

## I. General provisions

### MINISTRY OF ECONOMY AND FINANCE

**3646** *ROYAL DECREE 261/2008 of 22 February 2008, approving the Defence of Competition Regulation.*

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## **Royal Decree 261/2008 of 22 February 2008, approving the Defence of Competition Regulation (Reglamento de Defensa de la Competencia)**

The Spanish Competition Act 15/2007 of 3 July 2007 (Ley de Defensa de Competencia), in the framework of article 38 of the Constitution and inspired in the European Community rules on competition policy, has as its purpose to ensure the existence of sufficient competition and protect it from all attacks contrary to the public interest.

In this new general framework, in which Act 15/2007 of 3 July 2007 has established a substantial reform of the Spanish defence of competition system with the aim of strengthening the mechanisms already existing in the Competition Act 16/1989 of 17 July 1989, which it replaces, and endowing that system with the instruments and optimum institutional structure to protect effective competition in the markets, taking into account the new community regulatory system and the authority of the Autonomous Communities for application of the provisions on anti-competitive conducts, as well as that of judicial bodies in applying competition rules, a regulatory development and implementation of the new law is needed.

Act 15/2007 of 3 July 2007, in final provision two, authorised the Government to dictate, within six months, the regulatory provisions to implement the said statute as regards the proceedings, treatment of conducts of minor importance and the rules on leniency or exemption from and reduction of fines for companies that cooperate in the fight against cartels.

In the meantime, insofar as is not opposed to the provisions of the said Act, the sole repealing provision has maintained in effect the regulatory texts that implemented and complemented the 1989 Act, in particular, Royal Decree 1443/2001 of 21 December 2001, implementing Act 16/1989 of 17 July 1989 in relation to control of economic concentrations, and articles 2 and 3 of chapter I, articles 14 and 15, paragraphs 1 to 4, of chapter II and chapter III of Royal Decree 378/2003 of 28 March 2003, implementing Act 16/1989 of 17 July 1989 on matters of block exemptions, individual authorisation and defence of competition register.

The Government, continuing with the reform of the national system of protection and promotion of competition, has drawn up this Regulation, which addresses fundamental issues for the implementation of the Competition Act 15/2007 of 3 July 2007 and whose approval is set out in the single article of this Royal Decree.

The Regulation is structured in two titles, the first, “On the defence of competition”, implements substantive questions on the defence of competition that are regulated in Act 15/2007 of 3 July 2007, specifically, aspects relating to conducts of less importance, economic concentrations, state aid and the promotion of competition; and the second, “On proceedings in defence of competition matters”, implements different proceedings regulated in Act 15/2007 of 3 July 2007.

With respect to title one, chapter one implements what is provided in article 5 of Act 15/2007 of 3 July 2007 in relation to conducts of minor importance, laying down the criteria for the definition of such conducts. Nevertheless, taking into account the practice and experience acquired in this respect, as well as the European Commission Notices on this matter, the Spanish National Competition Commission (Comisión Nacional de la Competencia) may prepare a Communication to clarify the said criteria.

Chapter two, on economic concentrations, implements the provisions of Act 15/2007 of 3 July 2007 concerning notification thresholds, in relation to calculation of market share and turnover and assessment of the economic efficiencies derived from the concentration operation.

Chapter three, on state aid, implements the provisions of article 11 of Act 15/2007 of 3 July 2007, in particular, the mechanisms for reporting and notifying state aid, having regard to the relevant community rules. Toward this end the Regulation provides for the creation of a telematic centre for reporting national state aid that has been published in Official Journals.

Chapter four focuses on the competition promotion function to be performed by the National Competition Commission, in accordance with the terms of article 26 of Act 15/2007 of 3 July 2007, by means of preparing reports, studies, research work and proposals, with the necessary cooperation of the different economic sectors and public and private sector entities. For the discharge of this function of promoting competition, the Regulation lays down the duty to cooperate with the National Competition Commission.

Title two, “On proceedings in defence of competition matters”, develops the two proceedings regulated in Act 15/2007 of 3 July 2007, with chapter one containing the provisions common to all proceedings. Together with the computation of the time limits and requirements for notifications, the content of the powers of inspection are implemented extensively, as is the cooperation, in relation to matters of powers of investigation, with the competent authorities of the Autonomous Communities on the one hand, and with the European Commission and other national competition authorities of Member States on the other.

Chapter two implements questions relating to disciplinary proceedings for prohibited conducts, developing in this areas the instruments incorporated into these proceedings by Act 15/2007 of 3 July 2007, grounded in the necessary balance between the principles of legal security and administrative effectiveness.

Precisely with the aim of ensuring greater efficiency in the allocation of public resources, without this implying impairment of the legal security of economic operators, and coherent application of competition rules, it has been provided that competition authorities cannot initiate disciplinary proceedings if the cause of action is not of sufficient public interest. This non-initiation of proceedings by the National Competition Commission does not preclude the complainant from bringing action before Mercantile Courts under Act 15/2007 of 3 July 2007, having regard to the nature of this judicial proceeding, more apropos for solving the problems raised in the complaint.

According to the provisions of Act 15/2007 of 3 July 2007, and the functions which the said Act attributes to such Courts, which not only hear cases brought under articles 81 and 82 of the Treaty establishing the European Community and the law deriving therefore, but also proceedings under articles 1 and 2 of Act 15/2007 of 3 July 2007, this may be the most appropriate instance for hearing a given complaint, for ensuring adequate articulation between the different institutional levels that interact in this area and the necessary coherence of the new systems for defending competition.

Taking into account the practice and experience being acquired in this respect, the National Competition Commission will be able to prepare a Communication to clarify the principles that guide its action in relation to the reasons for not initiating the proceeding.

This chapter contains a specific section implementing the leniency programme, regulating the procedures for exemptions and reductions of the amount of fines that are

provided for in articles 65 and 66 of Act 15/2007 of 3 July 2007, whose effective date has been deferred until the time this Regulation enters into force.

Chapter three develops the procedure for control of economic concentrations, with the Annexes to the Regulation containing the ordinary (full) and short forms for notifying concentration operations.

Chapter four, On the arbitration proceeding, develops the arbitration function pursuant to article 24.f) of Act 15/2007, as well as this arbitration procedure. The arbitration function may be proposed to the National Competition Commission for resolution of disputes relating to application of defence of competition law in Spain. The Regulation contains certain specific instances of the procedure, applying on a subsidiary basis the rules of the Spanish Arbitration Act 60/2003 of 23 December 2003 (Ley de Arbitraje), indicating that submission of a matter for arbitration by the National Competition Commission may be done under an arbitration covenant or by the individual declaration of a company, in the latter case in relation to enforcing covenants or conditions established in resolutions of the National Competition Commission and provided that another individual declaration of submission made by the other company affected by the controversy is also deposited.

Chapter five implements the procedure for National Competition Commission approval of Communications, requiring the opinion of the Defence of Competition Council when the Communications affect application of articles 1 to 3 of Act 15/2007 of 3 July 2007, and also establishes that the Council can take the initiative of requesting the President of the National Competition Commission to prepare such Communications.

The Regulation ends with a single additional provision, whereby all references to the National Competition Commission and its executive bodies are understood to be made to the offices responsible for investigation and resolution in the Autonomous Communities, and with two transitional provisions. The first provides that the Regulation will be applied to all proceedings brought, in the case of disciplinary proceedings, and initiated, in control of concentration proceedings, subsequent to the effective date of Act 15/2007. Transitional provision two refers to enforcement of Council of Ministers Resolutions adopted under Act 16/1989 of 17 July 1989.

The Regulation has been the object of a favourable report from the Spanish Data Protection Agency (Agencia Española de Protección de Datos), in accordance with the terms of articles 37.h) of the Organic Act of 13 December on the Protection of Personal Data and 5.b) of the Agency's charter, approved by Royal Decree 428/1993 of 26 March 1993.

This Regulation has likewise been the object of a favourable report from the Defence of Competition Council (Consejo de Defensa de la Competencia) at its meeting of 19 July 2007, in accordance with the terms of article 5 of Act 1/2002 of 21 February 2002 on the Coordination of the Powers of the State and the Autonomous Communities in Defence of Competition Matters (Ley de Coordinación de las Competencias del Estado y las Comunidades Autónomas en materia de Defensa de la Competencia), as well as from the National Competition Commission, in accordance with the terms of article 25.a) of Act 15/2007 of 3 July 2007.

Wherefore, at the proposal of the Minister of Economy and Finance, with the prior approval of the Minister of Public Administrations, in agreement with the Council of State and upon prior deliberation of the Council of Ministers at its meeting of 22, February 2008, I hereby

PROVIDE:

**Single article. Approval of the Defence of Competition Regulation**

In accordance with what is provided in final provision two of the Competition Act 15/2007 of 3 July 2007 (Ley de Defensa de la Competencia), the Defence of Competition Regulation is hereby approved, having as its subject matter the implementation of the Competition Act 15/2007 of 3 July 2007 and whose text is included below.

**Sole repealing provision. Repeal of laws and regulations**

This Royal Decree repeals all provisions of equal or lower ranking that are opposed to the provisions hereof, and in particular:

- a) Royal Decree 1443/2001 of 21 January 2001 implementing the Competition Act 16/1989 of 17 July 1989 as regards control of economic concentrations.
- b) Article 2 and 3 of chapter I, articles 14 and 15, paragraphs 1 to 4, of chapter II and chapter III of Royal Decree 378/2003 of 28 March 2003, implementing Act 16/1989 of 17 July 1989 on matters of block exemptions, individual authorisation and defence of competition register, which had remained in force until the approval of this regulatory instrument in accordance with the repealing provision of the Competition Act 15/2007 of 3 July 2007.

**Final provision one. Authority for regulatory implementation**

The Minister of Economy and Finance is authorised to dictate, upon prior report from the National Competition Commission, the provisions needed to implement this Royal Decree. In particular, the Minister of Economy and Finance is given powers to amend or develop the annexes included in this Royal Decree, upon prior report from the National Competition Commission.

**Final provision two. Effective date**

This Royal Decree shall be effective as from the day following its publication in the Spanish Official State Gazette (*Boletín Oficial del Estado*).

Done in Madrid on 22 February 2008.

KING JUAN CARLOS

The Second Vice President of the Government and Minister of Economy and Finance,  
PEDRO SOLBES MIRA



## **DEFENCE OF COMPETITION REGULATION**

### **TITLE I**

#### **On the Defence of Competition**

### **CHAPTER I**

#### **On conducts of minor importance**

#### **Article 1. Conducts of minor importance having regard to market share**

For the purposes of article 5 of the Competition Act 15/2007 of 3 July 2007, the following conducts shall be considered of minor importance, without the need for prior declaration to such effect:

- a) Conducts between actual or potential competitor companies whose combined market share is no greater than 10 percent in any of the affected relevant markets.
- b) Conducts between companies that are neither actual nor potential competitors, if neither one of them has a market share of more than 15 percent in any of the affected relevant markets.
- c) Where it is not possible to determine if the case involves conduct between competitors or between non-competitors, the 10 percent threshold will be tested in each of the affected relevant markets.
- d) When competition is restricted in a relevant market by the cumulative effect of parallel agreements for sale of goods or services reached by different suppliers or distributors, the market share percentage thresholds fixed in the foregoing subparagraphs will be lowered to 5 percent. A cumulative effect will not be found to exist if less than 30 percent of the relevant market is covered by parallel networks of agreements.

#### **Article 2. Conducts excluded from the concept of minor importance**

1. Independently of what is provided in the preceding article, conducts shall not be classified as of minor importance if they are carried on between competitors and, directly or indirectly, in isolation or in combination with other factors under the control of the participating companies, have as their object:

- a) the fixing of prices when selling the products to third parties;
- b) the limitation of output or sales;
- c) the allocation of markets or customers, including fraudulent bids, or restriction of imports or exports.

2. Independently of what is provided in the preceding article, conducts shall not be classified as of minor importance if they are carried on between non-competitors and, directly or indirectly, in isolation or in combination with other factors under the control of the participating companies, have as their object:

- a) the establishment of a fixed or minimum resale price which the buyer must comply with;

- b) the restriction of active or passive sales to end users by members of a selective distribution system, without prejudice to the supplier being able to restrict the capacity of such members to operate out of an unauthorised place of establishment;
- c) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade;
- d) the restriction agreed between a supplier of components and a buyer who incorporates those components which limits the supplier's ability to sell the components as spare parts to end users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods;
- e) the establishment of a non-competition clause of indefinite duration or term of more than five years;
- f) the restriction of the territory into which, or of the customers to whom, the buyer may sell the contract goods or services, except:
1. the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or exclusively allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer;
  2. the restriction of sales to end users by a buyer operating at the wholesale level of trade;
  3. the restriction of sales to unauthorised distributors by the members of a selective distribution system; and
  4. the restriction of the buyer's ability to sell components to customers who would use them to manufacture the same type of goods as those produced by the supplier.
3. Irrespective of what is provided in the preceding article, collective agreements, decisions or recommendations or concerted or consciously parallel practices between competitors who, for the purposes of the agreement, operate at a different level of the production or distribution chain, shall not be considered of minor importance if they contain any of the restrictions listed in paragraph 1 and 2 above.
4. Irrespective of what is provided in the preceding article, the following will not be considered of minor importance:
- a) conducts pursued by companies that are the holders or beneficiaries of exclusive rights;
  - b) conducts pursued by companies that are present in relevant markets in which more than 50 percent is covered by parallel networks of vertical agreements having similar effects.
5. For the purposes provided for in this article:
- a) Active sales means actively approaching individual customers inside another distributor's exclusive territory or exclusive consumer group by means, *inter alia*, of direct mail or visits, advertising in the media, other activities specifically targeting those customers, and establishing a warehouse or distribution centre in another distributor's exclusive territory.
  - b) Passive sales means responding to requests that were not actively solicited from individual customers or from specific customer groups, including delivery of goods or services to them.

c) Non-competition clause means any direct or indirect obligation prohibiting the buyer from manufacturing, acquiring, selling or reselling goods or services which compete with the contract goods or services, or any obligation, direct or indirect, which requires the buyer to acquire from the supplier or another company designated by the supplier more than 80% of its total purchases of the contract goods or services and their substitutes in the relevant market, calculated on the basis of the value of the buyer's purchases in the preceding year.

### **Article 3. Other conducts of minor importance**

1. Without prejudice to what is provided in the preceding articles and for the purposes provided for in articles 5 and 53.1.b) of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission may waive application of articles 1 to 3 of the said Act to conducts which, having regard to their legal and economic context, are not capable of having a significant effect on competition.

2. The Council of the National Competition Commission, having heard the Defence of Competition Council, may approve Communications to develop the criteria for delimiting the conducts of minor importance under article 5 of Act 15/2007 of 3 July 2007.

## **CHAPTER II**

### **On economic concentrations**

#### **Article 4. Calculation of market share**

1. For the purposes provided for in articles 8.1.a) and 56.1 of Act 15/2007 of 3 July 2007, in all cases the market share resulting from a concentration operation in a relevant market will be understood to be the sum of the market shares in that market of the companies participating in the operation.

2. For the purposes provided for in articles 8.1.a) and 56.1 of Act 15/2007 of 3 July 2007, in all cases it shall be understood that:

a) There is an acquisition of share when, even if there is prior control by the purchasers, the economic concentration has the effect of a change in the characteristics of that control, be it joint or exclusive.

b) Similarly, there is an acquisition of share when a joint venture is created and the parent companies contribute all or part of their business to the newly created entity.

#### **Article 5. Calculation of turnover**

1. For the purposes provided in article 8.1.b) of Act 15/2007 of 3 July 2007, the overall turnover in Spain will comprise the figure generated by the sale of goods and provision of services as part of the ordinary business of the companies that participate in the concentration operation in the last accounting year, after deducting the amount of rebates and other reductions of sales, Value Added Tax and other taxes directly related to the turnover.

Without prejudice to the above, any acquisition or assignment of control of all or part of the companies after the closing date of the audited financial statements of the participating companies will be reflected in the turnover used for purposes of notifying the concentration operation.

The turnover attained in Spain will include products sold and services provided to companies or consumers in Spain.

