




**GOBIERNO DE ESPAÑA**  
**MINISTERIO DE ECONOMÍA Y HACIENDA**



COMPETITION SERVICE  
Annual Report 2006

SECRETARÍA DE ESTADO DE ECONOMÍA  
SECRETARÍA GENERAL DE POLÍTICA ECONÓMICA Y DEFENSA DE LA COMPETENCIA  
DIRECCIÓN GENERAL DE DEFENSA DE LA COMPETENCIA



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e-publicaciones



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Créditos

# COMPETITION SERVICE

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# PRESENTATION

The work of the Competition Service (SDC) in 2006 was basically characterised by a dual nature. The Service has not only continued its growing task of execution in matters of competition, but in addition it has carried out significant regulatory work with the drafting of the Draft Competition Act (PLDC), which was referred to Congress in August for its parliamentary procedure.

This project has been the culmination of a regulatory gestation process whose bases were set out in 2005 with the publication of the White Paper for the Reform of the Spanish Competition System and which has been possible to maintain parallel to the growing work pace of the Directorate General for Competition.

Indeed, 2006 was a year that saw a great deal of activity, not only with regard to case-handling in application of the Competition Act (LDC) 16/1989, of 17 July 1989, but also in terms of the representation of the Service in international forums.

Specifically, in 2006, there were 132 merger operations reported to the Competition Service, surpassing the maximum reached to date. Of these, nine have been referred to the Competition Court (TDC).

In the restrictive practices field, the entry of cases rose in 2006 compared

with previous years and the number of proceedings completed was maintained.

Also of importance is the increasingly closer collaboration with the Autonomous Communities in the framework of the Act regarding coordination of the State and Autonomous Communities' competences on Competition Defence. This collaboration has been strengthened by the start-up of the Network of Cooperation of Spanish competition defence bodies.

Significant formal and informal collaboration has also been maintained with the sector regulators, both in terms of mergers and in the restrictive practices field.

The Competition Service has strengthened its role of advocating competition, fundamentally through the reports issued during the regulatory process of certain laws and regulations. In this arena, we should highlight the task undertaken in collaboration with the Professional Associations for the fulfilment of competition regulations in line with the liberalising policy pursued by the European Commission in terms of Professional Associations.

As has been stated above and apart from the day-to-day work in case-handling, advocating competition and collaboration with the other agents

involved, in August 2006, the Council of Ministers approved the PLDC, the result of intense work by the Competition Service.

This project has a dual nature, continuist and reformist, as it seeks to maintain the aspects of the system that have been working and to go beyond, through the reform of the weaknesses that practical experience since 1989 has steadily highlighted.

In any event, the reform has taken into account the evolution undergone by Community competition law during the 2003-2004 periods.

The project plans the creation of a single competition defence body independent from the government and with full decision-making powers in matters of competition. In addition, together with a series of changes of a more procedural nature, the following should be highlighted:

- The project aims to fight more effectively and efficiently against practices harmful to competition,

highlighting, to this effect, the introduction of a leniency programme in Spain for the detection of cartels or the establishment of a system of legal exemption in replacement of the present individual authorisation system.

- The private application of competition law is introduced so that Mercantile Judges will be able to apply the rules on restrictive practices directly and rule on damages in the same proceedings.
- The functions are increased and the role of advocating competition is strengthened, as is the collaboration with the other agents involved (Autonomous Communities, Judges and sector regulators).

Therefore, the present time is characterised by a series of changes that will lead to a more effective and efficient system of competition and one that is at the same levels of strength and quality as the most established competition defence systems worldwide.

# I. REGULATORY ACTIVITY AND PROMOTING COMPETITION

## I.1. Reform of the Spanish competition system

As in recent years, 2006 was characterised by an intense legislative activity.

On the one hand, and as one of the most important projects of the Ministry of Economy and Finance in this term of office, the renewal of the Spanish competition system initiated in 2004 continued, and culminated in 2006 with the referral by the Council of Ministers to the Spanish Parliament on 25 August 2006 of the Draft Competition Act.

On the other hand, work continued on the drafting of Exemption Regulations for certain categories of information exchange regarding payment defaults, which was finally approved by Royal Decree 602/2006, of 19 May 2006<sup>1</sup>.

### I.1.1. Reform of the Spanish competition system: The Draft Competition Act (DCA)

After EC Regulation 1/2003 came into effect and with the start of the new term of office, the Ministry of Economy and Finance began drafting a new

Competition Act for the modernisation and adaptation to European Law of the current 1989 Act.

This reform process was carried out with the creation of the “White Paper for the Reform of the Spanish Competition system”, presented publicly by the Second Vice-President of the Government and Minister of Economy and Finance on 20 January 2005, and which was submitted for a period of public notification and consultation.

Since then, the Competition Service has been working on the text of the Draft of the Competition Act, which involved an extensive period of consultation, in which other Ministerial Departments and Public Bodies took part.

The Draft was also submitted to the following mandatory reports<sup>2</sup>, specifically, by the Competition Court, the Consumers and Users Council, the Spanish Data Protection Agency, the Economic and Social Council, the General Council of the Judiciary, and the Council of State<sup>3</sup>.

On 10 March, the Ministry of Economy and Finance informed the Council of Ministers of the definitive text of the Draft Bill and submitted it to a new

<sup>1</sup> Published in the Official Gazette of the Spanish State no. 129, of 31 May 2006.

<sup>2</sup> In 2005, the Draft was also informed by the Competition Council.

<sup>3</sup> Ruling of the Council of State during the Session of 20 July 2006.



public consultation process, publishing it on the Ministry of Economy and Finance website.

As with the White Paper, numerous observations were received from private and public organisations interested in the reform.

Once the observations made had been incorporated, the Draft Act was submitted by the Council of Ministers to the Spanish Parliament on 25 August 2006, undergoing Parliamentary procedure when this Report was being drafted<sup>4</sup>.

The first public consultation process highlighted the extensive agreement from all specialised sectors involved with regard to the suitability and opportunity of the reform. The involvement and participation has been sought from all areas of society affected by the direct application of the Spanish Competition Law to achieve a rule that unites the maximum support of all those involved in its future application.

Similarly, the different public consultation processes have confirmed the suitability of the principles that inspired the reform: guaranteed legal security, independent decision-making, transparency and responsibility toward the society of the bodies charged with the application of the competition regulations, efficacy and search for coherence throughout the system, and, in particular, an adequate interweaving of the different institutional levels that interact in this field.

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<sup>4</sup> The Draft Act, as well as the observations received, the authors of which have agreed to their publication, and the DCA can be consulted on the Service's Website, at [http://www.dgdc.meh.es/Proyecto\\_LDC.htm](http://www.dgdc.meh.es/Proyecto_LDC.htm).

The DCA aligns the Spanish model with the Community model, introduces instruments that have been strengthened to tackle restrictive practices and it amends the national institutional framework to strengthen independence and administrative efficacy, introducing at the same time, the experience accumulated during the application of current Act 16/1989 and the best practices from our surrounding environment.

The aim of the reform is to strengthen the social efficacy of administrative participation, so ensuring the optimum institutional structure and an efficient allocation of resources. To achieve this, the reform has focused on the following elements:

1. Institutional structure and strengthening of its competences and competition promoting duties, creating a new national body, the National Competition Commission (NCC), which incorporates the current Competition Service and Competition Court. This new body is fully independent from the Spanish government, and its Chairman and Members will be appointed after having previously appeared before the Parliamentary Finance and Economy Committee, for a period of six non-renewable years, separate from the preliminary phase, which will be carried out by the Investigation Department, and from the ruling phase, under the National Competition Commission, so preserving the due balance between administrative efficacy and legal security.



2. Greater cooperation and coordination between institutions: the application of the national regulations relating to restrictive practices by the mercantile judges has been planned i.e., private competition law actions will enable private operators to appeal directly to the judges to have the acts declared null and void and/or obtain compensation for damages suffered, incorporating instruments such as the *amicus curiae* that facilitate the coordination between administrative and jurisdictional bodies, making it possible for administrative bodies to inform about aspects relating to the application of the Competition Act and for judges to suspend the process until an administrative ruling is given.

In addition, the cooperation mechanisms needed for the application of the competition regulations have been strengthened, both in relation to the Competition Authorities of the Autonomous Communities —adapting to the constitutional structure of competition distribution with these— and with the sector regulators.

3. Strengthening of the instruments in order to tackle restrictive practices, in accordance with the new Community regulations, establishing the suppression of the prohibition of the abuse of economic dependency as part of the abuse of a dominant position and of the practices which, given that they are less important, would be unlikely to affect competition in

the markets. The system of individual authorisations is abandoned, and a legal exemption system is used, with the National Competition Commission also being able to make declarations of inapplicability and publish interpretative communications to inform companies about the principles that will guide their actions.

In addition, sanctioning proceedings are simplified, eliminating proceedings that were duplicated in the preliminary and ruling phase or in the administrative appeals phase and the maximum duration is reduced from two years to 18 months. The instruments available to tackle restrictive practices and effectively end violations are also strengthened: fines are increased and become more predictable, and adoption of conventional termination and interim measures is facilitated.

Of particular note as a new feature for tackling the most damaging practices is the introduction of a leniency programme for the identification and proof of cartels.

4. Within the field of merger control, in light of the current structure in which the decision during both the first and second phase falls to the Ministry of Economy and Finance and the Council of Ministers, respectively, the Draft Act establishes that the National Competition Committee will have the final decision in the first and

second phase, with the Council of Ministers only able to intervene under exceptional circumstances, for reasons of general interest, when the National Competition Commission has ruled to prohibit or subordinate its authorisation to the fulfilment of commitments or conditions.

### **I.1.2. Royal Decree 602/2006, of 19 May 2006, approving the regulations on the exemption of certain categories of agreements for the exchange of information on payment defaults**

In 2006, the Competition Service drew up the Draft Regulation on the exemption of certain categories of agreements for the exchange of information on payment defaults, which was approved by the Council of Ministers by Royal Decree 602/2006, of 19 May 2006.

These regulations are the first relating to exemption by category passed by the Spanish government by virtue of Article 5 of the Competition Act, which permits the government to exempt categories of agreements and restrictive practices from the application of the law after a prior report by the Competition Court.

The object of these regulations has been the constitution agreements of the so-called "records regarding delays", which, since 1989, have been a very high percentage of the individual authorisation proceedings.

The content of the Royal Decree has been specifically adapted to the case

law emerging from the rulings of the Competition Court.

## **I.2. Promoting competition**

The work of advocating competition has followed the line set out in previous years, with the drafting of reports on regulatory projects coming from the Ministry of Economy and Finance or from other ministries, the content of which may have an impact on the competition conditions of the markets.

This work was carried out from the concurrence analysis and the identification of the possible effects on competition in the markets and on the efficiency of the economy in general.

Consequently, in 2006, reports were issued on approximately 44 rules or regulatory projects, while reports relating to consumers and users, the electricity sector, the audiovisual sector, postal services, insurance, administrative procurement, administrative procedure and professional services predominated.

In relation to rules or projects of rules of the Autonomous Communities, throughout 2006 reports were issued on the projects of amendment of six Statutes of Autonomous Communities.

Besides these reports on regulatory projects, the Competition Service regularly carried out other tasks promoting competition, the most notable of which, in terms of greenhouse gases emission rights, were the issuing of two reports requested by the Spanish Climate Change Office (Ministry of the Environment) concerning procedures for the

authorisation of the grouping of authorised installations for emitting greenhouse gases<sup>5</sup>.

Similarly, the Competition Service has continued the task of drafting market reports in accordance with the General Telecommunications Act 32/2003, of 3 November 2003.

The possibility has also been evaluated as to whether it is appropriate for the Kingdom of Spain to submit an application for intervention in any preliminary issue and appeal lodged before the Community courts in matters of competition. Consequently, in 2006, reports have been compiled on a total of 19 preliminary issues submitted in accordance with Article 234 of the EC Treaty by jurisdictional bodies of the Member States of the European Union, before the Court of Justice of the European Community, 80 direct appeals and 5 appeals to the Supreme Court.

Under no circumstances has the direct intervention of the Kingdom of Spain in the proceedings in question been deemed suitable by the Competition Service.

Finally, special mention should be made of the work promoting competition carried out in the professional services sector.

At the request of the European Commission, in July 2006 the Competition Service organised a new meeting, similar to that of the previous year, between civil servants from the

European Commission, the competent ministries on legal, engineering and architecture professional services, representatives from Professional Associations and the National Consumers' Institute. This meeting served to analyse the Spanish regulation of some professions and its adaptation to Community regulations. It also allowed an increase in the level of cooperation between the Competition Service and the Professional Associations in relation to orientative fee scales.

After this meeting, the European Commission sent letters to the Ministers attending, especially stressing the faculty of the Professional Associations to establish "merely orientative fee scales", which are considered, by virtue of community jurisprudence, to produce the same effect as the fixing of recommended prices —Article 81 of the EC Treaty.

Subsequently, the Competition Service has held meetings with the ministerial departments that received a letter from the European Commission with the aim of coordinating the measures and proposals that solve the above restrictions.

Similarly, the Service sent letters to the General Councils or Professional Associations at a national level for the professions of lawyers, engineers and architects, in which they were informed of the possible incompatibility of the orientative fee scales with Community Law and they were requested to report on measures aimed at removing them.

<sup>5</sup> These mandatory reports are required of the Competition Service by virtue of Article 12.1 of Act 1/2005, of 9 March 2005, that regulates the trade system of greenhouse gas emissions.



## II. MERGER CONTROL

### II.1. Introduction

The 2006 financial year was characterised by the high number of operations notified and a greater number of operations referred to the Competition Court for their in-depth analysis compared with 2005.

In all, 132 concentration operations were notified, which means the maximum number of operations notified since the Spanish merger control system was established.

In addition, the CS has continued its task of investigation on its own initiative through preliminary actions, replies to previous consultations posed by companies and drafting reports on the arena of jurisdictional review.

With regard to the consolidation and development of the Community merger regulations, Regulation 139/2004, 2006 saw the approval of a single Communication establishing the new requirements for the submission of reasoned briefs before the European Commission: Communication in accordance with Article 3 of Section 2 of (CE) Regulation no. 802/2004 of the Commission applying (EC) Regulation no. 139/2004 of the Council on the merger control between companies.

On 7 April 2006, a meeting of the Advisory Committee was held which

approved the definitive text of the "Working Arrangements", the object of which is not only to contribute to an adequate functioning of the Advisory Committee in matters of concentrations as referred to in Article 19 of the Community Merger Regulation, but it also aims to tighten the existing relationships between the Commission and the Member States.

Cooperation within the network has also been reflected in the huge number of operations referred by the Competition Service to the European Commission during the pre-notification phase, contributing to the efficient functioning of the referral system based on the principle of subsidiarity and better positioned authority.

### II.2. Mergers analysed

#### a) Notifications

Table 1 shows general statistics on the merger control from 1990 to 2006. In these statistics, the criterion adopted in previous reports is followed so that all the actions relating to a case are compiled in the financial year in which the concentration was notified, although subsequent actions or procedures (for authorisation, disposal, referral to the Competition Court or

**Table 1**  
**STATISTICS ON THE MERGER CONTROL IN SPAIN**

	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06
Notifications	8	11	17	15	13	20	23	19	31	51	93	76	100	79	94	115	132
Multiple notifications <sup>1</sup>	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	30	30	32	31	46	43	54
No referral to the CC	5	11	10	12	10	14	20	9	19	34	81	65	83	72	86	103	117
Referral to the CC	3	0	7	3	2	5	2	7	7	14	11	7	9	5	5	6	9
Agreement of Council of Ministers	3	0	7	3	2	5	1	7	6	14	11	7	9	4	5	6	9
File	0	0	0	0	1	1	1	3	5	2	1	3	7	1	3	6	6
Referrals <sup>2</sup>	0	0	0	0	0	0	0	0	0	1	1	-1	2	-1	-1	-10	1
Preliminary proceedings	0	0	0	11	16	8	27	27	27	32	45	17	45	52	44	26	14
Prior queries	0	0	0	0	0	0	0	0	0	13	24	12	12	14	16	10	11

<sup>1</sup> Concentration operations notified in Spain and other EU member states.

<sup>2</sup> Referrals from the European Union to Spain (articles 4.4. and 9 of Regulation 139/2004); those with a minus sign are referrals of Spain to the European Union (Articles 4.5. and 22 of Regulation 139/2004).

the Agreement of the Council of Ministers) will occur during the following year.

As already mentioned, 2006 saw an important rise in the number of notified merger operations. A total of 132 were notified, compared with 115 notifications in 2005.

It must be noted that 54 of the 132 notifications provided in Spain were also issued in other EU countries.

#### **b) Referral of cases to and from the European Commission**

The twelve referrals shown in Table 1 are from Spain to the European Commission, in pre-notification phase, in accordance with the provisions of

Article 4.5 of Regulation 139/2004 and requested by the companies involved<sup>6</sup>.

There were no referrals from the European Commission to Spain in 2006.

#### **c) Termination during the first stage**

As far as the termination of proceedings is concerned, the vast majority of operations are authorised during the first stage, as can be seen in Chart 1, within an average of 34 days.

<sup>6</sup> Community Cases M.4092 ANDRITZ/ KÜSTERS; M.4106 ISOLA/POLYCLAD; M.4071 APOLLO GROUP/AKZO NOBEL; M.4154 DEGUSSA/DOW; M.4196 TK/ORB/SURA; M.4265 PHILIPS/AVENT; M.4290 ADC/ ANDREW; M.4300 PHILIPS/ INTERMAGNETICS; M.4239 PLASTIC OMNIUM/INOPART; M.4357 BRIDGEPOINT/ DORNA; M.4389 WLR/BST and M.4498 HG CAPITAL/DENTON.

The percentage of referrals to the Competition Court (6.8%) has risen slightly compared with previous years.

Six proceedings have been filed, of which two were due to abandonment<sup>7</sup> and four were not merger operations subject to control under the Competition Act<sup>8</sup>.

**d) Mergers analysed by the type of transaction and sector**

Chart 2 breaks down the operations notified in 2006 into percentages of on the basis of the type thereof: acquisition of exclusive control (or

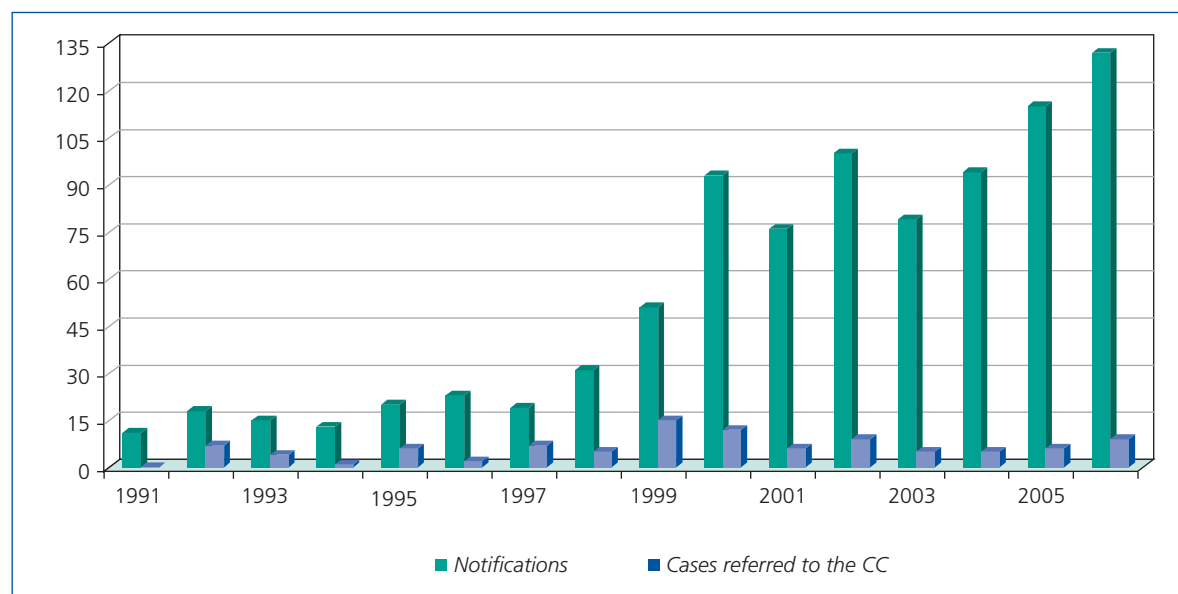
acquisition), merger, joint control and takeover bids.

As in previous years, the majority of notified concentrations consisted of a company acquiring exclusive control of another.

Compared with previous years, this year 3 mergers were notified<sup>9</sup>, while as regards takeover bids it appears that the figure recorded in 2005 (eight) has been maintained.

Chart 3 shows the number of operations by sector of activity, which are still dominated, as in previous years, by concentrations notified in the chemical and pharmaceutical industry and the importance already observed in

**Chart 1  
Mergers Notified and Sent to the Competition Court**



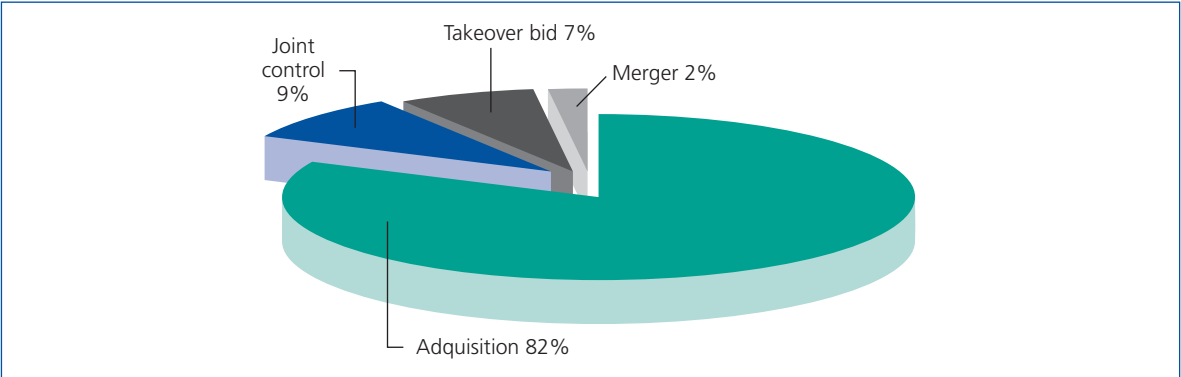
<sup>7</sup> N0650 CFF RECYCLING, S.A./PENAUILLE POLYSERVICES, S.A and N06093 LEGRIS INDUSTRIES/CERIC, S. A.

