of 26 November 2003 and Organic Act 2/1982 of 12 May 1982 on the Court of Auditors.

(Non-official Text)

Article 34. *Budget, accounting rules, and economic and financial supervision.*

1. Every year, the National Markets and Competition Commission shall draw up and approve a preliminary draft budget, the appropriations of which shall be restricted, and shall send it to the Ministry of Finance and Public Authorities through the Ministry of the Economy and Competitiveness for subsequent processing in accordance with the provisions of Act 47/2003 of 26 November 2003.

2. The rules on changes to and the earmarking of appropriations in that budget shall be those established in the Organisational Charter of the National Markets and Competition Commission.

3. The President of the National Markets and Competition Commission shall be responsible for approving outgoings, instructing payments and submitting the accounts of the Commission in accordance with the provisions of Act 47/2003 of 26 November 2003.

4. The National Markets and Competition Commission shall draw up and submit its accounts in accordance with Act 47/2003 of 26 November 2003 and with the accounting rules and principles set forth in the National Chart of Public Accounts and its implementing legislation. The National Markets and Competition Commission shall have an analytical accounting system that provides cost information on its activities which is sufficient for the proper and efficient adoption of decisions.

5. Notwithstanding the powers conferred on the Court of Auditors by its Organic Act, the financial and economic management of the National Markets and Competition Commission shall be subject to supervision by the State Audit Agency on the terms set forth in Act 47/2003 of 26 November 2003. Ongoing financial supervision shall be carried out by the Audit Branch at the Commission under the functional authority of the State Audit Agency.

Article 35. *Legal assistance.*

Responsibility for legal assistance, comprising the provision of advice to and the representation and defence at trial of the National Markets and Competition Commission, shall lie with the State Legal Service, whose higher management unit is the State Attorney's Office — Legal Service Directorate, by formalising the appropriate agreement on the terms provided for in Act 52/1997 of 27 November 1997 on Legal Assistance to the State and Public Institutions and its implementing legislation.

Article 36. *Appeals against acts, decisions and resolutions of the National Markets and Competition Commission.*

1. Acts and decisions of the bodies of the Commission other than the President and the Council may be challenged by way of an administrative appeal in accordance with the provisions of Act 30/1992 of 26 November 1992.

However, acts performed under Act 15/2007 of 3 July 2007 may only be subject to appeal if they refer to Article 47 of that Act.

2. Acts and resolutions of the President and the Council — in plenum and in chambers — of the National Markets and Competition Commission performed or handed down in the exercise of their public functions shall exhaust administrative proceedings and may not be challenged by way of an appeal for reconsideration, the only possible avenue of appeal being before the judicial review courts.

(Non-official Text)

Transparency and responsibility

Article 37. *Publicity of actions.*

1. The National Markets and Competition Commission shall make public all provisions, resolutions, decisions and reports issued under the law regulating them, once they have been notified to interested parties, after taking a decision — where appropriate — on the confidential aspects of said resolutions, decisions and reports, and following removal of the personal data referred to in Article 3(a) of Organic Act 15/1999 of 13 December 1999, except the names of the infringers. In particular, the following shall be publicly released:

a) The structure and functions of the Commission and its bodies, including the curriculum vitae of the Council members and management staff.

b) A list of the decisions taken at Council meetings.

c) The reports on which Council decisions are based.

d) The annual report, including the annual accounts, staffing structure, information on staff and the activities undertaken by the Commission, together with the aims pursued and the outcomes achieved. This shall be sent to the relevant committee of the Congress and the Minister of the Economy and Competitiveness.

e) Yearly sectoral economic reports, which shall analyse the competitive situation of the sector, the conduct of the public sector and the prospects for evolution of the sector, without prejudice to reports that may be drawn up by ministerial departments. In all cases, the reports shall be sent to the relevant committee of the Congress, the Minister with competence for the sector in question, the Minister of the Economy and Competitiveness and, where appropriate, the Minister for Health, Social Services and Equality, as regards sections dealing with claims from end users.

f) Other reports prepared on the competitive structure of production sectors or markets, notwithstanding their submission to the Minister for the Economy and Competitiveness.

g) The Commission's action plan for the following year, including the basic outline of its work for that year, together with the appropriate goals and priorities. The action plan shall also be sent to the relevant committee of the Congress and the Minister of the Economy and Competitiveness.

h) Reports prepared on legislative proposals or the conduct of the public sector.

i) Meetings between Commission members and companies from a given sector, provided that publication thereof does not affect achievement of the aims of the National Markets and Competition Commission.

j) Resolutions bringing an end to proceedings.

k) Resolutions ordering the imposition of interim measures.

l) The opening of concentration control proceedings.

m) The opening of infringement proceedings.

n) The conduct of inspections in accordance with Act 15/2007 of 3 July 2007.

2. Provisions, resolutions, decisions, reports and the annual report shall be published using electronic means.

(Non-official Text)

3. Every three years, the National Markets and Competition Commission shall present an evaluation of its action plans and the outcomes achieved in order to be able to gauge their impact on the sector and the degree of compliance with resolutions handed down. These evaluations shall also be sent to the relevant committee of the Congress and the Minister of the Economy and Competitiveness.

Article 38. Measures to improve the efficiency, effectiveness and quality of supervision procedures.

1. Notwithstanding the powers conferred on other bodies by Chapter IV of this Act in the area of economic and financial supervision, the Commission shall have an internal supervision body whose functional dependence and reporting capacity shall be governed by the principles of impartiality, objectivity and the avoidance of conflicts of interest.

2. Every year, the Commission shall draw up a report on its supervisory functions which shall include an assessment from the internal supervision body on the conformity of the Commission's decisions with the applicable procedural rules. This report must be approved by the Council and submitted to the Spanish Parliament and the Ministry of the Economy and Competitiveness.

Article 39. Parliamentary oversight.

1. The President of the National Markets and Competition Commission must appear, at least once a year, before the relevant committee of the Congress to explain the basic outline of the Commission's work, together with its goals and priorities for the future. At the request of the Chamber, one or more Council members may appear alongside the Chairman.

2. Annual appearances shall be based on the annual report and the action plan.

3. Notwithstanding his annual appearances, the President shall appear before the relevant committee of the Lower or Upper Houses of the Spanish Parliament, at their request, on the terms established in their respective Regulations.

4. Every three years, the President shall make an extraordinary appearance to discuss the evaluation of the action plan and the outcomes of the National Markets and Competition Commission.

Additional Provision One. Constitution and effective exercise of the functions of the National Markets and Competition Commission.

1. Immediately following approval of the Organisational Charter, the Minister of the Economy and Competitiveness shall propose the appointment of Council members to the Government. They shall appear before the Congress, which shall have one month to veto them on the terms set forth in Article 15 of this Act.

2. The National Markets and Competition Commission shall be constituted, through the constitution of the Council, within 20 days from publication of the Royal Decree appointing the Council Members. Once constituted, the Council shall appoint the Secretary.

3. Following constitution of the Commission, the Council shall have one month in which to take the following steps:

a) Appoint management staff, in accordance with the provisions of Article 26(3) of this Act.

b) Draw up the Regulations on internal functioning.

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c) Incorporate the human and material resources to which the National Markets and Competition Commission is entitled.

4. The entry into operation of the National Markets and Competition Commission, which shall entail the effective exercise by its bodies of the functions conferred on it, shall commence on the date determined for that purpose by Order of the Minister of the Economy and Competitiveness and, in any event, within four months from the entry into force of this Act. The transfer of staff and of sufficient budgetary resources for the discharge of the functions set forth this Act must have occurred by that date.

Additional Provision Two. *Closure of authorities.*

1. The constitution of the National Markets and Competition Commission shall entail the closure of the National Competition Commission, the National Energy Commission, the Telecommunications Market Commission, the National Postal Commission, the Railway Regulation Committee, the National Gaming Commission, the Airport Economic Regulation Commission and the State Council of Audiovisual Media.

2. Notwithstanding the provisions of this Act, references in the legislation in force to the National Competition Commission, the National Energy Commission, the Telecommunications Market Commission, the National Postal Commission, the State Council of Audiovisual Media, the Airport Economic Regulation Commission and the Railway Regulation Committee shall be deemed to be references to the National Markets and Competition Commission or to the relevant ministry depending on the function in question.