2. The turnover of a participating company will be calculated as the sum of the turnover of the following companies:

- a) the participating company,
- b) the companies controlled by the participating company exclusively or jointly, and
- c) the companies that exclusively or jointly control the participating company.

3. The aggregate turnover of a participating company will not take into account transactions that take place between companies in the same group.

4. For the purposes of avoiding double accounting, when the acquired companies was already controlled by one or more of the acquiring companies, the entire turnover of the acquired entity will be imputed to that entity only.

5. When the concentration operation consists in the acquisition of a business branch, business unit, establishment or, in general, of part of one or more companies, and irrespective of whether that part has its own legal personality, there shall only be taken into account, insofar as relates to the acquired company, the turnover relative to the part subject to acquisition.

6. When two or more concentrations within the meaning of the preceding paragraph take place within a two-year period between the same buyers and sellers, the concentrations will be considered as a single concentration carried out on the date of the last operation.

7. Without prejudice to the above, the following specific rules shall be observed:

a) In the event that a participant in the concentration operation is an investment fund, its turnover will be determined as the sum of the turnover of its management companies and the turnover of the companies controlled by the investment funds managed by those management companies.

b) In the case of credit institutions and other financial institutions, the turnover will be replaced by the sum of the following revenue items received by the institution in Spain, as defined in Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, after deducting, if applicable, Value Added Tax and other taxes directly relating to those revenues:

1. Interest and similar income.
2. Income from securities, whether shares, units and other variable-yield securities, including shares in group companies.
3. Commissions received.
4. Net profit from financial operations.
5. Other operating income.

The turnover of credit institutions and other financial institutions obtained in Spain will be that of the institution's branches or divisions located in Spain.

c) In the case of insurers, the turnover will be replaced by the value of the gross premiums written that include all amounts received and receivable in respect of insurance contracts established by those companies or for their account, including the premiums assigned to reinsurers and after deducting the taxes and assessments

applied on the basis of the different premiums or of the total volume thereof, taking into account the gross premiums paid by residents in Spain.

The calculation method refers to the activities proper to the insurance or lending business, respectively, without prejudice to there being included in the aggregate turnover the part that corresponds to the companies controlled by the participants who carry on other businesses, which will be calculated according to the general rules.

### **Article 6. Assessment of economic efficiencies**

In order for the National Competition Commission to take into account the economic efficiencies envisaged in article 10.1 of Act 15/2007 of 3 July 2007 and invoked by the parties to a concentration operation, the notifying party must describe the nature and effects of such efficiencies, quantifying them if possible, and indicate the time frame in which they are expected to be achieved, evidencing all these points with the means at its disposal.

## **CHAPTER III**

### **On state aid**

#### **Article 7. Reports and proposals**

1. According to the provisions of paragraphs 1 to 4 of 11 of Act 15/2007 of 3 July 2007, and taking into account what is provided in article 39 of the said statute, upon the prior request of the National Competition Commission, the Public Administrations must provide to the latter, within the stipulated time limit, all information which the National Competition Commission deems necessary for the purpose of making the reports and proposals envisaged in paragraphs 1, 2 and 4 of the above-cited article 11 of Act 15/2007 of 3 July 2007.

2. When the National Competition Commission acts at the behest of another Public Administration in accordance with article 11.1 of Act 15/2007 of 3 July 2007, the said administration must identify the agencies that granted the state aid and the aid schemes or individual aids on which the pronouncement is sought from the National Competition Commission, as well as all documents which could be significant for analysing the effects of that aid on the maintenance of effective competition in the markets.

3. According to what is provided in article 11.1 of Act 15/2007 of 3 July 2007, the analysis of the criteria for grant of state aid in relation to its possible effects on the maintenance of effective competition in the markets will address both the legal and economic aspects of the instrument used, without prejudice to the terms of articles 87 to 89 of the European Community Treaty and their implementing regulations, and to the powers of the European Commission and of community and national courts on matters of control of state aid. The following aspects, *inter alia*, may be analysed:

- a) the strategic plan, if applicable, in which the aid scheme is integrated, as public policy planning instrument that sets objectives and identifies market failures;
- b) the rules governing the aid in the case of a line of aid, or its legal foundation in the case of individual aid;
- c) the balancing test for the aid, which will analyse the positive and negative aspects of its grant, including the appropriateness of the instrument used, its incentive effect and its necessity and proportionality.

4. The annual report on state aid issued by the National Competition Commission will include amongst its annexes the reports which, if applicable, have been prepared by the competition authorities of the Autonomous Communities on state aid granted by the regional or local authorities in their respective territory.

#### **Article 8. Mechanisms for reporting state aid**

1. According to article 11.3 of Act 15/2007 of 3 July 2007, the office responsible for reporting aid to the European Commission must include in the information submitted to the National Competition Commission all data that permit effective tracking of that aid, including any eventual decisions or observations emanating from the European Commission.

2. The National Competition Commission will set up a system of access for the competition authorities of the Autonomous Communities with respect to the information obtained pursuant to article 11.3 of Act 15/2007 of 3 July 2007, ensuring the confidentiality of the information in each case.

3. According to the principles of publicity and transparency set out in article 27 of Act 15/2007 of 3 July 2007, the National Competition Commission will set up a telematic information centre on national state aid that has been published in Official Journals.

### **CHAPTER IV**

#### **On the promotion of competition**

#### **Article 9. Exercising the function of promoting competition**

1. According to what is provided in article 26.1 of Act 15/2007 of 3 July 2007, the National Competition Commission will promote the existence of effective competition in markets, for the benefit of all participants in the market and of consumers in particular. This function will be pursued with the instruments deemed appropriate and, in particular, by means of reports, studies, research work and proposals.

2. For the purposes of articles 25 and 26 of Act 15/2007 of 3 July 2007, the National Competition Commission may prepare reports and proposals regarding bills and draft laws and regulations, and address proposals to Public Administrations for modification or elimination of restraints on effective competition derived from their actions or for maintenance or reestablishment of competition in markets. In particular, the National Competition Commission will report on bills and draft laws and regulations submitted to it by the Ministry of Economy and Finance.

3. The National Competition Commission may address proposals to the Ministry of Economy and Finance for drafting and reforming laws and regulations that affect competition.

#### **Article 10. Duty of cooperation and disclosure in relation to the promotion of competition**

1. In the performance of its promotion of competition function, the National Competition Commission has the powers attributed to by Act 15/2007 of 3 July 2007 for exercise of its authority. In particular, it may solicit data and information on the situation of the markets from the economic sectors involved.

2. For the purposes provided for in article 39 of Act 15/2007 of 3 July 2007, all natural or legal persons and the offices and agencies of all Public Administrations are subject to the duty to cooperate with the National Competition Commission and are obliged to provide, at the request of the latter and within the stipulated time limit, all types of data and information available to them and which may prove necessary for the National Competition Commission to perform the function of promoting effective competition in markets referred to by article 26.1 of Act 15/2007 of 3 July 2007.

3. In the event of breach of the duties of cooperation and disclosure vis-à-vis the National Competition Commission referred to by this article, the provisions of article 21 of this Regulation will apply.

## TITLE II

### On proceedings in defence of competition matters

#### CHAPTER I

#### Common provisions

##### **Article 11. Service of notifications**

1. For the purposes of serving the notifications referred to by articles 36 and 37 of Act 15/2007 of 3 July 2007, the interested parties in the proceeding must designate a location in the town where the competition authority is headquartered or indicate and identify the relevant electronic media, according to what is provided in article 28 of Act 11/2007 of 22 June 2007 on electronic access of citizens to public services (Ley de acceso electrónico de los ciudadanos a los servicios públicos), where the notification may be made until midnight of the last day of the time limit.

2. According to article 58 of Act 30/1992 of 26 November 1992 on the Legal Framework of Public Administrations and Common Administrative Procedure (Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común), the notification obligation shall be considered to have been fulfilled with an attempt to notify that contains at least the full text of the resolution, duly evidenced, within the maximum stipulated time limit.

##### **Article 12. Computation of the maximum time limits for proceedings in cases of suspension**

1. In case of suspension of the maximum time limit, the competent body of the National Competition Commission must adopt a resolution indicating the grounds for suspension, according to what is provided in article 37 of Act 15/2007 of 3 July 2007. The running of the time limit will be suspended:

a) in the events provided for in article 37.1.a) and b) of Act 15/2007 of 3 July 2007, for the time period between service of the order and the recipient's effective compliance therewith, or, in default thereof, during the period granted for compliance;

b) in the event provided for in article 37.1.e) of Act 15/2007 of 3 July 2007, during the time needed for incorporation into the case file of the results of the evidentiary proceedings or complementary actions;

- c) in the event provided for in article 37.1.g) of Act 15/2007 of 3 July 2007, when negotiations begin with a view to reaching a settlement, from the time of the decision to begin the actions until the conclusion, if applicable, of the said negotiations;
- d) in the event provided for in article 37.2.b) of Act 15/2007 of 3 July 2007, for the time period between service of the order and the recipient's effective compliance therewith, without prejudice to what is provided in paragraphs 4 and 5 of article 55 of Act 15/2007 of 3 July 2007;
- e) in the event of article 37.2.d) of Act 15/2007 of 3 July 2007, for the time period between the request for a report, notice of which request must be given to the interested parties, and receipt of the report, which shall likewise be notified thereto;
- f) in the rest of the events of article 37 of Act 15/2007, the running of the time limit shall be considered suspended as from the date of the suspension resolution, which shall be notified to the interested parties.
2. To lift the suspension of the maximum time limit, the competent body of the National Competition Commission must dictate a new resolution stating that the running of the time limit is understood to resume as from the day following resolution of the incident that gave rise to the suspension and indicating the new date of the maximum time limit for resolution of the proceeding. The resolution to lift the suspension shall likewise be notified to the interested parties.
3. In the event of suspension of the time limit, the final day of the time limit will be determined by prolonging the initial deadline by the number of calendar days during which the running of the time limit was suspended.

### **Article 13. Powers of inspection**

1. For the purposes of article 40 of Act 15/2007 of 3 July 2007, National Competition Commission personnel may be accompanied by experts or specialists in the matters addressed by the inspection, as well as by experts in information technologies, all of them duly authorised by the Director of Investigation.
2. For the purposes provided for in article 40.2.a) of Act 15/2007 of 3 July 2007, the personnel authorised by the Director of Investigation may conduct inspections in the private domiciles of entrepreneurs, directors and other staff of the companies if there are well founded indicia that books or other documents relating to the company and to the subject matter of the inspection may be found in those private domiciles that can serve to prove a serious or very serious violation. The authorised personnel will have the powers envisaged in article 40.2.b), c) and d) of Act 15/2007 of 3 July 2007.
3. The personnel authorised to carry out an investigation will exercise their powers upon prior presentation of a written authorisation from the Director of Investigation indicating the subject matter and purpose of the inspection, the persons investigated, data, document, operations, information and other elements that will be subject to inspection, the date on which the inspection is to be conducted and its scope. The written authorisation will likewise include the penalties envisaged in Act 15/2007 of 3 July 2007 in the event the companies do not submit to the inspections or by any means obstruct the inspection work of the National Competition Commission.
4. All entries and inspections made in premises, land, transportation means and domiciles will be set out in a certificate and signed by an authorised official and by the person before whom the inspection has been conducted or, if such person is not present at the time of signing, by the individual he or she authorises to sign. Refusal by these persons to sign the certificate will not prevent it from having probatory value once



it has by signed by two authorised officials. There will be attached to the certificate a list of the documents for which copies have been obtained, as well as a copy thereof and, if applicable, the list of those documents which have been retained and temporarily forwarded to the National Competition Commission by the inspection staff, regardless of the material format of those documents.

5. The inspection staff will issue a copy of the certificate and of the rest of the documents thereto attached to the persons concerned.

#### **Article 14. Cooperation with the competent bodies of the Autonomous Communities on matters of investigation powers**

For the purposes provided in article 40 of Act 15/2007 of 3 July 2007, in relation to inspection powers, in proceedings that deal with the conducts envisaged in articles 1, 2 and 3 of this Act, the National Competition Commission and competent bodies of the Autonomous Communities, and the latter between them, may request the mutual assistance of their personnel.

#### **Article 15. Cooperation with the European Commission and other national competition authorities on matters of investigation powers**

The National Competition Commission is the competent authority to collaborate in inspections and other investigation powers with the European Commission and other national competition authorities on the terms established in Regulation (EC) 1/2003 of 16 December 2002, on the implementation of the rules on competition laid down in articles 81 and 82 of the Treaty and in Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

#### **Article 16. Coordination with the Presidents of the sector regulatory agencies**

For the purposes provided in article 17.3 of Act 15/2007 of 3 July 2007, meetings of the President of the National Competition Commission with the Presidents of the sector regulatory bodies will be held at least yearly, or whenever considered necessary by any of them having regard to the situation of effective competition in the respective economic sector or such concrete circumstances as may affect the same.

#### **Article 17. Duty to cooperate**

1. For the purposes provided for in article 39 of Act 15/2007 of 3 July 2007, the offices of the National Competition Commission, when requesting the information needed to discharge the functions referred to in Act 15/2007 of 3 July 2007, will advise the recipient of the information request of the time limit for submitting the requested information and as to the levying of a periodic penalty payment that may be ordered in the case of failure to comply with the request according to what is provided in article 67 of Act 15/2007 of 3 July 2007.

2. If the time limit mentioned in the preceding paragraph expires without fulfilment of the request, the offices of the National Competition Commission may reiterate the request, setting a new time limit no greater than half of the one initially established, warning the recipient of the request that a periodic penalty payment will be imposed at the expiry of the new time limit.

3. The levying of periodic penalty payments will be governed by the provisions of article 21 of this Regulation.

### **Article 18. Administrative information and attention to citizens**

Without prejudice to what is provided in article 55.2 of Act 15/2007 of 3 July 2007, the National Competition Commission will provide the administrative information and citizen attention services, and manage complaints and suggestions in relation to defence of competition, in accordance with the terms of Royal Decree 208/1996 of 9 February 1996, which regulates administrative information and citizen attention services, and in Royal Decree 951/2005 of 29 July 2005, which establishes the general framework for enhancing the quality of the General State Administration.

### **Article 19. Visit before the Council of the National Competition Commission**

1. The Council of the National Competition Commission may resolve to hold a hearing, upon the prior request of the interested parties or when it deems appropriate for examining and ruling on the subject matter of the case. In the request, addressed to the Secretariat of the Council of the National Competition Commission, the interested parties will indicate the persons interested in attending the hearing, specifying the position they hold in relation to the interested parties.

2. The hearing will be contradictory in nature, with the participation of the interested parties, their representatives, staff of the Directorate for Investigation and the persons authorised by the President of the National Competition Commission. The Council of the National Competition Commission may also request the presence at the hearing of those persons considered appropriate, giving the interested parties notice to such effect with an indication of the identity, office and occupation of those persons, with the confidentiality of the actions guaranteed in all events.

3. The hearing will begin with an exposition of the proposed resolution and report of the Directorate for Investigation representative, and conclude with the exposition by the interested parties of their allegations, giving the interested parties and the Directorate for Investigation representative a new round in which they may briefly clarify and rectify facts or concepts and concretise their position.

The President of the National Competition Commission may submit to the interested parties and to the Directorate for Investigation representative the questions the President deems appropriate and grant authorisation to any Council member to do so.

4. The President of the National Competition Commission will have all powers needed to preserve and reestablish order in the hearings and maintain due respect for the Council of the National Competition Commission and for the rest of the public authorities, with authority to correct speakers in the act, and even to clear the hearing room if the President deems necessary. In particular, the President of the National Competition Commission will have powers to call the interested parties to order if they stray from the subject matter of the proceeding, with authority to deny them the floor to continue speaking.

### **Article 20. Treatment of confidential information**

Any person who when submitting documents to the National Competition Commission requests confidential treatment of the data or information, must do so on a reasoned

basis before the competent body within the framework of the proceeding in question, and must also submit a non-confidential version of those documents.

