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COMPETITION ACT 16/1989 of 17th July*

("Official State Gazette" No. 170, of 18th July 1989)

(Non-official consolidated text)

EXPLANATORY STATEMENT

Competition, as the guiding principle of any market economy, is an inseparable element in our society's model of economic organisation. In the sphere of the individual liberties, it is the first and foremost way in which corporate liberty is exercised and manifested. Therefore, in accordance with the requirements of the general economy and if needs be, of planning, defence of competition must be conceived as a mandate for the public authorities, directly related to article 38 of the Constitution.

The present Act was drawn up to meet this specific objective: to ensure the existence of sufficient competition and protect it against any attack that is contrary to the public interest. It is compatible with the other laws that regulate the market according to other legal or economic requirements, be they public or private.

The Act is built upon the solid pillars of experience. On the one hand, it is inspired by the community regulations on competition policy, which have played a transcendental role in creating and operating the common market. On the other hand, this Act is born with the purpose of rectifying the faults that thwarted the full implementation of Act 110/1963, of 20th July, on the Suppression of Restrictive Practices in Competition, which is hereby repealed.

Under the first title, "Free competition", the first chapter, "Restrictive or abusive agreements and practices" lays down a system for flexible control of the agreements that limit competition on the domestic market, prohibiting the abuse of economic power and unilateral conduct that may distort competition by disloyal means. The second chapter, "Economic concentrations", establishes a system to control the concentrations that might alter the structure of the national market to the detriment of the public interest, due to the importance and effects of such an event. The third chapter, "State aids", establishes a system for analysing them according to the criteria of

* This text has been amended with the standing legal provisions regarding the defence of competition, including the change that was incorporated by R.D.-Law 2/2003, of 25th April ("Official State Gazette" No. 100 of 26th April), which changed the article 16.3 in Competition Act 16/1989, of 17th July, ("Official State Gazette" No. 170 of 18th July)

competition and if necessary, for preventing their undesirable effects from the perspective of the general interest.

The application of the Act, which aims to vouch for the constitutional economic order in the market economy with a view to defending the public interests, is entrusted in the second title to the following administrative bodies: The Competition Court (*Tribunal de Defensa de la Competencia*), with the functions of legal ruling and in some cases, proposals, and the Competition Service (*Servicio de Defensa de la Competencia*), in charge of instructing the proceedings. The latter shall be given special proceedings status, both due to the essential complexity of the issue and due to the need to provide the system with the necessary independence from the active Administration, without prejudice to legal control over its activities.

The applicable procedure, described in the third title, abides by the principles of economy, promptness and efficiency and guarantees the rights of defence of the interested parties. It includes the special proceedings required by its very nature, envisaging in some cases the intervention of the Autonomous Communities and the Council of Consumer Associations.

Finally, a sanctionary regime is laid down to ensure compliance with the formal and substantive aspects of the Act.

TITLE I

Free competition

CHAPTER I

Restrictive or abusive agreements and practices

SECTION 1

Prohibited and authorised conduct.

Article 1. Prohibited Conduct.

1. Any collective agreement, decision or recommendation or any concerted or consciously parallel practice aimed at producing or enabling the effect of impeding, restricting or distorting competition in all or any part of the domestic market, are prohibited, particularly those which:

a) Directly or indirectly fix prices or other trading or service conditions.

b) Limit or control production, distribution, technical development or investment.

c) Share markets or sources of supply.

d) Apply dissimilar conditions to equivalent transactions in commercial or Service relations, thereby placing some competitors at a competitive disadvantage.

e) Make the conclusion of contracts subject to the acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Such agreements, decisions and recommendations as are prohibited pursuant to item 1 and not contemplated in the exemptions foreseen in the present Act shall be automatically void.

3. The competition defence bodies may decide not to initiate or to stay the proceedings foreseen in this Act in the case of conduct whose relative unimportance prevents it from having a significant effect on competition.

Article 2. Legally Authorised Conduct.

1. Without prejudice to the application of community provisions on the matter of defence of competition, the prohibitions in article 1 shall not be applied to such agreements, decisions, recommendations and practices as result from the application of a law.

On the contrary, they shall be applicable to the situations of restricted competition that are derived from the exercise of other administrative powers or that are caused by the action of the public authorities or public companies without such legal protection.

2. The Competition Court may formulate a motivated proposal to the Government, through the Ministry of Economy, requesting it to adopt or, as the case may be, urge the competent public authority to modify or suppress the restricted competition situations that have been established according to the legal regulations.