References in Act 15/2007 of 3 July 2007 to the Investigations Division of the National Competition Commission shall be deemed to be references to the Competition Division of the National Markets and Competition Commission.

References to the State Supervision Authority, governed by Title VI of Act 21/2003 of 7 July 2003, in that Act or in any other provision shall be deemed to be references to the National Markets and Competition Commission.

3. References in any legal provision to the National Gaming Commission shall be deemed to be references to the Directorate-General for Gaming of the Ministry of Finance and Public Authorities which replaces it and assumes its powers, on the terms provided for in Additional Provision Ten.

4. Notwithstanding the provisions of paragraph 6, the National Markets and Competition Commission shall acquire such material resources — including, in particular, the IT systems and computer software of the bodies subject to closure, as referred to in paragraph 1 — as may be necessary for the exercise of its functions, with the remainder falling to the Ministries that assume the functions conferred by Additional Provisions Seven, Eight, Nine, Ten, Eleven and Twelve.

5. The Ministry of Finance and Public Authorities and the Ministry of the Economy and Competitiveness shall determine the cash balances and financial assets of the bodies subject to closure which must be incorporated into the National Markets and Competition Commission.

6. The immovable property and in rem rights owned by the regulatory bodies subject to closure which are not necessary for the exercise of the functions of the National

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Markets and Competition Commission shall be incorporated into the assets of Central Government.

Additional Provision Three. Special regime on incompatibility and indemnification applicable to the President, Vice-President and members of the bodies subject to closure.

1. For a period of two years following their vacation of office, the President, Vice-President and members of the bodies subject to closure may not engage in any private professional activities whatsoever related to the regulated sector, either at or for companies in the sector, in the case of regulatory bodies. In the case of the National Competition Commission, upon vacating office and for two years thereafter, the President and Council members may not engage in any professional activities whatsoever related to the activities of the Commission.

2. Pursuant to that restriction, the President, the Vice-President and the members of the bodies subject to closure, upon vacating office, shall be entitled to receive, as from the month after their vacation of office and for a term equal to that during which they held office, subject to a maximum limit of two years, monthly economic compensation equal to a twelfth of eighty percent of the total remuneration allocated to the office in question in the budget in force during the indicated term.

No entitlement to receive that compensation shall arise in the event of the remunerated performance of any job position, office or activity in the public or private sector on the terms provided for in Article 1 of Royal Decree 20/2012 of 13 July 2012 on Measures to Safeguard Budget Stability and Boost Competitiveness.

Additional Provision Four. Allocation of resources to Central Government.

1. By the deadline specified in Additional Provision One of this Act for the entry into operation of the Commission, the Government shall approve the necessary amendments to the Royal Decrees implementing the basic organisational structure of the affected Ministries.

2. The amendments to the structural Royal Decrees referred to in this provision shall not enter into force until the budgets of the Ministries have been adjusted to reflect the new distribution of powers, in accordance with Transitional Provision Four.

Additional Provision Five. Conferral of powers on the National Markets and Competition Commission.

The powers conferred by the laws in force on the bodies that will close upon constitution of the National Markets and Competition Commission, powers that this Act has not expressly conferred on the competent ministerial departments of Central Government, shall be exercised by the National Markets and Competition Commission.

Additional Provision Six. Incorporation of staff of the public bodies subject to closure into the National Markets and Competition Commission.

1. Civil service staff who work at the bodies subject to closure in accordance with the provisions of Additional Provision Two shall join either the National Markets and Competition Commission or Central Government.

Such incorporation shall be carried out, in both cases, in accordance with the procedures on mobility set forth in the legislation on the civil service applicable to civil servants of Central Government.

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Civil service staff who join the National Markets and Competition Commission shall do so in the context of active service in their relevant division or scale and shall retain the same rights and obligations as those recognised prior to transferring.

The same administrative situation and safeguards shall be enjoyed by civil servants who transfer to work in Central Government as a consequence of the powers assumed by the latter from the defunct bodies.

2. Non-civil service employees of the bodies subject to closure shall join the National Markets and Competition Commission on the terms provided for in Article 44 of the Revised Workers' Statute, approved by Legislative Royal Decree 1/1995 of 24 March 1995, with respect to the employment rights and obligations they held before transferring.

For the purposes of incorporating such non-civil service employees, regard must necessarily be had to the actual functions they performed at the defunct body.

In exceptional circumstances, non-civil service employees may join ministerial departments, on the same terms as those set forth in the foregoing paragraph, if, as a consequence of the functions which, pursuant to this Act, are conferred on ministerial departments, it is necessary for them to join said departments. However, under no circumstances may their remuneration be increased above the level existing at the bodies where they previously worked. When vacancies arise for job positions that form part of the organisational structure of those departments, due to death, retirement or on any other statutory ground, and provided that no right to return to active service arises, those positions shall be eliminated and shall become civil servant positions in order to guarantee the continuity of the performance of the above-mentioned functions, on the condition that it is necessary to do so in accordance with the provisions of Article 9 of Act 7/2007 of 12 April 2007. The reallocation of staff and the elimination and, where appropriate, creation of job positions shall take place on the terms and to the extent determined by the competent body.

Additional Provision Seven. Functions assumed by the Ministry of Industry, Energy and Tourism in audiovisual matters.

In State-wide audiovisual matters, the Ministry of Industry, Energy and Tourism shall exercise the following functions, in addition to those already entrusted to it:

- a) To receive notices of commencement of operations from providers of audiovisual communication services.
- b) To maintain the State register of providers of audiovisual communication services.
- c) To decide on any issue or matter that affects the holding of enabling instruments for audiovisual communication services, such as their term, renewal, modification or termination, or the conclusion of legal transactions.
- d) To verify the conditions of Articles 36 and 37 of Act 7/2010 of 31 March 2010 concerning restrictions on acquiring holdings among operators of audiovisual communication services.
- e) To certify simultaneous broadcasts by providers of radio audiovisual communication services that notify same, and to call for their registration, where appropriate, in the State register of providers of audiovisual communication services.

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Additional Provision Eight. *Functions assumed by the Ministry of Industry, Energy and Tourism in energy matters.*

The Ministry of Industry, Energy and Tourism shall assume the following functions.

1. In the electricity sector:

a) To inspect, within the scope of its powers, compliance by facilities with technical conditions, compliance with requirements established in permits, the proper and effective use of indigenous coal at electricity facilities entitled to receive the indigenous coal consumption premium, the economic conditions and activities of parties in so far as they may affect the application of tariffs, prices and criteria for the remuneration of energy activities, the actual availability of generation facilities under the ordinary regime, proper invoicing and conditions of sale to eligible customers and consumers at distributors and wholesalers, continuity of the electricity supply, service quality, as well as the effective separation of those activities when required.

b) To order the opening of infringement proceedings and to investigate same, when they fall within the competence of Central Government on account of the fact that the commencement of proceedings and their investigation is not the responsibility of the National Markets and Competition Commission, and to report, when called upon to do so, on infringement proceedings opened by the various public authorities.

c) To report on, deal with and process, in coordination with the competent authorities, using action protocols, claims filed by consumers of electricity, and to make available to such persons all necessary information on their rights, the legislation in force and their dispute resolution options in the event of conflict.

The Ministry of Industry, Energy and Tourism shall report to the National Markets and Competition Commission, at least once every six months, on the action taken, including information on the number of claims reported on, dealt with and processed, in order to assist the latter in its task of supervising the functioning of the retail markets.

d) To settle electricity transmission and distribution costs, ongoing system operating costs and such other costs as may be determined for the system as a whole when responsibility for their settlement is expressly conferred upon it, and to send the National Markets and Competition Commission all information necessary to draw up toll methodologies.

e) To supervise the activities of the Office for Switching Energy Supplier.