### **Article 21. Levying of periodic penalty payments**

1. For the purposes provided for in article 67 of Act 15/2007 of 3 July 2007, the following have power to impose periodic penalty payments:

a) The Directorate for Investigation, with respect to the obligations established in its resolutions and acts, in the event of breach of the duty to cooperate established in article 39 of Act 15/2007 of 3 July 2007.

b) The Council of the National Competition Commission, ex officio or at the proposal of the Directorate for Investigation, with respect to the obligations established in its resolutions, requests and decisions and, if applicable, with respect to those established in resolutions of the Council of Ministers.

2. The resolution or decision declaring breach of an obligation shall impose, if applicable, the relevant periodic penalty payment, setting the total amount thereof as a function of the number of days of delay in compliance, and granting a new time limit for performance of the obligation.

3. If the time limit indicated in the preceding paragraph expires without the obligation being complied with, the offices of the National Competition Commission may levy a new periodic penalty payment for the time elapsed, and levy it as many times as necessary until the obligation is fulfilled.

4. The levying of periodic penalty payments will be understood without prejudice to the opening, in the cases provided for according to article 62 of Act 15/2007 of 3 July 2007, of the relevant disciplinary proceeding, which shall be pursued in accordance with the provisions of Act 30/1992 of 26 November 1992 on the Legal Framework of Public Administrations and Common Administrative Procedure and its implementing regulations.

### **Article 22. Payment of fines, periodic penalty payments and fees**

1. The payment of fines and periodic penalty payments must be done within the time limits stipulated in paragraphs 2 and 5 of article 62 of the Spanish General Tax Act 58/2003 of 17 December 2003 (Ley General Tributaria), without prejudice to such regional legal provisions as may apply.

2. The fee for analysis and study of concentration operations will accrue when the person subject to such fee presents the notification provided for in article 9 of Act 15/2007 of 3 July 2007. Collection of the fee via enforcement proceedings will be done in accordance with the General Regulations for Tax Collections (Reglamento General de Recaudación), via agreements concluded with the Spanish Tax Administration Agency (Agencia Estatal de Administración Tributaria).

### **Article 23. Publicity**

1. According to 27 of Act 15/2007 of 3 July 2007, the National Competition Commission resolutions, decisions and reports issued pursuant to defence of competition laws and regulations will be publicly disclosed by being posted on the National Competition Commission website ([www.cncompetencia.es](http://www.cncompetencia.es)), after being notified to the interested parties.

2. The public disclosure referred to by the preceding paragraph will be done after resolving, if applicable, on the confidential aspects of the content of those disclosures and upon prior separation of the personal data referred to by article 3.a) of Organic Act 15/1999 of 13 December 1999 on the Protection of Personal Data (Ley Orgánica de Protección de Datos de Carácter Personal), except as refers to the name of the infringers.

#### **Article 24. Appeals against the resolutions and measures dictated by the Directorate for Investigation**

1. In accordance with the terms of article 47 of Act 15/2007 of 3 July 2007, once the administrative appeal has been filed before the Council of the National Competition Commission against the resolutions and measures dictated by the Directorate for Investigation, the Council will instruct the Directorate for Investigation to forward a copy of the case file to the Council together with the Directorate's report within five days.

2. If there are other interested parties, the appeal will be notified to them and they will be shown the case file in order for them to be able to submit such allegations as they deem appropriate.

## **CHAPTER II**

### **Disciplinary proceedings for prohibited conducts**

#### **SECTION 1. On the examination phase of the disciplinary proceeding**

#### **Article 25. Initiation of the proceeding**

1. The disciplinary proceeding is always initiated ex officio by the Directorate for Investigation:

- a) At its own initiative, after having obtained direct or indirect knowledge of the conducts capable of constituting an infringement;
- b) At the initiative of the Council of the National Competition Commission;
- c) Pursuant to a complaint, with the content indicated in the following paragraph.

2. Complaints addressed to the Directorate for Investigation of the National Competition Commission shall contain, at minimum, the following information, and the complainant may submit the additional data and information set out in Annex I of this Regulation:

- a) Full individual or corporate name, domicile, telephone and fax number of the complainants and, if they are acting through a representative, evidence of the representative capacity and address for purposes of notices.
- b) Full individual or corporate name, domicile and, if applicable, telephone and fax number or any other relevant electronic media of the accused.
- c) Facts from which there derives the existence of a violation and evidence thereof, if applicable, and definition and structure of the relevant market.
- d) If applicable, justification of standing as interested party in any eventual disciplinary proceeding according to article 31 of Act 30/1992 of 26 November 1992 on the Legal Framework of Public Administrations and Common Administrative Procedure.

3. If the complaint does not meet the requirements laid down in paragraph 2 above, the complainant will be given ten days within which to remedy the failure or provide the requested documentation, and advised that failure to do so will lead to the complaint being considered withdrawn.
4. Abandonment by the complainant will not preclude the Directorate for Investigation from ex officio carrying out all actions it deems necessary.
5. Submission of a complaint in due form does not oblige the Directorate for Investigation to initiate the disciplinary proceeding. A decision not to bring the proceeding by the Council of the National Competition Commission, at the proposal of the Directorate for Investigation, shall be notified to the complainant, indicating the reasons for not initiating the proceeding in accordance with what is provided in article 49 of Act 15/2007 of 3 July 2007.

#### **Article 26. Reserved information**

Within the framework of the reserved information referred to in article 49.2 of Act 15/2007 of 3 July 2007, the Directorate for Investigation may address requests for information to the complainant, the accused and third parties. Where the Directorate for Investigation requests information from the accused, it shall notify the latter of all objective elements contained in the complaint in relation to facts of the complaint.

#### **Article 27. Resolution not to proceed and to dismiss the complaint**

1. In order for the Council of the National Competition Commission to be able to resolve not to initiate proceedings and to dismiss the case on the terms established in articles 44 and 49.3 of Act 15/2007 of 3 July 2007, the Directorate for Investigation will forward to the Council the complaint received, the preliminary actions carried out, if applicable, and a proposal for dismissal.
2. Where the Council of the National Competition Commission, in view of the proposal for dismissal, believes that there may be indicia of violation of competition rules, it shall instruct the Directorate for Investigation to initiate the relevant proceeding.

#### **Article 28. Initiation of the proceeding**

1. Initiation of proceedings shall be formalised with the following minimum content:
  - a) Identification of the presumed infringers and of the complainants, where such exist.
  - b) Reasons for initiating the proceeding.
  - c) Examining officer or officers and, if applicable, examining clerk, indicating the rules for recusal.
  - d) If applicable, the persons who have standing as interested party.
2. The decision to initiate proceedings will be notified to the interested parties, and a copy of the complaint will be served on the accused.
3. Notice of the initiation of proceedings by the Directorate for Investigation will be posted on the National Competition Commission website.
4. The time limit for investigating the case will be twelve months reckoned from the date of the decision to initiate proceedings. Expiry of the maximum time limit of eighteen months after the date of the decision to initiate the disciplinary proceeding without a

resolution having been issued thereon will cause the proceeding to lapse in accordance with the terms of article 38.1 of Act 15/2007 of 3 July 2007.

### **Article 29. Joinder, separation and expansion of cases**

The Directorate for Investigation, at its own initiative or at that of the interested parties, may order cases to be joined if there is a direct connection between them, as well as separate cases if the nature of the cause of action requires that independent proceedings be pursued. It may likewise order an expansion of the decision to initiate proceedings if the investigation detects the participation of other presumed infringers, the presumed commission of other infringements or if new interested parties not included in the decision come forth.

### **Article 30. Incorporating information into a case file**

The Directorate for Investigation may decide to incorporate into a case file the information on record in another case if such information is necessary for establishing the facts investigated in the former. The resolution of incorporation shall be notified to the interested parties and to the third parties who submitted the information subject to incorporation, giving them five days within which to submit the allegations they deem appropriate in the defence of their rights and interests.

### **Article 31. Access to case file**

Once the proceeding has been initiated the interested parties may have access to the case file and obtain individualised copies of all documents in the case file of the National Competition Commission, except for trade secrets of other interested parties or third parties, as well as any other confidential information, by personally appearing at the offices of the National Competition Commission, in such way as does not affect its functioning and without submitting generic requests for the case file.

### **Article 32. Investigative actions, pleadings and evidence**

1. The examining officer will carry out all actions that may be necessary to establish the facts and determine legal liability, soliciting the data, information and probative materials of relevance for determining the existence of violations and, when deemed appropriate, the participation of the interested parties.
2. The interested parties may, at any time during investigation of the disciplinary proceeding, submit the pleadings and propose the admission of evidence they deem relevant for the defence of their interests. The Directorate for Investigation must give a reasoned resolution on the admission of the evidence. Denial of admission of evidence shall admit no appeal.

### **Article 33. Statement of objections**

1. In accordance with the provisions of article 50.3 of Act 15/2007 of 3 July 2007, the facts that may constitute a violation shall be set out in a statement of objections that will be served on the interested parties, who will have fifteen days within which to respond and, if applicable, propose the evidence they deem pertinent. After having received the pleadings and admitted the evidence or, as applicable, on expiry of the fifteen day time

limit, the Directorate for Investigation shall proceed to close the examination phase of the proceeding, giving notice to such effect to the interested parties, in order to draw up the proposed resolution provided for in article 50.4 of Act 15/2007 of 3 July 2007.

2. When the facts may constitute a violation with effect on more than one Autonomous Community or on the whole of the national market, but which have significant impact on one Autonomous Community, the Directorate for Investigation will send the respective office of that Autonomous Community a copy of the statement of objections and, if applicable, of the complaint and of the documents and evidence on record in the case file, in order for that office to issue its mandatory non-binding report within twenty days. This request for the mandatory report will be notified to the interested parties, for the purposes of article 37.1 of Act 15/2007 of 3 July 2007.

3. Where the Directorate for Investigation considers that the existence of prohibited practices has not been demonstrated, it shall so notify the interested parties, who will have fifteen days within which to submit the pleadings or propose the evidence they deem pertinent. After having received the pleadings and admitted the evidence or, as applicable, on expiry of the fifteen day time limit, the Directorate for Investigation shall proceed to close the examination phase of the proceeding, giving notice to such effect to the interested parties, in order to draw up the proposed resolution provided for in article 50.4 of Act 15/2007 of 3 July 2007.

Notwithstanding the above, if in view of the pleadings submitted or the evidence admitted, the Directorate for Investigation believes there may be facts that constitute a violation, the provisions of paragraph 1 above shall apply, and the relevant statement of objections will be drawn up.

#### **Article 34. Proposed resolution and report**

1. The resolution proposal shall contain the background of the case, the findings in facts, the liable persons, the legal assessment of the facts, the proposal on declaration of existence of a violation and, if applicable, the effects generated in the market, the liability that rests with the infringers, the aggravating and mitigating circumstances in play and the Directorate for Investigation's proposal on exemption from or reduction of fines under articles 65 and 66 of Act 15/2007 of 3 July 2007. Where the Directorate for Investigation considers that the existence of prohibited practices has not been demonstrated, it shall so state in the proposed resolution.

The resolution proposal, which will include the pleadings submitted by the interested parties throughout the examination of the case and the evidence proposed by them, with an indication as to whether or not such evidence was admitted, will be notified to the interested parties in order for them, within fifteen days, to formulate such allegations as they deem fit. The allegations on the proposed resolution of the Directorate for Investigation must contain, if applicable, the proposals made by the parties in relation to admission of evidence and complementary actions before the Council of the National Competition Commission, as well as their request for a hearing.

2. According to what is provided in article 50.5 of Act 15/2007 of 3 July 2007, at the expiry of the time limit stipulated in part 1 above, the Directorate for Investigation shall forward the case file to the Council of the National Competition Commission, together with the report containing the proposed resolution and the allegations received in relation to that proposal.

**Article 35. Time limit on submissions**

The Directorate for Investigation will not take into account in its report the submissions made by the interested parties outside the time limits granted under paragraphs 1 and 3 of article 33 of this Regulation for responding to the statement of objections or, as applicable, to the notice sent by the Directorate for Investigation informing them that the existence of prohibited practices has not been demonstrated. The Directorate for Investigation shall likewise decline to admit additional evidence outside those time limits. In all cases, the briefs will be incorporated into the case file, with an express indication that they were not submitted in due time.

**SECTION 2. On resolution of the disciplinary proceeding****Article 36. Evidence and complementary actions**

1. On receiving the case, the Council of the National Competition Commission may resolve to admit evidence, either ex officio or at the request of the interested parties, and instruct the Directorate for Investigation to admit the evidence. The Council of the National Competition Commission may decline to admit evidence proposed by the interested parties that could have been but was not proposed during the examination phase before the Directorate for Investigation.

2. The result of the evidentiary proceedings carried out by the Directorate for Investigation will be forwarded to the Council of the National Competition Commission, which will disclose it to the interested parties in order for them, within ten days, to submit the pleadings they deem appropriate regarding the scope or importance of that evidence.

3. The Council of the National Competition Commission may resolve to have the Directorate for Investigation carry out complementary actions, specifying the involvement the interested parties are to have in those actions. The interested parties will have ten days within which to assess the result of the complementary actions carried out.

4. If the Council of the National Competition Commission finds the existence of prohibited practices was not sufficiently evidenced in the report of the Directorate for Investigation, it may instruct the latter to carry out such complementary actions as may be needed to establish the facts.

After the complementary actions have been carried out, the Directorate for Investigation will draw up a new proposed resolution in which it will include, if applicable, the new assessment of the facts, for submission to the Council of the National Competition Commission. The proposal will be notified to the interested parties in order for them, within fifteen days, to submit the allegations they consider appropriate.

**Article 37. Other actions of the Council of the National Competition Commission**

1. The Council of the National Competition Commission, at any time during the resolution phase of the disciplinary proceeding, may make a pronouncement on the standing as interested party of all persons who evidence a legitimate interest according to article 31 of Act 30/1992 of 26 November 1992 on the Legal Framework of Public Administrations and Common Administrative Procedure.



2. In accordance with article 51.3 of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission may likewise resolve to hold a hearing, upon prior request of the interested parties or when the Council deems appropriate for analysing or adjudging the positions at issue in the case. The request must contain the information referred to in article 19.1 of this Regulation.

3. The Council of the National Competition Commission will notify the rest of the interested parties of the request for a hearing, so that they may state, within the time limit indicated to them, their intention to attend and, if such is the case, submit the information referred to in article 19.1 of this Regulation. The Council of the National Competition Commission will notify the interested parties who have requested to attend the oral hearing as to the date and time it will be held.

### **Article 38. Content of the resolution**

1. The resolutions of the Council of the National Competition Commission will contain the background of the case, the findings in fact, the liable persons, the legal assessment and legal foundations of the decision.

2. In addition, in accordance with article 53.1 of Act 15/2007 of 3 July 2007, in its resolutions the Council of the National Competition Commission will declare, depending on the case, the existence of conducts prohibited by the Competition Act and/or by articles 81 and 82 of the European Community Treaty, the existence of conducts which, due to their negligible importance, are not capable of having a significant effect on competition, or that the existence of prohibited practices has not been demonstrated.

3. Also, under article 53.2 of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission may order cessation of the prohibited conducts within a given time period, impose conditions or obligations, of a structural or behavioural nature, order removal of the effects of prohibited practices contrary to the public interest, levy fines, dismiss proceedings and adopt any other measures it is authorised to adopt under the Competition Act.

### **Article 39. Settlements of disciplinary proceedings**

1. In accordance with article 52 of Act 15/2007 of 3 July 2007, at any time in the proceeding before the issuance of the proposed report provided for in article 50.4 of Act 15/2007 of 3 July 2007, the Directorate for Investigation may resolve, at the proposal of the presumed perpetrators of the prohibited conducts, to initiate actions to reach a settlement of a disciplinary proceeding on matters of prohibited practices and agreements. This resolution to seek a settlement will be notified to the interested parties, informing them as to whether the running of the maximum time limit for the proceeding is suspended until the conclusion of the settlement.

2. The presumed infringers will present their proposed commitments to the Directorate for Investigation within the time limit stipulated by the latter in the resolution to seek a settlement, which shall be no greater than three months. The said proposal will be forwarded to the Council of the National Competition Commission for its knowledge.