<sup>8</sup> N06003 NATURGAS ENERGIA DISTRIBUCION, S.A.U./GAS DE HERNANI, S.A./GAS PASAIA, S.A; N06065 INVERPENINSULAR S.L.U./LURCA, S.A; N06120 EUROPCAR GROUPE S.A./ VANGUARD CAR RENTAL EMEA HOLDINGS LTD and N06124 VOLKSWAGEN/AUVOL/ AUVOL MOTOR.

<sup>9</sup> N-06022 MEDIAPRODUCTION PROPERTIES, B.V./ARBOL PRODUCCIONES, S.A.; N-06026 COFARES, Sociedad Cooperativa Farmacéutica Española/HEFAME, Hermandad Farmacéutica del Mediterráneo, S.C.L; N-06098 MONTE DE PIEDAD Y CAJA DE AHORROS DE HUELVA Y SEVILLA/CAJA DE AHORROS PROVINCIAL SAN FERNANDO DE SEVILLA Y JEREZ



**Chart 2**  
**CONCENTRATION OPERATIONS NOTIFIED IN 2006, BY TYPE OF TRANSACTION**

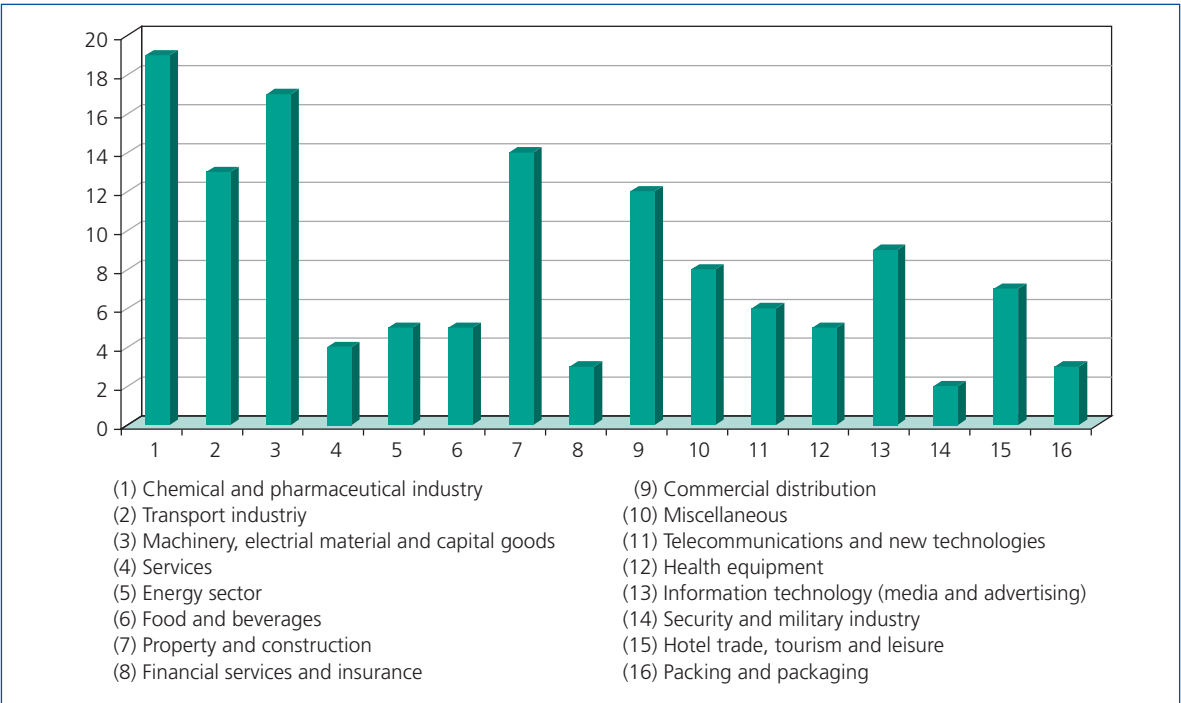


2005 of the machinery, electrical material and capital goods sector. It should also be stressed that the relative importance that the services, energy and food and beverages sectors had had in recent years fell considerably in 2006.

In addition, the growing importance of the operations in the following sectors should be highlighted:

- i) property and construction, which went from five operations in 2005 to fourteen in 2006,

**Chart 3**  
**NOTIFIED OPERATIONS IN 2006, BY ACTIVITY SECTOR**



- ii) commercial distribution, which went from four operations in 2005 to twelve in 2006,
- iii) information technologies (the media and advertising) which went from two operations in 2005 to nine in 2006, and
- iv) hotel, tourism and leisure industry, which went from a single operation in 2005 to seven in 2006.

### II.3. Operations referred to the Competition Court

Throughout 2006, the Competition Service referred nine operations to the Competition Court for its report. As Table 2 shows, five of them have been authorised without conditions by the Council of Ministers and four have been authorised subject to conditions.

**Table 2**  
**PROCEEDINGS REFERRED TO THE COMPETITION COURT (2006)**

Case No.	Merger operation	Ruling of the Competition Court	Agreement of the Council of Ministers
N-06006	MIQUEL ALIMENTACIO GRUP, S. A./ PUNTOCASH, S.A.	No opposition	Authorisation
N-06026	COFARES, Sociedad Cooperativa Farmacéutica Española/HEFAME, Hermandad Farmacéutica del Mediterráneo, S. C. L.	No opposition subject to conditions	Conditional authorisation
N-06028	COMPAÑÍA TRANSMEDITERRANEA, S. A./ EUROPA FERRYS, S. A./VIAJES EUROTRAS, S.A.	No opposition subject to conditions	Conditional authorisation
N-06058	ABACOCINE, S. L. U./CIRCUITO ESPAÑOL DE CINE, S. L./CINEBOX EXHIBICION, S. L.	No opposition	Authorisation
N-06059	UNIVERSAL MUSIC SPAIN, S. L./ VALE MUSIC SPAIN, S. L.	No opposition	Authorisation
N-06076	CENTROS COMERCIALES CARREFOUR, S.A. /DINOSOL SUPERMERCADOS, S.L.	No opposition	Authorisation
N-06069	COMPAÑÍA DE SEGUROS ADESLAS, S. A./ GLOBAL CONSULTING PARTNERS, S. A./ LINCE SERVICIOS SANITARIOS, S. A./ SEGURO COLEGIAL MÉDICO QUIRÚRGICO, S. A./ LINCE ASISTENCIA MÉDICA HOSPITALARIA, S. L.	No opposition subject to conditions	Conditional authorisation
N-06094	SOGEABLE, S.A./AUDIOVISUAL SPORT, S. L.	No opposition subject to conditions	Conditional authorisation
N-06113	GRUPO MAHOU SAN MIGUEL/ALHAMBRA	No opposition	Authorisation

### **1. N-06006 MIQUEL ALIMENTACIÓ/ PUNTOCASH**

On 20 January 2006, the Competition Service was notified of the concentration relating to the acquisition of exclusive control of PUNTOCASH, S.A. (PUNTOCASH) by MIQUEL ALIMENTACIÓ GROUP (MIQUEL ALIMENTACIÓ).

In its report, the Competition Court felt that the operation would not significantly impede effective competition in the national fast-moving consumer goods supply market.

As regards the wholesale distribution market, the Court's study concluded that, irrespective of the increase in the market share caused by the takeover, it was not foreseeable that the operation would impede effective competition given the number and variety of suppliers and the professional nature of the buyers, as well as the possible competitive pressure of close or connecting markets, such as that of traditional wholesale distribution, together with the freedom of establishment in the wholesale distribution sector.

The operation was cleared by Agreement of the Ministers of 19 May 2006.

### **2. N-06026 COFARES/HEFAME**

On 20 March 2006, the Competition Service received notification of the concentration operation consisting of the merger of Sociedad Cooperativa Farmacéutica Española (COFARES) and Hermandad Farmacéutica del Mediterráneo, S.C.L. (HEFAME), with

the creation of a new cooperative company and the dissolution, without dissolution, of COFARES and HEFAME.

The Agreement of the Council of Ministers of 26 July 2006, in line with the ruling of the Competition Court, cleared the operation, with the condition that the statutes of the future cooperative explicitly limited to one year the minimum stay of the partners in the new cooperative and reduced the obligation of the partners of the minimum annual volume of purchases to a maximum of 25% of the average purchase per partner from the cooperative or, at the request of the partner, to 25% of their purchasing capacity, should this be less than the average purchase above mentioned.

### **3. N-06028 TRANSMEDITERRANEA/ EUROPA FERRYS/VIAJES EUROTRAS**

On 15 March, the Service received notification of the concentration consisting of the acquisition of exclusive control of EUROPA FERRYS, S.A. (EUROPA FERRYS) and VIAJES EUROTRAS, S.A. (VIAJES EUROTRAS) by COMPAÑÍA TRANSMEDITERRANEA, S.A. (TRANSMEDITERRANEA).

The Agreement of the Council of Ministers of 14 July 2006 following the Court's line of thought approved the operation subordinate to conditions aimed, in the first place, at TRANSMEDITERRANEA and EUROPA FERRYS shedding their direct or indirect company interests in the shipping companies that did not belong exclusively to the group resulting from the merger and that were active or

could be active in the general cargo or passenger maritime transport sector on the route between the south of the Iberian Peninsula and North Africa, and they may not hold an interest in these companies for five years.

Together with this, the Agreement of the Council of Ministers reserved for prior clearance any acquisition, not involving control of interests, in those shipping companies in the next five years.

In addition, it was established that the resulting group could not enjoy the exclusive use of more than one mooring in the port of Ceuta, or hold exclusive agreements with retailer passenger ticket points of sale on the access routes to the ports of the south of the Iberian Peninsula and North Africa. Neither could it enter into non-competition agreements with the sellers of the companies acquired in the merger.

#### **4. N-06058 ABACOCINE/CINEBOX**

On 26 June 2006, the Competition Service was notified of the concentration operation consisting of the acquisition of exclusive control by ÁBACOCINE, S.L. (ABACOCINE) of the companies CIRCUITO ESPAÑOL DE CINE, S.L., CINEBOX EXHIBICIÓN, S.L. (CINEBOX) and its subsidiary LANOCA EXHIBICIÓN, S.L., through the acquisition of all of its share capital.

The Competition Court determined that it was not foreseeable that the operation would impede effective competition in the markets of distribution of commercial films for cinema screening, contracting

advertising spaces in cinemas or in the screening of commercial films.

By Agreement of the Council of Ministers of 20 October 2006, the takeover was approved unconditionally, although, to be able to be classed as accessory restrictions to the operation, the lifetime of the non-competition agreement entered into between the seller and the buyer was limited to two years and to certain geographical areas, and the scheduling agreement to a maximum of three years.

#### **5. N-06059 UNIVERSAL MUSIC/ VALE MUSIC**

On 22 June 2006, the Competition Service was notified of the concentration relating to the acquisition by UNIVERSAL MUSIC SPAIN, S.L. (UNIVERSAL MUSIC) of the exclusive control of the companies VALE MUSIC SPAIN, S.L. (VALE MUSIC) and TICKER MEDIA SUPERVENTAS, S.L. (TICKER MEDIA).

In its report, the Court ruled that the operation would not substantially alter competition in the music production market and in the wholesale licensing market for the distribution of music products via digital channels, and similarly ruled out the existence of risk of tacit coordination that could lead to or strengthen a collective leading position of the companies in the market after the takeover.

By Agreement of the Council of Ministers of 20 October 2006, in line with the Competition Court, the operation was approved. This Agreement established that the

non-competition agreements between UNIVERSAL MUSIC and the seller did not constitute an accessory restriction to competition.

#### **6. N-06076 CARREFOUR/DINOSOL**

On 7 August 2006, the Competition Service was notified of the concentration consisting of the acquisition by CARREFOUR Group, through DISTRIBUIDORA INTERNACIONAL DE ALIMENTACIÓN, S.A. and CENTROS COMERCIALES CARREFOUR, S.A. (CARREFOUR), of the control of the assets of 30 retail distribution establishments belonging to DINOSOL SUPERMERCADOS, S.L. (DINOSOL).

In its report, the Court felt that, despite the existence of legal barriers to entry in the retail and supply distribution markets, the existence of major competitors, both present and potential, would limit the anti-competition effects caused by the increase in market share of CARREFOUR.

The operation was cleared unconditionally by the Agreement of the Council of Ministers of 1 December 2006.

#### **7. N-06069 ADESLAS/GLOBAL CONSULTING/LINCE SERVICIOS SANITARIOS**

On 19 July 2006 the Service received notification relating to the acquisition by COMPAÑÍA DE SEGUROS ADESLAS, S.A. (ADESLAS) and GLOBAL CONSULTING PARTNERS, S.A. (GLOBAL

CONSULTING) of the joint control of LINCE SERVICIOS SANITARIOS, S.A. (LINCE SERVICIOS).

The Agreement of the Council of Ministers of 1 December 2006 approved the concentration unconditionally, in line with the proposal of the Court, establishing that ADESLAS and GLOBAL CONSULTING:

- i) would ensure the absence of exclusivity in relations with doctors and health centres,
- ii) would continue to provide healthcare services to third parties for three years under conditions of objectivity, transparency and non-discrimination, and
- iii) would subcontract for three years the healthcare insurance arranged (MUFACE, ISFAS and MUGEJU) with the insurers that request it.

#### **8. N-06094 SOGECABLE/AVS**

On 4 October 2006, the Competition Service received notification relating to the acquisition by SOGECABLE, S.A. (SOGECABLE) of the exclusive control of AUDIOVISUAL SPORT, S.L. (AVS), a company of which it previously had joint control together with TVC MULTIMEDIA, S.L. (TVC).

In its report, the Competition Court stated that, once the conditions of the Agreement of the Council of Ministers of 29 November 2002, which cleared the SOGECABLE / VÍA DIGITAL concentration operation, became invalid, SOGECABLE would be able to strengthen its power in the pay television market either by altering the

present conditions of the use of the audiovisual rights on League and Cup matches in the pay TV and pay per view windows or by changing the conditions of access of its competitors that broadcast by PPV. Similarly, the Court considers that SOGECABLE could reduce or remove access to this audiovisual football content to limit the development of emerging markets of the use of these rights on the Internet or mobile telephony.

In line with the Court's proposal, on 23 March 2007, the Council of Ministers decided to clear the operation subject to conditions. The conditions establish primarily guarantees of access to third parties under transparent and non-discriminatory objective conditions to the audiovisual rights of the football League and Cup on pay per view, Internet and mobile telephony. They also limit the ability of SOGECABLE to use more matches exclusively in the pay television window, establish a maximum of three years in the duration of the new contracts for the use of audiovisual football rights and create mechanisms to ensure third parties the full and peaceful use and enjoyment of the acquired rights. Most notable among the last of these is the authorisation of the TV operators that broadcast League and Cup football matches in pay per view to set jointly an adoption mechanism of the choices of matches and times for that window, and failing an agreement, the appointment of a trustee in charge of making these choices is planned. It also establishes an arbitration mechanism to resolve quickly and efficiently any contractual and extra-contractual disputes that may arise with

SOGECABLE in relation to the use of the audiovisual football League and Cup rights.

## 9. N-06113 MAHOU SAN MIGUEL/ALHAMBRA

On 15 November 2006, the Service was notified of the operation consisting of the acquisition by MAHOU, S.A. and SAN MIGUEL FÁBRICAS DE CERVEZA Y MALTA, S.A. (GMSM) of the exclusive control of GRUPO ALHAMBRA ALIMENTARIA, S.L. (ALHAMBRA).

In its report, the Competition Court considered that in light of the characteristics of the Alhambra Group and the market performance, the operation was not going to hinder effective competition in the beer supply and commercialisation market to the foodstuffs channel, or in the supply and commercialisation of beer to the HORECA channel (hotels, restaurants, and cafeterias).

The operation was cleared unconditionally by the Agreement of the Council of Ministers of 23 March 2007.

### II.4. Other activities

In relation to the other actions carried out by the Service, it should be pointed out that the number of previous consultations<sup>10</sup> made, was maintained compared with 2005 (10). As Table 3 shows, of the 11 consultations made this year, two were notifiable operations.

<sup>10</sup> Established in Article 15.5 of the CA.

Finally, as a result of the preliminary actions, derived from the own initiative action of the Service, after the appropriate requests for information, the Service has had to be notified of five concentration operations. These operations notified

on the requirement of the Service have not led, at present, to the initiation of any disciplinary proceedings. In general, in 2006, no disciplinary proceedings have been initiated in terms of merger control.

**Table 3**  
**PREVIOUS CONSULTATIONS (2006)**

No. consultations	Notifiable			Not notifiable
	Total	14.1. a)	14.1. b)	
11	2	2	0	9



# III. ANTI-COMPETITIVE CONDUCT

## III.1. Introduction

In 2006, the rate of work was maintained in the anti-competitive conducts arena in terms of the number of proceedings terminated, although a significant effort was made to raise the efficiency and speed of the prosecuting acts and to strengthen the own initiative actions.

Consequently, 92 proceedings have been initiated, four of which have been derived from rulings by the Competition Court, allowing the appeals lodged against disposal (Proceedings 2506/04) or dismissal agreements (Proceedings 2417/02, 2505/04, 2525/04) by the Competition Service.

Of these 92 proceedings, 80 correspond to complaints and four to proceedings started on its own initiative. The remaining 8 correspond to requests for individual authorisation.

In 2006, 92 proceedings were terminated, of which 22 corresponded to reports to the Competition Court, one to direct settlement<sup>11</sup> and the rest were disposed of or dismissed.

In addition, in 2006, 24 reports were issued on appeals lodged before the

Competition Court for different actions by the Competition Service.

Of these, 11 appeals were dismissed by the Competition Court. At the time of writing this Report, 14 appeals were pending court ruling.

Finally, the Competition Service has continued in its task of safeguarding the fulfilment of the rulings adopted by the Competition Court.

## III.2. Sanctioning proceedings heard in 2006

### a) Sanctioning proceedings

In 2006, 296 briefs were received in relation to possible anti-competitive conduct. Of these, 216 were disposed of as the events against which complaints were lodged did not come under the jurisdiction of Act 16/1989 or did not meet the minimum information requirements.

In addition, 9 consultations were made and 21 prior proceedings were initiated to check the existence or non-existence of prohibited practices. Of these, 7 have been disposed of, with a further 14 pending at the end of 2006.

Table 4 and charts 4 to 6 include the most significant aspects of the Service's activity in terms of anti-competitive conducts.

<sup>11</sup> Disciplinary proceedings against Servired, 4B and Euro 6000 Payment Systems initiated by the complaints lodged by retailers' representatives and tour operators and hotel companies – ANGED, CAAVE, CEC, AVAD, CEHAT and FEHR — relating to the fixing of interchange rates.

In particular, they reflect the volume of incoming proceedings to the Service and their termination, be it before the Service or by referral of the corresponding report-proposal to the Competition Court.

Table 4 differentiates the proceedings initiated in previous years that are still pending ruling, the so-called initial balance, of the entry of proceedings to the Service during that year.

Within the category of incoming new proceedings, a breakdown is given of the complaints submitted, the proceedings initiated on the initiative of

the Competition Service and the authorisation requests made each year.

After taking into account the entry and termination of proceeding during the year, the balance as of 31 December 2006 (the initial balance for 2007), is 67 proceedings, the same number with which 2006 started.

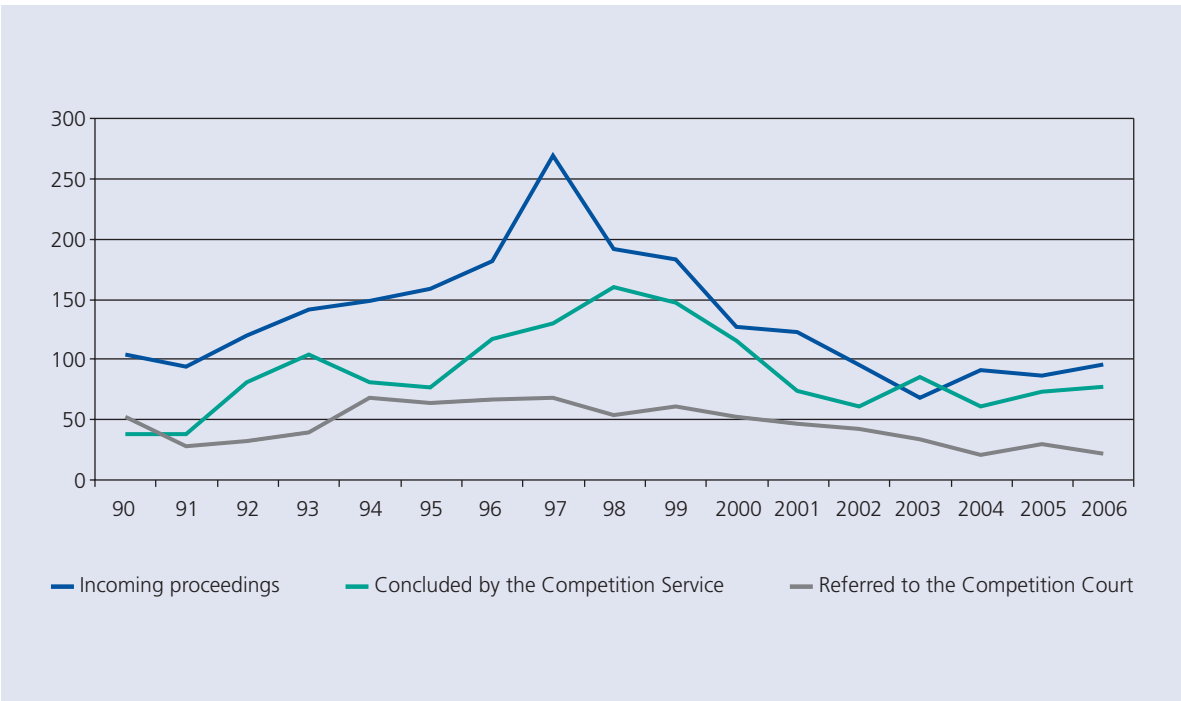
Lastly, the different ways in which proceedings were concluded are identified:

- in the Competition Service, through disposal, dismissal, annexation, or
- referral to the CC.