2. In the hydrocarbon sector:

a) To inspect, within the scope of its powers, compliance by facilities with technical conditions, compliance with requirements established in permits, the economic conditions and activities of parties in so far as it may affect the application of tariffs, prices and criteria for the remuneration of hydrocarbon activities, the actual availability of gas facilities, proper invoicing and conditions of sale to consumers at distributors, as regards access to networks, and at wholesalers, continuity of the supply of natural gas, service quality, as well as the effective separation of those activities when required.

b) To order, within the scope of Act 34/1998 of 7 October 1998, the opening of infringement proceedings and to investigate same, when they fall within the competence of Central Government, and to report, when called upon to do so, on infringement proceedings opened by the various public authorities, notwithstanding the powers conferred on the

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Corporation of Strategic Oil Product Reserves in Article 52(4) of that Act or the exclusive powers of other bodies of public authorities.

c) To make settlements relating to revenue obtained from tolls and levies relating to the use of basic network facilities, secondary transmission and distribution, as referred to in Article 96 of Act 34/1998 of 7 October 1998, and to communicate same to interested parties.

d) To report on, deal with and process, in coordination with the competent authorities, using action protocols, claims filed by consumers of natural gas, and to make available to such persons all necessary information on their rights, the legislation in force and their dispute resolution options in the event of conflict.

The Ministry of Industry, Energy and Tourism shall report to the National Markets and Competition Commission, at least once every six months, on the action taken, including information on the number of claims reported on, dealt with and processed, in order to assist the latter in its task of supervising the functioning of the retail markets.

e) To issue certificates and manage the mechanism for certifying the consumption and sale of biofuel.

f) To supervise the activities of the Office for Switching Energy Supplier.

g) To exercise the powers conferred by the legislation in force on the National Energy Commission in the area of liquid hydrocarbons.

Additional Provision Nine. Acquisition of holdings in the energy sector.

1. The Ministry of Industry, Energy and Tourism shall be notified of the following transactions.

a) The acquisition of holdings in companies or by companies that pursue activities deemed to be regulated activities, which involve the operation of the electricity market or which concern activities in island or non-mainland territories in accordance with Electricity Sector Act 54/1997 of 27 November 1997.

b) The acquisition of holdings in companies or by companies that pursue activities deemed to be regulated activities, which involve the technical management of the gas system in accordance with the provisions of Hydrocarbon Sector Act 34/1998 of 7 October 1998, or that pursue activities in the hydrocarbon sector such as oil refining, oil pipeline transmission and oil product storage.

c) The acquisition of holdings in companies or by companies that own assets necessary for the pursuit of the activities described in letters a) and b), or strategic energy sector assets included in the national catalogue of critical infrastructure in accordance with the provisions of Act 8/2011 of 28 April 2011 Establishing Measures to Protect Critical Infrastructure and its implementing legislation.

In all cases, strategic assets shall be deemed to include nuclear power plants and coal-fired power plants of special importance in the consumption of nationally produced coal, as well as oil refineries, oil pipelines and oil product storage facilities.

d) The acquisition of the assets mentioned in letter c) above.

2. Companies that engage in the activities included in letters a) and b) of paragraph 1 above must notify the Office of the Secretary of State for Energy of the Ministry of Industry, Energy and Tourism of the acquisitions — made directly or through companies under

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their control in accordance with the criteria established in Article 42(1) of the Code of Commerce — of holdings in other commercial companies or of assets of any kind which, in view of their value or other factors, have a material impact or significant effect on the pursuit of the activities of the notifying company.

3. The Office of the Secretary of State for Energy must also be notified of the acquisition of equity holdings in a company in percentages that entail significant influence over its management, if that company, directly or through companies controlled by it in accordance with the criteria established in Article 42(1) of the Code of Commerce, engages in activities included in paragraph 1 or owns the assets referred to. Similarly, direct acquisition of the assets mentioned in letter d) of paragraph 1 must also be notified.

Furthermore, in order to determine the percentage holding that triggers the notification requirement, account shall be taken of any agreements that the acquiring company may have with other acquirors or shareholders for the joint or coordinated exercise of voting rights at the affected company.

4. When the acquisition referred to in paragraph 3 is carried out by entities of States that are not members of the European Union or the European Economic Area, the provisions of paragraph 7 hereof shall apply.

5. The acquiror must also notify modifications which, when considered individually or as a whole, may entail a significant change to its holding.

6. The notifications referred to in the foregoing paragraphs must be made within 15 days from the date of the relevant transaction, and they may state, giving reasons, which aspects of the data or information supplied are considered to be of commercial or industrial importance for the purposes of having those aspects declared to be confidential.

7. If the Ministry of Industry, Energy and Tourism considers there to be an actual and sufficiently serious threat to the electricity, gas and hydrocarbons supply guarantee within the scope of the acquiror's activities, it may set conditions for the pursuit of the business of the companies subject to the notified transactions, in accordance with paragraphs 2 and 4 of this provision, as well as specific obligations that may be imposed on the acquiror to ensure compliance.

The risks relate to the following aspects:

a) The security and quality of supply, understood as the uninterrupted physical availability of products or services on the market at reasonable prices in the short or long term to all users, irrespective of their geographical location.

b) Security against the risk of an investment or insufficient infrastructure maintenance that makes it impossible to ensure, on an ongoing basis, a minimum set of required services to guarantee supply. For those purposes, account shall be taken of the level of indebtedness in order to safeguard the investments, as well as compliance with commitments assumed in that regard.

c) Breach of requirements concerning the legal, technical, economic and financial capacity of the acquiror or the acquired company, in accordance with the provisions of the applicable special legislation and, in particular, Nuclear Energy Act 25/1964 of 29 April 1964, Electricity Sector Act 54/1997 of 27 November 1997, and Hydrocarbon Sector Act 34/1998 of 7 October 1998, and their implementing legislation.

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For those purposes, regard shall be had to the holdings the acquiror has or intends to acquire in other companies or assets subject to this provision.

The conditions imposed shall respect, in all cases, the principle of proportionality and protection of the public interest.

It shall be for the Ministry of Industry, Energy and Tourism to monitor compliance with the conditions that may be imposed, and the affected companies must respond to any requests for information that may be issued for such purposes.

The resolution must contain reasons and be served within a maximum of 30 days from the date of notification, following a report issued by the National Markets and Competition Commission. This report shall not be binding and must be issued within ten days.

8. When the acquisition of holdings affects the managers of electricity or gas transmission networks, including the managers of independent networks, the provisions of Electricity Sector Act 54/1997 of 27 November 1997 and Hydrocarbon Sector Act 34/1998 of 7 October 1998 shall apply.

Additional Provision Ten. Functions assumed by the Directorate-General for Gaming of the Ministry of Finance and Public Authorities in gaming matters.

The Directorate-General for Gaming of the Ministry of Finance and Public Authorities shall assume the aims, functions and powers conferred on the defunct National Gaming Commission by Gaming Regulation Act 13/2011 of 27 May 2011.

Additional Provision Eleven. Functions assumed by the Ministry of Public Works and Infrastructure in relation to the postal sector.

In postal matters, the Ministry of Public Works and Infrastructure (Ministerio de Fomento) shall assume the following functions:

1. To inform users about postal operators, access conditions, price, quality standards, indemnification and the deadline for payment of such indemnification, and, in all cases, to publish information on the website of the Ministry, as required by Article 9(2) of Act 43/2010 of 30 December 2010.

2. To handle disputes between users and postal service operators in the context of the universal postal service, provided that such disputes were not submitted to Consumer Arbitration Boards.

3. To handle claims and complaints from users concerning the breach of obligations by postal operators, in relation to the provision of the universal postal service, in accordance with the provisions of Title II of Act 43/2010 of 30 December 2010, and the provisions of its implementing legislation.

The Ministry of Public Works and Infrastructure shall report to the National Markets and Competition Commission, at least once every six months, on the action taken, including information on the number of claims reported on, dealt with and processed, in order to assist the latter in its task of supervising the functioning of the retail markets.

4. To exercise inspection and penalty powers in relation to the functions mentioned in the foregoing paragraphs.

5. To grant individual authorisations and receive solemn declarations which enable the pursuit of postal activities and to manage the general register of postal service

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provider companies, in accordance with the provisions of Title IV of Act 43/2010 of 30 December 2010 on the Universal Postal Service, on the Rights of Users and on the Postal Market, and the provisions of its implementing legislation.

Additional Provision Twelve. Functions assumed by the Ministry for Presidential Affairs in audiovisual matters.

The Ministry for Presidential Affairs shall approve the catalogue of events of general public interest referred to in Article 20(1) of Act 7/2010 of 31 March 2010, after consulting providers of audiovisual communication services and the organisers of sports competitions.