3. If the presumed infringers do not present the commitments within the time limit set by the Directorate for Investigation, they shall be deemed to have abandoned their petition for settlement, and the disciplinary proceeding will continue. In addition, the presumed infringers will be considered to have abandoned their petition if, after the commitments have been presented to the Directorate for Investigation and the latter has ruled that they do not adequately resolve the effects on competition arising from the conducts at

issue in the proceeding or do not sufficiently safeguard the public interest, the presumed infringers fail to present, within the time limit set for such purpose by the Directorate for Investigation, new commitments which in the judgment of the latter do resolve the problems detected.

4. The proposed commitments will be sent by the Directorate for Investigation to the other interested parties so that, within the stipulated time limit, they can make all such allegations as they deem fit.

5. The Directorate for Investigation will forward to the Council of the National Competition Commission the proposed settlement for its adoption and incorporation into the resolution that puts an end to the proceeding. On receiving the settlement proposal and, if applicable, after the European Commission has been informed as provided in article 11.4 of Council Regulation (EC) 1/2003 of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the Council of the National Competition Commission may:

a) Resolve the disciplinary proceeding via settlement, upholding the adequacy of the commitments submitted.

b) Resolve that the commitments presented do not adequately resolve the effects on competition arising from the conducts examined in the case or do not sufficiently safeguard the public interest, in which case, it may grant a time period for which the presumed infringers to submit new commitments that resolve the problems detected to the Council of the National Competition Commission. If, at the expiry of that time period, the presumed infringers have not submitted new commitments, they will be considered to have abandoned their request and the Council of the National Competition Commission will instruct the Directorate for Investigation to continue the disciplinary proceeding.

6. The resolution that puts an end to the proceeding via settlement will establish as minimum content,

a) the identity of the parties that are bound by the commitments,

b) the persons, territory and time period to which the commitments apply,

c) the object of the commitments and their scope, and

d) the rules for monitoring compliance with the commitments.

7. Breach of the resolution that puts an end to the proceeding via settlement will be considered a very serious infringement according to the terms of article 62.4.c) of Act 15/2007 of 3 July 2007, and may determine the levying of periodic penalty payments under article 67 of the Competition Act and article 21 of this Regulation, as well, if applicable, as the opening of disciplinary proceedings for violation of articles 1, 2 or 3 of Act 15/2007 of 3 July 2007.

## **SECTION 3. On interim measures**

### **Article 40. Classes of interim measures**

1. According to the terms of article 54 of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission may adopt, *inter alia*, the following interim measures intended to ensure the enforceability of the resolution:

a) Orders to cease the conducts referred to by the case or to impose certain conditions thereon to avoid the harm they may cause.

b) Guarantee of any kind declared sufficient by the Council of the National Competition Commission to cover the liability for such damages and losses as could be caused.

2. Interim measures cannot be ordered that are capable of generating irreparable harm to the interested parties or that imply violation of fundamental rights.

### **Article 41. Adoption of and legal framework for interim measures**

1. The Directorate for Investigation, during the examination part of the disciplinary proceeding, may propose to the Council of the National Competition Commission, *ex officio* or at the motion of the interested parties, that interim measures be adopted. If the interim measures were requested by the interested parties, the Directorate for Investigation, within two months after the request was filed or, as applicable, of the adoption of the decision to initiate proceedings, will submit the proposal to the Council of the National Competition Commission, without prejudice to which the request may only be deemed to have been denied by negative silence after three months, which will be computed according to what is provided in article 36.6 of Act 15/2007 of 3 July 2007.

2. If during the resolution phase of the disciplinary proceeding the interested parties petition the Council of the National Competition Commission to adopt interim measures or the Council considers adoption thereof to be necessary, it shall request a report from the Directorate for Investigation on the appropriateness of such measures. If the interim measures were requested by the interested parties, the Directorate for Investigation will issue its report within two months after the request for a report from the Council of the National Competition Commission.

3. The Council of the National Competition Commission, after having received the proposal or, as applicable, the report of the Directorate for Investigation, will hear the interested parties within five days, whereupon it will resolve on the appropriateness of the measures.

4. The Council of the National Competition Commission, *ex officio* or at the initiative of the interested parties, and upon prior report from the Directorate for Investigation, may resolve at any time during the disciplinary proceeding to suspend, modify or revoke the interim measures by virtue of supervening circumstances or circumstances that could not be known when the measures were adopted, giving the interested parties five days within which to make such allegations as they deem fit for the defence of their rights and interests.

5. The interim measures shall cease when the Council of the National Competition Commission adopts the resolution putting an end to the proceeding and in no event will proposal, adoption, suspension, modification or revocation of interim measures suspend the pursuit of the proceeding.

6. According to what is provided in article 67 of Act 15/2007 of 3 July 2007, in the event of breach of the interim measures adopted, the Council of the National Competition Commission may levy periodic penalty payments that will be governed by the provisions of article 21 of this Regulation.

#### **SECTION 4. On monitoring**

##### **Article 42. Monitoring of compliance with obligations and resolutions of the Council of the National Competition Commission**

1. For the purposes provided for in article 41 of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission, when adopting the resolution or decision that imposes an obligation, must advise the recipient of the time limit for fulfilment of the obligation, with the warning of the amount of the periodic penalty payment that may be levied thereupon in the event of non-fulfilment for each day of delay, on the terms provided in article 67 of Act 15/2007 of 3 July 2007.

2. Once the resolution or decision has become enforceable, the Directorate for Investigation will carry out all actions needed to monitor compliance therewith.

3. When the Directorate for Investigation considers there is a possible breach of the obligations and resolutions of the Council of the National Competition Commission, it may issue a monitoring report that will be notified to the interested parties in order for them, within fifteen days, to make such allegations as they deem fit.

4. After having received the allegations of the interested parties and, if applicable, having conducted such additional actions as are considered necessary, the Directorate for Investigation will submit the monitoring reporting to the National Competition Commission for the latter to declare there is compliance with the obligations imposed or that there is non-compliance.

5. The resolution of the Council of the National Competition Commission declaring breach of an obligation may levy the relevant periodic penalty payment, in accordance with the terms of article 21 of this Regulation.

#### **SECTION 5. On the procedure for declaration of inapplicability**

##### **Article 43. Declarations of inapplicability**

1. According to what is provided in article 6 of Act 15/2007 of 3 July 2007, the procedure for declaration of inapplicability is initiated ex officio by the Directorate for Investigation, whether at its own initiative or at that of the Council of the National Competition Commission, by drawing up a proposal for declaration of inapplicability after evaluating the fulfilment of the conditions set out in the said article 6 of Act 15/2007 of 3 July 2007, which will be submitted to the Council of the National Competition Commission.

2. To draw up the proposal for declaration of inapplicability, the Directorate for Investigation will carry out such acts as are needed, gathering the relevant data, information and probatory material.

3. On receiving the proposal for declaration of inapplicability, the Council of the National Competition Commission may instruct the Directorate for Investigation to obtain

evidence or carry out complementary actions for the purpose of clarifying the questions needed for the Council to make its judgment.

4. Before adoption of a declaration of inapplicability by the Council of the National Competition Commission, the latter will request a report from the Defence of Competition Council, which will be issued within one month.

5. The Council of the National Competition Commission may the proposal for declaration of inapplicability to public input so that observations can be submitted during a term of not less than fifteen days.

## **SECTION 6. On the withdrawal of the block exemption**

### **Article 44. Initiation of the procedure for withdrawal of the block exemption**

1. The National Competition Commission may withdraw, according to the terms of the relevant Regulations on block exemptions, the benefits of the exemption provided for in paragraphs 4 and 5 of article 1 of Act 15/2007 of 3 July 2007, if it finds that, in a specific case, an agreement that enjoys an exemption produces effects that are incompatible with the conditions of article 1.3 of Act 15/2007 of 3 July 2007.

2. That procedure may also be initiated on fulfilment of the withdrawal conditions provided in the European Community Regulation on block exemptions that applies to the specific case at hand.

### **Article 45. Procedure for withdrawal of the block exemption**

1. Where the Directorate for Investigation considers there are sufficient indicia of the existence of any of the circumstances envisaged in the preceding article of this Regulation, it shall initiate the procedure to withdraw the exemption. The decision to initiate the procedure will be notified to the interested parties.

2. The Directorate for Investigation will carry out such investigation as is needed to establish the facts on which the exemption withdrawal is based, gathering the data, information and probatory material of relevance for verifying the facts, allowing, where appropriate, the interested parties to participate.

3. The facts will be established and assessed in a report which the Directorate for Investigation will notify to the interested parties, so that they, within ten days, may submit such allegations as they deem pertinent and propose the evidence they consider appropriate. Within a maximum of three months after the date the withdrawal procedure is initiated, the Directorate for Investigation will forward the proposed report to the Council of the National Competition Commission. The evidence proposed by the interested parties will be reflected in this report, with an indication as to whether the evidence was admitted or not admitted.

4. The Council of the National Competition Commission, after receiving the proposed report from the Directorate for Investigation, may instruct the latter to obtain evidence other than the evidence obtained in the examination phase and to carry out complementary actions for the purpose of clarifying the questions needed for the Council to make its judgment. The decision to gather evidence and carry out complementary actions will be notified to the interested parties, giving them ten days within which to make the allegations they deem fit. The decision will set, provided it is possible, the time limit for its execution.

5. The Council of the National Competition Commission, at the conclusion of the proceedings and, if applicable, after the European Commission has been informed according to what is provided in article 11.4 of Council Regulation (EC) 1/2003 of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, will dictate and notify the resolution within a maximum of six months after the date of the decision to initiate the procedure. Expiry of this time limit without the resolution being dictated and notified will cause the procedure to lapse.

6. The resolution to withdraw the exemption will grant the interested parties a time period during which they can adapt their conducts to the conditions established in that resolution, advising them that if they do not make the necessary adaptations by the end of that time period, the relevant disciplinary proceeding will be initiated and, if applicable, periodic penalty payments will be levied according to the terms of article 67 of Act 15/2007 of 3 July 2007 and article 21 of this Regulation.

## **SECTION 7. On the procedures for exemption from and reduction of fines**

### **Article 46. Filing applications for exemption from payment of fines**

1. The procedure for exemption from payment of the fine will be initiated at the initiative of the requesting company or natural person that has participated in the cartel. The applicant must submit to the Directorate for Investigation a formal application for exemption accompanied by all information and evidence in the applicant's possession, taking into account, as applicable, the provisions of letters a) or b) of article 65.1 of Act 15/2007 of 3 July 2007, and in paragraph three of this article.

2. At the applicant's request, the Directorate for Investigation may allow the application to be submitted orally. Such statement, which will contain the information and be accompanied by the evidence referred to in the following paragraph, will be recorded at the National Competition Commission premises, with a transcript thereof being entered in the register.

3. The applicant for an exemption from payment of the fine under article 65.1 of Act 15/2007 of 3 July 2007 must provide the Directorate for Investigation with the following information and evidence:

- a) Complete individual or corporate name and address of the applicant.
- b) Complete individual or corporate name, address of the companies and professional particulars of all natural persons who participate or have participated in the cartel.
- c) A detailed description of the cartel that includes:
  - Its aims, activities and functioning.
  - Affected products, services and territory.
  - Estimated duration and nature of the cartel.
- d) Evidence relating to the cartel in the possession of the applicant or available to it in a reasonable time period, in particular, contemporaneous evidence of the cartel that allows its existence to be verified.
- e) List of fine exemption or reduction applications which the applicant, as the case may have it, has filed or intends to file before other competition authorities in relation to the same cartel.

4. The order of receipt of the exemption applications will be set according to their entry date and time in the register of the competent authority to which they are forwarded to be processed, irrespective of the register in which they were first presented. The applicant may request the competent authority to issue a receipt for the filing of the application, which must indicate the entry date and time in that office's register.

5. The Directorate for Investigation may grant, upon a prior reasoned request from the applicant, additional time for submitting evidence on the cartel. In all events, the company or natural person must submit to the Directorate for Investigation the information indicated in subparagraphs a), b), c) and e) of paragraph 3 of this article. Once the evidence has been presented within the stipulated time limit, the filing date for the exemption application will be understood to be the date of the initial application.

#### **Article 47. Processing applications for exemption from payment of fines**

1. The Directorate for Investigation will examine the information and evidence presented and check if they fulfil the conditions of article 65.1 of Act 15/2007 of 3 July 2007, in which case it will approve the conditional exemption from payment of the fine, giving the applicant company or natural person notice to such effect.

2. If the conditions established in article 65.1 of Act 15/2007 of 3 July 2007 are not fulfilled, or the exemption application is presented after notification of the statement of objections, the Directorate for Investigation will reject the exemption application, giving notice thereof to the applicant, who may withdraw the information and evidence presented or request of the Directorate for Investigation that they be examined according to the terms of article 66 of Act 15/2007 of 3 July 2007. Withdrawal of the information and evidence will not impede the Directorate for Investigation from using its powers of investigation to obtain the same.

3. Applications for exemption from payment of the fine will be examined following the order in which they were received.

4. If at the end of the disciplinary proceeding, the applicant has complied with the requirements established in article 65.2 of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission, in accordance with the proposal of the Directorate for Investigation, will grant the applicant the exemption from payment of the fine in the resolution that puts an end to the proceeding. Otherwise, the applicant will not be able to benefit from any favourable treatment according to the provisions of this Section, except in the event of breach of article 65.2.d) of Act 15/2007 of 3 July 2007, in which case the applicant may be granted a reduction in the amount of the fine.

#### **Article 48. Summary exemption applications**

1. In those cases where the company has filed or is going to file an application for immunity from the fine with the European Commission because the latter is the competition authority particularly well placed to investigate the cartel, a summary exemption application may be submitted to the Directorate for Investigation. Summary applications may only be presented within the framework of what is provided in article 65.1.a) of Act 15/2007 of 3 July 2007.

2. The European Commission will be considered to be the competition authority particularly well placed to investigate the cartel if the latter has effects in more than three Member States.

3. Summary applications shall contain at least the following information:

- a) Legal or registered name and address of the applicant company.
- b) Legal or registered name and address of the companies participating in the cartel.
- c) Products and territories affected by the cartel.
- d) Estimated term and nature of the cartel.
- e) Member States in whose territory evidence of the cartel may be found.
- f) Information on the fine exemption or reduction applications which the applicant has submitted or is going to submit to other competition authorities in relation to the same cartel.

The Directorate for Investigation may require the applicant to submit additional information, setting a time limit for such submission.

4. The order of receipt of the summary applications will be determined according to the date and time of entry in the National Competition Commission register, irrespective of the register where the applications first presented. The applicant may request the National Competition Commission to issue a receipt for the filing of the application, which must indicate the entry date and time in the National Competition Commission register.

5. In the event the National Competition Commission is eventually designated as the competition authority to investigate the cartel, the company must complete the summary exemption application with the pertinent information and evidence, for which purpose it will have ten days reckoned from the date on which the European Commission gives it notice that the case has been assigned to the National Competition Commission.

#### **Article 49. Applications for reduction of fines**

1. The company or natural persons who requests the reduction in the amount of the fine must provide the National Competition Commission with evidence that represents significant added value with respect to that already in its possession.
2. Evidence will be considered to provide significant added value when that evidence, whether by its nature or level of detail, reinforces the National Competition Commission's ability to prove the relevant facts.

#### **Article 50. Filing and processing of applications for reduction of fines**

1. The procedure for reducing the amount of the fine will be initiated at the initiative of the company or natural person who has participated in the cartel, who must for such purpose submit to the Directorate for Investigation a formal application with the relevant evidence, according to what is provided in article 46.3 of this Regulation. At the applicant's request, the Directorate for Investigation may allow the application to be submitted orally, accompanied by the relevant information and evidence, and recorded at the National Competition Commission premises, with a transcript thereof being entered in the register.
2. The order of receipt of applications for reduction of the fine will be determined according to the date and time of entry in the register of the competent office for their processing, irrespective of the register where the applications first presented. The applicant may request the competent authority to issue a receipt for the filing of the application, which must indicate the entry date and time in that office's register.