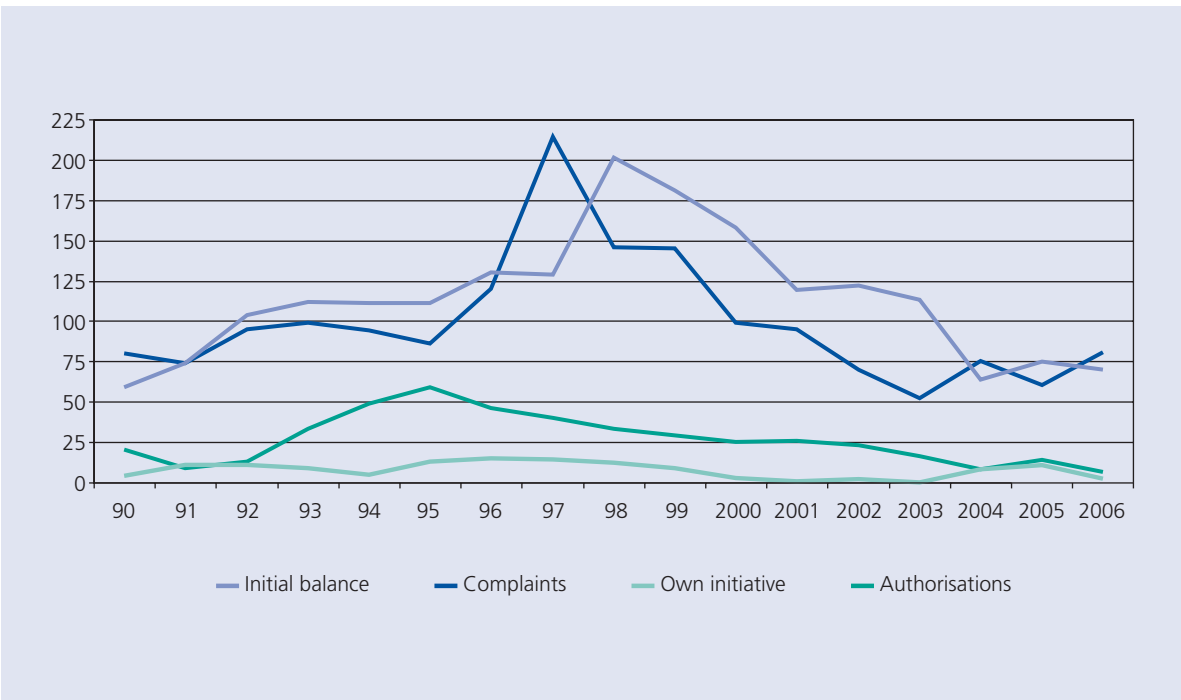
**Table 4**  
**STATISTICS FOR PROCEEDINGS IN TERMS OF ANTI-COMPETITIVE CONDUCTS**

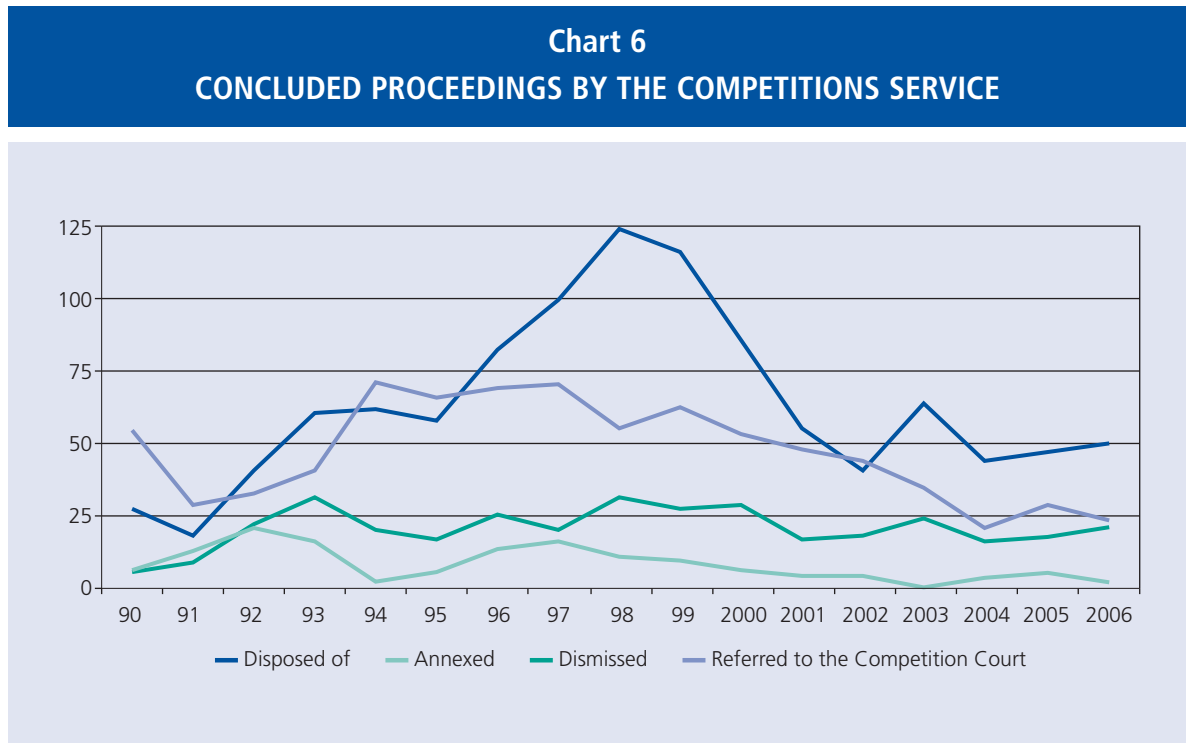
	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06
Initial balance	59	74	104	112	111	111	130	129	201	181	158	119	122	113	64	75	67
<b>Incoming proceedings</b>	<b>104</b>	<b>94</b>	<b>119</b>	<b>141</b>	<b>148</b>	<b>158</b>	<b>181</b>	<b>268</b>	<b>191</b>	<b>183</b>	<b>127</b>	<b>122</b>	<b>95</b>	<b>68</b>	<b>91</b>	<b>86</b>	<b>92</b>
Complaint	80	74	95	99	94	86	120	214	146	145	99	95	70	52	75	64	80
Own initiative	4	11	11	9	5	13	15	14	12	9	3	1	2	0	8	10	4
Authorisations	20	9	13	33	49	59	46	40	33	29	25	26	23	16	8	12	8
<b>Proceedings concluded</b>	<b>89</b>	<b>64</b>	<b>111</b>	<b>142</b>	<b>148</b>	<b>139</b>	<b>182</b>	<b>196</b>	<b>212</b>	<b>206</b>	<b>166</b>	<b>119</b>	<b>102</b>	<b>118</b>	<b>80</b>	<b>93</b>	<b>92</b>
<b>Concluded by the Competition Service</b>	<b>37</b>	<b>37</b>	<b>80</b>	<b>103</b>	<b>80</b>	<b>76</b>	<b>116</b>	<b>129</b>	<b>159</b>	<b>146</b>	<b>115</b>	<b>73</b>	<b>60</b>	<b>85</b>	<b>60</b>	<b>67</b>	<b>70</b>
Disposed of	26	17	39	58	59	55	79	95	119	111	82	53	39	61	42	46	50
Annexed	6	12	20	15	2	5	13	15	10	9	6	4	4	0	3	4	2
Conventional termination	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	1
Dismissed	5	8	21	30	19	16	24	19	30	26	27	16	17	23	15	16	17
<b>Referred to the Competition Court</b>	<b>52</b>	<b>27</b>	<b>31</b>	<b>39</b>	<b>68</b>	<b>63</b>	<b>66</b>	<b>67</b>	<b>53</b>	<b>60</b>	<b>51</b>	<b>46</b>	<b>42</b>	<b>33</b>	<b>20</b>	<b>26</b>	<b>22</b>

**Chart 4**  
**STATISTICS ON PROCEEDINGS RELATED TO ANTI-COMPETITIVE CONDUCT**



**Chart 5**  
**INCOMING PROCEEDINGS**





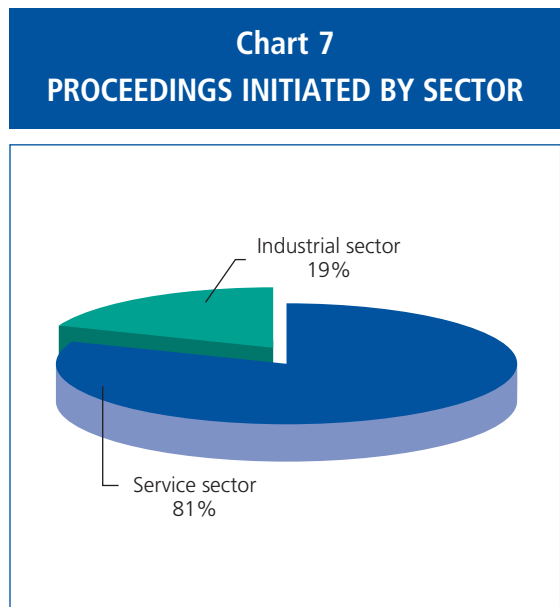
**b) Proceedings initiated**

In 2006, 27 proceedings were initiated on the grounds of prohibited conduct. All but one was derived from admission to processing of the corresponding complaint.

As regards distribution by sectors, Chart 7 shows the predominance of the service sector (22 proceedings) in comparison to the industrial sector.

Chart 8 distinguishes between the various proceedings involving the service sector which were initiated during 2006.

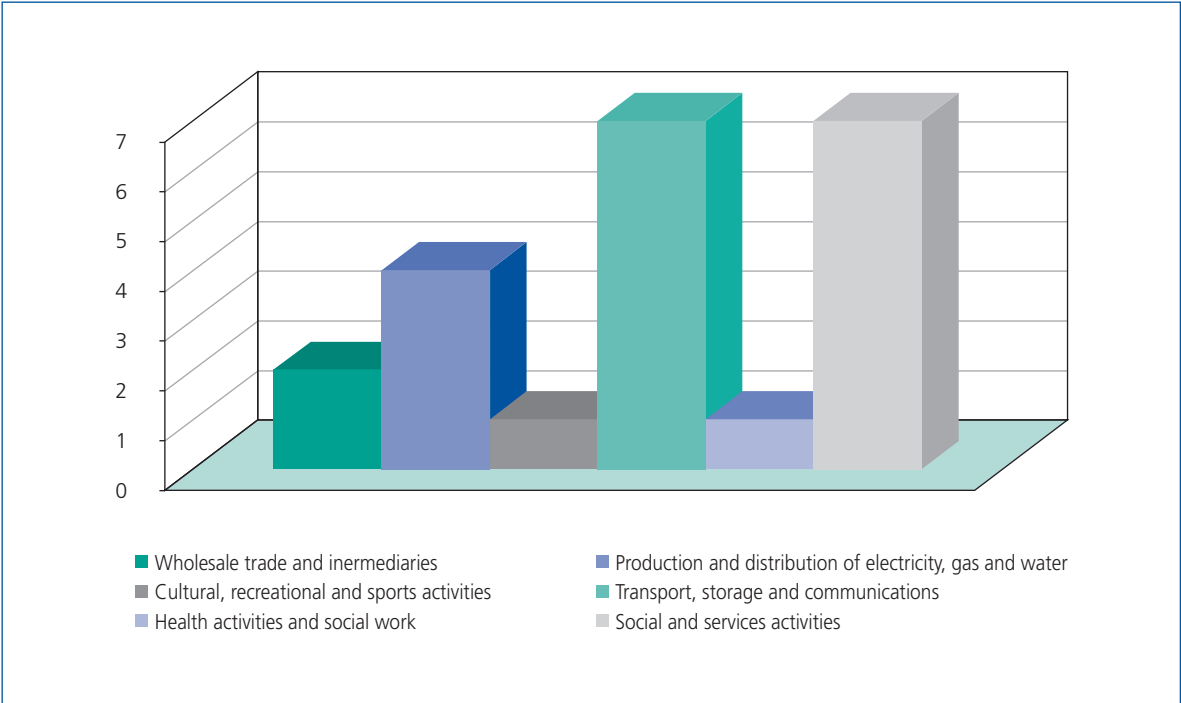
With regard to the violated articles of the Competition Act, the breakdown of the sanctioning proceedings initiated in 2006 is reflected in table 5 and in charts 9 and 10 in relation to the violation of Article 1 and Article 6, respectively, of the Competition Act.



**c) Proceedings concluded in the Competition Service**

In 2006, the Competition Service concluded 92 proceedings. Of these, 38 were disposed of by upholding that there was not sufficient evidence of

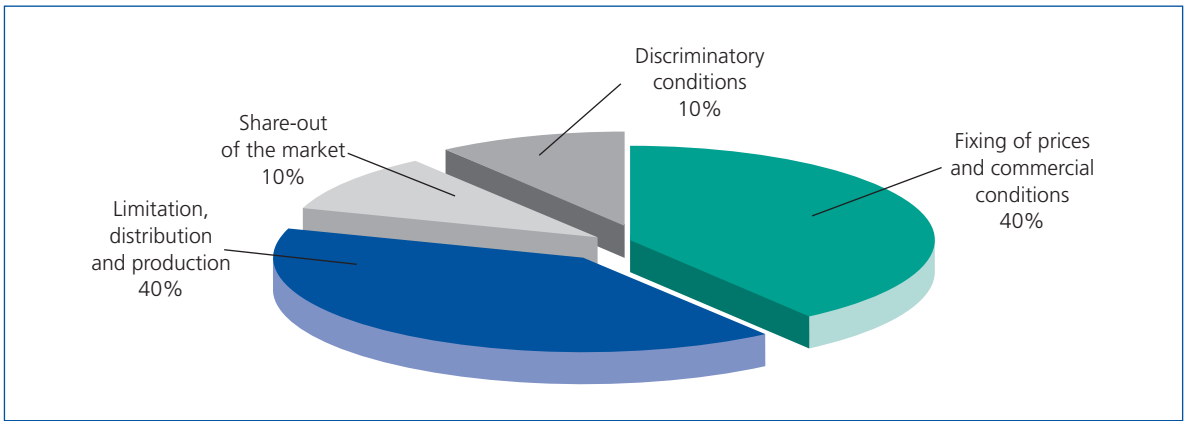
**Chart 8**  
**SERVICE SECTOR PROCEEDINGS 2006**



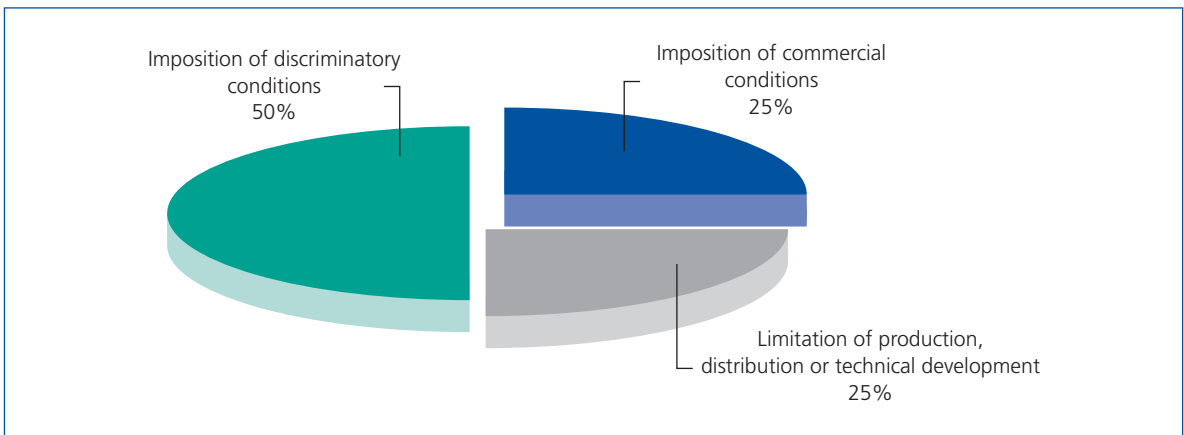
**Table 5**  
**BREAKDOWN OF PROCEEDINGS INITIATED FOLLOWING COMPLAINTS, IN TERMS OF THE ARTICLE OF THE CA VIOLATED**

Article and section violated	No. proceedings
<b>ARTICLE 1 (totals)</b>	<b>10</b>
— Section a) Fixing of prices and commercial conditions	4
— Section b) Limitation of production	4
— Section c) Share-out of the market	1
— Section d) Discriminatory conditions	1
<b>ARTICLE 6 (totals)</b>	<b>12</b>
— Section a) Imposition of commercial conditions	3
— Section b) Limitation of production, distribution or technical development	3
— Section c) Refusal to sell	0
— Section d) Imposition of discriminatory conditions	6
<b>ARTICLE 7 (totals)</b>	<b>5</b>

**Chart 9**  
**BREAKDOWN OF PROCEEDINGS INITIATED DUE TO A BREACH OF ARTICLE 1**



**Chart 10**  
**BREAKDOWN PROCEEDINGS INITIATED DUE TO A BREACH OF ARTICLE 6**



violation to initiate the corresponding proceedings, 12 were referred to the competition bodies of the Autonomous Communities, 17 were dismissed (disposal proceedings initiated), 2 were annexed, 1 concluded by the conventional termination procedure and 22 were sent to the Competition Court.

The conventional termination agreement, signed on 16 November 2006 by the Competition Service, Servired Payment Systems, 4B and Euro 6000, and retailers’ representatives and tour operators and hotel companies

(ANGED, CAAVE, CEC, AVAD, CEHAT and FEHR) brought to an end the sanctioning proceeding 2457/03, opened against the three payment systems, by multilateral agreement among them for the fixing of interchange rates that payment card issuing banks charged acquirer banks and that these, in turn, passed on to retailers through discount rates.

This agreement, reached between the commercial and financial sectors, favours a gradual reduction of the levels of the multilateral interchange (intrasystem and

intersystem) rate without generating entrance barriers, respecting the principles of objectivity based on costs, transparency and differentiation between debit and credit transactions, as called for by the Competition Court.

**d) Proceedings sent to the Competition Court**

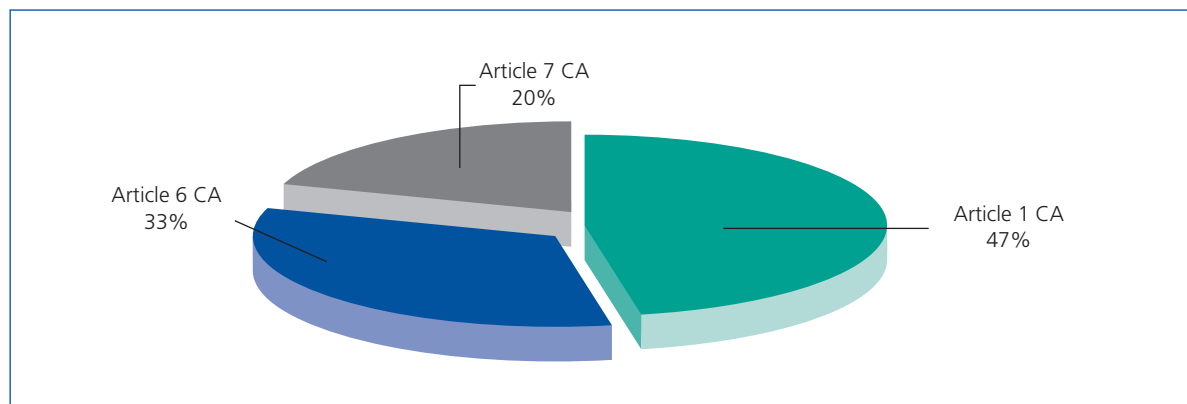
Of the 22 proceedings sent to the Competition Court in 2006 for a ruling,

7 are for individual authorisation, and the remaining 15 the Competition Service has referred the corresponding report-proposal the Court.

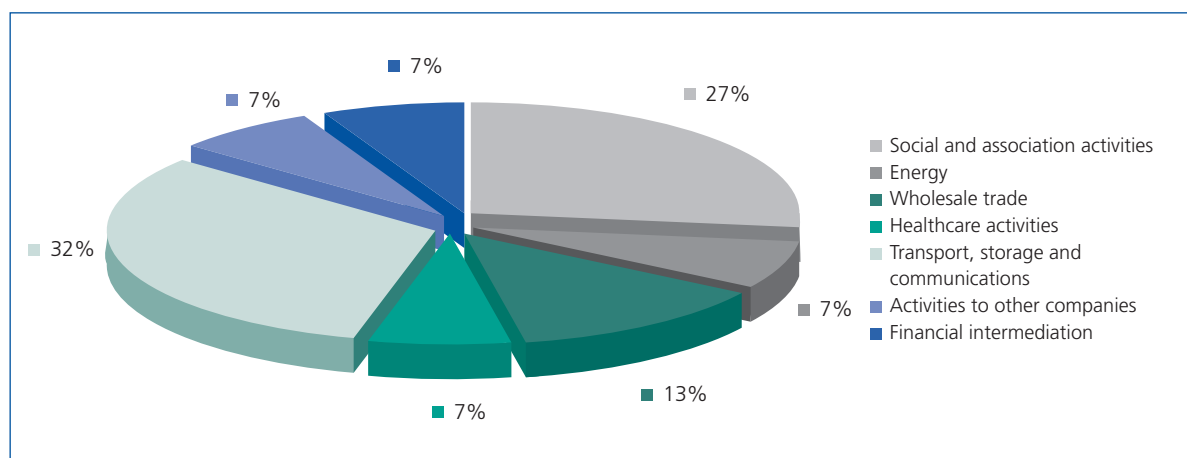
These 15 sanctioning proceedings referred to the Competition Court to enable their ruling can be broken down, in accordance with the article of the Competition Act applied and to the sectors affected as can be seen charts 11 and 12.

Of these sanctioning proceedings referred to the Competition Court

**Chart 11**  
**PROCEEDINGS REFERRED TO THE COMPETITION COURT**



**Chart 12**  
**PROCEEDINGS REFERRED TO THE COMPETITION COURT BY SECTOR**





during 2006, shown in table 6, at the time of drafting this Report, the following have been resolved:

### 1. 607/06 Ayuda a domicilio

The ruling of 29 January 2007 by the Competition Court proved the existence of a practice prohibited by Article 1 of the Competition Act, which consists of fixing the minimum obligatory price at which the companies in the home help sector in Cantabria should offer their services in the 2004-2005 Agreement between Comisiones Obreras de Cantabria trade union and the Cantabria Home Help Services

Association, fining each of them with € 3,000.

### 2. 608/06 Asturvivienda

The ruling of 28 December 2006 by the Competition Court the existence of a practice prohibited by Article 1 of the Competition Act, which consists of the collective recommendation by the Confederación Asturiana de la Construcción, whose aim was that associates did not participate in the Asturvivienda property show organized by the Salón Inmobiliario del Principado de Asturias, and fined the above Confederación with € 50,000.