Additional Provision Thirteen. Submission of reports to the National Consumer Institute.

Notwithstanding the functions assumed by the Ministry of Industry, Energy and Tourism in energy matters, and by the Ministry of Public Works and Infrastructure in relation to the postal sector, as provided for in paragraph 1(c) and 2(d) of Additional Provision Eight, and in paragraph 1 of Additional Provision Eleven, those Ministries shall send the National Consumer Institute, during the first quarter of every calendar year, a report covering the previous year which includes comprehensive information on the number of claims filed by consumers which were dealt with, the subject-matter of those claims, the resolutions adopted upholding and dismissing the claims, any resulting penalties, as the case may be, and any other information considered to be relevant.

Additional Provision Fourteen. Fees, payments and revenue deriving from the exercise of the functions provided for in this Act.

1. The Ministries and bodies that perform the functions provided for in this Act, which give rise to the requirement to pay fees and make payments of a public nature as set forth in paragraphs I.1, I.3, I.4, I.5 and II.1 of the Schedule, shall be responsible for the management and collection of such fees and payments during the voluntary period, notwithstanding the terms of Additional Provision Nine.

2. The National Markets and Competition Commission shall be responsible for the management and collection, during the voluntary period, of the fees provided for in paragraph I.2 and of the financial contribution specified in paragraph II.2 of the Schedule.

3. The sums collected in respect of the rights referred to in this additional provision, including those corresponding to the bodies subject to closure in accordance with this Act, shall be deposited at the Public Treasury, except as regards the financing system for the Spanish Radio and Television Corporation and the fund for financing the universal postal service, which shall be governed by their respective provisions.

4. Collection during the enforcement period of the public funds referred to in the foregoing paragraphs shall be carried out in accordance with the provisions of the General Collection Regulations approved by Royal Decree 939/2005 of 29 July 2005.

5. The funds referred to in the foregoing paragraphs shall be governed by the legislation in force when this Act enters into force, in so far as it is not incompatible with this Act.

Additional Provision Fifteen. Advisory boards.

1. The Energy Advisory Board is hereby created, as a vehicle for the participation and consultation of the Ministry of Industry, Energy and Tourism in matters falling within the remit of the Office of the Secretary of State for Energy.

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The Energy Advisory Board shall be chaired by the Secretary of State for Energy, or by his delegated representative, and its functions shall include studies, discussions and proposals on energy and mining policies.

It shall also handle the matters submitted to it by the Government or the Ministry of Industry, Energy and Tourism.

2. Advisory boards may also be created in the telecommunications, audiovisual, transport and postal sectors.

3. The functions, composition, organisation and rules applicable to the advisory boards shall be determined by secondary legislation. The constitution and functioning of the boards shall not entail any additional increase whatsoever in public spending and shall be carried out using the material and human resources existing in the respective departments.

4. In all cases, advisory boards shall report on the preparation of provisions of a general nature and of circulars of the National Markets and Competition Commission. That report shall be equivalent to a hearing of the holders of legitimate rights and interests.

Additional Provision Sixteen. Temporary exercise of supervision functions in the area of airport charges.

1. The functions established in Article 10(a) and (b) of Royal Decree-Act 11/2011 of 26 August 2011 creating the Airport Economic Regulation Commission and amending the Legal Regime for Aena Employees shall be exercised by the Railway Regulation Committee from the entry into force of this Act, subject to the provisions of Articles 11 to 13, inclusive, of said Royal Decree-Act and of Title VI, Chapter IV of Air Safety Act 21/2003 of 7 July 2003.

2. As from the entry into force of this Act, the Railway Regulation Committee shall be known as the Railway and Airport Regulation Committee.

3. In the exercise of the functions provided for in this provision, the Railway and Airport Regulation Committee shall act with full functional independence, in respect of the organisation, financial decisions, legal structure and decision making of the airport manager and airlines, and shall exercise its functions in an impartial and transparent manner.

4. In so far as it discharges the functions conferred on it by paragraph 1, references in the applicable legislation to the State Supervision Authority — regulated by Title VI, Chapter IV of Act 21/2003 of 7 July 2003 — shall be deemed to be references to the Railway and Airport Regulation Committee.

In addition, references in the applicable legislation to the Railway Regulation Committee shall also be deemed to be references to the Railway and Airport Regulation Committee.

5. The temporary exercise of these functions, beyond the extent set forth in this provision, shall not alter Articles 82 to 84 of Railway Sector Act 39/2003 of 17 November 2003.

6. This temporary conferral of functions shall also continue when the National Markets and Competition Commission is constituted and shall end when the Commission enters into operation.

Additional Provision Seventeen. Promotion of advertising co-regulation.

The National Markets and Competition Commission may sign co-regulation agreements that contribute to meeting the objectives established in this Act, particularly in relation to monitoring compliance with obligations, prohibitions and restrictions on the exercise of the right

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to issue audiovisual commercial communications, with advertising self-regulation systems that meet the requirements of Article 37(4) of Unfair Competition Act 3/1991 of 10 January 1991. Such agreements shall determine the recognised effects of steps taken under self-regulation systems.

Additional Provision Eighteen. *Other offices.*

The National Markets and Competition Commission may have other offices, in accordance with the provisions of Article 2(3) of this Act.

Their location shall be determined retaining the current location for telecommunications, which shall house the Telecommunications Division of the Audiovisual Sector (Telecommunications and Audiovisual Services Investigations), in order to maximise the use of existing resources and infrastructure.

Transitional Provision One. *First term of office of the members of the National Markets and Competition Commission.*

1. During its first session, the Council shall choose — preferably on a voluntary basis and, failing that, by drawing lots — the three Council members who will vacate office two years after their appointment and the three who will vacate office four years after their appointment.

2. Notwithstanding the provisions of Article 15 of this Act, the Council members affected by the first partial renewal may be re-elected for a further term of six years.

Transitional Provision Two. *Appointment of first President and Vice-President.*

The provisions of Transitional Provision One of this Act shall not affect the appointment of the first President and Vice-President of the authority who, in accordance with Article 15(2) hereof, shall have an un-renewable term of office of six years.

Transitional Provision Three. *Continuation of functions by bodies subject to closure.*

Between the date of constitution of the National Markets and Competition Commission and the date of its entry into operation, the supervisory bodies shall continue to exercise the functions they perform at present. During that period, the Council members shall remain in office and the bodies shall have full capacity to carry on their activities.

Transitional Provision Four. *Transitional performance of functions by the National Markets and Competition Commission.*

In relation to functions that, in accordance with the provisions of this Act, are to be transferred to Ministries, the National Markets and Competition Commission shall, upon entering into operation, perform those functions until such time as the ministerial departments have the necessary resources to exercise them effectively.

Transitional Provision Five. *Proceedings initiated prior to the entry into force of this Act.*

1. Proceedings initiated prior to the entry into force of this Act shall continue to be conducted by the bodies of the authority on which this Act confers the functions previously performed by the bodies subject to closure.

2. The constitution and entry into operation of the National Markets and Competition Commission may be deemed to be an extraordinary event which, in accordance

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with the applicable specific legislation, shall permit extension of the deadline for deciding on proceedings subject to time bar or affected by administrative silence.

Transitional Provision Six. *Job positions of civil service staff held by non-civil service employees.*

In exceptional circumstances, permanent non-civil service employees of defunct public bodies who held positions with functions that, in accordance with the provisions of this Act, must be performed by civil service staff, may continue to hold those positions.

In addition, any positions that may be created, as well as any vacancies that may arise, must comply, in terms of their nature, with the provisions of the legal regime for staff set forth in Article 31 of this Act.

Transitional Provision Seven. *Applicable budgets until approval of the budgets of the National Markets and Competition Commission.*

Once the National Markets and Competition Commission has been constituted, the budgets of the bodies that, in accordance with Additional Provision Two, are subject to closure shall remain in place until such time as the Commission has its own budget.

Transitional Provision Eight. *Transitional arrangements in relation to accounting and the submission of annual accounts.*

1. Transactions carried out by the National Markets and Competition Commission during the 2013 financial year shall be recorded in the accounts and budgets of each of the defunct bodies, according to the scope of those transactions.