3. The Directorate for Investigation may accept applications for reduction of fines that have been presented after the statement of objections has been notified if, taking into account the information in the case file, the nature or the content of the evidence submitted by the applicant so justifies.

4. The Directorate for Investigation will not examine the evidence submitted by a company or natural person who has applied for a fine reduction without having first ruled on the conditional exemption regarding prior exemption applications in relation to the same cartel.

5. The Directorate for Investigation, no later than at the time of notification of the statement of objections provided for in article 50.3 of Act 15/2007 of 3 July 2007, will inform the applicant company or natural person of its proposal to the Council of the National Competition Commission for reduction of the fine on fulfilment of the requirements established in article 66.1 of Act 15/2007 of 3 July 2007, or inform them that such proposal is not in order due to failure to fulfil the requirements for attaining the reduction.

If the application for reduction of the fine is presented after notification of the statement of objections, the Directorate for Investigation will inform the applicant of its proposal for reduction of the fine in the resolution proposal referred to by article 50.4 of Act 15/2007 of 3 July 2007.

6. According to what is provided in article 34.1 of this Regulation, the Directorate for Investigation will include in the resolution proposal its proposal for reducing the amount of the fine. The proposal for reduction will be done applying the ranges stipulated in article 66.2 of Act 15/2007 of 3 July 2007.

7. The Council of the National Competition Commission will set the percentage reduction that applies to each company or natural person in the resolution that puts an end to the disciplinary proceeding.

#### **Article 51. Processing of applications for exemption from or reduction of fines**

1. The National Competition Commission will treat as confidential the fact of the filing of a fine exemption or reduction application, and will organise a special separate record with all application data and documents deemed to be confidential, including, in all events, the applicant's identity.

2. According to what is provided in article 50.3 of Act 15/2007 of 3 July 2007, the interested parties will have access to the data and documents which, though forming part of a special confidential record, are necessary to responding to the statement of objections.

3. Without prejudice to what is provided in the preceding paragraph, no copies can be obtained of any statement by the fine exemption or reduction applicant that has been specifically made by the applicant for submission with the related application.

#### **Article 52. Duty of cooperation of applicants for exemption or reduction of fines**

For the purposes provided for in articles 65.2.a) and 66.1.b) of Act 15/2007 of 3 July 2007, the fine exemption or reduction applicant will be deemed to cooperate fully, continuously and diligently with the National Competition Commission when, over the course of the proceeding, the applicant complies with the following requirements:

- a) Provides the Directorate for Investigation without delay all relevant information and evidence relating to the presumed cartel in the possession of or available to the applicant.
- b) Remains available to the Directorate for Investigation to respond without delay to all requests that can contribute to establishing the facts.
- c) Facilitates interviews by the Directorate for Investigation with the employees and current executives of the company and, if applicable, with former executives.
- d) Abstains from destroying, falsifying or concealing relevant information or evidence in relation to the presumed cartel.
- e) Abstains from disclosing the filing of the fine exemption or reduction application, or the content thereof, prior to notification of the statement of objections or such time as may be determined by the Directorate for Investigation.

### **Article 53. Mechanisms for coordination with the competent offices of the Autonomous Communities in fine exemption proceedings**

1. In the event the exemption application is filed before a regional competition authority, the competent body of the Autonomous Community in question, before resolving on the exemption, will give notice of the exemption application to the National Competition Commission, along with all the information and evidence in its possession. The notice will indicate the State or regional office which it considers competent for the matter, applying the mechanisms for coordination and distribution of powers envisaged in Act 1/2002 of 21 February 2002 on Coordination of the Powers of the State and the Autonomous Communities in Defence of Competition Matters.
2. In addition, prior to the resolution on conditional exemption, the Directorate for Investigation will notify the competent body of the Autonomous Community as to the exemption applications, accompanied by all information and evidence in its possession, in those events in which Act 1/2002 of 21 February 2002 applies and the effects of the investigated conducts do not range beyond its Autonomous Community. In that notice, the Directorate for Investigation will indicate the State or regional office it considers competent.
3. If pursuant to article 2.4 of Act 1/2002 of 21 February 2002 there is a change in the designation of competent authority, the conditional exemption previously granted will be recognised.

## **CHAPTER III**

### **On the procedure for control of economic concentrations**

#### **SECTION 1. On notifications**

### **Article 54. Notification of economic concentration**

1. The notification provided for in articles 55 and 56 of Act 15/2007 of 3 July 2007 may be done as from the time the concentration proposal or agreement exists. For these purposes, a proposal or agreement is considered to exist:

a) In cases involving acquisition of control, a concentration proposal or agreement exists as from the time the participants consent to carry out the transaction that gives rise to the concentration, and determine the manner, time frame and conditions in which it will be executed.

If the participants are companies, the agreement will be considered to exist when it has been approved by the management body, even though legal provisions or the articles of association require subsequent adoption or ratification of another corporate body.

b) In cases involving a public tender offer, provided there is a resolution of the Board of Directors of the offerors and their intention to present the offer has been publicly announced.

c) In cases of corporate mergers, a concentration proposal or agreement will be considered to exist when the relevant company law provisions are fulfilled.

2. The existence of clauses which in any way condition the future formalisation or execution of those agreements does not release the entity from the notification duty.

3. If after the proposed concentration has been notified and before the proceeding has been resolved, the parties abandon the concentration, the notifying party will immediately inform the Directorate for Investigation of this circumstance, giving formal evidence thereof, in view of which the Council of the National Competition Commission may resolve to dismiss the case with no further proceedings.

#### **Article 55. Notification via representative**

1. The parties obliged to notify under article 9 of Act 15/2007 of 3 July 2007 may do so directly or through a duly accredited representative.

2. If the notification is presented by a person other than the ones with the notification obligation according to article 9 of Act 15/2007 of 3 July 2007, or whose representative capacity is not duly evidenced, the Directorate for Investigation may issue a resolution not to admit the notification for consideration.

#### **Article 56. Form and content of the notification**

1. The notification provided for in articles 55 and 56 of Act 15/2007 of 3 July 2007 will be presented to the National Competition Commission using the official ordinary notification form set out in Annex II, or in the official short form set out in Annex III in the events provided for in article 56 of Act 15/2007 of 3 July 2007. In the event of joint notification, only one form will be used.

In addition, the notifying party may submit all such analyses, reports or studies as may have been carried out and are considered significant in relation to the concentration.

2. The party obliged to notify may submit to the Directorate for Investigation a confidential draft notification form in order to clarify formal or substantive aspects of the concentration, without such submission leading to accrual of the fee referred to by article 23 of Act 15/2007 of 3 July 2007.

3. Without prejudice to the Directorate for Investigation being able to require additional information from the notifying party at any time during the proceeding, receipt in due form of the notification referred to by article 55.1 of Act 15/2007 of 3 July 2007 will be considered to take place, in all events, when all sections of the notification form have been completed.

Without prejudice to the above, upon a prior reasoned request by the notifying party, the Directorate for Investigation may exempt the latter from having to present certain sections or documents contemplated in the notification form.

4. If the notification is not presented in due form, the Directorate for Investigation may issue a resolution not to admit the notification for consideration.

5. The Directorate for Investigation will inform the notifying party of the date on which the notification was received in due form by the National Competition Commission, as well as the initial expiry date of the maximum time period for resolution in the first phase.

6. Once the notification has been received in due form, if the Directorate for Investigation finds that information is missing or that the information contained in any of the sections of the notification form needs to be completed, it shall instruct the notifying party to remedy the lack of information within ten days. If the problem is not remedied within that time limit, the notifying party will be considered to have dropped the petition, although this will not prevent the Directorate for Investigation from being able to initiate the control of concentrations proceeding *ex officio* in accordance with the provisions of article 9.5 of Act 15/2007 of 3 July 2007.

7. The notifying party will inform the National Competition Commission immediately of any significant modification that could affect the content of the concentration notification form during the course of the proceeding.

8. As provided in article 37.4 of Act 15/2007 of 3 July 2007, the Directorate for Investigation may resolve to extend the time limit for resolution where:

a) the information submitted by the notifying party is presumed to be misleading or false, without prejudice to what is provided in article 62 of Act 15/2007 of 3 July 2007;

b) there is an essential modification of the facts contained in the notification subsequent to the notification and which the notifying party knew or should have known, provided the modification could have a significant effect on the evaluation of the concentration;

c) new information appears after the notification which the notifying party knew or should have known, without prejudice to the National Competition Commission having been informed thereof, provided the new information could have a significant effect on the evaluation of the concentration.

#### **Article 57. Short form notification**

1. According to what is provided in article 56 of Act 15/2007 of 3 July 2007, the short form notification will be used for the purpose of notifying concentrations when one of the following circumstances, *inter alia*, is fulfilled:

a) Where none of the parties to the concentration are engaged in business activities in the same relevant product and geographic market, or in a market which is upstream or downstream of a market in which another party to the concentration is engaged.

b) Where the participation of the parties in the market, due to their negligible importance, are not capable of having a significant effect on competition. A participation of minor importance will be considered to exist when in a concentration of those defined in article 8 of Act 15/2007 of 3 July 2007:

1. the participants in the concentration do not have a combined market share of more than 15 percent in the same product or service market at the national level or in a geographic market defined therein, or if they do reach a combined market

share of more than 15 percent and less than 30 percent, the addition of share is not greater than 2 percent, and

2. the participants in the concentration do not reach an individual or combined share of 25% in a product market which is upstream or downstream of a product market in which the other party to the concentration is active at the national level or in a geographic market defined therein.

c) Where a party is to acquire sole control of a company or several companies or parts of companies over which it already has joint control.

d) Where, in the case of a joint venture, the latter is not engaged and is not expected to engage in activities in Spanish territory or such activities are marginal. The activities of a joint venture will be considered to be marginal in Spain if its turnover does not exceed or is not expected to exceed 6 million euros.

2. The Directorate for Investigation is the competent office to instruct the notifying party to submit an ordinary form according to what is provided in article 56.2 of Act 15/2007 of 3 July 2007, *inter alia*, in the following events:

a) in those cases where it is difficult to define the relevant markets, cases where a party is a new or potential entrant, or an important patent holder;

b) in those cases where it is not possible to adequately determine the parties' market shares;

c) in markets with high entry barriers, with a high degree of concentration or known competition problems;

d) where at least two parties to the concentration are present in closely related neighbouring markets;

e) in concentrations where an issue of coordination arises;

f) in the case of a party acquiring sole control of a joint venture in which it currently holds joint control, where the acquiring party and the joint venture, together, have a strong market position, or the joint venture and the acquiring party have strong positions in vertically related markets;

g) where the short form contains incorrect or misleading information.

### **Article 58. Lifting of the suspension of execution**

1. According to the terms of article 9.6 of Act 15/2007 of 3 July 2007, the notifying party may request at any time during the proceeding, including when presenting the confidential draft notification form, that the total or partial suspension of execution of the concentration be lifted.

2. The notifying party will request the lifting of the total or partial suspension of execution by submitting a reasoned brief setting out the harm that the suspension would cause to the concentration and, if applicable, submit to the Directorate for Investigation commitments aimed at eliminating the possible negative effects execution of the concentration could have on effective competition.

3. The lifting of the suspension of execution will be decided by the Council of the National Competition Commission at the proposal of the Directorate for Investigation.

**Article 59. Pre-notification consultation**

1. The consultation referred to in article 55.2 of Act 15/2007 of 3 July 2007, will be submitted in writing to the Directorate for Investigation by any of the companies participating in the concentration.
2. The Directorate for Investigation will be responsible for handling preliminary consultations and the Council of the National Competition Commission for resolving on them at the proposal of the Directorate for Investigation.
3. In the consultation, the Directorate for Investigation should be given a description of the concentration and of the parties involved, the turnover of the participant companies in the last financial year, according to the terms of article 8 of Act 15/2007 of 3 July 2007, and all information needed to determine the relevant markets and the participant companies' shares in those markets, according to sections 5 and 6 of the official notification form set out in Annex II.
4. If the information provided is considered insufficient, the Directorate for Investigation may instruct the parties to submit additional information, advising them that failure to do so will mean they are considered to have abandoned the consultation, without prejudice to what is provided in article 9.5 of Act 15/2007 of 3 July 2007.
5. In those cases where the consultation submitted does not conform to the subject matter established in article 55.2 of Act 15/2007 of 3 July 2007, the Directorate for Investigation will dictate a resolution not to admit the consultation for consideration.
6. The actions referred to by article 55.2 of Act 15/2007 of 3 July 2007, will be considered confidential.

**Article 60. Fee for analysing and studying concentration operations**

1. The fee will be self-assessed by the chargeable person. The self-assessment payments may be made in the deposit institutions authorised to act as government revenue collection collaborating entities, as provided in the General Regulations for Tax Collections (Reglamento General de Recaudación) and in the Order of 4 June 1998 regulating certain aspects of collections management for fees which the Public Treasury is entitled to charge. In the alternative, the fee may be paid by telematic means.
2. The amount of the fee will be calculated as provided in paragraphs 5 and 6 of article 23 of Act 15/2007 of 3 July 2007. Calculation of aggregate turnover in Spain of the participants will be done on the basis of the last accounting year and in accordance with the terms of article 5 of this Regulation.
3. Where the tax payment made is less than was payable according to paragraph 3 of this article, the notifying party is obliged to make the relevant complementary assessment.
4. The notifying party is also obliged to make the relevant complementary assessment if it has presented the short form notification and the Directorate for Investigation has required it to present the ordinary form, according to what is provided in article 57.3 of this Regulation.
5. According to the regulations on government fees, once the first phase report referred to by article 57 of Act 15/2007 of 3 July 2007 has been prepared, the amounts paid in respect of the fee will be refunded at the request of the notifying party where:

- a) the notified operation is not a concentration of those provided for in article 7 of Act 15/2007 of 3 July 2007,
- b) though a concentration of those provided for in article 7 of Act 15/2007 of 3 July 2007, the operation does not meet the mandatory notification requirements set out in article 8 of the said statute,
- c) the operation involves a concentration which Spain has decided to refer to the European Commission under article 22 of Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

## **SECTION 2. On the proceeding**

### **Article 61. Confidentiality of the proceeding**

1. In accordance with article 27.2 of Act 15/2007 of 3 July 2007, the fact that a proceeding to control concentrations has been initiated will be made public, in particular, the notification presentation date, the names of the participant companies, the economic sector affected and a summary description of the operation.
2. Without prejudice to what is provided in the preceding paragraph, the actions carried out by the Directorate for Investigation in relation to the notification will be considered confidential until the Council of the National Competition Commission has issued its resolution both in the first phase and the second phase.
3. Once the resolution of the Council of the National Competition Commission has been entered in first or second phase, the resolution and the report provided for in articles 57 and 58 of Act 15/2007 of 3 July 2007 will be notified to the notifying party so that the latter, within five days, can submit a reasoned request to the Directorate for Investigation to declare the confidentiality of the content it deems confidential. On receiving the request for declaration of confidentiality, the Directorate for Investigation will have ten days within which to resolve on the request.
4. If the notifying party has not requested the declaration of confidentiality within the aforesaid time limit of five days, the relevant resolution and report will be deemed not to contain confidential information and may be made public in their entirety.

### **Article 62. Proceeding in the first phase**

1. On having received the notification or ex officio, according to what is provided in article 9.5 of Act 15/2007 of 3 July 2007, the Directorate for Investigation will initiate the control of concentrations proceeding, set up the case file and proceed to analyse the concentration, and submit to the Council of the National Competition Commission a report and a resolution proposal based on the report, expressing its view as to whether the notified concentration can hinder the maintenance of effective competition in all or part of the national market. In accordance with what is provided in article 57.2 of Act 15/2007 of 3 July 2007, the Council of the National Competition Commission will hand down a resolution in first phase.
2. Where the operation analysed does not meet the requirements set forth in articles 7 and 8 of Act 15/2007 of 3 July 2007, upon prior report from the Directorate for Investigation, the Council of the National Competition Commission may resolve on whether the operation should be treated as an agreement between companies subject

to the rules on restrictive or abusive agreements and practices of Act 15/2007 of 3 July 2007.