Article 3. Authorised Cases.

1. Such agreements, decisions, recommendations and practices as referred to in Article 1, or categories of them, which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress may be authorised, as long as they:

- a) Allow consumers or users a fair share of the resulting benefit.
- b) Do not impose on the undertakings concerned restrictions that are not indispensable to the attainment of these objectives;
- c) Do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

2. Similarly, agreements, decisions, recommendations and practices as referred to in Article 1, or categories of them, inasmuch as they are justified by the general economic situation and the public interest, may be authorised, if they:

- a) Aim to defend and promote exports, as long as they do not alter competition in the internal market and are compatible with the obligations resulting from the international Agreements that have been ratified by Spain, or
- b) Lead to a sufficiently important increase in the social and economic level in underprivileged areas or sectors, or
- c) Are relatively unimportant and unable to exert a significant effect on competition.

Article 4. Individual Authorisations from the Court.

1. The Competition Court may authorise the agreements, decisions, recommendations and practices referred to in Article 1, in the cases and according to the requirements foreseen in Article 3.

2. The Court Authorisation shall determine the date after which it shall enter into force, whereas this date may not be prior to the request for such authorisation. Similarly, it shall determine the period of time for which the authorisation is granted and may lay down modifications, conditions or obligations, following consultation with the undertakings involved and the Competition Service during a common term of ten days.

3. The authorisation shall be renewed at the request of the interested parties if the Court deems that the circumstances that motivated the authorisation are still present.

The authorisation may be amended or repealed if there is a fundamental change in the circumstances that were taken into account when it was granted.

The authorisation may also be repealed if the beneficiaries fail to comply with the conditions or obligations set down by the Court or if it is proven that the concession was based on relevant data provided in an incomplete or inaccurate manner by the parties.

In all such cases, the interested parties and the Service shall be summoned for mandatory hearings.

4. If a period of three months elapses after the request for the authorisation of agreements, decisions, recommendations or practices and the Court has not given notice as to any decision in this regard, the participant undertakings may proceed to provisional application. If the agreements are not authorised by the Court, the latter shall determine in its resolution the date after which such provisional application shall cease, but no retroactive effects may be produced regarding the agreement notified by the period of provisional application.

Article 5. Block exemptions.

1. The Government may draw up Exemption Regulations, in which preparation the Competition Court must issue a mandatory report, to authorise the categories of agreements, decisions, recommendations, concerted or consciously parallel practices foreseen in Article 3.1, when:

a) Only two or more undertakings are participating and imposing restrictions in the distribution and/or supply of certain goods or Services for sale or resale or regarding the acquisition or use of industrial or intellectual property rights, or secret industrial or commercial knowledge, or

b) The only objective is the preparation and uniform application of standards or types, or specialisation in manufacturing certain products, or joint research and development, or

c) The objective or effect is to increase the plausibility and competitiveness of the Undertakings, especially in the case of small and medium size undertakings.

2. Similarly, the Government may draw up Exemption Regulations, in which the Competition Court must issue a mandatory report, to authorise the categories of agreements, decisions, recommendations and practices referred to in Article 3.2.

Article 6. Abuse of dominant position.

1. Abusive exploitation by one or more undertakings is prohibited, namely the abusive use:

a) Of a dominant position in all or part of the domestic market.

b) Of the situation of economic dependence customer or supplier companies may be in, if they do not have an equivalent alternative to carry out their activities. This shall be presumed to be the case when a supplier must grant its customer other additional benefits as well as the usual discounts on a regular basis, which are not granted to similar purchasers.

2. Such abuse may consist, specifically, of:

a) Directly or indirectly imposing unfair prices or other unfair trading or service conditions.

b) Limiting production, distribution or technical development, to the unjustified prejudice of Undertakings or consumers.

c) Unjustifiably refusing to meet the demands to purchase products or Services.

d) Applying dissimilar conditions to equivalent transactions in trading or service relations, thereby placing some competitors at a competitive disadvantage compared to others.

e) Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

f) Breaking up, albeit partially, an established commercial relationship without precise prior notice in writing at least six months in advance, except in the case of an intentional failure to comply with the conditions accepted by the supplier or in the case of force majeure.

g) Threatening to break up commercial relations in order to obtaining or try to obtain prices, settlement conditions, modes of sale, the payment of additional charges and other commercial cooperation conditions that are not included in the general sale conditions agreed upon by the parties.