**Table 6**  
**SANCTIONING PROCEEDINGS REFERRED TO THE COMPETITION COURT (2006)**

Name of proceedings	CS No.	CC No.	Status of proceedings before the CC
Tanatorio SE-30	2361	622/06	Proceedings underway
Funeraria Nuevo tanatorio	2417	616/06	Proceedings underway
Gesa Gas	2505	615/06	Proceedings underway
Aeropuertos Nacionales	2525	668/05	Proceedings underway
Excursiones marítimas	2545	611/06	Prohibited practice declared to have been proven
Grupo Telefónica	2553	610/06	Prohibited practice declared not to have been proven
Convenio Colectivo Ayuda a Domicilio	2602	607/06	Prohibited practice declared to have been proven
Servicios funerarios La Gomera	2605	613/06	Proceedings underway
Compañía Cervecera Canarias	2606	614/06	Prohibited practice declared to have been proven
Unipost	2610	618/06	Proceedings underway
Koipe	2614	612/06	Proceedings underway
Confederación Asturiana Construcción	2626	608/06	Prohibited practice declared to have been proven
Cajas Vascas y Navarra	2643	617/06	Proceedings underway
Telefónica de España	2651	620/06	Proceedings underway
Registro Aceptaciones impagadas	2658	609/06	Lapsed

### 3. **609/06 Registro aceptaciones impagadas**

The ruling of 2 March 2007 by the Competition Court ruled that the facts constituting a violation of the Competition Act have lapsed, consisting these of the breaching of the principle of confidentiality during the 1994-1999 period to which this Court conditioned the individual authorisation of the creation and maintenance of Registro de Aceptados Impagados.

### 4. **610/06 Tarjetas prepago Telefónica**

The Competition Court in the ruling of 1 March 2007 has ruled unproven the violations of Article 6 of the Competition Act and Article 82 of the European Community Treaty consisting of an abuse of a dominant position by Grupo Telefónica in the public and landline telephone markets available to the public due to predatory prices, packaging or linking in the sale of services and discrimination in favour of its Distribution Agents, against whom a complaint had been lodged by CITYCALL TELECOMUNICACIONES, S. L.

### 5. **611/06 Excursiones marítimas**

In the ruling of 3 April 2007, the Competition Court ruled that FERROCARRIL DE SÓLLER, S.A. had committed an abuse of a dominant position prohibited by Article 6.1.a) of the Competition Act, consisting of the practice —carried out from its position of exclusive concessionary for the public

service Palma-Sóller-Puerto de Sóller railway— of subordinating the obtaining of seats at preferential times on the Sóller railway, which covers the “Vuelta a la Isla” train excursion, to contracting the part of this intermodal excursion by boat with “Excursiones marítimas Puerto de Sóller, S. L.” (Barcos Azules), fining Ferrocarril de Sóller S.A. with 318,365 euros and its joint and several administrator with a further 6,000 euros.

### 6. **614/06 Cervezas Canarias**

In the ruling of 17 February 2006, the Competition Court ruled proven the existence of a restrictive practice prohibited by Article 1 of the Competition Act, which consists of the obligation to make minimum purchases and the obligation to adapt to exclusive advertising in the Canary Islands, for which the Cervecera de Canarias S.A. (CERCASA), is responsible, fining it 400,000 euros.

#### e) **Appeals before the Competition Court**

Of the total of agreements to dispose of proceedings 11 appeals were lodged before the Competition Court. The Court has already issued a ruling on 8 of them.

Also, we should add the 8 appeals lodged against the corresponding dismissal Agreements, on 3 of which the Competition Court has already ruled.

Table 7 shows the direction of the rulings adopted by the Competition

Court at the time of drafting this report, analysing the rulings that have been admitted indicating whether they were rejected or allowed and subsequently returned to the Competition Service in order for it to hear the proceedings.

It should be taken into account that the 10 rulings that reject the appeals do so as they coincide with the analysis carried out by the Competition Service.

### 1. *r 682/06 Farmacéuticos de Córdoba*

The Competition Court rejected an appeal lodged against the disposal of the complaint by considering that there was nothing to suggest that the variable fee established by the Association regarding invoicing the SAS and the insurance companies, which is the object of the complaint, affects competition between pharmacists, nor does it affect the interests of users.

**Table 7**  
**APPEALS LODGED BEFORE THE COMPETITION SERVICE (2006)**

Name of Proceedings	CS No.	CC No.	Action appealed against	Status of proceedings before the CC
Castellana subastas	2501	R 710/06	Dismissal	Pending
SGAE/ASIMELEC	2511	R 692/06	Dismissal	Rejected
Aedem/televisiones	2514	R 696/06	Dismissal	Pending
Transportes Tenerife	2543	R 695/06	Dismissal	Rejected
Distribuidoras cine	2581	R 706/06	Dismissal	Pending
Gas Natural	2595	R 697/06	Dismissal	Pending
Shell España	2608	R 691/06	Dismissal	Pending
Farmacéuticos Córdoba	2612	r 682/06	File	Rejected
SGAE	2619	R 701/06	Dismissal	Rejected
UNIPOST	2654	r 705/06	File	Pending
Rotores centrífugas	2659	r 689/06	File	Admitted
Artistas intérpretes	2671	r 686/06	File	Rejected
Tornier España	2673	r 702/06	File	Rejected
Telefónica	2688	r 699/06	File	Rejected
Gran distribución	2694	r 690/06	File	Rejected
Corredores seguros	2695	r 693/06	File	Rejected
Abogados Madrid	2702	r 694/06	File	Rejected
Antena3/Sogecable-La Sexta	2706	r 707/06	File	Pending
Telecinco/Sogecable-La Sexta	2717	r 709/06	File	Pending

## **2. *r 686/06 Artistas interpretes o ejecutantes***

In the ruling that rejects the appeal lodged against the disposal agreement, the Competition Court upholds the valuation by the Service in the sense that Article 1 of the Competition Act and Article 81 of the European Community Treaty do not apply to the agreements entered into between the accused: SGAE and the Telecinco and Antena 3 television channels.

## **3. *r 690/06 Operadores sector distribución***

In the ruling that rejects the appeal lodged against the disposal agreement, in relation to a complaint about the alleged agreement regarding the distribution to ensure that employees are not robbed, the Competition Court stated, coinciding with the Competition Service, that there was insufficient evidence of prohibited practices that may affect competition.

## **4. *693/06 Correduria de Seguros***

In the ruling that rejects the appeal lodged against the disposal agreement, the Court coincides with the Competition Service in that the facts against which a complaint was lodged do not affect the market, so it can be stated that it is an inter-party conflict that can only be covered by private law.

## **5. *r 694/06 JUREI***

In the ruling that rejects the appeal lodged against the agreements to

dispose of proceedings of the Service, in relation to the alleged unfair action by the Madrid Bar Association and its Governing Board for organising courses in which judges took part, the Competition Court considers that the facts against which a complaint was lodged show no evidence of violation of the Competition Act, existing other means for solving them.

## **6. *r 702/06 Tornier/ADESLAS***

In its ruling that rejects the appeal lodged against the agreement, the Competition Court indicates that the existence of neither economic power nor independent behaviour by Adeslas in the orthopaedic products and medical implants market is observed, nor are there the economic dependency requirements according to the provisions of Article 6 of the Competition Act, for which the unilateral decision of excluding the complainant as an authorised supplier cannot be ruled to be abusive.

## **7. *R 695/06 Transportes Tenerife***

In its ruling that rejects the appeal lodged against the dismissal agreement of the Competition Service, the Competition Court states that the Regional Authorities of Tenerife and the Santa Cruz Town Council, in their decisions regarding public passenger transport, are acting as Public Administrations and, therefore, subject to Administrative Law, for which reason the Competition Act cannot apply to their actions.

**8. r 689/06 Rotores centrifugadoras**

The Competition Court has allowed the appeal lodged by Mantenimiento de Instrumentos de Laboratorio, S.L. (MIL) against the Disposal Agreement of the Service, and has revoked this Agreement to enable proceedings to be initiated and heard in relation to the complaint lodged by the above company against Controltecnica instrumentación Científica, Kendro Laboratory Products and Termo Electrón Corporation.

**9. R 701/06 Promotores Musicales/ SGAE**

In its ruling that rejects the appeal lodged against the dismissal agreement, the Competition Court considers that the behaviour was not proven, in connection with a complaint lodged by the Asociación de Promotores Musicales against SGAE for the imposition of certain abusive conditions in the copyright licence contracts.

**10. r 699/06 ASTEL/Telefónica**

In its ruling that rejects the appeal lodged against the disposal, the Competition Court considers that the application of the minimum rate by Telefónica does not constitute an abuse of dominant position against which a complaint was lodged by the Asociación de Empresas Operadoras y Servicios de telecomunicaciones, ASTEL.

**11. R 692/06 SGAE/ASIMELEC**

The Competition Court has rejected the appeals lodged against the dismissal, considering that the object or the effect of the agreement entered into by the accused in relation to the remuneration right per private copy is not to exclude either manufacturers or management institutions from the market, all of which without prejudice to the interest of the Service in the analysis of the scope of the new legislation regarding the agreement against which the complaint was lodged.

**f) Proceedings referred by the Service in previous years**

In relation to proceedings referred by the Competition Services in previous years, the content of which is reflected in table 8, the Competition Court ruled on 16 proceedings imposing penalties, fining 68 companies for a global total of € 24,426,000.

The following is a brief analysis of the content of the rulings issued in 2006 and which were not discussed in the Report by the Competition Service of the previous year:

Table 8 RULINGS OF THE COMPETITION COURT ON PROCEEDINGS REFERRED IN OTHER YEARS	
Article violated	No. of proceedings
Article 1	13
Article 6	4
No practice declared	2
Expiry of proceedings	0

**1. 587/05 Bingo Simultáneo**

Ruling of the Competition Court of 17 February 2006 declaring proved the performance by Red de Distribución de la Agrupación de Empresarios de Juego de Madrid and Cirsá Interactive Corporation of practices prohibited by Article 1 of the Competition Act, by having entered into a long-term agreement with exclusivity, first refusal and abandonment penalty clauses, which may have had the effect of removing competition from the organisation of simultaneous online games of chance.

**2. 588/05 Distribuidores Cine**

Ruling of the Competition Court of 10 May 2006 declaring that the Federación de Distribuidores Cinematográficos (Fedicine) is responsible for creating and maintaining a database through which distributor companies exchange sensitive information, and therefore prohibited by Article 1 of the Competition Act, with a fine of € 900,000 being imposed.

In this ruling, the Court considers that the distributors: The Walt Disney, Buenavista Internacional Spain, Sony Pictures Releasing España, Hispano Fox Film, United Internacional Pictures and Warner Sogefilms, have committed a violation of Article 1 of the Competition Act for having agreed to standardise their commercial policies, sharing out a substantial part of the Spanish cinema distribution market, with each company being fined € 2,400,000.

**3. 589/05 FIAB/Grandes Superficies**

Ruling of the Court of 22 May 2006 declared prohibited by Article 1 of the Competition Act the standardisation between Alcampo, Carrefour, El Corte Inglés and Mercadona of their commercial policies, imposing on their distributors a homogeneous security system through the installation of anti-theft labels at origin. A fine of € 75,000 was imposed on each one.

**4. 590/05 Ambulancias Orense**

Ruling of the Competition Court of 5 June 2006 declaring that the companies in the Agrupación de Ambulancias de Orense (a total of 14) are responsible for the violation of Article 1 of the Competition Act, consisting of entering an arrangement through the constitution of a Joint Venture for the share-out of the ambulance transport market in the province of Orense, imposing a total fine on all of them of € 432,000.

**5. 591/05 Agencias de viaje**

Ruling of the Competition Court of 26 July 2006 declaring as proven the commission of three practices prohibited by Article 1 of the Competition Act consisting of:

- Agreeing on the transfer of the decisions of the group with regard to its relations with the large service providers, which have led to a collective negotiation of the ticket issue charges, for which Cúpula Asociativa de Agencias de Viajes Españolas (CAAVE) is considered responsible.



- The agreements between the Iberia, Spanair and Air Europa airlines with CAAVE to fix the ticket issue charges.
- The share-out of the market in relation to the contracting of tickets between Iberia and CAAVE.

The Court imposed on all of them fines for a total of € 6,150,000.

**6. 592/05 Fabricantes Bisutería de Andalucía**

Ruling of the Competition Court of 17 March 2006 declaring proven the commission by the Asociación de Fabricantes de Bisutería de Andalucía of a practice prohibited by Article 1 of the Competition Act consisting of not admitting the Kayania trading company as an associate for non-objective reasons, limiting its trading activity, imposing a fine of € 6,000.

**7. 593/05 Televisiones**

Ruling of the Competition Court of 13 July 2006 declaring as proven and prohibited by Articles 6 of the Competition Act and 82 of the EC Treaty the application by Agedi of unequal conditions in the use of its repertoire, which means discrimination by Antena 3 and Telecinco against their competitor, the Televisión Española public body, between 1999 and 2002, for which a fine of € 300,000 is imposed.

**8. 594/05 Cines Campoo**

Ruling of the Competition Court of 27 July 2006 declaring as proven the

violation of Article 1 by the signature of an agreement between the Aguilar de Campoo Town Council and the Campoo Salas trading company, by virtue of which screenings were hindered in premises other than those of Cines Campoo, which means a barrier to the entry of other exhibitors.

The Competition Court imposed a fine on each one of € 1,000.

**9. 595/05 Ambulancias Conquenses**

Ruling of the Competition Court of 20 September 2006 declaring as proven the violation of Article 1 by thirteen ambulance companies consisting of the share-out of the market of healthcare transport services by land in the province of Cuenca. The Competition Court imposed a total fine of € 495,000.

**10. 596/05 Fabricacion Máquina Herramienta**

Ruling of the Competition Court of 2 October 2006 declaring not proven the violation of Article 1 of the Competition Act by Ingersoll-Rand Ibérica, S.L., by not having shown the acceptance by the distributors, and therefore the bilateral nature of the alleged agreement, necessary for the application of the above Article 1.

**11. 597/05 Emision partidos de bolos**

Ruling of the Competition Court of 20 September 2006 declaring as proven



the violation of Article 6 of the Competition Act by the Federación Española de Bolos, consisting of putting pressure on the Skittles Clubs into signing contracts for the assignment of the audiovisual and television rights to Audiovisual Cantabria and binding participation in these competitions to the signature of the above contracts, imposing a fine of € 8,000 on the Federation.

#### **12. 598/05 Panaderías de Valencia**

Ruling of the Competition Court of 18 October 2006 declaring as proven the violation of Article 1 of the Competition Act by the Federación Gremial de Panadería y Pastelería of the Province of Valencia, consisting of a collective minimum price recommendation for bread, on which a fine of € 300,000 was imposed.

#### **13. 599/05 Maquinaria agropecuaria**

Ruling of the Competition Court of 5 October 2006 declaring as not proven the violation of Article 1 by the inclusion of a clause in the standard Automoción 2000 contract with its dealerships and distributors supposedly limiting the maximum discounts applicable by them to their customers.

#### **14. 600/05 Panaderías de Cuenca**

Ruling of the Competition Court of 18 July 2006 declaring as proven the violation of Article 1 of the Competition

Act by the Asociación Provincial de Fabricantes and Expendedores de Pan in the Province of Cuenca, consisting of a collective minimum price recommendation for bread, on which a fine of € 100,000 was imposed.

#### **15. 602/05 Viesgo Generación**

Ruling of the Competition Court of 28 December 2006 declaring as proven the violation of Article 6 of the Competition Act by Viesgo Generación for having abused the dominant position that it has in the electricity market, in a situation of technical restrictions in the central-south and southern areas and on certain days, by having offered electricity to the daily market at higher prices than its variable costs disclosed with the aim of not matching supply and demand, knowing that it would be called to technical restrictions as it was the only one available.

The Competition Court imposed a fine of € 2,500,000.

#### **16. 603/05 Procuradores Pontareas**

Ruling of the Competition Court of 18 October 2006 declaring as proven the existence of a restrictive practice prohibited by Article 1 of the Competition Act by the six solicitors in the judicial district of Pontareas by not applying the maximum discount of 12% permitted by Article 2 of Royal Decree 1373/03.

The Competition Court imposed a fine of € 3,000 on each one of them.

### 17. **604/05 Transporte Taxi**

Ruling of the Competition Court of 21 November 2006 declaring that Interfacom and Gas Auto Sociedad Cooperativa Andaluza have committed a practice prohibited by Article 1 of the Competition Act by having adopted an agreement whereby the former refused the Asociación Provincial de Autónomos del Taxi de Huelva the direct supply of the fare models needed to adapt the taxi meters to the new fares. A fine of € 6,000 was imposed on both companies.

### 18. **605/05 Juguetes Cataluña**

Ruling of the Competition Court of 21 November 2006 declaring as proven that the Asociación de Joguiners Agrupats de Catalunya, Cooperativa Catalana Limitada was responsible for a violation of Article 1 of the Competition Act for a market share-out that hinders competition between its associates, so the Court imposed a fine of € 3,000 .

### 19. **606/05 ASINEM-ENDESA**

Ruling of the Competition Court of 22 December 2006 declaring as proven the violation of Article 6 of the Competition Act by Endesa Distribución Eléctrica consisting of an abuse of a dominant position in the related installation market by hindering and impeding the entry of potential competitors.

The Competition Court imposed a fine of 900,000 €.

## III.3. Individual authorisations

In 2006, there were 8 applications for individual authorisations. One of them was dismissed as the applicant had abandoned the proceedings.

Of the remaining 7:

- Three of these applications referred to the Bad Debtors' data files. One of them, that of the Asociación Nacional de Arrendadores de Plataformas Elevadoras sobre Mástil, was authorised by ruling of the Competition Court of 7 April 2006 (A 358/06). In relation to the other two, that of the Asociación de Distribuidores de Carburantes y Combustibles de Andalucía and that of the Asociación de Fabricantes de Impermeabilizantes Asfálticos, the Tribunal dismissed them as Royal Decree 602/06, of 19 May 2006, had come into effect, approving the regulations based on the exemption of certain categories of agreements of exchange of information on payment defaults (Court Order of 20 July, A359/06; and Court Order of 22 June, A359/06).
- The authorisation requested by the Federación Española de Bebidas Espirituosas for "the advertising self-regulation code" was authorised by the Competition Court in a ruling of 6 April 2006 (A357/06) for a period of five years.
- Three are pending ruling by the Competition Court: i) the application of the Asociación de Cerveceros de España for the establishment of a statistical data compilation system with reference to the manufacturing and

commercialisation of beers; (ii) that of Euro 6000 for the agreement of the establishment of a multilateral interchange rate applicable between the organisations in the system in cash withdrawal transactions or other types of transactions completed with a debit or credit card in the ATMs belonging to the Euro 600 network, and iii) referring to the inter-line agreement for the Algeciras-Ceuta sea route, which has been the object of amendment proceedings filed by Court Order of the Competition Court of 20 December 2006 (A354/05).

#### III.4. Monitoring and execution

In 2006, and with regard to the safeguarding of the fulfilment of the Rulings of the Competition Court, a total of 26 new proceedings have been initiated, of which 19 are for prohibited practices and 7 are for individual authorisations.

Meanwhile, 87 proceedings were concluded over the course of the year, 27 corresponding to prohibited conducts and 60 to authorisations. The year ended with a total of 138 proceedings, of which 114 are for prohibited practices and 24 are for individual authorisations.

In relation to the proceedings in question, 250 requests for information were processed, including reiterations.

It is important to stress that in 2006, Royal Decree 602/2006, of 19 May 2006, was passed, approving the Regulation on the exemption of certain categories of agreements of exchange

of information on payment defaults, which has meant the following:

- a) Since 1 June 2006, the date of entry into effect of the above Royal Decree, there were no more individual authorisations for agreements of this type.
- b) The associations that have been awarded an individual authorisation for agreements of exchange of information do not have to reapply for renewal.

All of this means that out of a total of 76 monitoring proceedings on individual authorisations at the start of 2006, 42 related to renewals of authorisations of exempt agreements and with an expiry date that fell in 2006, were closed.

It should also be stressed that 2006 saw the start-up of a number of competition bodies in the Autonomous Communities, adding to the ones that had begun operating in previous years.

This has meant the referral to these communities of the individual authorisation proceedings which, in accordance with the points of connection set out in Act 1/2002, are the competence of the Autonomous Communities.

Specifically, a total of 14 individual authorisation proceedings were referred, affecting the Autonomous Communities of Valencia, Madrid, Galicia, the Basque Country and Aragon.

Four monitoring reports relating to the individual authorisation section were referred, all of them related to interchange rates in the use of payment methods.

To summarise 2006, we should stress that the different circumstances that occurred have led to a great reduction in individual authorisation proceedings, which total 24 compared with the 77 in 2005.

As regards the reports referred to the Competition Court in relation to the safeguarding of the fulfilment of the notifications made by the Competition Court in the prohibited practices proceedings that were proven, those relating to oil operators in 2006 should be highlighted.

Repsol, Cepsa and BP were monitored by this Service, which sent the appropriate reports to the Court. The Court ruled in the Repsol case in accordance with the criterion expressed by the Service and the Cepsa and BP cases are pending ruling.

In 2006, there was a total of 17 safeguarding proceedings on sanctioning proceedings that were closed in light of the information requested and recorded relating to the

practices proven and to the penalties and publications met. This information gave rise to the issuing of the relevant communications to the Competition Court.

This apart, it should be stressed that in 2006 the final ruling was given in the judicial review of some of the appeals lodged against Competition Court rulings in sanctioning proceedings.

This has meant that the Competition Court has addressed the Service in the interest of issuing the report on the level of fulfilment of each of the rulings in question, with the aim of the Court issuing the corresponding ruling on the execution of the judgment.

#### **III.5. Inspection and investigation activity**

In 2006, the Competition Court made 15 on-site inspections in businesses related with food, construction materials and telecommunication services.

## IV. RELATIONS WITH THE AUTONOMOUS COMMUNITIES

### IV.1. Introduction

Within the framework of Act 1/2002, of 21 February 2002, regarding the Coordination of the State and Autonomous Communities' competences on competition defence, the Autonomous Communities have created their own Competition bodies. This means that the General State Administration ceases to be the competent body with regard to the issues restricted to the arena of each Autonomous Community, those resulting from the application of Articles 1, 4, 6 and 7 of the Competition Act.

Throughout 2006, to the already four Autonomous Communities with competent bodies created and in operation: Catalonia, Galicia, Madrid and Valencia, a further four have been added: Aragon, the Basque Country, the Region of Murcia and Castile and Leon.

With regard to the chronological order of their start-up, in the case of the Region of Murcia, although the Regional Defence Service was created by Decree in 2004, it did not come into operation until February 2006.