### **Article 63. Report from sector regulators**

1. For the purposes of article 17.2.c) of Act 15/2007 of 3 July 2007, the Directorate for Investigation will issue a request for a report from the sector regulator, which will be accompanied by a copy of the notification presented.
2. The request will specify the time frame for the sector regulator to issue the report. At the end of that time period, the Directorate for Investigation may decide to lift the suspension of the time limit, without prejudice to what is provided in article 37.2.d) of Act 15/2007 of 3 July 2007.

### **Article 64. Application of Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings**

Where the European Commission refers a concentration under article 4.4 or article 9 of Council Regulation (EC) 139/2004 of January 2004 on the control of concentrations between undertakings, the persons legally obliged to notify must submit the notification form to the National Competition Commission, in accordance with Act 15/2007 of 3 July 2007 and this Regulation. The Directorate for Investigation will initiate the control of concentrations proceeding, set up the case file and proceed to carry on the proceeding in accordance with Act 15/2007 of 3 July 2007 and its implementing regulations.

### **Article 65. Examination of the case in the second phase**

1. Once the Council of the National Competition Commission decides to initiate the second phase of the proceeding, the succinct note referred to by article 58.1 of Act 15/2007 of 3 July 2007 will be communicated to the notifying party so that the latter may, within a maximum of two days, state in writing which if any points of information contained in the note should in its judgment be kept confidential. At the expiry of the said time limit, the Directorate for Investigation will decide the definitive content of the succinct note for purposes of making it public and known to the natural or legal persons would could be affected and to the Council of Consumers and Users (Consejo de Consumidores y Usuarios).
2. The succinct note will be posted on the National Competition Commission website so that any affected person may submit information within a ten day period.
3. When the concentration has a significant effect in the territory of an Autonomous Community, the Directorate for Investigation will notify the respective office at the Autonomous Community of the succinct note, together with a copy of the notification presented, as well as the report prepared by the Directorate for Investigation, in order for that office to issue a mandatory, non-binding report within twenty days. This request for the mandatory report will be notified to the interested parties, for the purposes of article 37.1 of Act 15/2007 of 3 July 2007.
4. According to what is provided in article 58.2 of Act 15/2007 of 3 July 2007, the Directorate for Investigation will draw up a statement of objections which, after being communicated to the Council of the National Competition Commission, will be notified to the interested parties.



**Article 66. Request for standing as interested party**

1. According to what is provided in article 58.1 of Act 15/2007 of 3 July 2007, natural or legal persons who could be affected may only petition to be considered interested parties after the second phase of the control of economic concentrations proceeding has begun.
2. The succinct note will grant a period of ten days within which standing as interested party in the proceeding may be requested and, if applicable, allegations may be submitted, according to what is provided in article 58.1 of Act 15/2007 of 3 July 2007.
3. The Council of the National Competition Council will evaluate the subjective right or accredited legitimate interest and decide on the requests for standing as interested party, accepting or denying them on a reasoned basis, within ten days. In this regard, natural or legal persons affected merely by the fact of having been sent the succinct note will not be considered interested parties.
4. Natural or legal persons who requested standing as interested parties within the time limit stipulated in the succinct note will be entitled, once the request has been accepted by the Council of the National Competition Commission, to full participation in the different stages of the proceeding, on the terms established in Act 15/2007 of 3 July 2007 and in this Regulation.
5. Exercise of the rights that rest with those declared to be interested parties may in no event disrupt the normal pursuit of the proceeding, nor imply delays in the timing nor retroactive effect of expired procedures.

**Article 67. Discovery of the case file and allegations**

1. According to what is provided in article 58.2 of Act 15/2007 of 3 July 2007, after the statement of objections has been notified to the interested parties, the latter may ask the Directorate for Investigation to see the case file, after being cleared of confidential aspects and, if applicable, submit allegations within ten days.
2. If the allegations submitted give rise to new elements of judgment which the Directorate for Investigation considers must be corroborated, the latter may give the notifying party or the rest of the interested parties a new time limit within which to submit their views on the matter.
3. At the expiry of the time limits for submissions referred to in paragraphs 1 and 2 of this article, the hearing will be considered to have concluded, unless the notifying party requests that there be held the oral hearing provided for in article 58.3 of Act 15/2007 of 3 July 2007, and the resolution proposal will be submitted to the Council of the National Competition Commission.
4. In its report, the Directorate for Investigation will not take into account allegations that are submitted beyond the time limits referred to in paragraphs 1 and 2 of this article. In all events, those allegations will be incorporated into the case file, with an express indication that they were not submitted in due time.

**Article 68. Oral hearing**

1. The notifying party may request the Council of the National Competition Commission to hold a hearing according to article 58.3 de la Act 15/2007 of 3 July 2007 at any time up to twelve days after being notified of the statement of objections. The request must contain the information referred to in article 19.1 of this Regulation.

2. The Council of the National Competition Commission will notify the rest of the interested parties of the notifying party's request for a hearing or of its decision to hold a hearing to analyse or adjudge the positions at issue in the case, so that they can state, within the time limit indicated to them, their intention to attend and, if such is the case, submit the information referred to by article 19.1 of this Regulation.
3. The Council of the National Competition Commission will notify the interested parties who requested to attend the oral hearing as to the date and time it will be held.
4. If such is the case, once the hearing has been held the hearing part of the proceeding will be considered to have concluded, and the resolution proposal will be submitted to the Council of the National Competition Commission.

### **Article 69. Presentation of commitments in first and second phase**

1. According to what is provided in article 59 of Act 15/2007 of 3 July 2007, the notifying party may present commitments to the Directorate for Investigation:
  - a) In first phase, within twenty days after the notification of the concentration is filed in due form with the National Competition Commission.
  - b) In second phase, within up to thirty-five days after the decision of the Council of the National Competition Commission to initiate the second phase of the proceeding.
2. Where commitments are offered, the notifying party will give a reasoned indication, when presenting the commitments, of any information considered confidential and provide a separate non-confidential version thereof.
3. The Directorate for Investigation will forward the notifying party's proposed commitments to the Council of the National Competition Commission for its knowledge.
4. The Directorate for Investigation will examine the commitments presented by the notifying party and may request that they be modified if it believes they are insufficient for eliminating the possible obstacles to competition that could derive from the operation.
5. The commitments presented in first phase can only be accepted if the competition problem detected is clearly identifiable and can be easily remedied.
6. The notifying party must present the proposals for modification of commitments within the time limits indicated in paragraph 1 of this article. After those time limits have expired, the Directorate for Investigation will not be obliged to consider the proposed commitments or their modifications.
7. The final proposal for commitments of the notifying party will be set out in the resolution proposal issued by the Directorate for Investigation in order to be submitted to evaluation by the Council of the National Competition Commission.

### **Article 70. Intervention of the Council of Ministers**

1. Once the resolution of the Council of the National Competition Commission has been notified to the Minister of Economy and Finance according to article 58.6 of Act 15/2007 of 3 July 2007, at the request of the Minister of Economy and Finance, the Secretary of the Council of the National Competition Commission will forward the latter a copy of the case file.

2. For the purposes of article 60.3.b) of Act 15/2007 of 3 July 2007, the Council of Ministers, through the Minister of Economy and Finance, may request a report from the National Competition Commission, which shall issue the same within ten days.

### **Article 71. Monitoring compliance with obligations, resolutions and decisions**

1. In accordance with the terms of article 41 of Act 15/2007 of 3 July 2007, the Directorate for Investigation will carry out the necessary actions to enforce performance and monitor fulfilment of the obligations laid down in that Act and in its implementing regulations, as well as of the resolutions and decisions that are adopted pursuant thereto on matters of control of concentrations.

2. In the event the obligations imposed arise from a Resolution of the Council of Ministers, the resolution shall specify the administrative office which, according to the authority attributed to it, is responsible for their monitoring compliance.

3. The Council of the National Competition Commission will resolve on such issues as may arise during the compliance monitoring period, at the prior proposal of the Directorate for Investigation. In all events, the Council of the National Competition Commission will issue a resolution declaring compliance monitoring to have concluded.

4. The person responsible for fulfilment of the obligation under Act 15/2007 of 3 July 2007, its implementing regulations, resolution or decision on matters of control of concentration that are subject to monitoring for compliance shall be considered an interested party in the compliance monitoring.

## **Chapter IV**

### **On arbitration proceedings**

#### **Article 72. Arbitration function, general principles and norms**

1. Pursuant to article 24.f) of Act 15/2007 of 3 July 2007, the National Competition Commission will perform the institutional arbitration functions, at law and in equity, attributed to it by law and those submitted to it by economic operators under the Arbitration Act 60/2003 of 23 December 2003 (Ley de Arbitraje).

2. National Competition Commission Council members and staff shall not abstain from or be subject to recusal in arbitration proceedings by mere fact or having investigated or resolved on defence of competition proceedings that affect one or more parties to the arbitration, in accordance with what is provided in article 17 of Act 60/2003 of 23 December 2003.

3. The decision as to the competence of the National Competition Commission in arbitration matters will rest with its Council. In all events, it shall have authority to reject the competence of the National Competition Commission for reasons of sufficient public interest.

4. The place of the arbitration will be the head offices of the National Competition Commission. The language of arbitration before the National Competition Commission will be Castilian Spanish.

5. Matters as to which this Regulation is silent will be subsidiarily regulated by Act 60/2003 of 23 December 2003, except in relation to computing time limits.

**Article 73. Submission to arbitration**

1. Submission to arbitration by the National Competition Commission may be done by means of an arbitration agreement between the parties or through an individual declaration signed by one party pursuant to commitments or conditions established in resolutions that have put an end to defence of competition proceedings.
2. The individual declaration must be effected in writing and deposited in the Directorate for Investigation. The declaration must contain, at minimum, the identifying particulars of the parties and an express declaration of the party's unequivocal intention to submit a certain dispute or disputes to arbitration by the National Competition Commission and accept the award it hands down.
3. The individual declaration will not operate as a submission to arbitration until the other party to the dispute has deposited in the Directorate for Investigation an individual declaration that complies with the same requirements as set out in the preceding paragraph.

**Article 74. Pursuit of the arbitration proceeding**

1. The arbitration proceeding prior to the arbitration award will be pursued by the Directorate for Investigation, which shall prepare a report that includes a proposed arbitration award to be submitted to the Council of the National Competition Commission.
2. The Council of the National Competition Commission may adopt, at its own initiative or at that of a party, at the proposal of or upon prior report from the Directorate for Investigation, such interim measures as it deems necessary. To adopt, suspend, modify, revoke and discontinue the interim measures that have been adopted, the provisions of article 41 of this Regulation shall apply.
3. Interlocutory decisions in the arbitration proceeding will not admit of appeal before the Council of the National Competition Commission or before the courts.

**Article 75. Maximum time limit for the proceeding**

The maximum time limit for entering and notifying the arbitration award that puts an end to the proceeding will be three months reckoned from the arbitration commencement date, without prejudice to the powers of suspension or extension of time limits provided in article 37 of Act 15/2007 of 3 July 2007. Expiry of the time limit without the award being handed down will operate to terminate the arbitration.

**Article 76. Arbitration award**

The Council of the National Competition Commission will hand down the arbitration award according to its rules of procedure.

**Article 77. Arbitration settlement**

If during the course of the arbitration proceeding the parties reach a settlement that puts a total or partial end to the dispute, the Council of the National Competition Commission, at the proposal of or upon prior report from the Directorate for Investigation, will consider the proceeding to have terminated with respect to the points agreed, and if both parties so request and the Council of the National Competition

Commission sees no reason to object, it shall set out the agreement in the form of an arbitration award.

### **Article 78. Expenses**

The arbitrations referred to by this chapter will be free of charge, except for the expenses generated by the admission of evidence, which will be paid, unless the parties expressly agree otherwise, by the party that proposed the evidence. The expenses arising from the evidence attained ex officio will be paid by the parties in equal parts.

## **Chapter V**

### **On the procedure for approval of Communications**

#### **Article 79. Communications of the National Competition Commission**

1. Communications issued by the National Competition Commission will be prepared by order of its President, who shall request that a report be issued by the Directorate for Investigation and, where the President deems appropriate, by other technical services of the National Competition Commission.
2. Where the Communications affect application of articles 1 to 3 of Act 15/2007 of 3 July 2007, the Defence of Competition Council may address a proposal to the President of the National Competition Commission for the latter to order issuance of the report. In all events, Communications referring to articles 1 to 3 of Act 15/2007 of 3 July 2007 will be published after having heard the Defence of Competition Council.
3. Where so required by the nature of the Communication, the President of the National Competition Commission will decree the opening of a public input or information period through the National Competition Commission website.
4. Communications of the National Competition Commission will be posted on the National Competition Commission website and published in the Spanish Official State Gazette (*Boletín Oficial del Estado*).

#### **Single additional provision.- References to the National Competition Commission and to its executive bodies.**

The references contained in this Regulation to the National Competition Commission and its executive offices relating to functions, administrative powers and proceedings, will also be understood to be made to the relevant investigative and decision making bodies of the Autonomous Communities with powers for these matters according to the Competition Act 15/2007 of 3 July 2007.

#### **First transitional provision. Pursuit of proceedings initiated after the effective date of the Competition Act 15/2007 of 3 July 2007.**

The provisions of this Regulation will apply to prohibited conducts disciplinary proceedings initiated after the effective date of the Competition Act 15/2007 of 3 July 2007, and to the internal procedures for control of concentrations initiated after the entry into force of the said statute.

**Second transitional provision. Monitoring of compliance with resolutions of the Council of Ministers adopted under the Competition Act 16/1989 of 17 July 1989.**

After the entry into force of the Defence of Competition 15/2007 of 3 July 2007, the Directorate for Investigation will monitor enforcement of and compliance with the Resolutions of the Council of Ministers that were adopted under article 17 of the Competition Act 16/1989 of 17 July 1989. In all events, the Directorate for Investigation will be responsible for deciding to declare the conclusion of the monitoring of the said Council of Ministers Resolutions.

In the event a breach is detected of what is ordered in the said Council of Ministers Resolutions, the Directorate for Investigation will have authority, after hearing the interested parties, to recommend to the Government the levying of the fines envisaged in paragraphs 3 and 4 of article 18 of the Competition Act 16/1989 of 17 July 1989, without prejudice to the adoption of other compulsory enforcement measures available in the legal system.

**Third transitional provision. Individual authorisations granted under the Competition Act 16/1989 of 17 July 1989.**

Individual authorisations granted under the Competition Act 16/1989 of 17 July 1989 and which have not expired at the effective date of this Regulation will be terminated, without prejudice to the agreements not being considered prohibited for so long as there are fulfilled the conditions of article 1.1 of Act 15/2007 of 3 July 2007, without an express administrative decision thereon and subject to evaluation by the companies themselves.

## ANNEX I

### Content of the complaint

#### 1. Identification of the parties.

##### 1.1 Complainant.

1.1.1 Full individual or corporate name, taxpayer identification number (NIF) or resident foreigner identification number (NIE), address, telephone number and fax number. Contact person and fax number. In the case of complaints filed by individual entrepreneurs or enterprises without legal personality that operate under a trade name, also identify the owners or partners, indicating their full names and address.

1.1.2 Succinct description of the company or association of companies filing the complaint, including its corporate objects and territory in which it operates.

1.1.3 In the case of complaints filed in the name of a third party or by more than one person, identify the representative (or the joint attorney) and attach a copy of the power of attorney to act as representative.

##### 1.2 Accused.

1.2.1 Full individual or corporate name, taxpayer identification number (NIF) or resident foreigner identification number (NIE), address, telephone number and fax number.

1.2.2 Succinct description of the companies.

1.2.3 Form and scope of participation of the accused in the reported practice.

#### 2. Subject matter of the complaint.

Detailed description of the facts that support the existence of an infringement of Spanish and/or community competition rules, indicating:

2.1 Which practices of the accused companies or associations of companies have as their purpose, produce or could produce the effect of impeding, restricting or distorting competition in all or part of the national or European market.

2.2 The extent to which the reported practices affect the conditions of competition in the relevant market and the degree to which they affect the interests of the complainants.