3. This prohibition shall also be applied to such cases as where the dominant market position of one or several undertakings was established by a legal provision.

Article 7. Distortion of free competition by unfair acts of unfair competition.

1. The Competition Court shall be informed, according to the terms established in the present Act for prohibited conduct, about the acts of unfair competition as long as the following circumstances are present:

a) That this act of unfair competition seriously distorts the competitive conditions in the market.

b) That this serious distortion affects the public interest.

2. When the Competition Service deems that the above circumstances are not present, it shall shelve the proceedings.

Article 8. Co-responsibility incumbent of the controlling undertakings that exercise a dominant influence.

For the purposes of applying this Act, it is understood that the conduct of an undertaking as foreseen herein may also be attributed to the company that controls the undertaking, when the economic behaviour of the latter is determined by the former.

SECTION 2 Sanctions

Article 9. Court Notifications.

Those who perform acts such as are described in articles 1, 6 and 7 may be requested by the Competition Court to cease such acts and, if needs be, obliged to remove the effects of such acts.

Article 10. Sanctioning fines.

1. The Court may impose on the economic agents, undertakings, associations, unions or groups that have either deliberately or through negligence breached the terms of articles 1, 6 and 7, or failed to comply with a condition or obligation foreseen in Article 4.2, fines of up to 150.000.000 pesetas (901.518,16 euros), amount which may be increased up to 10 percent of the turnover corresponding to the financial year immediately prior to the Court resolution.

2. The amount of the sanction shall be determined according to the importance of the breach, for which purpose the following factors shall be taken into consideration:

- a) The type and scope of the restriction upon competition.
 - b) The dimension of the market affected.
 - c) The market share of the corresponding undertaking.
 - d) The effect of the restriction upon competition had on the actual or potential competitors, the other parties in the economic process and the consumers and users.
 - e) The duration of the restriction upon competition.
 - f) The reiteration of the prohibited conduct.
3. As well as the sanction to be imposed on the offenders, in the case of a legal entity, its legal representatives or the members of the management bodies that have intervened in the agreement or decision may be fined up to 5.000.000 pesetas (30.050,61 euros).

Members of the collegiate management bodies who did not attend the meetings or who voted against the motion or withheld their votes shall be excluded from the sanctions.

4. Fines shall not be imposed for breach of Article 1, if the authorisation foreseen in Article 4 is requested for the conduct referred to in the application made in the period elapsing between when the application is presented and when the decision is issued. The foregoing shall not apply when after a provisional examination of the application, the Court adopts a decision against the same acts included in the authorization.

5. Fines shall not be imposed for breach of Article 1 if prior to the initiation of reserved information before the sanction proceedings are opened, an A/B notification is presented before the European Commission Services according to EEC Council Regulation No. 17/62, of 6th February.

6. Without prejudice to the foregoing sections of this article, if the Competition Court were to judge that there were a lack of good faith or intentional recklessness in the actions of any of the parties before the defence of competition bodies, it could impose a fine of up to 5.000.000 pesetas or 30.051.61 euros.

Article 11. Coercive Fines.

Independently of the sanctioning fines, the Competition Court may impose on undertakings, associations, unions or groups and on economic agents in

general, coercive fines of between 10.000 and 500.000 pesetas or 60,10 and 3.005,06 euros per day with a view to obliging them:

- a) To cease with an action that has been prohibited according to the terms of the Act.
- b) To remove the distorting effects on the competitive conditions caused by the breach.
- c) To comply with the commitments adopted by such parties in the context of a pact for termination by agreement of the procedure.
- d) To comply with the terms of Article 46.5 of this Act.

Article 12. Prescription of the offences and sanctions.

1. The following shall be subject to prescription:

- a) Four years, for the offences foreseen in this Act. The period will commence to run from the day on which the breach was committed.
- b) Four years, for the sanctions.

2. The prescription shall be interrupted by any action on the part of the Competition Court or Service, of which the interested parties are formally notified, towards investigating, instructing or pursuing the infringement.

3. The prescription shall also be interrupted by any action on the part of the interested parties towards ensuring, complying with or implementing the sanctionary agreements.

Article 13. Other liabilities and compensation for damages.

1. The sanctions mentioned in the present Act shall be understood without prejudice to the other liabilities which arise in each case.