In the case of the Basque Country, by means of Decree 29/2006, of 21 February 2006, the members of the Basque Court were appointed,

consisting of a Chairman and two Members. Since December 2005, the Basque Competition Service has been attached to the Department of Taxation and Public Administration. The Service and the Court came into operation in March 2006.

With regard to Aragon, its Competition Defence bodies were created and regulated by means of Decree 29/2006, of 24 January 2006. Its members, comprising one Chairman and four Members, were appointed in May. Both bodies came into operation in July 2006.

With regard to Castile and Leon, the competence in matters of competition was attributed by means of Decree 36/2006, of 25 May 2006, and the Competition Court of this Autonomous Community was created. In July, its Organisation and Operating Regulations were published, as was the appointment of a Chairman and two Members. The Secretariat General for Economy and Employment is in charge of proceedings. Both institutions came into operation in July 2006.

This way, in 2006, together with the General State Administration, eight autonomous competition bodies exercised their competences. In the case of Extremadura, although the Competition Court Jury was created by Act 2/2005, of 24 June 2005,

appointing its Chairman and two Members in 2006, and, also in 2006 the Interior Trade Service was designated as the competent unit for hearing proceedings, both bodies did not come into operation until January 2007.

The approval, by means of Decree 169/2006, of 12 November 2006, of the Statute of the Competition Court of the Community of Valencia, which has not come into operation as ruling body yet, should also be mentioned, with the state Competition Court carrying out this work.

Finally, mention should be made of the creation, by means of Decree 118/2006, of 1 August 2006, of the Competition Service by the Autonomous Community of the Canaries, attached to the Economy Sub-Council, and which did not come into operation in 2006 either.

## **IV.2. Activity undertaken in the context of Act 1/2002**

The notable increase in the creation of autonomous competition defence bodies has meant that the number of proceedings being heard through the mechanisms set out in Article 2 of Act 1/2002 has risen considerably.

Consequently, whereas a total of 16 proceedings were heard in 2005, this figure jumped to 38 in 2006.

### **a) Cases allocated**

Of this total of 38 cases, 14 of them (37%) were initiated by the General

State Administration and 24 (63%) by the corresponding Autonomous Community.

Specifically, and in light of the greater number of proceedings being heard, in the Autonomous Community of Catalonia the allocation mechanism was activated 12 times in 2006. Of these, on 10 occasions it was initiated by the Autonomous Administration and the rest by the General State Administration, with the Catalan authority being competent on 10 occasions.

In the case of the Autonomous Community of Galicia, in 2006 the case allocation mechanism was activated on 8 occasions, with the General State Administration initiating the allocation procedure on 3 of them. In all cases, the autonomous authority was competent.

With regard to the Community of Madrid, the mechanism was activated on 6 occasions, with the Autonomous Administration having been designated competent in all the proceedings, which were started in equal parts from one or the other Administration.

In relation to the Autonomous Communities of Aragon and the Basque Country, in both cases, the mechanism was activated on 4 occasions. With regard to the Basque Country, the General State Administration was designated competent on 2 occasions, whereas in Aragon only in one case was the General State Administration competent.

As for Valencia, these mechanisms were activated twice, and in one case

the Autonomous Administration was considered competent.

Finally, with regard to the Autonomous Communities of Castile and Leon and Murcia, the legally established allocation mechanisms were only activated once.

The case was allocated to the Autonomous Community of Castile and Leon, whereas in the case of the Autonomous Community of the Region of Murcia, the General State Administration was considered competent.

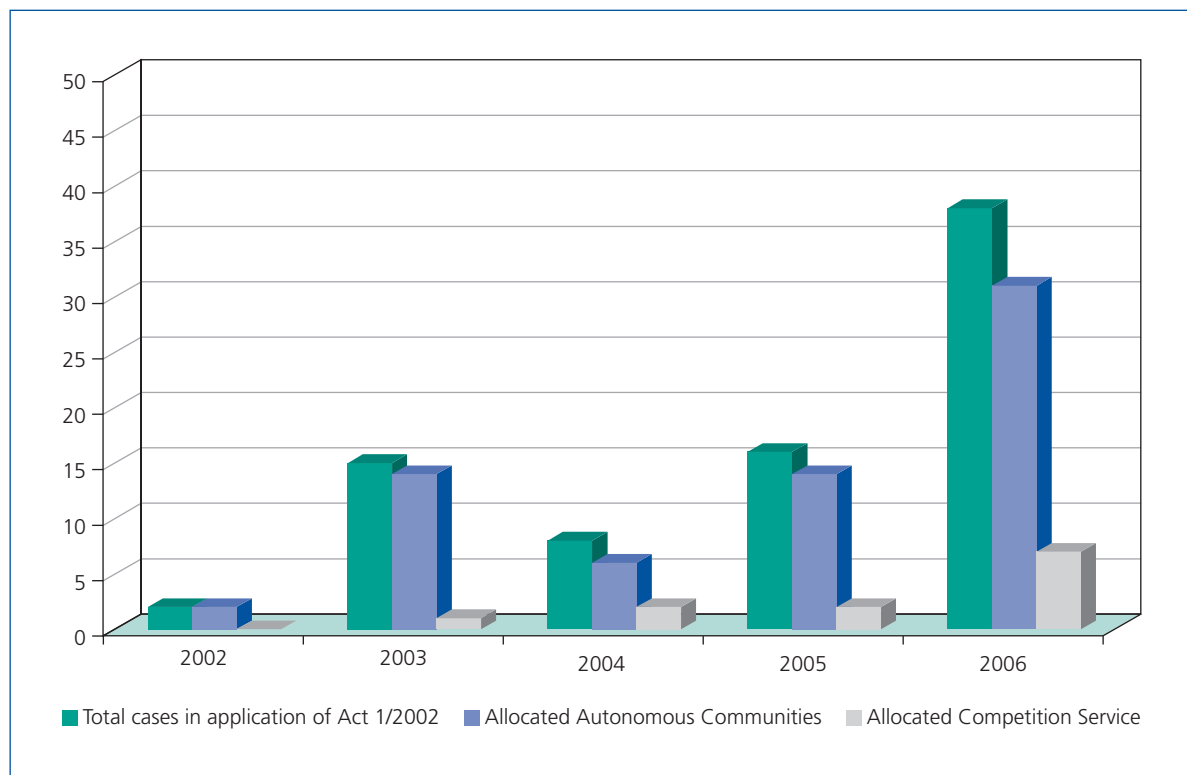
As regards the breakdown of the total of 38 proceedings allocated by type of initiation, on 35 occasions they were initiated by official complaint and 3 on

own initiative, without any application for individual authorisation in accordance with Article 4 of the Competition Act being initiated.

Graph 13 shows a breakdown of these proceedings according to their allocation to the competition body of the Autonomous Community or to the Competition Service, and Graph 14 shows it by Autonomous Community.

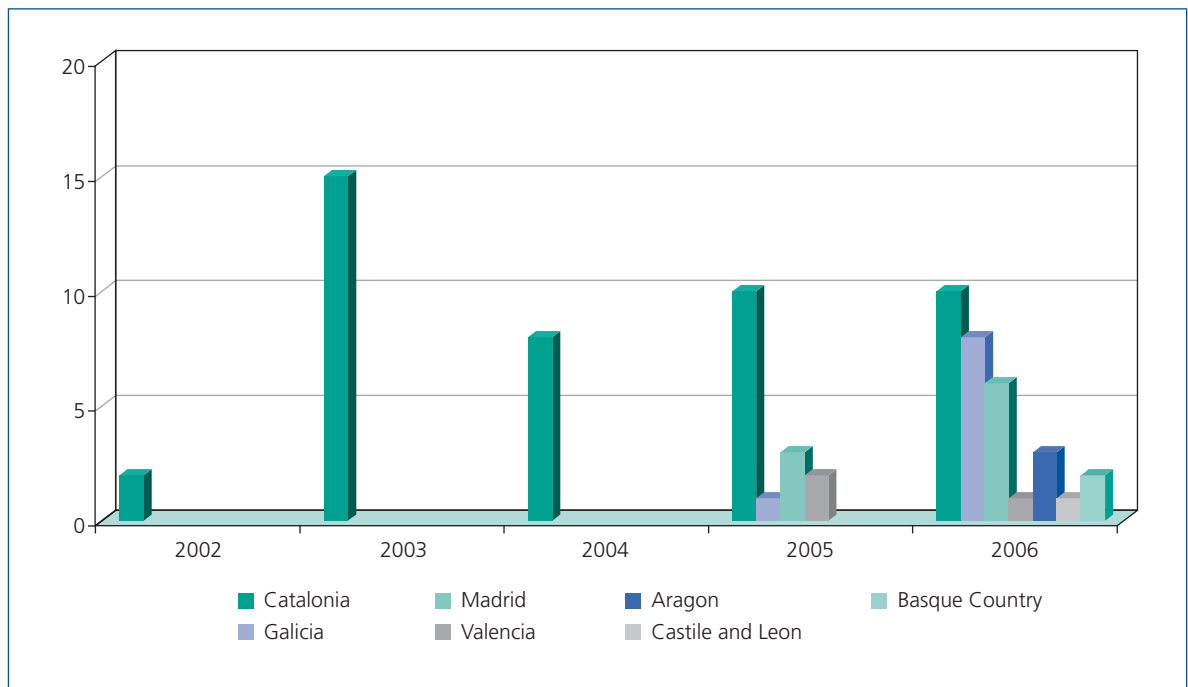
In 2006, the Competition Service formed 92 cases on practices and authorisations (Articles 1, 4, 6 and 7 of the Competition Act). Of these 92 proceedings, if we compare the data for 2006 with those of 2005, a slight drop can be observed (28 in 2005 compared with the 19 in 2006) in the

**Chart 13**  
**APPLICATION OF THE CASE ALLOCATION MECHANISMS IN APPLICATION OF ACT 1/2002**





**Chart 14**  
**BREAKDOWN OF CASES BY COMPETITION BODIES OF THE AUTONOMOUS COMMUNITIES**



number of proceedings heard by the Competition Service and which would fall under the scope of the Autonomous Communities<sup>12</sup>.

Without a doubt, the reason for this fall lies in the fact that the number of competition defence authorities in the Autonomous Communities that have come into operation has risen. If at the start of 2005 only the one in Catalonia was in operation (with 9 proceedings in 2006), on 1 January 2006, the authorities of Galicia (with 8 proceedings), Madrid (6 proceedings) and Valencia (with 1 proceedings) had been added to it.

Therefore, to these 19 proceedings, we should add a further 25 proceedings

<sup>12</sup> Proceedings that would have been processed by autonomous competition bodies if they had been created, constituted and in operation at the time of their hearing.

that have been allocated to the above Autonomous Communities.

Table 9 shows the share-out of proceedings by Autonomous Communities out of the above total of 19 proceedings of an autonomous scope (the proceedings relating to the Autonomous Community of the Basque Country and Aragon are processed by the respective Autonomous Communities as when these cases came into the Competition Service, the Aragonese and Basque competition authorities had already been constituted).

In comparison with the previous year, Andalusia remains as the Autonomous Community with the highest number of proceedings, followed by the Balearics and the Canaries. Following the vein of 2005, there were no proceedings that



**Table 9**  
**DISTRIBUTION BY AUTONOMOUS COMMUNITIES (%)**

	2005		2006	
Andalusia	4	14.3%	5	28.0%
Aragon	1	3.6%	1*	5.5%
Asturias	2	7.1%	1	5.5%
Balearic Islands	2	7.1%	4	22.0%
Canary Islands	4	14.3%	2	11.0%
Cantabria	2	7.14%	1	5.5%
Castile and Leon	3	10.7%	1*	5.5%
Castile-La Mancha	1	3.6%	1	—
Galicia	1*	3.6%	—	—
Extremadura	0	—	1	5.5%
Madrid	2*	7.1%	—	—
Navarre	1	3.6%	1	5.5%
Basque Country	3	10.7%	1*	5.5%
Valencia	2	7.1%	—	—
<b>TOTAL</b>	<b>28</b>	<b>100.0%</b>	<b>19</b>	<b>100.0%</b>

\* Proceedings sent to the Autonomous Communities in question the moment its autonomous competition body came into operation.

could be considered to be in the scope of the Autonomous Communities of La Rioja and Murcia.

With regard to the share-out by economic sector of the proceedings, Table 10 classifies these autonomous proceedings according to the economic sector affected.

#### **b) Conflict Consultation Board**

The aforementioned Act regarding the Coordination of the State and Autonomous Communities'

Competences on Competition Defence establishes in its Article 3 the creation of this consultation body that specialises in providing advisory services, by means of non-binding reports, towards settling conflicts regarding the attribution of competences that may arise between the State Administration and the Autonomous Communities as a result of the application of the legislation on competition.

It was not necessary to summon the Conflict Consultation Board during 2006.

**Table 10**  
**AUTONOMOUS SPHERE: NACE SECTORS**

	Number	%
Activities of professional organisations	6	28.0%
General activities of the public administration	1	5.5%
Other business activities	2	11.0%
Financial intermediation and insurance	2	11.0%
Retail trade	1	5.5%
Non-metal waste recycling	1	5.5%
Healthcare	2	11.0%
Sanitation and cleaning	1	5.5%
Undertakers and related activities	1	5.5%
Sports and leisure activities	1	5.5%
Transport	1	5.5%
<b>TOTAL</b>	<b>19</b>	<b>100.0%</b>

### c) The Competition Council (CC)

The 5th meeting of the Competition Council was held on 12 December 2006. The Council, also created by the above Act 1/2002, is the body in charge of mutual collaboration, coordination and information between the State and the Autonomous Communities.

This meeting was marked by the strengthening of the duties inherent to the CC, promoting the uniform application of competition legislation.

To this effect, at the meeting, the working document presented by the CS, "Proposed contents and structure of the Network of Cooperation of the

Spanish Competition Defence bodies (REC)", was shared.

### d) Network of Cooperation of the Spanish Competition Defence bodies (REC)

Act 1/2002 establishes the legal framework for the development of the executive powers related to competition defence that are attributed to the Autonomous Communities. It states the need to promote the uniform and efficient application of the competition legislation throughout the whole of the country, establishing the case allocation and coordination mechanisms between the competent bodies, at both the

autonomous and state levels. To this effect, Act 1/2002 establishes reciprocal flows of the supply of information between the Autonomous Communities and the Competition Service.

The REC is the coordination and collaboration mechanism between the competent bodies of the State and of the Autonomous Communities in terms of Competition Defence, taking advantage of the technical solutions provided by the computer application on which it is supported. It is configured as an instrument that enables fluid communication between the Competition Service and the competent bodies of the Autonomous Communities.

The creation of the REC is in response to an initiative presented at the 1st Meeting of the Competition Council to create a network of cooperation between the national and autonomous bodies and the authorities with competence in matters of competition, considering it suitable to use the CIRCA tool, managed for the whole Administration by the Ministry of Public Administrations and which is already being implemented in other applications regarding autonomous coordination.

At successive meetings of the Competition Council, the basic lines of CIRCA were presented, although in light of the low number of autonomous bodies constituted and in operation, it was considered opportune to wait for its entry into operation.

Consequently, the Service organised a working session on 12 July 2006 of the so-called Competition Network Group

(REC Group), where it was stated that the Council would be informed of its results.

Subsequent to the above working meeting, and once the REC had come into operation, proposals and comments by the Service and the authorities of the Valencian Autonomous Community were presented, as well as by the Catalan Competition Court and the Directorate General for Competition of the Regional Government of Catalonia.

Taking the needs detected into consideration, the Service presented a proposal of contents and structure of the REC to the Competition Council, accepted by the majority of its members, who were expressly asked to formulate pleadings and comments.

In broad terms, through the REC, public information of general interest to all the competent bodies will be shared. In the case of confidential information linked to specific proceedings and disciplinary and authorisation proceedings, access will be restricted to the bodies concerned.

#### **e) Other collaboration mechanisms: training**

As is traditional since the entry into effect of Act 1/2002, the Competition Service has been offering training activities to the Autonomous Communities.

Besides organising the aforementioned training session of July 2005 relating to the operation of the REC, the practical training cycles have continued at the offices of the Competition Service

aimed at the civil servants in the autonomous bodies who will be carrying out the examining work of the Service.

Throughout 2006, staffs in the Autonomous Communities of the

Basque Country and Aragon have attended these sessions, adapted to the needs expressed by them, as was previously done with the staff from the Autonomous Communities of Catalonia, Madrid, Valencia, Murcia and Galicia.

# V. STATE AID

## V.1. Introduction

In 2006, the field of State aid was marked by an extraordinary legislative activity by the Community and the Competition Service has continued to participate actively in this regulatory process at EU level as well as in the monitoring of the aid notified to the European Commission.

State aid policy is an instrument that is continuously being adapted to political or economic situations within the EU and at an international level. Therefore, adjustments are required to tackle the changes that affect its correct functioning and enable it to adapt to the economic reality of the markets and sectors in which it has an influence.

## V.2. Competition Service activity

### a) At EC level

The discussion and drawing up of the EU rules adopted in 2006, and the contribution to the different public consultations launched by the Commission, have required the participation of the Competition Service at the different meetings held for this purpose.

In 2006, the European Commission launched a number of public consultations about:

- The 2005-2009 State Aid Action Plan, adopted by the European Commission on 7 June 2005, which entailed a comprehensive reform of state aid rules and procedures with the aim of ensuring that they are better suited to encourage Member States to contribute to the Lisbon Strategy. In 2006, the reform guidelines were followed extensively in the Member States.
- State aid for innovation, in order to create a new specific framework for aid on innovation.
- The revision of the state aid Guidelines for environmental protection.
- The experience of the member States in the application of the block exemption regulations on state aid as well as the “de minimis” regulation on aid, which increases the de minimis threshold to 200,000 euros/3 years per beneficiary company and will also apply to the transport sector and to the processing and marketing of agricultural products.
- A working document of the European Commission on “Good practice” which proposes measures for pre-notification, streamlining of complaints or official complaints and time limits.

The interest in promoting SMEs and the desire for them to benefit from greater intensity of aid should be identified as a common element of the approved regulations set out.

The new R+D+i rules also include a series of measures specifically designed for SMEs, and the new Directives on capital risk have been revised to stimulate investment in innovative SMEs, through more sensitive evaluation rules that facilitate the implementation of small and medium young and innovative businesses and streamline the use of this financial instrument.

The Competition Service has also followed the approval of new Community Guidelines on state aid for the agriculture and forestry sector for 2007-2013, which favour measures to promote employment, regional development, the environment, training and research in addition to specific sector and business measures.

Of particular interest are the Guidelines on national regional aid for 2007-2013 (DAR)<sup>13</sup>, which have replaced those from 1998 and have involved an in-depth revision, incorporating the Multisectoral Framework on regional aid for large investment projects. The importance of these Guidelines lies in the fact that they establish the rules for the authorisation of state aid that foster the development of the poorest regions, define the map of the regions that can opt for regional aid and set the maximum permitted levels of this aid throughout this period.

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<sup>13</sup> Published in the Official Journal of the European Union of 4 March 2006.

The previous map of regional aid established for the Member States expired on 31 December 2006 and the fact that it was approved before 1 January 2007 ensures the continuity of the regional policy and the Structural Fund Programme, establishing the limit of aid to regional investment (%).

Other particularly relevant measures relate to the Services of General Economic Interest and the treatment of their financing from the perspective of state aid. In July 2006, the Economic Advisory Group for Competition Policy (EAGCP) working group published a working document. In December, a Directive on the transparency of financial relations was published which amends the Transparency Directive in effect until that time and which, among other issues, obliges companies that receive compensation for the provision of a public service, and that also carry out other activities different from this one, to keep separate accounts.

It is important to highlight the participation at the two Multilateral meetings on state aid at which the EU Framework project regarding R+D+i aid and different aspects of the monitoring of the Conclusions of the Councils in terms of aid were discussed.

The definitive implementation of the State Aid Notifications Interactive (SANI) facilitates the electronic transmission of notifications of the state aid projects by the Member States, developed by the European Commission under the measures aimed at simplifying the procedures has required the Competition Service's attendance at meetings. The Competition Service has been authorised as a read-only user,

which will provide it with specific and full knowledge about all aid notified to the European Commission.

The creation of SANI has enabled the Competition Service to make improvements in the integration and complementation of the proceedings, and the operativity of access to the most complete information on each aid project has ensured greater control.

The Competition Service also monitors initiatives that the European Commission has put into operation or carried out in 2006 and the Service also participates in the transposition process of some directives.

#### **b) At national level**

Regulatory projects that affect state aid policy and proceedings on aid regimes have been informed after analysing the criteria for awarding the aid.

#### **c) CIAUE State Aid Workgroup**

In 2006, the Service participated in four meetings of the State Aid Working Group of the Interministerial Commission of Affairs for the EU (CIAUE) at which sixty-nine aid projects were analysed that were subsequently notified by the Ministry for Foreign Affairs and Cooperation (MAEC) to the European Commission for their authorisation.

### **V.3. Most relevant state aid information for 2006**

The information below comes from the aid projects that were analysed by the

CIAUE State Aid Working Group for notification, from the aid notified ex post as allowed by the exemption regulations and from the aid included in the European Commission's Aid Registry as not notified.

Table 11 shows the data from the last 5 years and their evolution over this period.

The 2006 data shows a substantial increase, in absolute terms, of the total number of aid projects compared with the three previous years.

However, the trend recorded over these last five years is towards greater use of the exemption regulations, as seen by the amount of this type of aid in absolute terms.

The proportion of external aid, less detrimental to effective competition conditions in the market as it is aimed at horizontal objectives, has grown gradually over the 2002-2006 period.

In 2006, the number of state aid projects corresponding to Autonomous Communities is still clearly greater, more than double, than those of the General State Administration (table 12).

All the Autonomous Communities, except for the Balearics Islands, granted aid in 2006, although it is distributed unequally among them, as can be seen in table 13.

Catalonia has retaken its position as the leading Autonomous Community that granted the most aid during the 2006 financial year, with 11.8% of total aid. It is followed by Andalusia and Valencia with a total of 6% of state aid each. Also of note is the position occupied by a group of

**Table 11**  
**STATE AID IN SPAIN**

	2002		2003		2004		2005		2006	
	No.	%	No.	%	No.	%	No.	%	No.	%
CIAUE projects	107	75.9	50	68.5	51	64.6	67	63.2	120	74.5
Block exemption regulations (BER)	28	19.9	20	27.4	28	35.4	38	35.9	39	24.2
No notification	6	4.3	3	4.1	—	—	1	0.9	2	1.3
<b>Total</b>	<b>141</b>	<b>100</b>	<b>73</b>	<b>100</b>	<b>79</b>	<b>100</b>	<b>106</b>	<b>100</b>	<b>161</b>	<b>100</b>

SOURCE: Competition Service Database.