2. The President of the National Markets and Competition Commission shall draw up and approve, for each of the defunct bodies, accounts for the 2013 financial year, which shall include the transactions carried out by each body as well as those indicated in paragraph 1 above, and shall also submit those accounts to the Court of Auditors, on the terms set forth in General Budget Act 47/2003 of 26 November 2003.

3. Responsibility for preparing and approving the 2012 accounts of the defunct bodies and for submitting them to the Court of Auditors on the terms set forth in General Budget Act 47/2003 of 26 November 2003 shall lie with the reporting entities of those bodies or with the President of the National Markets and Competition Commission, if the Commission has already been constituted.

Transitional Provision Nine. *Management and payment of the fees provided for in the Schedule.*

1. Management and payment of the fees referred to in paragraph I.1, headings A) and B), of the Schedule to this Act shall comply with the provisions of Order FOM/3447/2010 of 29 December 2010 approving the standard forms for payment of the fees established and regulated by Act 23/2007 of 8 October 2007 creating the National Postal Commission, in so far as they are not subject to new regulation.

2. Management and payment of the fees referred to in paragraph I.4 of the Schedule to this Act shall comply, in so far as the Ministry of Industry, Energy and Tourism does not have the resources necessary to exercise its functions effectively, with the provisions of Additional Provision Twelve of Act 34/1998 of 7 October 1998.

Transitional Provision Ten. *Advisory bodies of the National Energy Commission.*

The advisory bodies of the National Energy Commission provided for in Additional Provision Eleven of Act 34/1998 of 7 October 1998 shall continue to exercise their functions

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until the Energy Advisory Board provided for in Additional Provision Fifteen of this Act has been constituted.

Repealing Provision.

All provisions of an equal or lower ranking which contradict the provisions of this Act are hereby repealed and, specifically.

- a) Paragraph 7 of Additional Provision Four of Judicial Review Jurisdiction Act 29/1998 of 13 July 1998.
- b) Additional Provision Eleven, except paragraph six, which shall remain in force, and Additional Provision Twelve of Hydrocarbon Sector Act 34/1998 of 7 October 1998.
- c) Article 48 of General Telecommunications Act 32/2003 of 3 November 2003, except paragraph 4 thereof.
- d) Articles 82, 83 and 84 of Railway Sector Act 39/2003 of 17 November 2003.
- e) Articles 12, 17 and 40 and Title III of Competition Act 15/2007 of 3 July 2007.
- f) Act 23/2007 of 8 October 2007 creating the National Postal Commission.
- g) Title V of General Audiovisual Communication Act 7/2010 of 31 March 2010.
- h) Chapter II of Title I and Final Provision Four of Sustainable Economy Act 2/2011 of 4 March 2011.
- i) Articles 20, 21(15) and (16), 25, 26, 27, 28, 29, 30, 31, 32, 33, 34(2), Transitional Provision Five and paragraph one of Final Provision Two of Gaming Regulation Act 13/2011 of 27 May 2011.
- j) Royal Decree-Act 11/2011 of 26 August 2011 creating the Airport Economic Regulation Commission, regulating its Composition and amending the Legal Regime for Aena Employees.

Final Provision One. *Amendment of Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government.*

Paragraph 1 of Additional Provision Ten of Act 6/1997 of 14 April 1997 on the Organisation and Functioning of Central Government is amended as follows.

“1. The National Securities Market Commission, the Nuclear Safety Council, non-transferred universities, the Spanish Data Protection Agency, the Consortium of the Special Canary Islands Zone, the National Markets and Competition Commission, the Prado National Museum and the Reina Sofía National Arts Museum shall be governed by their own specific legislation and, secondarily, by this Act.”

Final Provision Two. *Amendment to Judicial Review Jurisdiction Act 29/1998 of 13 July 1998.*

Paragraph 5 of Additional Provision Four of Judicial Review Jurisdiction Act 29/1998 of 13 July 1998 is amended as follows:

“5. The acts and provisions issued by the Spanish Data Protection Agency, the National Markets and Competition Commission, the Economic and Social Council, the Cervantes Institute, the Nuclear Safety Council, the Council of Universities and Section Two of the Intellectual Property Commission, directly, before the Judicial Review Chamber of the National Court (Audiencia Nacional).”

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Final Provision Three. *Amendment to Hydrocarbon Sector Act 34/1998 of 7 October 1998.*

Article 116(4) is amended as follows:

“4. The National Energy Commission shall have power to impose penalties in the following cases:

- a) Very serious infringements as provided for in Article 109(1)(h), (i), (q), (r) and (ac).

It may also impose penalties in cases involving infringements under Article 109(1)(d), (g) and (j) if the infringement is the result of a refusal to comply with legally binding decisions, to send information or to comply with inspections and other requests from the National Energy Commission within the scope of its powers, and in cases involving infringements under paragraph ab) if they affect matters under its remit.

- b) Serious infringements as provided for in Article 110(l)(t), (u) and (w).

It may also impose penalties in cases involving infringements under Article 110(d) and (f) if the infringement is the result of a refusal to comply with legally binding decisions, to send information or to comply with inspections and other requests from the National Energy Commission within the scope of its powers, and in cases involving infringements under paragraph v) if they affect matters under its remit.

- c) Minor infringements in relation to failures to comply with legally binding decisions and requests from the National Energy Commission within the scope of its powers.”

Final Provision Four. *Amendment of Air Safety Act 21/2003 of 7 July 2003.*

Air Safety Act 21/2003 of 7 July 2003 is amended as follows:

One. A new Additional Provision Thirteen is inserted with the following wording:

“Additional Provision Thirteen. *Legal regime for employees of Aena.*

Collective bargaining, recruitment and the legal regime for employees of the State-owned business enterprise Aena who do not have the status of air traffic controller shall be governed by the provisions established by statute for the staff of Aena Aeropuertos, S.A.”

Two. A new Additional Provision Fourteen is inserted with the following wording:

“Additional Provision Fourteen. *Procedures in the area of airport charges.*

1. In the event of inadmissibility of the proposal when it has been made forgoing the procedure envisaged in Article 98 of this Act, the airport manager shall be granted a period of time to rectify the defects identified. If, upon expiry of that period, the defects have not been rectified or the conditions causing the proposal to be inadmissible remain, the National Markets and Competition Commission shall send a proposal for modification of the charge which it considers to be reasonable, providing reasons and indicating the irregularities identified, to the competent body for its inclusion in the appropriate preliminary bill.

Otherwise, the identification of irregularities in the consultation and transparency procedure set forth in Article 98 of this Act shall give rise to the issuance of recommendations from the National Markets and Competition Commission on the measures to be adopted in future consultations, including the need to extend them to

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cover companies that use the airport which are not affiliated to the associations or organisations representing users.

2. In exercising the supervision function to ensure that proposals to modify or update airport charges submitted by the airport manager comply with the provisions of Articles 91 and 101(1) of this Act, the National Markets and Competition Commission shall send the proposals of the airport manager which meet those criteria to the competent body for inclusion in the appropriate preliminary bill.

Otherwise, the Commission shall notify the airport manager of the revised modification of the charge or, where appropriate, the criteria that would have to be followed to ensure that the proposal complies with the provisions of the foregoing paragraph, together with the deadline for submitting a new proposal that meets those criteria. Upon receiving notification from the airport manager, or, if no such notification is received by the deadline granted for that purpose, the Commission shall send the relevant revised modification of the charge to the competent body for inclusion in the appropriate preliminary bill. The proposal of the Commission shall clearly and precisely set out the modification of the charge proposed by the Commission as well as the opinion of the airport manager.

When establishing the revised modification of the charge, the Commission shall seek to avoid excessive fluctuations in airport charges, provided that this is compatible with the principles established in Articles 91 and 101(1) of this Act.”

Three. A new Additional Provision Fifteen is inserted with the following wording:

“Additional Provision Fifteen. *Consultation on airport charges.*

At airports where the users of aircraft for general or sporting use, aerial work and historic aircraft have a significant presence, the consultation procedure referred to in Articles 98 and 102 shall involve the associations and organisations representing such operators.”