2. Compensation for damages, based on the illegal nature of the acts prohibited by this Act, may be requested by the injured parties, once there is a firm administrative and if needs be, jurisdictional ruling. The substantive and procedural regime applicable to the compensation for damages shall be as foreseen in the civil legislation.

3. When so required by the competent judicial body, the Competition Court may issue a report on the origin and amount of the compensation that the authors of the conduct foreseen in articles 1,6 and 7 of the present Act must

pay to the plaintiffs and third parties that may have been harmed as a result of such acts.

CHAPTER II

Economic concentrations

Article 14. Scope of application.

1. Any project or operation involving the concentration of undertakings shall be notified to the Competition Service by one or more of the participant undertakings, when:

- a) As a consequence of the transaction, a share equal or higher than 25 percent of the national market or of a geographical market defined within same, is acquired or increased for a certain product or service, or,
- b) The global turnover of all the participants in Spain exceeds the amount of 40.000 million pesetas (240.404.841,75 euros) in the last accounting year, as long as at least two of the participants have an individually turnover in Spain of more than 10.000 million pesetas (60.101.210,44 euros).

This obligation of notification does not affect concentration transactions that fall within the scope of application of (EEC) Council Regulation 4064/89, amended by (EEC) Regulation 1310/97.

2. For the purposes foreseen in the previous item, a concentration transaction shall be deemed to be any stable change in the control structure of the participant undertakings, by means of:

- a) The merging of two or more previously independent undertakings.
- b) Take-over of all or part of an undertaking or undertakings by any legal means or business.
- c) The creation of a joint venture and, in general, the acquisition of joint control over an undertaking, when the latter permanently carries out the functions of an independent economic entity and does not have the fundamental objective or effect of co-ordinating the competitive behaviour of undertakings that continue to be independent.

Article 15. Notification of concentration transactions.

The notification of concentration transactions that fall within the scope of Article 14 of the present Act shall be submitted to the Competition Service before execution thereof.

The corresponding transaction may not be executed before it is notified, nor before the Administration expressly or implicitly declares its acceptance of the transaction or subjection thereof to specific terms and conditions, under the terms established in Article 17.

Whenever the concentration transaction is materialised through a take-over bid over securities listed on a stock exchange, once the offer is approved by the Spanish Securities and Exchange Market Commission, the corresponding announcements shall not be published and the term for acceptance shall not begin, insofar as the Administration does not provide its express or implicit authorisation. If the lifting of the suspension is carried out under the terms established in the following paragraph, the provisions established in Article 37 of Royal Decree 1197/1991, of 26th July, on the legal provisions applicable to take-over bids, shall apply.

The Minister of the Economy, in the resolution on sending the proceedings to the Competition Court, may lift the suspension on the execution of the transaction foreseen in this item, following such a proposal from the Competition Service and at the notifier's request, which should be submitted along with the notification. The resolution shall be passed after weighing up the potential detrimental effects such a suspension might have on the transaction and the damages that executing such a transaction might generate to competitors or to free competition. The resolution that lifts the suspension may subject its effectiveness to the notifier's compliance with certain conditions. In any case, the operation shall be subject to the terms of article 17.

Execution of the transaction in breach of the terms of this item shall be sanctioned with the fine established in article 18.4 of the present Act. The tacit authorisation foreseen in articles 15b and 17.2 of same shall not be applicable in this case. The Competition Service shall be in charge of instructing the proceedings and the Ministry of the Economy shall impose the sanction.

3. The notification shall be public.

4. The form and content of the notification shall be established in a regulation. In any case, such notification shall contain the information needed to understand the nature and the effects of the transaction.

5. Before submitting the notification, the parties involved may submit a consultation to the Service as to whether a given transaction exceeds the minimum thresholds for mandatory notification foreseen in item 1 of article 14 of the present Act.

6. In accordance with Article 60 of Act 24/1988, on the Stock Exchange Market, notification of transactions to acquire securities listed on a stock exchange when a take-over bid is required, shall be the object of a specific legally established procedure.

Article 15 b. Forwarding of the proceedings to the Competition Court and Tacit Authorisation.

The Ministry of Economy, upon request from the Competition Service, shall forward the Court any proceedings related to the concentration projects or transactions notified by the interested parties that it deems may hinder the maintenance of effective competition on the market, so that the latter may issue its judgement on the matter, after hearing the interested parties, if needs be.