Autonomous Communities that comprises Madrid, the Basque Country, Galicia, Navarre and Murcia, each with 5.6% of total aid. Compared with the data for 2005, it can be seen that Madrid and La Rioja have dropped in relative terms, while the Basque Country, Navarre and Galicia have climbed considerably in the ranking.

Table 14 shows the aid aimed at horizontal objectives and the distribution among them.

In 2006, there was a considerable rise in the amount of aid awarded to horizontal objectives, in both absolute and relative terms. However, aid for non-horizontal objectives underwent a strong decrease in relative terms. Aid awarded to SMEs continued to stand out compared with the rest over the five years.

However, there was a substantial rise in aid with a view to fostering R+D+i, as well as aid awarded for environmental protection.

**Table 12**  
**STATE AID PROJECTS DISTRIBUTED BY MANAGEMENT TYPE**

	Year 2002		Year 2003		Year 2004		Year 2005		Year 2006	
	No.	%	No.	%	No.	%	No.	%	No.	%
State	36	25.5	20	27.4	20	25.3	33	31.1	45	28
Autonomous Communities (*)	105	74.5	53	72.6	59	74.7	73	68.9	116	72
<b>Total</b>	<b>141</b>	<b>100</b>	<b>73</b>	<b>100</b>	<b>79</b>	<b>100</b>	<b>106</b>	<b>100</b>	<b>161</b>	<b>100</b>

(\*) Includes local aid

SOURCE: Competition Service Database.



**Table 13**  
**STATE AID PROJECTS BY AUTONOMOUS COMMUNITIES**

	Year 2005		Year 2006	
	No.	%	No.	%
State	33	31.1	45	28.0
Madrid	14	13.2	9	5.6
La Rioja	14	13.2	7	4.3
Catalonia	8	7.5	19	11.8
Castile and Leon	8	7.5	8	5.0
Murcia	7	6.6	9	5.6
Andalusia	4	3.8	10	6.2
Navarre	3	2.8	9	5.6
Asturias	3	2.8	5	3.1
Galicia	2	1.9	9	5.6
Cantabria	2	1.9	1	0.6
Basque Country	2	1.9	9	5.6
Canary Islands	2	1.9	8	5.0
Extremadura	2	1.9	1	0.6
Aragon	1	0.9	1	0.6
Valencia	0	0.0	10	6.2
Castile-La Mancha	1	0.9	1	0.6
<b>Total</b>	<b>79</b>	<b>100.0</b>	<b>161</b>	<b>100.0</b>

SOURCE: Competition Service Database.

Table 15 shows the evolution followed in terms of distribution by state aid objectives over the last 5 years. With regard to the distribution of aid projects by their sectoral nature, as can be deduced from table 15, the bulk of state aid continues to be aimed at the agriculture sector.

However, in relative terms it fell in favour of other sectors from the industrial area, with 22.4% of the total aid. A strong rise was observed in both absolute and relative terms of the aid in which the horizontal and sector objectives overlapped as well of the aid aimed at the new technology sector.

**Table 14**  
**STATE AID PROJECTS DISTRIBUTED BY OBJECTIVE**

	Year 2001		Year 2002		Year 2003		Year 2004		Year 2005		Year 2006	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
<b>Horizontal</b>	<b>69</b>	<b>41.6</b>	<b>62</b>	<b>44.0</b>	<b>26</b>	<b>35.6</b>	<b>51</b>	<b>64.6</b>	<b>48</b>	<b>45,3</b>	<b>85</b>	<b>52.8</b>
SMEs	28	40.6	25	40.3	12	46.2	25	49.0	31	64,6	32	37.7
R & D & I	12	17.4	5	8.1	7	26.9	15	29.4	9	18,8	24	28.3
Employment	13	18.8	4	6.5	2	7.7	5	9.8	5	10,4	9	10.6
Training	14	0.7	23	1.1	4	0.2	1	0.0	3	0,1	11	12.8
Environment	2	2.9	5	8.1	1	3.8	5	9.8	0	0,0	9	10.6
<b>Non-horizontal</b>	<b>97</b>	<b>58.4</b>	<b>79</b>	<b>56.0</b>	<b>47</b>	<b>64.4</b>	<b>28</b>	<b>35.4</b>	<b>58</b>	<b>54,7</b>	<b>76</b>	<b>47.2</b>
<b>Total</b>	<b>166</b>	<b>100.0</b>	<b>141</b>	<b>100.0</b>	<b>73</b>	<b>100.0</b>	<b>79</b>	<b>100.0</b>	<b>106</b>	<b>100.0</b>	<b>161</b>	<b>100.0</b>

SOURCE: Competition Service Database.

These data confirm the desire to redirect aid towards more dynamic sectors and with greater contribution to economic growth.

The State Aid Scoreboard is an instrument created by the European Commission in 2001 with the primary aim of analysing the evolution of EU aid and measuring progress towards the goals of the Lisbon Agenda of "less and better targeted aid".

The progress of aid is evaluated using the "reduction" indicator, defined as the total volume of aid compared with the GDP of a given period, and the "reorientation" indicator, understood as the progress of aid awarded towards horizontal objectives.

The total amount of state aid granted in 2005 by the twenty-five Member States was estimated at € 64 billion (0.59% of EU GDP), according to the latest State Aid Scoreboard compiled by

the European Commission, compared with some € 65 billion in 2004 (0.61% of EU GDP) in 2004.

Consequently, the response of the European Union as a whole to the request by the European Council to reduce state aid has been restrained.

However, the Member States have reacted positively to the second aim of the Council to better target aid. There is a definite trend towards "more specific aid" and towards horizontal objectives of common interest, such as environment and R+D.

Tables 16, 17 and 18 show data on the development and situation of public aid.

Spain's behaviour meets both objectives: it has reduced the total volume of its aid compared with the GDP in relation to the previous year and its reduction indicator is still below that of the European Union, both at 15 and 25.

**Table 15**  
**STATE AID PROJECTS DISTRIBUTED BY SECTORS**

	2001		2002		2003		2004		2005		2006	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Agriculture (1)	48	28.9	38	27.0	25	34.2	29	36.7	33	55.9	67	37.8
Others sectors	11	6.6	4	2.8	0	0.0	10	12.7	6	10.2	36	22.4
Energy	5	3.0	6	4.3	2	2.7	4	5.1	5	8.5	8	5.0
Culture and media	3	1.8	3	2.1	0	0.0	3	3.8	5	8.5	8	5.0
Other sectoral aid (2)	65	39.2	66	46.8	39	53.4	21	26.6	4	6.8	16	10.0
Fishing	26	15.7	15	10.6	3	4.1	1	1.3	2	3.4	9	5.6
Land transport	6	3.6	3	2.1	0	0.0	3	3.8	1	1.7	2	1.2
Shipbuilding	1	0.6	3	2.1	0	0.0	2	2.5	1	1.7	3	1.8
New technologies (3)	1	0.6	0	0.0	2	2.7	5	6.3	1	1.7	17	10.5
Aeronautical construction	0	0.0	3	2.1	2	2.7	1	1.3	1	1.7	1	0.7
<b>Total</b>	<b>166</b>	<b>100.0</b>	<b>141</b>	<b>100.0</b>	<b>73</b>	<b>100.0</b>	<b>79</b>	<b>100.0</b>	<b>59</b>	<b>100.0</b>	<b>161</b>	<b>100.0</b>

(1) Includes food sector.

(2) Includes aid in which horizontal and sector objectives overlap.

(3) Includes information technology.

Source: Competition Service Database.

It is also one of the Member States that has redirected more aid towards objectives of a horizontal

nature, although it still has not achieved the average levels of the EU-25.

**Table 16**  
**STATE AID AWARDED BY THE MEMBER STATES**

	Total state aid less railways	Total state aid less agriculture, fisheries and transport	Total state aid less railways	Total state aid less agriculture, fisheries and transport
	millions of euros	millions of euros	as % of GDP	as % of GDP
Spain 2003	4	3.1	0.54	0.43
Spain 2004	4	3.1	0.47	0.37
EU-15 2004	56.4	42	0.57	0.43
EU-25 2004	61.6	45.5	0.6	0.44
Spain 2005	3.8	3.3	0.41	0.36
EU-15 2005	58.7	42.2	0.57	0.41
EU-25 2005	63.8	45.1	0.59	0.42

SOURCE: European Commission State Aid Scoreboard. Autumn 2006 edition.

**Table 17**  
**TREND IN THE TOTAL VOLUME OF STATE AID IN THE EUROPEAN UNION**  
**2001/2005 (%GDP)**

		2003	2004	2005	Annual average 2001-03	Annual average 2002-04
<b>EU-25</b>	Total state aid less railways thousand million euros as % of the GDP		64.70 0.61	63.80 0.59		
	Total state aid less agriculture, fisheries and transport thousand million euros as % of the GDP	50.40 0.49	46.00 0.43	45.10 0.42	52.30 0.5	47.20 0.45
<b>EU-15</b>	Total state aid less railways thousand million euros as % of the GDP	56.60 0.57	59.10 0.58	58.70 0.57	62.00 0.63	58.10 0.58
	Total state aid less agriculture, fisheries and transport thousand million euros as % of the GDP	40.40 0.41	42.40 0.42	42.20 0.41	45.40 0.46	41.70 0.41

**Table 18**  
**STATE AID AIMED AT HORIZONTAL OBJECTIVES AND SECTORAL AID**  
**(% TOTAL AID, TOTAL 2005)**

	Horizontal objectives								Sectoral aid
	Horizontal objectives total	Employment aid	Regional development	R+D	SMEs	Training	Environment and energy saving	Other horizontal objectives	Sectoral aid total (1)
EU-25	<b>84</b>	8	19	12	10	2	28	4	<b>16</b>
Spain	<b>66</b>	1	32	9	10	2	5	7	<b>34</b>

(1) Aid for specific sectors awarded in accordance with measures for which there was no horizontal objective and rescue and restructuring aid.

SOURCE: European Commission Directorate General for Competition.



## VI. ACTIVITY BEFORE THE COURTS

### VI.1. Actions by the Spanish jurisdictional bodies in judicial review proceedings

In 2006, the Competition Service continued to collaborate with the Spanish judicial bodies in the framework of the appeals lodged against Agreements of the Council of Ministers and other acts within the field of application of the Spanish legislation on competition defence.

Thus, the corresponding administrative proceedings were referred, reports were produced upon the request of the various courts and the different appeal proceedings were monitored.

Four appeals have been brought before the Supreme Court against the Agreement of the Council of Ministers of 3 February 2006 on the Gas Natural/Endesa merger<sup>14</sup>.

In addition, two appeals have been brought before the High Court of Madrid<sup>15</sup> against rulings of the Service.

<sup>14</sup> Appeals for judicial review 2/47/2006, 118/2006, 91/2006 and 129/2006 against the Agreement of the Council of Ministers of 3 February 2006, in which, in accordance with the provisions of Point b) of Article 17 of the Competition Act 16/1989, of 17 July 1989, it was decided to subordinate the approval of the economic merger operation consisting of the acquiring of exclusive control of Endesa S.A. (Endesa) by Gas Natural SDG, S. (Gas Natural) A. to the observance of conditions.

<sup>15</sup> Appeal for judicial review number 284/2006 and Appeal for judicial review number 1021/2006.

This apart, it should be highlighted that in 2006, the Central Court dismissed<sup>16</sup> three appeals and partially admitted a fourth<sup>17</sup>, all lodged against disciplinary rulings by the Minister of Economy and Finance for the execution of operations before their notification and authorisation<sup>18</sup>.

Finally, on 12 July 2006, Court Three of the Supreme Court dismissed the appeal to the Supreme Court<sup>19</sup> lodged against the ruling of the Central Court of 5 November 2003, in relation to the penalty imposed on ACS by the Competition Service for violation of Article 15.2 of the Competition Act<sup>20</sup>.

<sup>16</sup> Ruling of the Central Court of 20 January 2006 in relation to disciplinary proceedings SNC 0203 NURTAS LAND/CEAC; Ruling of the Central Court of 13 February 2006 in relation to disciplinary proceedings SNC 0402 INTUR/SCI SPAIN and 0403 INTUR/EUROSTEWART SPAIN and Ruling of the Central Court of 16 February 2006 in relation to sanctioning proceedings SNC 0204 GAS ASTURIAS/GAS FIGUERES.

<sup>17</sup> Ruling of the Central Court of 1 December 2006, in relation to sanctioning proceedings SNC 0405 SACYR/VALLEHERMOSO.

<sup>18</sup> The disciplinary rulings were issued in accordance with the provisions of Article 15.2 in fine and of Article 18.4 of the Competition Act.

<sup>19</sup> The reasons on which the appeal was based were: i) non-application of Article 18.1 of the Competition Act, and ii) violation of the principle of proportionality in the imposition of the penalty by the Administration. Both reasons were dismissed by the Supreme Court.

<sup>20</sup> The penalty imposed by the Minister of Economy on 4 September 2002 in the framework of sanctioning proceedings SNC-0201 ACS was maintained.

## VI.2. Actions by the community jurisdictional bodies

On 14 July 2006, the Court of First Instance of the European Communities dismissed the appeal<sup>21</sup> lodged by Endesa against Decision COMP/M3986 Gas Natural/Endesa, in which the European Commission considered that the Gas Natural/Endesa merger had no community dimension in accordance with Article 1 of Regulation 139/2004<sup>22</sup>, proceedings in which the Kingdom of Spain had the status of intervener.

Also, Endesa withdrew the appeal that it had lodged against the Court Order of the Court of First Instance of 1 February 2006, dismissing the interim measures in the framework of the Gas Natural/Endesa merger operation.

In 2006, the Court of Justice of the European Communities issued a ruling in relation to two preliminary issues that had been brought by the Spanish Supreme Court.

On the one hand, in case C-217/05 Confederación Española de Empresarios de Estaciones de Servicio, the ruling of 14 December 2006 rules in favour of the application of Article 81 of the EC Treaty (ECT) to the exclusive distribution contracts between a supplier and a service station, when this owner assumes, in a not insignificant proportion, financial and commercial risks connected to the sale of third parties.

On the other hand, in case C-238/05 ASNEF-EQUIFAX, the ruling of 23

November 2006 rules that an information exchange system on customer solvency (such as the so-called "records regarding delays") does not have the effect of restricting competition in the sense of Article 81 of the ECT, providing the following conditions are fulfilled:

- i) the relevant market or markets are not strongly concentrated,
- ii) it does not permit the creditors to be identified, and
- iii) the conditions of access and use for the financial institutions are not discriminatory in fact or in law.

## VI.3. Private application of competition law. Action within the context of EC Regulation 1/2003

### a) Rulings referred to the European Commission

Article 15 of EC Regulation 1/2003 requires the European Commission to be informed of the rulings of the national jurisdictional bodies in which Articles 81 and 82 of the ECT apply.

In 2006, the Competition Service communicated eleven rulings, eight of them from the Mercantile Courts of Madrid and the three issued in remedies of appeal before the Madrid Crown Court, as shown in Table 19.

Most of the rulings resolve lawsuits brought by service stations applying, by virtue of Article 81 of the ECT, for the nullity of the agreements and contracts of constitution of the surface area right of the property, of the lease of them

<sup>21</sup> Case T-417/05.

<sup>22</sup> Competition Service Proceeding N-05082.



**Table 19**  
**RULINGS REFERRED TO THE EUROPEAN COMMISSION (2006)**

Body	Date	Parties	Rules	Decision	Content
Mercantile Court No. 5 Madrid	05/01/2006	Tramadi SA and La Povedilla SL/ Shell España SA and Disa Península SLU	Art. 81 EC	Dismissed	The exclusive supply is not null as the "de minimis" rule applies (European Commission Communication of 2001) and as the retail prices are not fixed.
Mercantile Court No. 1 Madrid	07/03/2006	Estaser El Mareny SL/ Repsol Comercial de Productos Petrolíferos SA	Art. 81 EC	Partially admitted	Classes the agency contract as not genuine and declares the nullity of the contract (assignment of service station operation –lease and exclusive supply) as the exclusivity clause is restrictive.
Mercantile Court No. 5 Madrid	25/01/2006	Canal Satélite Digital SL and DTS Distribuidora de Televisión Digital SA/ Sociedad General de Autores y Editores	Art. 82 EC	Dismissed	Despite the SGAE having a dominant position, there is no abuse in the application of general prices (according to a percentage of income) as there was no negative to negotiate (they were agreed and are, besides, applied to the rest of pay televisions).
Mercantile Court No. 3 Madrid	21/03/2006	Endesa SA/ Gas Natural SDG SA and Iberdrola SA	Art. 81 EC	Admitted court order application for interim measures	Orders the suspension of the takeover bid formulated by Gas Natural on the Endesa shares and the execution of contract entered into with Iberdrola.
Mercantile Court No. 1 Madrid	23/05/2006	Petropuerto SL and Petrogrado SL/ Shell España SA and Disa Península SLU	Art. 81 EC	Dismissed	The contract (with exclusive purchase obligation) is «de minimis» (European Commission Communication of 2001).
Mercantile Court No. 1 Madrid	12/06/2006	Estación de Servicio Talavera SA/ Shell España SA and Disa Península SLU	Art. 81 EC	Dismissed	Same content as ruling of 05/01/2006.
Madrid Crown Court section 28	25/05/2006	Conduit Europe SA/ Telefónica de España SAU	Art. 82 EC (in relation to the Competition Act)	Dismissed	Confirms the ruling of Mercantile Court No. 5 Madrid of 11/11/05.
Madrid Crown Court section 28	27/10/2006	Petrouxo SL/ Repsol Comercial de Productos Petrolíferos SA	Art. 81 EC	Dismissed	Confirms the Ruling of the Court of First Instance of Madrid of 28/07/2005. The ruling is in line with the Decision of the Commission of 12.4.06 (Repsol).
Mercantile Court No. 1 Madrid	30/10/2006	Particular/ Repsol Comercial de Productos Petrolíferos SA	Art. 81 EC	Dismissed	The lawsuit was dismissed as, on the basis of Article 81 EC, the nullity of the contract was not sought.
Madrid Crown Court section 28	16/11/2006	Tramadi SA and La Povedilla SL/ Shell España SA	Art. 81 EC	Partially admitted	Confirms the ruling of Mercantile Court No. 5 Madrid of 5.1.06 except where relating to costs.
Mercantile Court No. 3 Madrid	29/09/2006	Estación de Servicio Los Eucaliptos SL, Estagás SL, Estación de Servicio El Moro SL y Sogestín SL/ Disa Península SLU	Art. 81 EC	Dismissed	The contracts are «de minimis» in accordance with the Commission Communication of 2001.

and of the exclusive supply of carburants and fuels entered into with the oil companies<sup>23</sup>.

In some cases, compensation for damages has been sought, and consequently, in the appeal ruling in the Conduit/Telefónica case, the compensation for damages was confirmed. It had been imposed on Telefónica for abuse of a dominant position of Article 82 of the ECT due to the supply of information on subscribers to the telephone information service incompletely and defectively.

Another ruling in first instance dismissed the application of Article 82 of the ECT to the lawsuit brought by Canal Satélite Digital, S.L. and DTS Distribuidora de Televisión Digital, S.A. against SGAE in relation to the application of the general prices approved by the latter.

Mention should also be made of the referral of the ruling of interim measures that was adopted by a

mercantile court, suspending the takeover formulated by Gas Natural S.D.G., S.A. of Endesa, S.A. shares and the execution of the contract of 5 September 2005 entered into between Gas Natural and Iberdrola, S.A.

#### **b) Green and White Papers on reparation of damages**

The Green Paper on “Damages actions for breach of the EC antitrust rules” was published by the European Commission in December 2005 and submitted to a public consultation period until 21 April 2006. The Competition Service is awaiting publication of the White Paper for 2007, which will specify important conclusions on the basis of the results of the consultation on the Green Paper, with a view to proposing a community regulation or directive in terms of civil claims for damages before national courts and tribunals for violations of Articles 81 and 82 of the EC.

<sup>23</sup> Notable in these rulings is the application of category exemption regulations 1984/1983 and 2790/1999, and the communication of “de minimis” agreements of the European Commission of 22-12-2001.

# VII. INTERNATIONAL ACTIVITY

## VII.1. European Union

### a) Participation in the EU regulatory process

Throughout 2006, the Council of the European Union continued negotiating the proposed Directive of the European Commission of January 2004 on interior market services with the aim of creating a single market for services in the European Union.

This negotiation received huge political impetus from the presidencies of the European Union until finally being approved by the Council on 11 December 2006. The Directive was published in the OJEU of 27 December and came into effect on the following day.

Since the start of the negotiation process, the Competition Service actively participated in the coordination working group constituted by the Secretary of State for the European Union (MAEYC), in which all Ministerial Departments were represented.

Presently, the process of transposing it is underway, the different member states should put into effect the legal, regulatory and administrative provisions needed to comply with the Directive by 28 December 2009. In the process of incorporation into Spanish internal law, the Competition Service is also participating in the working group created for this purpose, analysing the

extent to which the transposition will affect competition regulations.

It has also participated in the Competition Working Group in the Council of the European Union relating to the revision of Regulation (CEE) no. 4056/86 of the Council, of 22 December 1986, determining the forms of application of Articles 85 and 86 of the Treaty to maritime transport (maritime conferences) and which was finally repealed after the entry into effect on 18 October 2006 of Council Regulation 1419/2006, which includes short sea and tramp services in the scope of application of Regulation 1/2003. However, this new Regulation establishes a transitory period of two years, for which reason it will be applicable as of 18 October 2008.

### b) Meetings of Directors-General for Competition

Following the practice initiated in 2004, the European Commission convened a single annual meeting of Directors General of Competition, held in Brussels on 29 September 2006.

The main topics examined at the meeting were:

- The ECN (European Competition Network) Model Leniency Programme:

This model is not binding for the Competition Authorities, but their commitment to align their respective programmes to standards set out in the Model should be underlined.

In any event, each national programme may contemplate a more favourable approach towards leniency applicants (immunity or reduced fine) than those contained in the model.

The document does not create legal rights or gives rise to any legitimate expectations on the part of any undertaking.

With regard to Spanish regulations, the essential substantive requirements of the model relating to immunity and the reduction of fines have been inserted in the DCA. The procedural aspects will be regulated in the future regulations of development of the future Competition Act.