Final Provision Five. *Amendment to General Telecommunications Act 32/2003 of 3 November 2003.*

General Telecommunications Act 32/2003 of 3 November 2003 is amended as follows:

One. Article 13 bis shall be worded as follows:

“Article 13 bis. *Functional separation.*

1. If the National Markets and Competition Commission concludes that the obligations imposed pursuant to the foregoing article were not sufficient to achieve effective competition and that there continue to be substantial and persistent competition problems or market faults in relation to the wholesale markets for access products, it may decide, as an exceptional measure, to require vertically integrated operators with significant power in the market to transfer activities related to the wholesale supply of access products to an independent business unit.

That business unit shall supply access products and services to all companies, including other business units of the parent company, subject to the same deadlines, terms and conditions, particularly as regards price and service levels, and using the same systems and processes.

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2. If the National Markets and Competition Commission intends to impose an obligation of functional separation, it shall draw up a proposal that includes:

- a) proof justifying the conclusions it has reached,
- b) proof that there is little if any likelihood of competition based on the infrastructure within a reasonable time,
- c) an analysis of the expected impact on the regulatory authority, on the company, particularly as regards the workers of the separate company and the electronic communications sector as a whole, on the incentives for investing in the sector as a whole, especially in terms of the need to safeguard social and territorial cohesion, and on other interested parties, including, in particular, the expected impact on competition in infrastructure and any potential negative effects on consumers, and
- d) an analysis of the reasons why the obligation is the most appropriate way to resolve the competition problems or market faults that were identified.

3. The draft measure shall include the following elements:

- a) the precise nature and degree of the separation, specifying, in particular, the legal status of the separate business entity,
- b) an indication of the assets of the separate business entity and of the products or services it is to supply,
- c) governance mechanisms in order to ensure the independence of the staff employed by the separate business entity and the appropriate incentive structure,
- d) rules to ensure performance of the obligations,
- e) rules to ensure the transparency of the operating procedures, particularly with respect to other interested parties, and
- f) a monitoring programme to ensure performance, including publication of an annual report.

4. Once the Ministry of Industry, Energy and Tourism and the Ministry of the Economy and Competitiveness, as National Regulatory Authorities identified in Article 46(1), have issued a report on the proposal to impose an obligation of functional separation, that proposal shall be submitted to the European Commission.

5. Following the decision of the European Commission, the National Markets and Competition Commission shall conduct, in accordance with the procedure provided for in Article 10, a coordinated analysis of the different markets related to the access network. On the basis of its evaluation, and following a report from the Ministry of Industry, Energy and Tourism, the National Markets and Competition Commission shall impose, maintain, modify or withdraw the appropriate obligations.

6. If a company designated as having significant power in one or more relevant markets intends to transfer its local access network assets, or a substantial part thereof, to a separate legal entity owned by a third party, or to establish a separate business unit to supply all retail suppliers, including its own retail divisions, with wholly equivalent access products, it must notify the Ministry of Industry, Energy and Tourism, the Ministry of the Economy and Competitiveness and the National Markets and Competition Commission. The companies shall also notify the Ministry of Industry, Energy and

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Tourism, the Ministry of the Economy and Competitiveness and the National Markets and Competition Commission of any change in its intention, as well as of the final outcome of the separation process.

In that case, the National Markets and Competition Commission shall evaluate the effects of the proposed transaction on the regulatory obligations imposed on that entity and shall conduct, in accordance with the procedure provided for in Article 10, a coordinated analysis of the different markets related to the access network. On the basis of its evaluation, and following a report from the Ministry of Industry, Energy and Tourism, the National Markets and Competition Commission shall impose, maintain, modify or withdraw the appropriate obligations.

7. Companies in respect of which functional separation has been imposed or decided on may be subject to any of the obligations listed in Article 13 in any relevant market in which they were designated as having significant power in the market.”

Two. Paragraph 1 of Schedule 1 shall be worded as follows:

“1. General operator fee.

1. Notwithstanding the economic contribution that may be imposed on operators in order to finance the universal service, in accordance with the provisions of Article 25 and Title III, all operators shall be required to pay an annual fee which may not exceed 0.15% of its gross operating revenue and which shall go towards defraying expenses, including management, supervision and enforcement expenses, arising as a result of the application of the legal regime established in this Act by the national regulatory authorities as referred to in Article 68.

For the purposes of the foregoing paragraph, gross revenue shall be deemed to be the overall revenue received by the operator from operating the networks and providing the electronic communications services included within the scope of this Act. To that end, gross revenue shall not be deemed to include revenue in respect of services provided by an operator which is collected from users in order to pay for the services of operators who operate networks or provide electronic communications services.

2. The fee shall be payable on 31 December of each year. However, if, for a reason attributable to the operator, the operator should lose its entitlement to act as such prior to 31 December, the fee shall be payable on the date on which that event occurs.

3. The amount of the annual fee may not exceed the expenses, including management, supervision and enforcement expenses, arising as a result of the application of the legal regime established in this Act, as referred to above.

To that end, the Ministry of Industry, Energy and Tourism shall publish, before 30 April of each year, a report containing the expenses incurred during the previous financial year by the national regulatory authorities, as referred to in Article 68, as a result of applying the legal regime established in this Act.

The report shall consider, as a separate item, the expenses incurred by the National Markets and Competition Commission as a result of applying the legal regime established in this Act, which shall be used as the basis for determining the annual

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allocation of funds to the Commission payable out of the State Budget and for ensuring that the Commission has sufficient financial resources to apply this Act.

The amount of the fee shall be calculated by multiplying the amount of the previous financial year's expenses incurred by the national regulatory authorities, as referred to in Article 68, as a result of applying the legal regime established in this Act — a figure which appears in the report — by the percentage represented by the individual gross operating revenue of each telecommunications operator for the previous financial year with respect to the total gross operating revenue received by all telecommunication operators in the same year.

Secondary legislation shall determine the management system for the payment of this fee and the deadlines and requirements with which telecommunications operators must comply for the purposes of notifying the Ministry of Industry, Energy and Tourism of the amount of their gross operating revenue so that it can calculate the amount of the fee due by each telecommunications operator.”

Three. Paragraph 5 of Schedule I shall be worded as follows:

“5. Management and collection of fees during the voluntary period:

The Ministry of Industry, Energy and Tourism shall manage and collect the fees set forth in this Schedule during the voluntary period.”

Final Provision Six. *Amendment to Railway Sector Act 39/2003 of 17 November 2003.*

Railway Sector Act 39/2003 of 17 November 2003 is amended as follows:

One. Article 95 shall be worded as follows:

“Article 95. *Power to impose penalties.*

Responsibility for imposing penalties in respect of minor infringements shall lie with Government representatives in the autonomous communities and in respect of serious infringements with the Secretary of State for Infrastructure, Transport and Housing of the Ministry of Public Works and Infrastructure. Penalties in respect of very serious infringements shall be imposed by the Ministry of Public Works and Infrastructure.

The National Markets and Competition Commission shall be responsible for imposing penalties in respect of failures to comply with its resolutions, classified as an infringement under Articles 88(b) and 89(a).”

Two. A new Article 96(12) is inserted with the following wording:

“12. The proceedings governed by this article shall be conducted by the National Markets and Competition Commission if they involve proceedings commenced as a result of the infringements referred to in paragraph two of Article 95.”

Final Provision Seven. *Amendment of Competition Act 15/2007 of 3 July 2007.*

A new Article 70(3) of Competition Act 15/2007 of 3 July 2007 is inserted with the following wording.

“3. Responsibility for the collection of fines shall lie with Central Government during the voluntary period and with the State Tax Agency during the enforcement

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period, in accordance with the provisions of the General Collection Regulations approved by Royal Decree 939/2005 of 29 July 2005.”

Final Provision Eight. *Amendment to Electricity Sector Act 54/1997 of 27 November 1997.*

One. Article 13(7) of Electricity Sector Act 54/1997 of 27 November 1997 is deleted.

Two. Article 66(3) of Electricity Sector Act 54/1997 of 27 November 1997 is amended as follows:

“3. The National Markets and Competition Commission, within the scope of its area of action and the functions entrusted to it, may impose effective, proportionate and dissuasive penalties on electricity companies in respect of administrative infringements classified as very serious infringements under numbers 1, 2, 5, 6 and 7 of Article 60(a) of this Act, as well as those under numbers 8, 9 and 10 of Article 60(a), in relation to failures to comply with legally binding resolutions or requests from the National Markets and Competition Commission within the scope of its powers.