2.3 The goods or services and geographic markets affected by the reported practices.

2.4 If there exists any particular regulation that affects the conditions of competition in the affected markets.

2.5 If there is some legal support for the said practice.

2.6 The provisions violated by the reported practice.

2.7 If the adoption of interim measures is being requested, how such measures could ensure the enforceability of the resolution eventually handed down and what risks would arise if they are adopted or if they are not granted for the operation of the market and for the interests of the complainants.

2.8 If confidential treatment is being requested for part of the information, defining the scope of the confidentiality, taking into account that nobody can be convicted

by evidence they have not been able to see, and attaching a non-confidential version of the documents containing that information.

### 3. Data on the market.

3.1 Nature of the goods or services affected by the reported practice, with mention, if applicable, of the Spanish combined nomenclature code (nine digits), or the national classification of economic activities code (c.n.a.e.) in the case of services.

3.2 Structure of the market or markets for those goods or services: geographic scope, supply and demand-side operators, market shares, degree of competition existing there, existence of substitute products, barriers to market entry that may confront new competitors, existence of legislation affecting conditions of competition in the market, as well as any other fact or information on the market that could be significant for purposes of a possible disciplinary proceeding.

### 4. Existence of legitimate interest.

Reasons why the complainants believes they fulfil the conditions laid down in article 31 of Act 30/1992 of 26 November 1992 on the Legal Framework of Public Administrations and Common Administrative Procedure, to be considered an interested party in such disciplinary proceeding as could eventually be brought.

### 5. Evidence.

5.1 Identity and address of the persons or institutions that can testify to or certify the facts set out in the complaint, in particular of the persons affected by the presumed infringement.

5.2 Documents referring to the facts notified or that have a direct relation thereto (texts of agreements, terms of transactions, trade documents, circulars, advertising, minutes of negotiations or meetings, etc.). Of the documents containing information that should be considered confidential, provide complete originals in a separate submission, as well as version censored so it can be included in the case file.

5.3 Statistics and other data in reference to the facts described (regarding, for example, the evolution and formation of prices, offering and sale terms and conditions, the usual conditions of the transactions, or the existence of boycotts or discrimination).

5.4 Technical characteristics of production, sales, need for licences, existence of other market entry barriers, and provide, or cite, as applicable, the references for sector or market studies, application of competition rules, including of comparative law, in similar or neighbouring cases.

5.5 Existence of any other evidence of the infringement, indicating what action is needed so the evidence can be provided.

### 6. Actions adopted.

Description of the arrangements made and actions undertaken prior to the complaint, in order to achieve cessation of the presumed infringement or of its harmful effects for the conditions of competition. Submit the information on all of the arrangements and actions you know of, including those carried out by any other party affected by the reported conduct or similar conducts. Specify the administrative or judicial proceedings and, if applicable, identify the cases and results of the proceedings.

### 7. Other information.



Submit any other available information that could allow the competition authorities to appreciate the existence of prohibited practices and the most effective remedies for restoring the conditions of competition.

## ANNEX II

### Ordinary notification form for economic concentrations

#### 1.- How to notify.

The notification form must be sent to the National Competition Commission (Comisión Nacional de la Competencia — hereinafter, CNC). Irrespective of the register where the notification is first presented, the running of the time limits for the control of concentrations proceeding will not begin until the notification enters the CNC register in due form.

The notification form and its attached documents should be presented in a hard copy (paper) and in electronic format.

This notification form is composed of:

- a) A cover indicating the identity of the notifying party (or of its representative), the identity of the other participants, the nature of the operation, an executive summary of the operation, the economic sector, the request for confidential treatment and, if applicable, for lifting of the suspension of execution of the operation, as well as the place, date and signatures of the notifying parties.
- b) The information required in sections 1 to 8 should be provided in order on separate sheets and mentioning the reference margin number.

#### 2.- Request for confidential treatment.

The notifying party will indicate on the cover of the notification, on a reasoned basis, the information that should be given confidential treatment with respect to third parties or, if applicable, with respect to a participant in the operation. Also, according to what is provided in article 20 of this Regulation, a non-confidential version of the notification must be provided.

### SECTION 0. COVER

Notifying party:

Representative (if applicable):

Other participants:

Type of operation:

Economic sector (NACE code):

Requests:

1. That this notification be considered for the purposes set out in article 55 of the Competition Act 15/2007 of 3 July 2007 (Ley de Defensa de la Competencia).
2. That the information contained in sections ... and in annexes ... of this notification be given confidential treatment with respect to third parties and be kept secret, in accordance with the terms of article 42 of Act 15/2007 of 3 July 2007, as such information is confidential content of the companies participating in the concentration.
3. If applicable, the lifting of the obligation of suspension of execution of the notified concentration, in accordance with the article 9 of Act 15/2007 of 3 July 2007.

The undersigned declare that the information provided in this form and its annexes is true, that the opinions are truthful and the estimates have been made in good faith.

Place, date and signature/s of the notifying party or of the representative.

## **SECTION 1. INFORMATION ON THE PARTIES**

### 1.1 Information of the notifying party or parties.

Provide the following data:

#### 1.1.1 Full name or registered corporate name.

In the case of natural persons or companies without legal personality that operate under a trade name, indicate the full name of the person or persons, or the name of the company.

#### 1.1.2 Registered address and taxpayer identification number or code.

#### 1.1.3. Nature of the company's business.

#### 1.1.4 Full name of the contact person, position in the company, address, telephone and fax number, and e-mail address.

#### 1.1.5 Address for service of the notifying party (or of each of the notifying parties) to which documents and, in particular, the resolutions and decisions of the National Competition Commission may be delivered. Full name, telephone number, fax number and e-mail address of a person authorised to receive documents at that address.

### 1.2. Information on other participants in the concentration operation.

#### 1.2.1 Full name or registered corporate name.

In the event of acquisition of part of one or more companies without legal personality, identify them with their trade name and with the corporate name of the sellers.

#### 1.2.2 Registered address and taxpayer identification number or code.

#### 1.2.3 Nature of the company's business.

#### 1.2.4 Full name of the contact person, position in the company, address, telephone and fax number, and e-mail address.

#### 1.2.5 Address for service of another participant in the concentration (or of other participants) to which documents and, in particular, the resolutions and decisions of the National Competition Commission may be delivered. Full name, telephone number, fax number and e-mail address of a person authorised to receive documents at that address.

### 1.3 Notification through a representative.

A notification made through a representative must be accompanied by the document evidencing the authority to act as representative or certified photocopy thereof with sworn translation if that authority is drawn up in a language other than an official language of the Spanish State. The document must contain the full name and position of the persons so authorised.

Indicate:

#### 1.3.1 Name of the person or entities appointed as representatives.

#### 1.3.2 Registered address and taxpayer identification number or code.

1.3.3 Person to be contacted. Address, telephone number, fax number and e-mail address.

1.3.4 Address of the representative (in Madrid, if possible) to which correspondence may be sent and documents delivered.

## **SECTION 2. NATURE, CHARACTERISTICS AND DIMENSION OF THE CONCENTRATION OPERATION**

2.1 Description of the nature of the operation.

Give a succinct description of the concentration operation, indicating, *inter alia*, the following:

2.1.1 Whether the concentration constitutes:

a) A merger between two previously independent companies.

b) An acquisition of assets.

c) An acquisition of interests of any other kind that allows sole or joint control of another company to be attained.

d) The creation of a full-function joint venture within the meaning of article 7 of Act 15/2007 of 3 July 2007.

e) A contract or other means of conferring direct or indirect control within the meaning of article 7 of Act 15/2007 of 3 July 2007.

2.1.2 Whether the whole or parts of the participating companies are subject to the operation.

2.1.3 If one of the parties is presenting a public offer to acquire another, indicate whether the operation has the support of the management bodies of the latter.

2.2 Economic and financial elements of the operation.

Give a brief description of the economic and financial details of the operation, indicating, in particular, as applicable:

2.2.1 The assets or securities and the amount and form of consideration (for example, funds to be received or obligations) offered or agreed.

2.2.2 The terms of any securities offer made.

2.2.3 If one or more of the parties to the operation has financial support for its execution, from public authorities or otherwise, this shall be noted, specifying the nature and amount of such support.

2.2.4 The structure of ownership and control after the completion of the operation.

2.2.5 The timetable of the operation, with special reference to the date on which the concentration proposal or agreement was achieved and the expected or proposed date of the events that give rise to the operation's execution.

2.2.6 Describe the economic rationale of the notified project.

2.3 Turnover of the participants.

The notifying party must provide the following data for all participants in the concentration operation during the last financial year, as provided in article 5 of this Regulation.

2.3.1 World-wide turnover.

2.3.2 Turnover in the European Union.

2.3.3 Turnover in Spain.

2.4 Explain why the notified concentration does not fall within the scope of application of Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

2.5 Indicate in what other countries and on what date the concentration has been notified or is expected to be notified.

### **SECTION 3. ANCILLARY RESTRICTIONS**

3.1 Indicate if there are restrictions on competition that are considered ancillary to the notified concentration operation in the agreement that gives rise to the concentration.

3.2 If the answer to point 3.1 is affirmative, indicate whether the said restrictions consists of:

3.2.1 Non-competition agreements or clauses.

3.2.2 Agreements or clauses on non-recruitment of personnel or other type of resources.

3.2.3 Confidentiality agreements or clauses.

3.2.4 Purchase or supply obligations.

3.2.5 Licensing agreements.

3.2.6 Other agreements or clauses that could be viewed as restrictions of competition.

3.3. For each point under paragraph 3.2 for which the reply was affirmative, indicate:

3.3.1 Duration of the agreement, clause or obligation.

3.3.2 Content of the agreement, clause or obligation.

3.3.3 Reasons why such agreements, clauses or obligations should be treated as an ancillary restriction of the notified concentration operation.

### **SECTION 4. PREVIOUS OWNERSHIP AND CONTROL**

For each of the participants involved in the concentration, provide a complete list of the companies belonging to the same group that are active in any of the affected markets, indicating their registered office.

For purposes of membership in a group, a control relationship will be understood within the meaning of article 7.2 of Act 15/2007 of 3 July 2007 and in accordance with what is provided in section 2 of this form in relation to the nature and characteristics of the concentration operation.

In particular, the list must include:

4.1 All companies or persons directly or indirectly controlling each of the participants;

4.2 All companies active in any of the relevant markets directly or indirectly controlled:

a) by the participants;

b) by any other company identified in 4.1.

Specify the nature and means of control with respect to each person or company on the list.

The information sought in this section may be accompanied by organisation charts or diagrams to show the structure of ownership and control of the companies.

With respect to the participants in the concentration and to each company or person identified in response to section 4.1, provide:

4.3 A complete list of all other companies which are active in the relevant markets (defined in section 5 of this form) in which the companies or persons of the group hold individually or collectively 10% or more of the voting rights, issued share capital or other securities.

In each case, identify the holder and the percentage held.

4.4 With respect to each company, a list of the members of their boards of management who are also members of the boards of management or of the supervisory boards of any other company which is active in affected markets; and, where applicable, for each company, a list of the members of their supervisory boards who are also members of the boards of management of any other company which is active in affected markets.

In each case, identify the name of the other company and the positions held.

4.5 Details of acquisitions made during the last three years by the groups identified in section 4.1 of companies active in affected markets as defined in section 6.

Information provided here may be illustrated by the use of organisation charts or diagrams to give a better understanding.

## **SECTION 5. MARKET DEFINITIONS**

With respect to each of the participating companies, the following shall be indicated:

5.1 The economic sectors in which they are active, identified using the four digit NACE code, indicating the sector associations that exist.

5.2 The goods or services marketed by each of the companies participating in the concentration operation, grouped by significant commercial categories and, if applicable, the changes in the product or service portfolio foreseen in the concentration operation.

5.3 Delimitation of the markets.

The notifying party should delimit the markets taking the following points into consideration:

### **5.3.1 Product markets**

A product market comprises all those products and services which are regarded as interchangeable or substitutable by the consumer, by reason of their physical and technical characteristics, their prices, their intended use, distribution systems or legal or regulatory definitions of the product.

The definition of product markets must take into account the possible existence of substitute products and services for those offered by the parties to the operation, as they may act as a competitive restraint on their behaviour. This competitive restraint may come from the existence in the market of other products and services considered interchangeable by consumers (demand-side substitutability) or the existence of other suppliers willing to immediately dedicate their resources to offering those products and services (supply-side substitutability).

The definition should explain the factors that determine why some products are included and others are excluded, having regard to, for example, substitutability, conditions of competition, prices, cross-price elasticity of demand or other relevant factors (for example, supply-side substitutability in appropriate cases).

### 5.3.2 Geographic markets

The geographic market comprises the area in which the participating companies are involved in the supply and demand of relevant products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the geographic market include *inter alia* the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the companies' market shares between neighbouring geographic areas and the existence of substantial price differences or other relevant factors.

### 5.4 Relevant markets.

For purposes of the information requested in this form, the relevant markets consist of the product markets in Spain or in a geographic area in Spain, where the following circumstances hold:

- a) Two or more of the participants in the concentration are engaged in business activities in the same product market and where the concentration will lead to a combined or individual market share of 15% or more.
- b) The participants in the concentration have an individual or combined share of 25% or more in a product market which is upstream or downstream of a product market in which any other party to the concentration is active at the national level or in a geographic market defined therein.

5.4.1 On the basis of the definitions given in section 5.4 of this form, indicate each of the relevant markets in:

- a) The national geographic area.
- b) In a geographic market defined inside the national market.

5.4.2 State and explain the notifying party's view regarding the scope of the geographic market within the meaning of point 5.3.2 above that applies in relation to each affected market identified in the preceding section (5.4.1).

5.5 Other markets in which the notified operation may have a significant impact.

5.5.1 On the basis of the definitions given in section 5.3, describe the scope of the product and geographic markets, other than the affected markets identified in section 5.4 in which the notified operation may have a significant impact, where:

- a) any of the participants in the concentration has a market share larger than 25% and another participant is a potential competitor with respect to that market. A participant may be considered a potential competitor, in particular, where it has plans to enter a market, or has developed or pursued such plans in the past two years.
- b) any of the participants in the concentration has a market share larger than 25% and other participant in the concentration holds important intellectual property rights for that market.

c) any of the participants in the concentration is present in a product market which is a neighbouring market closely related to a product market in which an other participating company is engaged, and their individual or combined market shares are 25% or more.

## **SECTION 6. INFORMATION ON RELEVANT MARKETS**

For each relevant market provide the following information:

### **6.1 Market shares**

For the national market, markets defined more narrowly within the national market and, if applicable, markets defined beyond the national market, give the following information for the last three years:

a) Estimate of the total size of the market expressed in value and in the type of units customarily used in the sector.

b) Estimate of the part corresponding to each of the companies and groups involved in the concentration and to each competitor company or group with shares larger than 5%.

### **6.2 Structure of supply.**

Provide the following information:

6.2.1 Full name, address, telephone number, fax number and e-mail address of the head of the legal department of each of the competitors.

6.2.2 Describe the structure of supply in the market and provide a list of the principal suppliers, with their respective percentage share of the total volume of purchases of the companies participating in the concentration operation.

6.2.3 Describe in detail the distribution channels and networks existing in the market and how they are used by the companies involved in the concentration, indicating to what extent distribution is performed by third parties or by the same companies or others in their group.

6.2.4 Estimate the total production capacity in the Spanish market during the last three years and the proportion of that capacity accounted for by each of the parties. Identify the location of their production facilities and their rates of capacity utilisation.

6.2.5 Specify whether any of the parties to the concentration, or any of the competitors, have 'pipeline' products and services, or products and services to be brought to market in the near term, or plans to expand production or sales capacity.

6.2.6 Indicate what pricing levels were practiced in the last year by the companies involved in the concentration in relation to those of their principal competitors and what are the criteria and factors for determining price levels.

6.2.7 Describe the main factors that determine the cost structure of the products and services comprised by the market and what the main factors are that differentiate between competitors.

6.2.8 Other factors that determine the structure and characteristics of supply in the market.

### **6.3 Structure of demand.**

Provide the following information:

6.3.1 Full name, address, telephone number, fax number and e-mail address of the head of the legal department of each of the main customers.