- The so-called direct settlement, a new instrument consisting of an accelerated (abbreviated) procedure for cartel cases.
- Green Paper on the judicial application of competition law:  
The European Commission informed on the contributions received after the presentation of the Green Paper on 19 December 2005.
- Revision of competition policy in relation to Article 82 after the presentation by the European Commission in June 2006 of the results of the public consultation regarding the draft directives on the application of Article 82 to exclusionary abuses.

- Two-thirds rule:

The document "Report on the functioning of the two-thirds rule in the merger regulation and related jurisdictional issues", drafted by the Group of Experts, was presented and which informed of the workings of the two-thirds rule during the 2001-2005 period in different member states, both in terms of its numerical importance and in terms of its scope, providing possible solutions to the problems detected in the present allocation of competences caused by the application of the two-thirds rule.

- Sectoral investigations:

The document drafted by the ECN Working Group, Transitional Issues (WGTI), on the cooperation of the ECN authorities in sector investigations and their being put into practice was presented. It also analysed the possibility of sharing the sector investigations —results, information, etc.— carried out by the different National Competition Authorities (NCA), to collaborate in the investigations of other NCAs and to conduct investigations jointly.

### c) Meetings of the ECN (European Competition Network)

Besides attending the plenary sessions convened, the Competition Service has actively participated in the following Working Groups and Subgroups of the ECN:

- Energy Working Group.

- Working Group on Transitional issues (subsequently called Cooperation issues).
- ECN Leniency Working Group.
- ECN Working Subgroup on Retail Banking and Payments.
- ECN Working Subgroup on Pharmaceutical Products.
- ECN Working Subgroup on Maritime Transport.
- ECN Working Subgroup on Professional Services.
- ECN Working Subgroup on the Stock Market.
- ECN Working Subgroup on Sports.

Due to their special relevance, the following shows the work carried out in 2006 in some of these groups:

- ***Subgroup on Retail Banking and Payments***

In 2006, the Service participated in three meetings of this Working Subgroup devoted to dealing with competition issues in the retail banking sector and, particularly, in the payment methods markets, with special reference to cards systems and to the start-up of the future Single European Payments Area (SEPA). It also attended the public presentation in July by the European Commission of the preliminary conclusions of its investigation on competition in the retail banking sector.

At the meeting held in March, the European Commission presented its Interim Report on the Payment Cards

Industry the aim of which is to analyse the state of competition in the card payment industry and which is complementary to another study into current accounts and other related services.

The principal conclusions drawn from this preliminary investigation highlight that it is a highly fragmented market in which there are significant price and profitability differences in the different member states.

Consumers benefit from these payment systems but it is the retailers who end up paying the bill for their cost.

The fragmentation is fundamentally due to the fact that the systems were created and organised in each member state through coordination and cooperation between banks at a national level.

The meeting of the group held in October debated the future creation of the Single European Payment Area (SEPA) and agreed to hold the first meeting of a Task Force reporting to this group and made up of a small number of member states. This Task Force will be responsible for studying the competition aspects that affect the future SEPA. Also presented were the results of the Payment Card Sector Inquiry and the Second Interim Report and the results of the consultation on current accounts and related services.

The first meeting of the Task Force responsible for studying the competition aspects that affect the future SEPA was held in November.

The aim of the meeting was to define the working programme to be carried out by this special group, establish its

timetable and distribute the tasks among the participating members.

The proposed working timetable to be carried out by the Task Force goes until May 2007, when it will present its report on the competition aspects that affect the SEPA.

In the share-out of subjects among the member delegations, Spain was put in charge of the credit transfers question.

- **Stock Market Subgroup**

The fourth meeting of this subgroup was held in June 2006, in which the European Commission presented the preliminary results of its work in the area of Securities Clearance and Settlement Systems in the EU, contained in its document «Competition in EU securities trading and post-trading» (24 May 2006), the aim of which is to achieve the liberalisation and integration of these systems so that they work efficiently, securely and with equality of access to all the operators in the market.

The preliminary conclusions have highlighted a number of aspects that hinder the application of the competition rules and that make a number of regulatory changes in these markets necessary to provide better access to their infrastructures.

- **Professional Services Subgroup**

Two meetings a year have been held, which have basically focused on the sharing of national proceedings as well as on the revision and reform actions of the national legislations to advocate competition.

We should also mention the attendance in Brussels at the Conference of 13 December, organised by the Finnish Presidency and the European Commission, on "The economic argument for the reform of the professional services".

- d) **Hearings and Advisory Committees on EC proceedings**

The Competition Service is entrusted with the task of monitoring the processing of the EU proceedings, both for anti-competitive conducts and concentration controls, cooperating with the European Commission on this point and representing the Spanish State at the Hearings and Advisory Committee prior to the adoption of decisions by the college of Commissioners.

Throughout 2006, there was abundant correspondence with the DG COMP in relation to matters dealt with by the National and Community Competition Authorities and to the investigations initiated by the European Commission in different sectors, such as that into the energy sector.

In 2006, the CS has continued to play an active role in the monitoring of these proceedings and has participated in the Hearings and Advisory Committees held, as can be seen from table 20.

It has also participated in various meetings or groups of experts in a number of subjects relating to mergers (two-thirds rule, non-horizontal mergers) or to anti-competitive conducts, such as the public conference organised by the European Commission



relating to Article 82 of the EC Treaty, after the public consultation period of its working document had ended.

In matters of state aid, we should highlight the participation at meetings, such as the one relating to the Regulation Project of the European Commission in application of Articles 87 and 88 of the EC Treaty to regional investment aid, and multilateral meetings with the member states, such as the one relating to the Community framework project on state aid for research and development and innovation or the attendance at the Advisory Committees for state aid, specifically, the one relating to the extension of one more year of the exemption regulations in matters of state aid, which expired in 2006.

**Table 20**  
**ATTENDANCE OF THE COMPETITION SERVICE AT HEARINGS AND ON ADVISORY COMMITTEES**

Merger control
136 Advisory Committee M.3796 Omya/Huber PCC
137 Advisory Committee M.3868 Dong/Elsam/Energi E2
138 Advisory Committee M.3975 Cargill/Degussa Food Ingredients
140 Advisory Committee M.4000 Inco/Falconbridge
Hearing of M.3796 Omya/Huber PCC
Hearing of M.4000 Inco/Falconbridge
Hearing of M.4009 CIM/BURG
140 Advisory Committee M.4000 Inco/Falconbridge
141 Advisory Committee M.3796 Omya/Huber
142 Advisory Committee M.3848 Sea Invest
144 Advisory Committee M4180 Gaz de France/Suez
147 Advisory Committee M.4209 Thule/Schneeketten

Anti-competitive practices
402 Advisory Committee Regulation 1617/93 Air Transport.
Hearing of case Fittings COMP/38.121
403 Advisory Committee case De Beers COMP/38.381
404 Advisory Committee case Liga UK COMP/38.173
405-406 Advisory Committee case Prokent/ Tomra COMP/38.113
407 Advisory Committee Repsol COMP/ 38.348
Hearing of case Microsoft COMP/37792
408 Advisory Committee case Hydrogen Peroxide COMP/38.620
409 Advisory Committee Communication for calculating fines
410-411 Advisory Committee case Methacrylates COMP/38.645
Hearing of Wanadoo/Telefónica COMP/ 38.784
Hearing of case CISAC
Hearing of Butadieno COMP/38.637 y 38.638
412 Advisory Committee case Microsoft COMP/37.792
Hearing of case Hard Haberdashery COMP/ 39.168
Hearing of case Gas Insulated COMP/38.899
413 Advisory Committee Regulation Air Transport
414 Advisory Committee case Bitumen NL COMP/38.456
415 Advisory Committee case Fittings COMP/38.121
Hearing of case Alloy Surcharge COMP/39.234
416 Advisory Committee case Cannes Agreement COMP/38.681
417 Advisory Committee case Steal Bearn COMP/38.907
Hearing of Groupement de Cartes Bancaires COMP/38.606
Hearing of case Payment Card System COMP/38.550/34.579/36.518
418 Advisory Committee case Batyer COMP/ 38.638
419 Advisory Committee of Leniency
Hearing of case Eon Energie AG
420 Advisory Committee case Gas Insulated Switchgear COMP/38.899
421 Advisory Committee case Alloy Surcharge COMP/39.234
Hearing of case Bitume Spain COMP/38.710

### e) ECA Meetings (European Competition Authorities)

The ECA is an informal forum where Competition Authorities of the European Economic Space can meet to discuss the main topics of common interest and strengthen cooperation.

In 2006, two working groups were active (mergers and air traffic), as was the financial services Subgroup.

In addition, The General Directors of the ECA hold an annual meeting, which for 2006 took place in Nice in May, where the work carried out by the various groups and subgroups was valued highly positively, as was its contribution as an informal forum supporting the National Competition Authorities and the European Commission itself, through the creation of a network of contacts.

At the Nice meeting, besides informing the European Commission on the latest actions carried out in the Community arena, the following topics were dealt with:

- Financial Services: A report was presented which, essentially focusing on payment methods, proposes certain actions to the European Commission. It was decided to publish it on the website of the National Competition Authorities<sup>24</sup>.
- Air Traffic: The report on code sharing was presented and it was decided to publish the joint declaration on slots and code sharing on the website of the National Competition Authorities<sup>25</sup>.

<sup>24</sup> Available on the Competition Service website: <http://www.dgdc.meh.es/AmbitoInternacionalECA.htm>

<sup>25</sup> Also available on the Competition Service website.

- Penalties: The economic aspect of penalties was analysed, as were the European Commission guidelines on penalties.

As regards the future working programme, it was decided to pass the financial services group to the ECN, keeping the air transport group to update the work already carried out. A new penalties group was created, as was another relating to the evaluation criteria of the work carried out by the National Competition Authorities.

## VII.2. OECD

In 2006, the Competition Service participated in the meetings of the Competition Committee (CC) and its working groups on Regulation and Competition (WP2) and Cooperation and Application of Legislation (WP3) and in Trade and Competition Joint Group meetings, held at the Paris headquarters of the OECD.

It also participated in the meetings of the 2nd World Trade and Competition Forum, which was held in Paris in February 2006.

### a) Competition Committee (CC), WP2 and WP3

As in previous years, the Competition Committee, WP2 and WP3 staged three meetings in February, June and October respectively. The main points on the agenda were the round tables on specific issues and an examination of competition policy in the member countries.

During the Round Tables, starting with the Background Paper of the Secretariat



and contributions from the Delegations, the following subjects of interest were discussed:

- Access to essential transport infrastructures.
- Private actions in competition law: position of the indirect buyer, transfer of the damage and definition and calculation of damages.
- Competition and the efficient use of payment cards.
- Private actions in competition law: collective/class actions and relationship between public and private enforcement.
- Conditions and penalties in cases of abuse of a dominant position.
- Environmental legislation and competition.
- Competition and regulation in retail banking services.
- Applications for negotiation and agreements in cases of cartels.
- Issues relating to evidence in merger control.
- Competition, patents and innovation.
- Auction markets.

Examining the competition policy (Peer Reviews) of the member countries is another of the most relevant aspects of the activity of the groups in question.

It is a control system to which the countries voluntarily submit to benefit from the positive effects derived from this critical examination.

Analyses are carried out under the supervision of two examining countries

and are based on a document drafted by the Secretariat.

The examiners pose questions to the country under examination, the delegations have the chance to intervene and the process ends with final recommendations that are offered to the country under examination.

Throughout 2006, Sweden and Korea were examined, with Spain acting on this occasion as examiner country of Sweden, together with Denmark.

In addition, Spain sent its annual Competition Policy Report for 2005 and presented it orally (the reports are sent annually but are only presented orally every two).

Other relevant topics discussed by the Competition Committee and its working groups in 2006 were:

- Drafting a Manual that compiles the guidelines for introducing the competition element in the analysis of the regulatory impact for its use by the member countries.
- The establishment of priorities for the Working Programme.
- The 2007-2008 Budget.

#### **b) Joint Group on Trade and Competition**

The mandate of this Working Group, allocated by the Competition and Trade Committee, is focused primarily on dealing with the topics set out in the working agenda with regard to competition policies approved by the Fourth WTO Ministerial Conference, held in Doha on 14 November 2001 and confirmed in the Cancún

Declaration of 2003, in which the renewal of the mandate of the Group for a period of two years, until May 2006, was agreed. The mandate focused the work on the analysis of regional trade agreements that include competition provisions as an instrument to raise the awareness of the economic benefits of an efficient competition policy among developing countries.

Therefore, the planned topics in the working agenda are those described in Paragraph 25 of the above Declaration of Doha: Fundamental WTO principles, hard core cartels, voluntary cooperation in competition legislation, technical assistance and capacity building in developing countries.

After the group's mandate ended in May 2006, the renewal for a second time of the working group's mandate, until May 2008, was discussed but was finally not approved as one delegation opposed the majority, which supported renewal.

#### **c) 2nd Global forum on Trade and Competition**

The second edition of this Forum was organised on 10 February with the aim of disseminating the work carried out over the last two years by the Joint Group and to discuss the topics of concern to the developing countries in this arena.

It was structured in three sessions: in the first one, three cases were presented which permitted an analysis of practical situations in which the trade and competition aspects appeared to be related and affected the competitiveness of exports in

developing countries; in the second, three experts made comments on the study entitled "Competition and the millennium development goals: new 'evidence' from official sources", highlighting the positive relationship existing between advocating a competition policy and achieving three of the most important Millennium development objectives (easing poverty, reducing famine and facilitating the benefits of the new technologies); and in the third, three delegations presented the competition legislation of regional organisations and the modes of cooperation between the national and regional authorities in these frameworks (CARICOM, COMESA and Andean Community).

#### **d) Sixth Global Forum on Competition (GFC)**

The sixth meeting of the GFC was held on 8 and 9 February. The forum is part of a broader OECD activity initiative involving non-member countries and has a clear focus on the relationship between competition and development.

The agenda included roundtables featuring debate on the introduction of competition in the awarding of public concessions and on the prosecution of cartels without direct evidence of agreement. An examination was also conducted into Chinese Taipei's competition law and policy.

### **VII.3. ICN (*International Competition Network*)**

The International Competition Network (ICN) is a voluntary forum of authorities

which includes around ninety competition agencies from countries with different levels of development.

It was created in October 2001 to improve the application of the competition policy in the global market in order to benefit consumers and companies.

It carries out its activity through working groups which are in turn divided into subgroups that specialise in different areas of competition.

At present, the ICN carries out its work through:

— Three groups dedicated to operational issues, since, compared with other international organisations, it does not have a secretariat or its own permanent facilities, operating the ICN through its website and regular meetings of the Steering Group:

- Funding: Its aim is to secure funding from multilateral donors, technical assistance institutions and non profit-making institutions to foster participation by competition agencies in the work of the ICN.
- Members: This is concerned with promoting and facilitating access by competition agencies to the ICN.
- Operational Framework: This responds to the need to establish a minimum infrastructure responsible for coordinating the work of the different Working Groups, for the preparation of the annual conference, for providing continuity between

management changes and for taking care of the financial needs of the ICN to cover the costs of its growing activities.

— Other working groups that are responsible for studying competition matters are:

- Competition Policy Implementation (Subgroups: Effectiveness of Technical Assistance Projects, Business Outreach, and Competition and the Judicial Arena).
- Cartels (Subgroups: General Framework, with the mandate of drafting recommended practices and guidelines on transparency and non-discrimination in the enforcement of anti-cartel regulations, and Enforcement Techniques, with the aim of helping the competition agencies in investigation techniques in the fight against cartels).
- Mergers, the aim of which is to promote the convergence of merger control practices and procedures and to reduce the cost of multijurisdictional merger reviews. It examines the procedural aspects of merger control, which includes the legal matters, timescales and scope of the initial notification. There are also two Subgroups: Notification and Procedures, and Merger Investigation and Analysis.
- Anti-trust Enforcement in Regulated Sectors, created in 2003 with the aim of exploring the practical and legal aspects of the relationships between

competition agencies and the sector regulators. It consists of two Subgroups: Banking Sector and Interrelations between Antitrust and Regulatory Authorities.

- Telecommunications, created in 2005, with a one-year mandate to draft a report on the sector.

In 2006, the Competition Service actively participated in almost all the working groups concerned with the study of competition subjects, completing a number of forms that comprise the starting point of these groups (such as the interaction form between the competition agencies and the judicial bodies, that of merger notifications and procedures, and the fight against cartel form), as well as the studies conducted.

Consequently, progress has been made in the report on the telecommunications sector of the corresponding group.

Of special note is the activity carried out in the arena of the Mergers Subgroups, having participated at the meeting held by the Notifications and Procedures Subgroup in Washington, on 27 and 28 March, and in which the following questions were analysed: notification thresholds, case initiation, periods and timescales of the proceedings, legality, transparency and confidentiality of the proceedings, and questions of the application of merger control.

As is the custom, the Competition Service participated in the 5th Annual ICN Conference which was held in Cape Town in May 2006, at which

several reports were approved, the results of the questionnaires completed were presented and the creation of a new group, relating to unilateral conducts, was approved.

#### VII.4. UNCTAD

Within the framework of the conclusions approved by the Intergovernmental Group of Experts on Competition Law and Policy, in its seventh period of sessions held from 31 October to 2 November 2006 in Geneva, the Competition Service participated in the revision and update of the working documents drafted by the UNCTAD for this session, specifically those relating to:

- Description of the bilateral or multilateral technical cooperation activities provided by the member states.
- The updated texts of the comments made by Spain to the Model Law on Competition.
- Competition cases resolved that involve more than one country.
- Criteria for evaluating the effectiveness of the authorities responsible for competition with the aim of improving the application of the Set of principles and equitable rules agreed multilaterally for the control of anti-competitive practices of the UNCTAD.

#### VII.5. Bilateral cooperation

As in previous years, there was close bilateral contact with EU member

countries, both in the field of restrictive conducts and mergers, fundamentally with the aim of exchanging experiences and approaches on a range of issues.

In terms of the bilateral relations with competition authorities from non-EU members, the visit by a Delegation of the Costa Rican Competition Authority (COPROCOM) should be highlighted. On this occasion, collaboration was embodied in the provision of technical assistance regarding competition by civil servants from the Competition Service.

### **VII.6. Latin American Competition Forum**

The fifth edition of the Iberoamerican School, whose headquarters and financing is the responsibility of the Spanish Competition Court, took place within the framework of the Latin American Competition Forum in November.

The Competition Service took part in the School's training activities.

### **VII.7. Technical assistance**

Throughout 2006, the Competition Service continued to collaborate on the development of technical assistance parallel to the one employed in the bilateral relations arena and in the context of the Latin American Forum.

In particular, the participation of civil servants from the Service in the Regional Programme for the promotion of instruments and mechanisms of the EU Euro-Mediterranean Market (EUROMED MARKET) should be highlighted, specifically as speakers during the fourth phase of the Regional Competition Seminar in the associated Euro-Mediterranean countries, held in Madrid in December, organised by the Institute of Public Administration-European Centre for the Regions (EIPA-ECR), as part of the European Commission's MEDA Programme.



# VIII. ORGANIZATION AND HUMAN RESOURCES. OTHER ACTIVITIES

## VIII.1. Administrative organisation

Article 4.1 of Royal Decree 562/2004, of 19 April 2004, whereby the basic organic structure of the Ministerial Departments is established, stipulates that, among other management bodies, the Directorate-General for Competition, which undertakes all the functions assigned to the Competition Service under the Competition Act, reports to the Secretariat of State for the Economy.

The Director-General of Competition is thus also the Director of the Competition Service.

The Director-General for Competition also chairs the Competition Council, in accordance with the provisions of Act 1/2002, of 21 February 2002, regarding Coordination of the State and Autonomous Communities' Competences on Competition Defence.

The Directorate-General of Competition is divided into three Deputy Directorate-Generals plus a support unit for the Directorate-General:

- Deputy Directorate-General for Mergers
- Deputy Directorate-General for Anti-Competitive Conducts
- Deputy Directorate-General for Legal Affairs and Institutional Relations

(this unit, apart from the reporting functions on regulatory projects and cooperation with other national and international bodies, monitors State Aid, both national and EU).

The organisation chart in chart 15 shows the institutional structure of the Directorate-General for Competition.

## VIII.2. Human resources

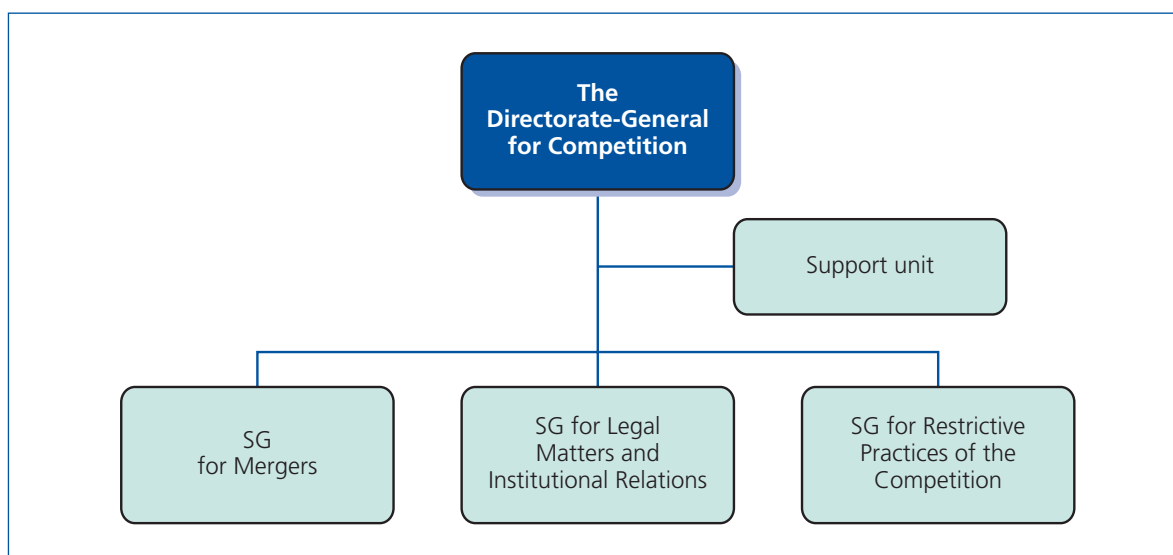
In 2001, with the creation of the Deputy Directorate-General for Legal Affairs and Institutional Relations and subsequently, in 2002, the Directorate-General Support Unit, there was a rise in the staff levels at the Directorate-General as a whole.

These levels have remained constant in recent years, although modifications have occurred in terms of the internal distribution of civil servant groups, with a slight rise in the number of work posts for competition case handlers, in Groups A and B, to the detriment of administrative and auxiliary staff, in Groups C and D, respectively.