2. The Administration shall be deemed to accept the transaction if a month elapses since the date the notification is delivered at the Competition Service and it has not been forwarded to the Court.

3. The Service shall notify the interested parties of the date on which the proceedings are forwarded to the Competition Court.

4. If a company concentration transaction which exceeds the limits established in Article 14 of the present Act is not duly notified, the Service may require the companies to submit the corresponding notification within a term of twenty days counting from when the requirement is received. If the notification is not submitted in this term, the Director of the Service may, after hearing the parties, impose the sanction foreseen in item 2 of article 18 of this Act and agree to initiate the proceedings on the concentration.

Transactions that are notified following a summons from the Service shall not qualify for the possibility of tacit authorisation.

5. As the case may be, a transaction may be deemed to include certain accessory restrictions on the competition if they are directly related to the transaction and necessary for its execution.

6. When the transaction that is analysed does not meet the conditions laid down in article 14 of this Act, the Director of the Service shall decide if the transaction should be treated as a company agreement according to the terms of article 3 of this Law and therefore, to the procedure foreseen in article 38 of same, in which case it may not qualify for tacit authorisation.

Article 15 ter. Termination by agreement in concentration proceedings.

1. When a concentration transaction which does not imply the creation or reinforcement of a dominant position that could hinder the development of competition in a market, may derive in obstacles to competition that are easily remedied, the Ministry of Economy, upon receipt of a report from the Competition Service, may decide that the parties propose undertakings or modifications to the transaction, which shall not qualify for tacit authorisation. The parties shall enjoy an on-month term after the moment of notice in which to present the undertakings or modifications to the transaction.

2. In the light of the undertakings that are presented and following receipt of the report from the Competition Service, the Minister of Economy may decide:

- a) To authorise the transaction if the undertakings are deemed to be sufficient.
- b) On the contrary, to forward the proceedings to the Court.

Article 16. Report issued by the Competition Court

1. Once the proceedings have been forwarded to the Competition Court, the latter must issue its report on the transaction within a two-month term. The decision as to whether a concentration project or transaction can hinder the maintenance of effective competition on the market shall be made by analysing its potential or actual restrictive effects, paying special attention to the following circumstances:

- a) Definition of the relevant market.
- b) Structure of relevant market.
- c) The possibilities of choice offered to suppliers, distributors and consumers or users.
- d) The economic and financial power of the companies involved.
- e) The evolution of the offer and the demand.
- f) External competition.

The Court may also consider the contribution that such a concentration might make to improving the production and marketing systems, promoting technical or economic progress, the international competitiveness of national industry or the interests of consumers and users and if such a contribution compensates for its restrictive effects on competition.

2. In the case of participating undertakings, the Court shall carry out a special analysis of the possible restrictive effects on competition derived from the presence of the participated undertaking and of the parent undertakings in the same market or in ascendant, descendent or close markets.

3. Once the Minister of Economy has received the Court's report and after solving the confidential aspects of its content, the Court will publicize its report.

Article 17. The Government's Powers.

1. The Competition Court shall forward its report to the Minister of Economy, who shall bring it before the Government, which shall in turn have one month at most to decide:

a) Not to oppose the concentration.

b) To subject its approval to the compliance of certain conditions that make a sufficient contribution to economic and social progress so as to compensate for the restrictive effects on competition. Such conditions may consist, among others, of the obligation to transfer certain businesses or assets or of the imposition of limits. If the corresponding sectorial legislation establishes any kind of limitation, the Agreement issued by the Council of Ministers may authorise its modification as long as it is executed according to the terms laid down in same.

c) To declare it incompatible with the law, being empowered to:

1. Order that the transaction may not be carried through, if it has not already begun.

2. Order that the necessary measures be taken to establish effective competition, including deconcentration.

If a one-month terms elapses from the moment of reception of the Court's report or after the term foreseen for the latter to issue its report expires and the Council of Ministers has not yet made its decision, the transaction shall be deemed to be tacitly authorised.

Article 18. Fines for breach of the duty to notify

1. Breach of the duty to notify shall be sanctioned by the Director of the Competition Service with a fine of up to 5.000.000 pesetas (30.050,61 euros).

2. Without prejudice to the foregoing, the Director of the Service shall impose a sanction of 2.000.000 pesetas (12.020,242088 euros) for every day the

notification is delayed, when the latter has been required by the Service in accordance with the terms of item 4 of article 15 bis.