6.3.2 Describe the structure of demand in the market and provide a list of the principal customers, with their respective percentage shares of the total sales of the companies party to the operation. For these purposes, evaluate the following factors:

- the phases of the markets in terms of, for example, take-off, expansion, maturity and decline, and a forecast of the growth rate;
- the importance of customer preferences, for example in terms of brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products, or network effects;
- the role of product differentiation in terms of attributes or quality, and the extent to which the products of the parties to the concentration are close substitutes;
- the role of switching costs (in terms of time and expense) for customers when changing from one supplier to another;
- the degree of concentration or dispersion of customers and possible segmentation into different groups (with a description of the 'typical customer' of each group);
- the importance of exclusive distribution contracts and other types of long-term contracts;
- other factors that determine the structure and characteristics of demand in the market.

6.4. Barriers to market entry for new companies.

6.4.1 Give a detailed description of the difficulties for entry into the market that may be confronted by new competitors, with special mention of any of the following that may apply:

- a) Restrictions on competition of imported products due to customs or non-customs barriers.
- b) Restriction of access to the production factors, such as raw materials, intermediate goods and qualified personnel.
- c) Restrictions on the creation of the distribution network, with a description of the causes.
- d) Difficulties arising from the total cost of entry for a new competitor due to the need for capital, promotion, advertising, distribution, servicing, research and development, etc.
- e) Any legal or regulatory barriers to entry, such as government authorisation or standard setting in any form, as well as barriers resulting from product certification procedures, or the need to have a proven track record.
- f) Any restrictions created by the existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights, identifying whether the parties are patent holders or licensees.

6.4.2 Indicate whether any significant company has entered the market during the last three years (or, if appropriate, a longer period) and whether entry by a new operator in the market is expected and in what time frame. If the responses are affirmative, provide the available information on those companies and contact person.

6.5 Research and development.

6.5.1 Describe the role and importance of research and development activities for a firm to be able to remain competitive in the relevant markets in the long term, having regard

to aspects such as trends, course of technological development, major innovations made and the cycle of innovation.

6.5.2 Describe the nature of the R&D activities carried out by the parties and the proportion of R&D expenses with respect to turnover and their significance in the market.

6.6 Cooperative aspects.

6.6.1 Indicate whether there exist horizontal or vertical cooperation agreements between the participating companies or between them and other competitors in the markets affected by the operation or in connected markets. If applicable, give details of those agreements and provide copies (research and development, licensing, joint production, specialisation, distribution, long-term supply and exchange of information agreements).

6.6.2 In cases of notification of joint control, indicate whether the parent companies retain or will retain to a significant extent activities in the same market as the joint venture or in a market which is upstream or downstream from that of the joint venture or in a neighbouring market closely related to this market. If affirmative, describe the share of the parent companies and of the joint venture in each one of the markets, indicating each one's share in the turnover of the others.

6.7 Vertical aspects of the operation.

Describe the implications of the operation for markets that are upstream and downstream from the relevant market, as well as their degree of vertical integration and the position of the parties in the operation.

## **SECTION 7. GENERAL QUESTIONS**

7.1 Describe and quantify the contribution which the concentration operation can make to:

7.1.1 Improving production or selling systems.

7.1.2 The development of technical and economic progress.

7.1.3. Favouring the interests of consumers or users.

7.2 If the above benefits are efficiencies that should be taken into account when evaluating the concentration operation, provide evidence for those efficiencies using the means you deem appropriate, quantify them, explaining the time frame in which they are expected to exert their effects and give reasons why they:

- Are specific to the concentration operation.
- Cannot be obtained by alternate means.
- Will be passed on to consumers.

7.3 Describe the European Community and world wide context of the operation and position of the parties there. Identify the expected effects for the parties to the operation with respect to those contexts, in particular, as regards their international competitiveness.

## SECTION 8. ATTACHED DOCUMENTS

- a) Copy of the management reports and annual financial statements for the last financial year of the companies participating in the operation and, if applicable, of their parent companies.
- b) Copy of the final or most recent version of the documents relating to the agreement that gives rise to the concentration operation and translation, if they are drawn up in other than an official language of the Spanish State, without prejudice to the authority of the Directorate for Investigation to require a sworn translation of those documents.
- c) Analyses, reports or studies considered of relevance.
- d) Cooperation or other agreements according to sections 3.2 and 5.6.
- e) If the operation involves public offers, include the offer prospectus that must be filed with the Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores) or its equivalent in other countries.
- f) Receipt of payment of the fee in accordance with article 23 of Act 15/2007 of 3 July 2007.
- g) Power of attorney or certified photocopy thereof with a sworn translation if it is drawn up in other than an official language of the Spanish State.
- h) Copies of the reports or explanatory documents that the parties have prepared or commissioned to third parties in connection with the operation for their management bodies, for shareholders or for investors and analysts.

Indicate for each of these documents (if it is not stated therein) the date of preparation, the full name and position of the persons who prepared it.

## **ANNEX III**

### **Short form notification of economic concentrations**

#### **1. How to notify.**

The notification form must be sent to the CNC. Irrespective of the register where the notification is first presented, the running of the time limits for the control of concentrations proceeding will not begin until the notification enters the CNC register in due form.

The notification form and its attached documents should be presented in a hard copy (paper) and in electronic format.

This notification form is composed of:

a) A cover indicating the identity of the notifying party (or of its representative, if applicable), the identity of the other participants, the nature of the operation, an executive summary of the operation, the reason for giving a short form notification, the economic sector, the request for confidential treatment and, if applicable, for lifting of the suspension of execution of the operation, as well as the place, date and signatures of the notifying parties.

b) The information required in sections 1 to 7 should be provided in order on separate sheets and mentioning the reference margin number.

#### **2. Request for confidential treatment.**

The notifying party will indicate on the cover of the notification, on a reasoned basis, the information that should be given confidential treatment with respect to third parties or, if applicable, with respect to a participant in the operation. Also, according to what is provided in article 20 of this Regulation, a non-confidential version of the notification must be provided.

## **SECTION 0. COVER**

Notifying party:

Representative (if applicable):

Other participants:

Type of operation:

Economic sector:

Requests:

1. That this notification be considered for the purposes set out in paragraph/s ... of article 56 of the Competition Act 15/2007 of 3 July 2007 (Ley de Defensa de la Competencia), for the following reasons:
2. That the information contained in sections ... and in annexes ... of this notification be given confidential treatment with respect to third parties and be kept secret, in accordance with the terms of article 42 of Act 15/2007 of 3 July 2007, as such information is confidential content of the companies participating in the concentration.
3. If applicable, the lifting of the obligation of suspension of execution of the notified concentration, in accordance with the article 9 of Act 15/2007 of 3 July 2007.

The undersigned declare that the information provided in this form and its annexes is true, that the opinions are truthful and the estimates have been made in good faith.

Place, date and signature/s of the notifying party or of the representative.

## **SECTION 1. INFORMATION ON THE PARTIES**

### 1.1 Information of the notifying party or parties.

Provide the following data:

#### 1.1.1 Full name or registered corporate name.

In the case of natural persons or companies without legal personality that operate under a trade name, indicate the full name of the person or persons, or the name of the company.

#### 1.1.2 Registered address and taxpayer identification number or code.

#### 1.1.3 Nature of the company's business.

#### 1.1.4 Full name of the contact person, position in the company, address, telephone and fax number, and e-mail address

#### 1.1.5 Address for service of the notifying party (or of each of the notifying parties) to which documents and, in particular, the resolutions and decisions of the National Competition Commission may be delivered. Full name, telephone number, fax number and e-mail address of a person authorised to receive documents at that address.

### 1.2 Information on other participants in the concentration operation.

#### 1.2.1 Full name or registered corporate name.

In the event of acquisition of part of one or more companies without legal personality, identify them with their trade name and with the corporate name of the sellers.

#### 1.2.2 Registered address and taxpayer identification number or code.

#### 1.2.3 Nature of the company's business.

#### 1.2.4 Full name of the contact person, position in the company, address, telephone and fax number, and e-mail address.

#### 1.2.5 Address for service of another participant in the concentration (or of other participants) to which documents and, in particular, the resolutions and decisions of the National Competition Commission may be delivered. Full name, telephone number, fax number and e-mail address of a person authorised to receive documents at that address.

### 1.3 Notification through a representative.

A notification made through a representative must be accompanied by the document evidencing the authority to act as representative or certified photocopy thereof with sworn translation if that authority is drawn up in a language other than an official language of the Spanish State. The document must contain the full name and position of the persons so authorised.

Indicate:

#### 1.3.1 Name of the person or entities appointed as representatives.

#### 1.3.2 Registered address and taxpayer identification number or code.

1.3.3 Person to be contacted. Address, telephone number, fax number and e-mail address.

1.3.4 Address of the representative (in Madrid, if possible) to which correspondence may be sent and documents delivered.

## **SECTION 2. NATURE, CHARACTERISTICS AND DIMENSION OF THE CONCENTRATION OPERATION**

2.1 Description of the nature of the operation.

Give a succinct description of the concentration operation, indicating, *inter alia*, the following:

2.1.1 Whether the concentration constitutes:

a) A merger between two previously independent companies.

b) An acquisition of assets.

c) An acquisition of interests of any other kind that allows sole or joint control of another company to be attained.

d) The creation of a full-function joint venture within the meaning of article 7 of Act 15/2007 of 3 July 2007.

e) A contract or other means of conferring direct or indirect control within the meaning of article 7 of Act 15/2007 of 3 July 2007.

2.1.2 Whether the whole or parts of the participating companies are subject to the operation.

2.1.3 If one of the parties is presenting a public offer to acquire another, indicate whether the operation has the support of the management bodies of the latter.

2.1.4 Briefly describe the economic and financial structure of the concentration operation.

2.1.5 Specify the proposed or expected date of any major events designed to bring about the completion of the concentration.

Indicate the proposed structure of ownership and control after the completion of the operation.

2.1.6 Indicate any financial or other support received from whatever source (including public authorities) by any of the parties and the nature and amount of this support.

2.1.7 State the value of the operation (the purchase price or the value of all the assets involved, as the case may be).

2.2 Turnover of the participants.

The notifying party must provide the following data for all participants in the concentration operation during the last financial year, as provided in article 5 of this Regulation.

2.3.1 World-wide turnover.

2.3.2 Turnover in the European Union.

2.3.3 Turnover in Spain.

2.4 In case the operation concerns the acquisition of joint control of a joint venture, provide the following information:

2.4.1 The turnover of the joint venture and/or the turnover of the contributed activities to the joint venture and/or

2.4.2 The total value of assets transferred to the joint venture.

2.5 Explain why the notified concentration does not fall within the scope of application of Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

2.6. Indicate in what other countries and on what date the concentration has been notified or is expected to be notified.

2.7 Describe the economic rational for the operation.

### **SECTION 3. ANCILLARY RESTRICTIONS**

3.1 Indicate if there are restrictions on competition that are considered ancillary to the notified concentration operation in the agreement that gives rise to the concentration.

3.2 If the answer to point 3.1 is affirmative, indicate whether the said restrictions consists of:

3.2.1 Non-competition agreements or clauses.

3.2.2 Agreements or clauses on non-recruitment of personnel or other type of resources.

3.2.3 Confidentiality agreements or clauses.

3.2.4 Purchase or supply obligations.

3.2.5 Licensing agreements.

3.2.6 Other agreements or clauses which could be viewed as ancillary to the concentration operation.

3.3 For each point under paragraph 3.2 for which the reply was affirmative, indicate:

3.3.1 Duration of the agreement, clause or obligation.

3.3.2 Content of the agreement, clause or obligation.

3.3.3 Explain why those agreements, clauses or obligations should be treated as an ancillary restriction to the concentration.

### **SECTION 4. PREVIOUS OWNERSHIP AND CONTROL**

For each of the participants involved in the concentration, provide a complete list of the companies belonging to the same group that are active in any of the relevant markets, indicating their registered office.

For purposes of membership in a group, a control relationship will be understood within the meaning of article 7.2 of Act 15/2007 of 3 July 2007 and in accordance with what is provided in section 2 of this form in relation to the nature and characteristics of the concentration operation.

In particular, the list must include:

4.1 All companies or persons directly or indirectly controlling each of the participants;

4.2 All companies active in any of the relevant markets directly or indirectly controlled:

a) by the participants;

b) by any other company identified in 4.1.

Specify the nature and means of control with respect to each person or company on the list.

The information provided in this section may be accompanied by organisation charts or diagrams that help give a better description of the structure of control of the companies before and after the operation.

## SECTION 5. MARKET DEFINITIONS

With respect to each of the participating companies, the following shall be indicated:

5.1 The economic sectors in which they are active, identified using the four digit NACE code, indicating the sector associations that exist.

5.2 The goods or services marketed by each of the companies participating in the concentration operation, grouped by significant commercial categories and, if applicable, the changes in the product or service portfolio foreseen in the concentration operation. A description of the characteristics of each one of these goods and services should be given.

5.3 Delimitation of the markets.

The notifying party should delimit the markets taking the following points into consideration:

5.3.1 Product markets

A product market comprises all those products and services which are regarded as interchangeable or substitutable by the consumer, by reason of their physical and technical characteristics, their prices, their intended use, distribution systems or legal or regulatory definitions of the product.

The definition of product markets must take into account the possible existence of substitute products and services for those offered by the parties to the operation, as they may act as a competitive restraint on their behaviour. This competitive restraint may come from the existence in the market of other products and services considered interchangeable by consumers (demand-side substitutability) or the existence of other suppliers willing to immediately dedicate their resources to offering those products and services (supply-side substitutability).

The definition should explain the factors that determine why some products are included and others are excluded, having regard to, for example, substitutability, conditions of competition, prices, cross-price elasticity of demand or other relevant factors (for example, supply-side substitutability in appropriate cases).

5.3.2 Geographic markets

The geographic market comprises the area in which the participating companies are involved in the supply and demand of relevant products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the geographic market include *inter alia* the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the companies' market



shares between neighbouring geographic areas and the existence of substantial price differences or other relevant factors.

#### 5.4 Relevant markets.

For purposes of the information requested in this form, the relevant markets consist of the product markets in Spain or in a geographic area in Spain, where the following circumstances hold:

- a) Two or more of the participants in the operation are engaged in business activities in the same product market.
- b) The participants in the concentration have an individual or combined share of 25% or more in a product market which is upstream or downstream of a product market in which any other party to the concentration is active at the national level or in a geographic market defined therein.

### **SECTION 6. INFORMATION ON RELEVANT MARKETS**

For each relevant market provide the following information:

6.1 An estimate of the overall size of the national market, the markets defined more narrowly within the national market and, if applicable, markets defined beyond the national market, in terms of sales value (euros) and volume (units).

Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations.

6.2 Sales in terms of value and volume, as well as an estimate of the market share of each of the participants in the concentration in the national market, the narrower markets defined inside the national market and, if applicable, in markets defined beyond national bounds.

Also indicate if there have been any significant changes in sales and market shares during the last three years.

### **SECTION 7. ATTACHED DOCUMENTS**

- a) Copy of the management reports and annual financial statements for the last financial year of the companies participating in the operation and, if applicable, of their parent companies.
- b) Copy of the final or most recent version of the documents relating to the agreement that gives rise to the concentration operation and translation, if they are drawn up in other than an official language of the Spanish State, without prejudice to the authority of the Directorate for Investigation to require a sworn translation of those documents.
- c) Analyses, reports or studies considered of relevance.
- d) Cooperation or other agreements according to sections 3.2.
- e) If the operation involves public offers, include the offer prospectus that must be filed with the Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores) or its equivalent in other countries.
- f) Receipt of payment of the fee in accordance with article 23 of Act 15/2007 of 3 July 2007.
- g) Power of attorney or certified photocopy thereof with a sworn translation if it is drawn up in other than an official language of the Spanish State.

h) Copies of the reports or explanatory documents that the parties have prepared or commissioned to third parties in connection with the operation for their management bodies, for shareholders or for investors and analysts.

Indicate for each of these documents (if it is not stated therein) the date of preparation, the full name and position of the persons who prepared it.