The budgetary provision of the Directorate-General for the 2006 financial year was 2,890.07 thousand euros, of which 89% correspond to staffing costs.

In terms of the proportion of men and women, 74% of the staff of the

**Chart 15**  
**ORGANISATION CHART OF THE D.G. FOR COMPETITION**



Directorate-General for Competition was women.

The average time that staff work for the Directorate-General for Competition is 7 years, and the average age of the Directorate-General for Competition civil servants is 44.

Table 21 shows the distribution by civil servant groups at the Directorate-General for Competition by effectively occupied positions in 2006, indicating the civil servants attached by Groups in each of the different Units that comprise the Directorate-General.

**Table 21**  
**OCCUPANCY OF COMPETITION SERVICE POSTS BY GROUP**

Group	D.G. and Support Unit	Deputy Director-General for Mergers	Deputy Director-General for Anti-competitive Conducts	Deputy Director-General for Legal affairs and Institutional Relations	Total
A	4	7	9	5	25
B	5	7	15	3	30
C	1	1	5	2	9
D	5	6	8	3	22
<b>Total</b>	<b>15</b>	<b>21</b>	<b>37</b>	<b>13</b>	<b>86</b>

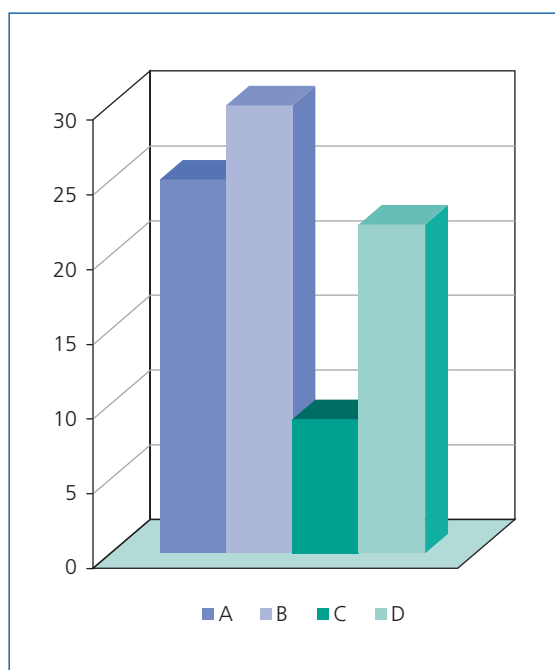


As chart 16 shows, the civil servants in Groups A and B are particularly important, with 63.5% of the positions effectively occupied.

Most specialist staff at the Directorate-General have financial or legal training, or both (as is the case of six civil servants), although there are also graduates from other disciplines.

In particular, without taking into account the administrative and auxiliary staff, the Directorate-General has 36 economists, 13 lawyers and a further 6 graduates (IT, Pharmacy, Chemical Science, Environmental Science, Political Science and Biology Engineers, etc.), who work in the different units that comprise the Directorate-General, as indicated in table 22.

**Chart 16**  
**OCCUPANCY OF D.G. POSTS**  
**BY GROUPS**



### VIII.3. Training activities

In 2006, the Service participated in numerous seminars, conferences and courses. It also continued to participate in the DG COMP civil servant exchange programme of the European Commission, which consists of civil servants from the Service joining the European Commission DG COMP for a month, as well as receiving training in Community Competition Law.

With regard to the training received by Directorate-General civil servants, this has concentrated, on the one hand, on the participation in training programmes offered by the Ministry of Economy and Finance for its staff, as well as on those run by the Institute for Fiscal Studies and the National Institute of Public Administration and, on the other hand, specific courses on competition or closely linked to activities carried out at this Directorate-General and which are run by universities, foundations or postgraduate institutes (Universidad Internacional Menéndez Pelayo, Instituto de Empresa, Universidad Carlos III, Fundación Rafael del Pino, Fundación ICO-Nebrija, etc.), in addition to other training centres or international forums (European Institute of Public Administration, Academy of European Law, European State Law Institute, Florence School of Regulation, International Bar Association, American Bar Association, etc.).

In specific terms, a total of 25 courses have been taken, with a global attendance of 95.

**Table 22**  
**PROFESSIONAL TRAINING OF THE COMPETITION SERVICE**

	D.G. and Support Unit	Deputy Director-General for Mergers	Deputy Director-General for Anti-competitive Conducts	Deputy Director-General for Legal affairs and Institutional Relations	Total
Economic training	2	11	20	3	36
Legal training	3	2	4	4	13
Intermediate degree holders	2	3	0	1	6
<b>Total</b>	<b>7</b>	<b>16</b>	<b>24</b>	<b>8</b>	<b>55</b>

Investment in training remained steady over the last few years, primarily in terms of strategic sectors of the economy.

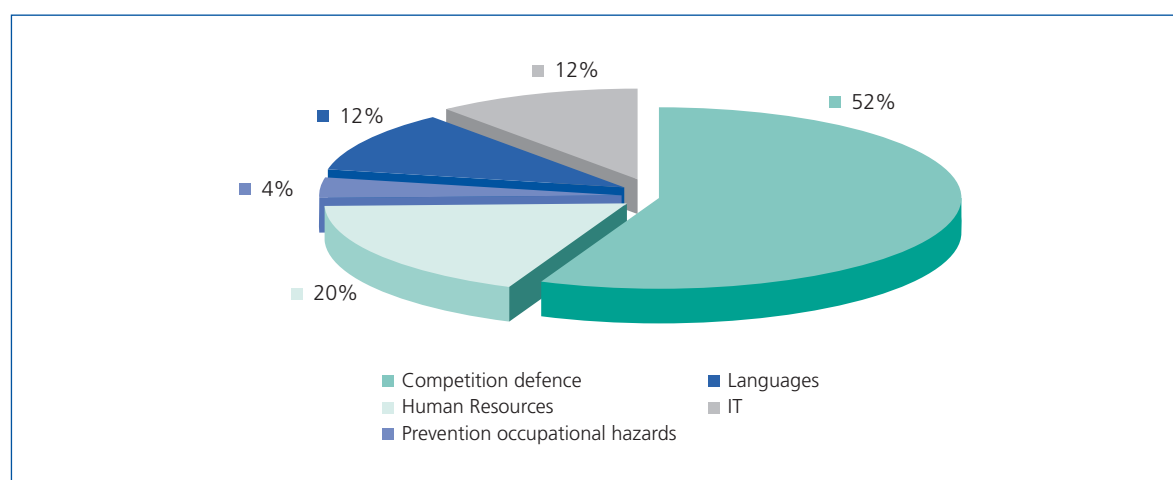
Chart 17 shows the subjects covered by the main training activities in 2006.

#### VIII.4. Management and quality indicators

In application of the provisions of Royal Decree 951/2005, of 29 July

2005, whereby the general framework is established for improvements to quality in the General State Administration, and continuing with the evaluation systems in the arena of the Ministry of Economy and Finance, the Directorate-General for Competition has established a series of management and quality indicators, as well as activity indicators, the aim of which is the constant and permanent improvement to the provision of public services.

**Chart 17**  
**COURSES BY TRAINING AREAS (2006)**



The aim of these indicators is to contribute to the achievement of greater transparency, flexibility and quality in the work carried out.

For this, the indicators not only reflect quantitative elements of the management conducted by the different units (indicators for the average time for processing procedures and queries), but also qualitative aspects that validate the level of achievement of the function allocated to this Directorate-General, such as the number of decisions or rulings adopted by the Competition Service that have subsequently been confirmed, after having been appealed against before the Competition Court or by process of law (National Criminal Court, Supreme Court), inspections conducted, cautionary measures adopted and safeguarding actions.

All this not only provides information about the periods in which a merger operation is being analysed or resolved in the arena of anti-competitive conducts, but it also helps detect aspects of management which have room for improvement.

Therefore, following efficacy and efficiency criteria, the following management indicators have been evaluated, which calculate the average time needed for the following activities:

1. Admission to processing or disposal of complaints submitted in the arena of anti-competitive conducts.
2. Referral of the anti-competitive conducts case report-proposal by the Service to the Competition Court (from the initiation date until

the above ruling report-proposal is referred).

3. Dismissal agreement by the Service (from the initiation date until the adoption of the agreement).
4. Reply to prior queries on concentration operations.
5. First stage merger operations ruling.

It should be stressed that 2006 saw a reduction in the average time for dismissing official complaints and adopting the dismissal agreements regarding anti-competitive conducts, as well as the average response time for prior queries on mergers.

With regard to the quality indicators, these provide information about the activity carried out by the Competition Service in terms of the actions conducted and their adaptation to the established criteria, where appropriate, by jurisdictional bodies.

For this, the percentage of reports proposed have been evaluated with a declaration of restrictive practices that have been validated by Competition Court rulings or the percentage of appeals, be it before the Competition Court or by process of law, before the Central Court or Supreme Court, in which the criterion of the Competition has been confirmed, both in the arena of anti-competitive conducts and in notified merger operations control.

Other actions were also evaluated, such as inspections conducted by the Competition Service and, as an element for negative evaluation, as the case may be, proceedings that have expired.

**Table 23**  
**MANAGEMENT INDICATOR OF THE COMPETITION SERVICE**

	2003	2004	2005	2006
1. Admission of complaints to processing (AP) or to disposal (AD) for official complaints submitted for anti-competitive conducts	180 days (AT) and 256 days (AR)	160 days (AT) and 245 days (AR)	93 days (AT) and 198 days (AR)	159 days (AT) and 175 days (AR)
2. Referral of report-proposal of the Competition Service to the Competition court (from initiation until proposed ruling)	365 days	313 days	215 days	310 days
3. Agreement on dismissal of the Competition Service (from initiation until agreement is adopted)	331 days	288 days	352 days	278 days
4. Reply to prior queries on merger operations	15 days	41 days	24 days	13 days
5. Ruling of first stage merger operation notifications	30 days	33 days	29 days	34 days

### VIII.5. Other activities

In 2006, the Service attended a number of meetings held by the Technical Secretariat General, including the plenary sessions of the Publications Advisory Commission, collaborating on the development of the Ministry of Economy and Finance Publishing programme, and the meeting of the Administrative Documents Qualifying Commission.

### VIII.6. Website: <http://www.dgdc.meh.es/>

The process of constantly updating and reviewing the Service's website continued in 2006, given that it is the instrument through which the public gets to know about the regulation, criteria and execution of Competition, giving publicity to regulatory projects or studies into Competition.

**Cuadro 24**  
**QUALITY INDICATORS OF THE COMPETITON SERVICE**

	2003	2004	2005	2006
1. Percentage of reports proposed with a declaration of restrictive practices confirmed by the Competition Court	65%	54%	85%	66.67%(1)
2. Percentage of appeals rejected by the Competition Court in relation to rulings adopted by the Competition Service in the arena of anti-competitive conducts	85%	80%	78%	92%(2)
3. Percentage of appeals in which the Central Court confirms the criterion of the Competition Service	90%	89%	85%	93%
4. Percentage of administrative appeals and appeals for judicial review rejected in the arena of merger control	93%	100%	86%	100%(3)
5. No. companies where an inspection has been conducted	3	4	6	15
6. No. expired proceedings	0	1	0	0

- (1) 66.67% of the 2006 financial year corresponds to the 6 proceedings on which the Competition Court passed rulings, on the date when this Report was drafted, of the total 15 proceedings lodged before the Competition Court in 2006.
- (2) 92% of the 2006 financial year corresponds to the 11 appeals rejected to the date when this Report was drafted of the total 19 appeals disposed and dismissed informed in 2006.
- (3) 100% of the 2006 financial year corresponds to the sole appeal on which a ruling was passed on the date when this report was drafted of the total 7 lodged in 2006.

Consequently, through its website, the Service has complied with the public consultation process by creating projects for the amendment of regulations. An example of this is, first, the publication of the White Paper for the reform of the Competition System (with the comments made), followed by the Draft Bill of the Competition Act and the observations presented, and, finally, the Draft Act referred by the Council of Ministers to the Spanish Parliament.

Other publications of interest include the Conventional termination Agreement of Payment Methods

Systems, the reports on notified concentration operations, the Agreements of the Council of Ministers on concentration control and the publication since 2004 of a weekly newsletter concerning matters relating to Competition.

In addition, the Service's website provides forms or documents, such as those for lodging complaints before the Service for prohibited conducts, requesting individual authorisation, notifying of an economic concentration or copies for the self-assessment of the fee by analysis and study into

concentration operations, also authorising online payment of this fee.

Table 25 reflects the general activity of this Website, as well as the average number of visitors and pages visited a day, and chart 18 shows the evolution of the number of visitors to the Service’s website throughout the year, broken down into months.

Chart 19 identifies the most visited pages on the Service’s website in 2006: first, its home page, followed by the page relating to merger operation

proceedings notified to the Service, the page concerning decisions and rulings and the page on legislation.

Chart 20 shows the most frequently downloaded files from the Competition Service’s website in 2006.

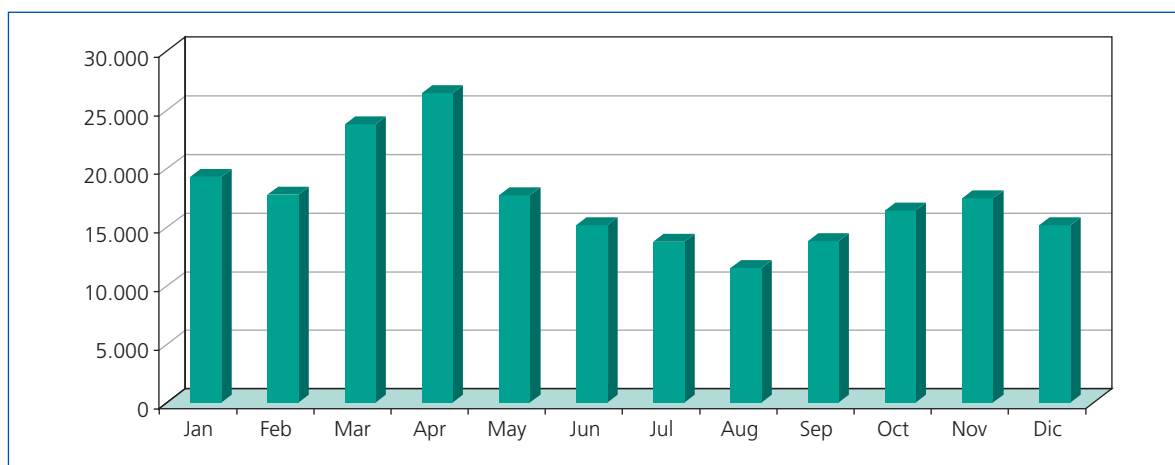
In relation to the files most frequently downloaded from this website, the top positions were held by certain reports on concentration operations, such as the Gas Natural/Endesa operation. The most visited also include the PLDC and the Annual Reports.

**Table 25**  
**ACTIVITY SUMMARY. YEAR 2006**

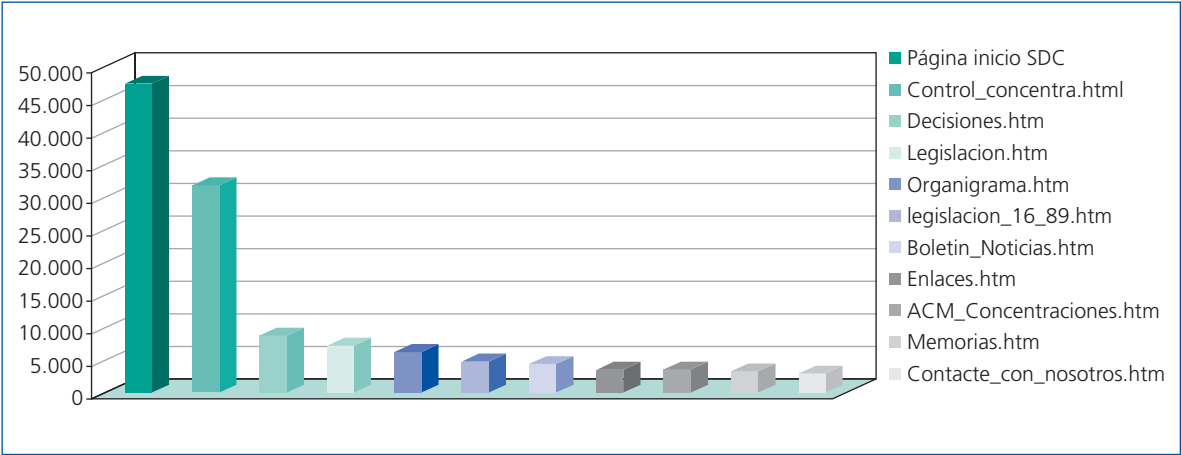
Total number of pages visited a year	200.549
Average number of pages visited a day	546
Average number of pages visited per visitor	0.96
Total visitors a year	207.890
Average number of visitors a day	566
Day of the week with highest level of activity	Tuesday
Day of the year with the highest level of activity	24 October 2006

SOURCE: Competition Service.

**Chart 18**  
**VISITORS IN 2006 TO THE COMPETITION SERVICE WEBSITE BY MONTH**



**Chart 19  
MOST VISITED SITES. 2006**



**Chart 20  
MOST DOWNLOADED FILES. 2006**

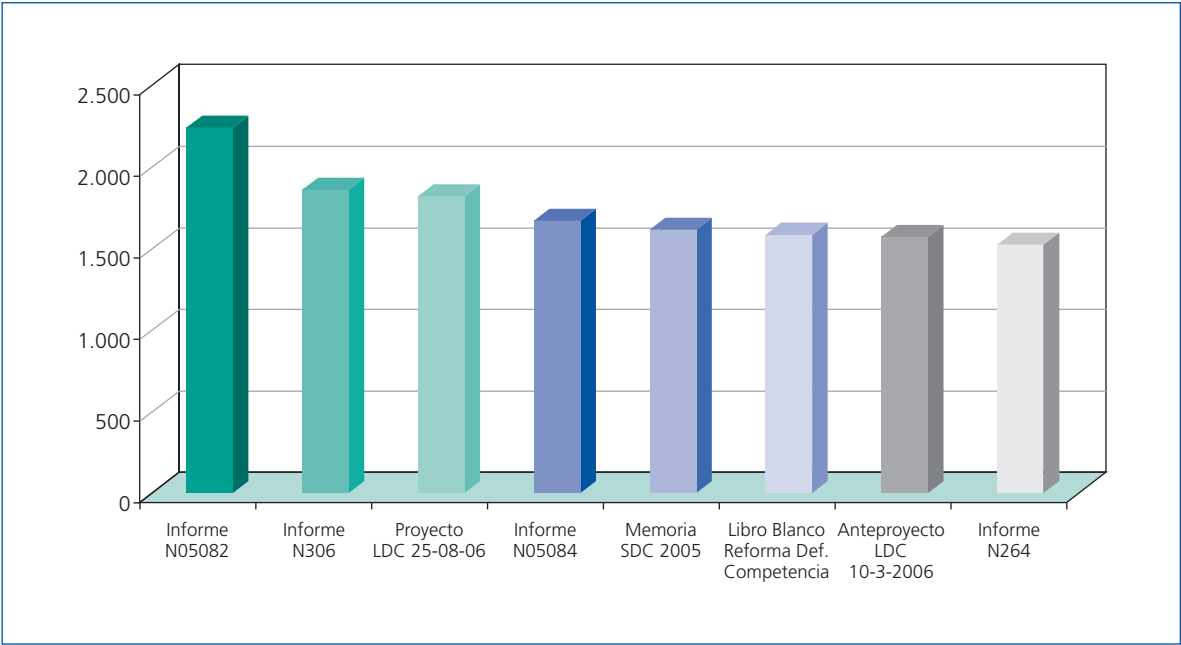
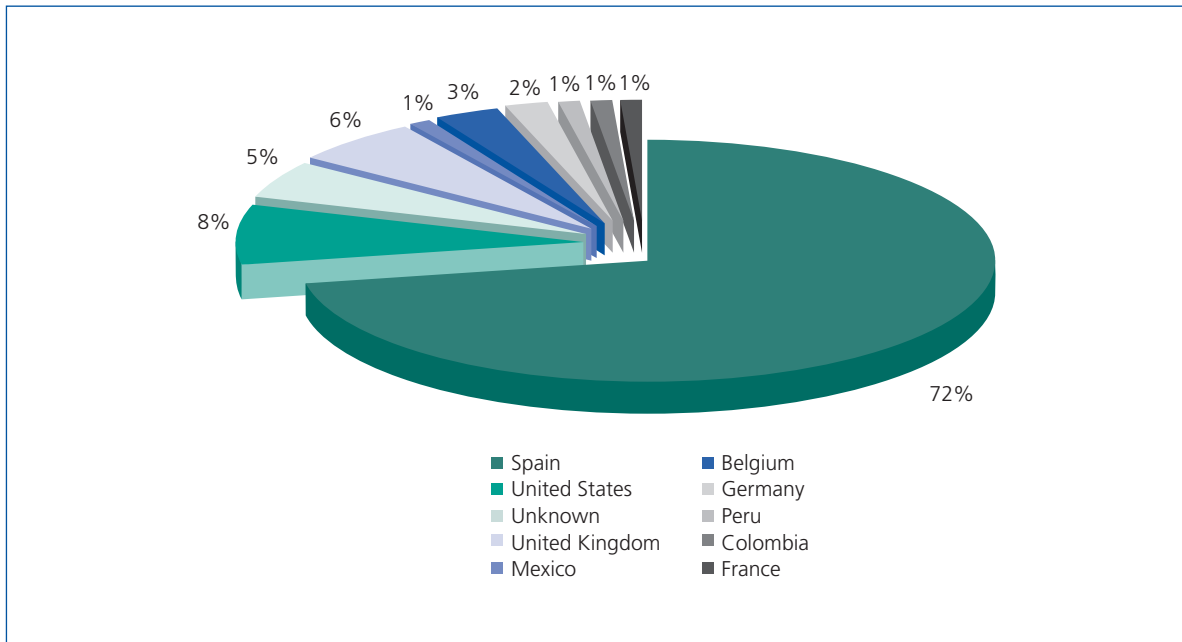


Chart 21 refers to the geographical origin of the users who most visited the Competition Service’s website, classified by country.

Unlike last year, when the United States was in first position, Spain has become

the most active visiting country, followed at a great distance by the United States and Latin American countries. This year also includes, among the 10 most active countries, users from European countries, such as the United Kingdom, Belgium, Germany and France.

**Chart 21**  
**MOST ACTIVE VISITING COUNTRIES**





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