The National Markets and Competition Commission shall also have the power to penalise commission of the serious infringements referred to in the foregoing paragraph if, due to the prevailing circumstances, those infringements cannot be classified as very serious infringements and, in particular, in the case of infringements under numbers 4, 5 and 22 of Article 61(a) of this Act, in relation to failures to comply with legally binding resolutions or requests from the Commission within the scope of its powers.

The National Markets and Competition Commission shall have the power to penalise minor infringements under Article 62 of this Act, in relation to failures to comply with legally binding resolutions or requests from the National Markets and Competition Commission within the scope of its powers.

In all cases, the amount of the penalty may not exceed 10% of the annual net turnover of the transmission network manager, in respect of a penalty imposed on that manager, or 10% of the annual net amount of the consolidated turnover of the parent company of the vertically integrated group, in respect of a penalty imposed on that vertically integrated company, where appropriate.”

Final Provision Nine. *Enabling provision.*

This Act is passed pursuant to the following provisions:

a) Article 149(1)(13) of the Constitution, which confers exclusive competence on the State to establish basic rules on and coordinate general economic planning.

b) Article 149(1)(20) of the Constitution, which confers exclusive competence on the State in the area of airports of general interest.

c) Article 149(1)(21) of the Constitution, which confers exclusive competence on the State in the area of railways that cross the territory of more than one autonomous community; general rules on communications; post and telecommunications.

d) Article 149(1)(25) of the Constitution, which confers exclusive competence on the State to establish basic rules on mining and energy.

e) Article 149(1)(27) of the Constitution, which confers exclusive competence on the State to pass basic legislation on the press, radio and television system.

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Final Provision Ten. *Power to make secondary legislation.*

1. The Government may issue the necessary secondary legislation to implement and apply this Act.

2. Within two months from the entry into force of this Act, the Council of Ministers shall approve, by Royal Decree, the Organisational Charter referred to in Article 26 hereof, which shall determine as many matters relating to the functioning and rules of conduct of the National Markets and Competition Commission as may be necessary in accordance with the provisions of this Act and, in particular, the following:

- a) The organisational structure of the National Markets and Competition Commission.
- b) The allocation of powers between the different bodies.
- c) The regime for staff.

Final Provision Eleven. *Entry into force.*

This Act shall enter into force on the day following its publication in the Official State Gazette.

Accordingly,

I order all Spanish nationals and authorities to comply and ensure compliance with this Act.

Madrid, 4 June 2013.

JUAN CARLOS R.

President of the Government,
MARIANO RAJOY BREY

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SCHEDULE

Fees and payments of a public nature related to the activities and services regulated by this Act

I. Fees for the provision of services and the performance of activities

1. Fees for the provision of services and the performance of activities in relation to the postal sector

A) Fee for registration on the general register of postal service provider companies.

1. Chargeable event.

The chargeable event for the fee is registration and renewal of registration on the general register of postal service provider companies.

2. Date of liability for payment.

The fee shall become payable upon registration and upon the annual renewal thereof.

3. Parties liable for payment.

The parties liable for payment shall be natural or legal persons who provide postal services and appear on the general register of postal service provider companies.

Companies that simultaneously provide postal services that fall both within and outside the scope of the universal postal service must be registered on the general register of postal service provider companies in the sections covering those services. Each registration and renewal shall give rise to the requirement to pay the relevant fee.

4. Amount.

The fee is €400, which must be paid upon registration or renewal thereof.

5. Management.

Settlement of the fee by the Ministry of Public Works and Infrastructure shall comply with the provisions of the Ministerial Order handed down for that purpose.

B) Fee for issuing registration certificates.

1. Chargeable event.

The chargeable event for the fee is the issuance of the registration certificate by the general register of postal service provider companies.

The fee shall not be payable in the case of certificates issued upon first registration or renewal of registration on the register.

2. Date of liability for payment. The fee shall become payable upon applying for the registration certificate.

3. Parties liable for payment.

Persons who apply for a certificate shall be liable for payment.

4. Amount.

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The fee is €100, which must be paid upon filing the application.

5. Management.

Settlement of the fee by the Ministry of Public Works and Infrastructure shall comply with the provisions of the Ministerial Order handed down for that purpose.

C) Fees for the grant of individual administrative authorisations.

Settlement of the fee by the Ministry of Public Works and Infrastructure shall continue to be required on the terms set forth in Article 32 of Act 43/2010 of 30 December 2010 on the Universal Postal Service, on the Rights of Users and on the Postal Market.

2. Fees for the provision of services and the performance of activities in relation to concentration operations

Fee for the analysis and examination of concentration operations.

1. Chargeable event.

The chargeable event for the fee is the conduct, by the National Markets and Competition Commission, of the analysis of concentrations subject to control in accordance with Article 8 of Competition Act 15/2007 of 3 July 2007.

2. Date of liability for payment.

The fee shall become payable upon filing the notification provided for in Article 9 of Act 15/2007 of 3 July 2007.

If a self-assessment is filed without payment of the fee, said fee shall be collected using enforced collection proceedings, without prejudice to any proceedings that may be raised by the National Markets and Competition Commission.

3. Parties liable for payment.

The liable parties shall be persons under an obligation to notify in accordance with Article 9 of Act 15/2007 of 3 July 2007.

4. Amount.

i. A fixed fee of €1,500 for concentrations that require to be processed using the short form notification provided for in Article 56 of Act 15/2007 of 3 July 2007. However, if the National Markets and Competition Commission decides, in conformity with the article referred to above, that the parties must file the ordinary notification, those parties will have to submit the appropriate supplementary charge.

ii. In the case of analyses of economic concentrations subject to control in accordance with Article 8 of Act 15/2007 of 3 July 2007, the fee shall be:

a) €5,502.15, if the aggregate turnover in Spain of all concentration participants is equal to or less than €240,000,000.

b) €11,004.31, if the aggregate turnover in Spain of the participating companies exceeds €240,000,000 but is less than or equal to €480,000,000.

c) €22,008.62, if the aggregate turnover in Spain of the participating companies exceeds €480,000,000 but is less than or equal to €3,000,000,000.

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d) A fixed fee of €43,944, if the turnover in Spain of all participants exceeds €3,000,000,000, plus an additional €11,004.31 for every €3,000,000,000 by which said turnover exceeds the foregoing amount, up to a maximum limit of €109,806.

5. Refund.

In accordance with the provisions of Article 12 of Public Tariffs and Fees Act 8/1989 of 13 April 1989, required fees may only be refunded if the chargeable event did not occur for reasons not attributable to the party liable for the fee.

6. Management.

Settlement of the fee by the National Markets and Competition Commission shall comply with the provisions of the Ministerial Order handed down for that purpose.

3. Fees for the provision of services and the performance of activities in relation to the telecommunications sector

Responsibility for settlement of the following fees shall lie with the Ministry of Industry, Energy and Tourism.

A) General operator fee, regulated in paragraph 1 of Schedule I to General Telecommunications Act 32/2003 of 3 November 2003.

B) Telephone numbering fee, regulated in paragraph 2 of Schedule I to Act 32/2003 of 3 November 2003.

C) Fee for reservation of the public radio spectrum, regulated in paragraph 3 of Schedule I to Act 32/2003 of 3 November 2003.

D) Telecommunications fee, regulated in paragraph 4 of Schedule I to Act 32/2003 of 3 November 2003.

4. Fees for the exercise of functions in the energy sector

1. For the purposes of this Act, the following fees are established:

One. Fees for the provision of services and the performance of activities in relation to the liquid hydrocarbon sector.

a) Chargeable event. The chargeable event for the fee is the provision of services and the performance of activities by the Ministry of Industry, Energy and Tourism in relation to the liquid hydrocarbon sector, in accordance with the provisions of this Act and Hydrocarbon Sector Act 34/1998 of 7 October 1998.

b) Fee base. The fee base is composed of the annual sales of petrol, diesel fuel, kerosene, fuel oil and liquid petroleum gas in bulk and tanked, expressed in metric tonnes (MT), which were delivered in Spain. For those purposes, sales shall be deemed not to include sales between operators, or sales by operators to the parties referred to in Article 45 of Act 34/1998 of 7 October 1998, to distributors of liquid petroleum gas carried by pipeline to end consumers.

The sales referred to in the foregoing paragraph shall be calculated annually, based on the sales made during the previous calendar year, and shall apply from 1 January. The annual sales of each operator, which shall be used as the basis for calculating the fee due to the Public Treasury, shall be determined by means of a resolution of the Directorate-General for Energy Policy and Mining of the Ministry of Industry, Energy and Tourism. Until such time as the resolution referred to in the foregoing paragraph has been issued, the Ministry of Industry,

(Non-official Text)

Energy and Tourism shall make the settlement provided for in letter f) of this section in accordance with the annual sales determined for the immediately preceding year. Once the resolution of the Directorate-General for Energy Policy and Mining of the Ministry of Industry, Energy and Tourism has been issued, the Ministry shall make any adjustments that may be necessary in accordance with the sales figures determined by it.

c) Date of liability for payment. The fee shall become payable on the last day of every calendar month.

d) Parties liable for payment. The parties liable for payment are the wholesale operators referred to in Articles 42 and 45 of Act 34/1998 of 7 October 1998.

e) Rate and fee due. The rate by which the fee base shall be multiplied in order to determine the fee due to the Public Treasury shall be €0.140817/MT.

f) Management rules. The Ministry of Industry, Energy and Tourism shall settle the fee on a monthly basis, and the amount of every settlement carried out shall be one-twelfth of the fee due as defined in letter e) above.

Payment of the fee, as settled and notified by the Ministry of Industry, Energy and Tourism, shall be made by the liable parties defined in letter d) above within the deadlines set in the General Collection Regulations, approved by Royal Decree 939/2005 of 29 July 2005.

Two. Fees for the provision of services and the performance of activities in relation to the gaseous hydrocarbon sector

a) Chargeable event. The chargeable event for the fee is the provision of services and the performance of activities by the Ministry of Industry, Energy and Tourism and the National Markets and Competition Commission in the gaseous hydrocarbon sector, in accordance with the provisions of this Act and Hydrocarbon Sector Act 34/1998 of 7 October 1998.

b) Fee base. The fee base is composed of the total billings deriving from application of the tolls and levies referred to in Article 92 of Act 34/1998 of 7 October 1998.

c) Date of liability for payment. The fee shall become payable on the last day of every calendar month.

d) Parties liable for payment. The parties liable for payment of the fee are companies that engage in activities of regasification, storage of LNG in tanks, basic storage, transmission and distribution, on the terms set forth in Act 34/1998 of 7 October 1998.

e) Rate and fee due. The rate by which the fee base shall be multiplied in order to determine the fee due to the Public Treasury shall be 0.140 percent.

f) Management rules. The fee shall be subject to monthly self-assessment by the parties liable for payment as defined in letter d) above. The party liable for payment shall complete the appropriate return-assessment form, using the standard forms approved by resolution of the Ministry of Industry, Energy and Tourism.

For the purposes of the foregoing paragraph, the parties liable for payment must, before the 25th of each month, file a return-assessment at the Ministry of Industry, Energy and Tourism in respect of their total billings for the previous month, detailing periods and invoices.

(Non-official Text)

The deadline for payment of the fees in respect of each month's billings shall be, at the latest, the 10th, or the next business day, of the month following the month to which the billings period subject to assessment refers.

g) Integration of the fee into the toll and levy structure provided for in Act 34/1998 of 7 October 1998. The fee for the provision of services and the performance of activities in the gaseous hydrocarbon sector is deemed to be an ongoing gas system operating cost, and is integrated, for all purposes, into the toll and levy structure established by Act 34/1998 of 7 October 1998 and its implementing provisions.

Three. Fees for the provision of services and the performance of activities in relation to the electricity sector.

a) Chargeable event. The chargeable event for the fee is the provision of services and the performance of activities by the Ministry of Industry, Energy and Tourism and the National Markets and Competition Commission in relation to the electricity sector, in accordance with the provisions of this Act and Electricity Sector Act 54/1997 of 27 November 1997.

b) Exemptions and rebates. In the area of exemptions and rebates, regard shall be had to the Sole Additional Provision of Royal Decree 2017/1997 of 26 December 1997 organising and regulating the Settlement Procedure for Tariff-Based Transmission, Distribution and Wholesaling Costs, for Ongoing System Operating Costs and for Supply Diversification and Security Costs, which lays down the rules on exemptions and reduction coefficients applicable to the fees referred to in Article 5 thereof.

Transitional Provision Six of Royal Decree 2017/1997 of 26 December 1997 shall also apply.

c) Fee base. The fee base is composed of the total billings deriving from application of the access tolls referred to in Article 17 of Act 54/1997 of 27 November 1997.

d) Date of liability for payment. The fee shall become payable on the last day of every calendar month.

e) Parties liable for payment. The parties liable for payment are the companies that engage in transmission and distribution activities, on the terms provided for in Act 54/1997 of 27 November 1997.

f) Rate and fee due. The rate by which the fee base shall be multiplied in order to determine the fee due to the Public Treasury shall be 0.150 percent for the tolls referred to in Article 17 of Act 54/1997 of 27 November 1997.

g) Management rules. The fee shall be subject to monthly self-assessment by the parties liable for payment as defined in letter e) above. The party liable for payment shall complete the appropriate return-assessment form, using the standard forms approved by resolution of the Ministry of Industry, Energy and Tourism.

For the purposes of the foregoing paragraph, the parties liable for payment must, before the 25th of each month, file a return-assessment at the Ministry of Industry, Energy and Tourism in respect of their total billings for the previous month, detailing periods and invoices.

Payment of the fees in respect of billings for the month preceding the previous month shall be made before the 10th of each month or, where appropriate, before the next business day immediately thereafter.

(Non-official Text)

h) Integration of the fee into the toll structure provided for in Act 54/1997 of 27 November 1997. The fee for the provision of services and the performance of activities in the electricity sector is deemed to be an ongoing system operating cost, on the terms provided for in Article 16(5) of Act 54/1997 of 27 November 1997, and is integrated, for all purposes, into the toll structure established by that Act and its implementing provisions.

2. Responsibility for management and collection of the fees defined in this provision during the voluntary period shall lie with the Ministry of Industry, Energy and Tourism, on the terms provided for in General Taxation Act 58/2003 of 17 December 2003 and other applicable legislation.

The Ministry of Industry, Energy and Tourism shall also have power to order the deferral or splitting of payment of the fees defined in this provision during the voluntary period, in accordance with the provisions of the General Collection Regulations, approved by Royal Decree 939/2005 of 29 July 2005. Responsibility for enforced collection shall lie with the collection bodies of the Public Finance Authority, in accordance with the provisions of tax legislation.

3. To the extent not provided for in the foregoing paragraphs, the provisions of General Taxation Act 58/2003 of 17 December 2003, Public Tariffs and Fees Act 8/1989 of 13 April 1989 and their implementing legislation shall apply.

4. The fee rates shall be reviewed by the Government every four years, and shall be adapted to meet the funding needs evidenced by the National Markets and Competition Commission and the Ministry of Industry, Energy and Tourism.

The first review shall take place the year after the year in which the Ministry of Industry, Energy and Tourism effectively exercises the functions entrusted to it under Additional Provision Eight of this Act.

5. The provision of services and the performance of activities by the Ministry of Industry, Energy and Tourism, to which reference is made in paragraphs One a), Two a) and Three a), shall include those carried out by bodies attached to the Ministry, to which the Ministry entrusts the provision of services or the performance of activities.

6. The annual State budget laws shall determine what percentage of the sums collected in respect of the fees provided for in paragraphs Two and Three shall be allocated to the National Markets and Competition Commission for the exercise of its functions in the energy sector.

5. Fee for the administrative management of gaming

This fee shall be managed by the Ministry of Finance and Public Authorities.

II. *Payments of a public nature*

1. Payments to be made by telecommunications operators and private providers of televised audiovisual communication services whose geographical remit is State-wide or covers more than one autonomous community, regulated in Articles 5 and 6 of Act 8/2009 of 28 August 2009 on the Financing of the Spanish Radio and Television Corporation.

2. Postal payment, regulated in Article 31 of Act 43/2010 of 30 December 2010.