3. The Competition Service shall vouch for the enforcement of and compliance with the Agreements adopted by the Council of Ministers according to article 17; to this end and without prejudice to the adoption of other mandatory measures foreseen in the legislation, it may propose that the Government impose coercive fines of up to 2.000.000 pesetas, or 12.020 euros, for each day that elapses without fulfilling the pertinent obligations under the Agreement.

4. Without prejudice to the foregoing, failure to comply with the terms of article 17 may give rise to Government imposition on each of the companies involved of fines amounting to up to 10 percent of the respective turnover in Spain in the financial year in which the concentration transaction took place.

CHAPTER III

State Aids

Article 19. State Aids.

1. The terms of this article shall be considered without prejudice to articles 87 to 89 of the European Community Treaty, letter c) of article 4 in the Treaty Establishing the European Coal and Steel Community and Council Regulation (EC) No. 659/1999 of 22nd March.

2. For the purposes of this Law, public benefits will be understood to be any resources provided to economic operators and public or private undertakings or productions, using public funds or any other advantage granted by the public authorities or entities entailing a reduction in the charges payable by the economic operators or the undertakings in market conditions or which does not imply a benefit market conditions. Any other measures with equivalent effects to the foregoing and which distort free competition shall also be considered as aids.

3. The Competition Court shall analyse *ex officio* or at the request of the Minister of Economy and Finance, the criteria for concession of the state aids, as regards their effects on the competition conditions with a view to issuing a report to be brought before the Council of Ministers. This report shall be public. The Council of Ministers, in the light of the content of the report issued by the Competition Court, shall decide in each case to propose that the public authorities suppress or amend the aforementioned criteria, as well as the other measures towards maintaining or re-establishing competition. The foregoing

shall be without prejudice to the powers of the European Commission on this matter.

TITLE II

The competition defence bodies

CHAPTER I

The Competition Court

SECTION 1

The Court organisation

Article 20. Legal nature and general objectives.

1. The Competition Court is configured as an autonomous Body, with a differentiated public legal personality and autonomous management according to the terms of Act 6/1997, of 14th April, on the Organisation and Operation of the General State Administration which, without prejudice to its administrative secondment, exercises its functions in a fully independent way, subject to the legal system.

2. The general objective is to preserve the competitive operation of the markets and ensure the existence of effective competition in same, protecting such competition by exercising the resolution, report and proposal functions expressly assigned to it by the present Act.

3. The Court is headquartered in the capital of the State and its powers extend over the whole of Spanish territory, in accordance with the regulations on co-ordinating powers between the State and the Autonomous Communities on the matter of the defence of competition.

4. In order to achieve its objectives, the resources of the Competition Court shall be formed by:

a) the goods and valuables that make up its assets and the products and income proceeding from same;

b) the income it is authorised to obtain;

c) the contributions proceeding from the General State Budgets.

5. The Competition Court shall draw up a draft budget on a yearly basis, following the structure indicated by the Ministry of Finance. This draft shall be

sent it to the latter so that it may be brought before the Government and then forwarded to the Parliament as part of the National State Budget.

The regime regarding budgets, economics, finance, accountancy, financial intervention and control shall be as established by the General Budgetary Law, in accordance with the terms of article 50 of Act 6/1997.

Internal control of the Competition Court shall be entrusted to a Delegate Intervention of the General Intervention of the State Administration in the autonomous Body, without prejudice to the functions that correspond to the Court of Auditors.

6. The Competition Court is seconded to the Ministry of the Economy, which shall exercise control over the efficiency of its activity. The Court shall be governed by the terms of this Law and its regulations and by Act 6/1997, of 14th April, on the Organisation and Operation of the General State Administration.

7. The personnel employed by the Competition Court shall be either civil servants or hired personnel in the same terms as are established for the General State Administration and the Court shall hire personnel according to the general hiring regulations of the Public Administrations.

Article 21. Composition.

1. The Competition Court shall be governed by the Plenary Session, formed by one President and eight Members, appointed by Royal Decree, at the proposal of the Minister of the Economy, including jurists, economists and other professionals of recognised prestige.

2. The President and the members shall be appointed for a five-year period, which may be renewed just once. Nonetheless, once the term of office corresponding to the members and to the President of the Court has expired, they shall continue to exercise their functions until the new members or the new President, takes up office.

If a member is dismissed from the post during the term of office, the successor shall remain in the post only until the aforementioned term of office expires.

When such a dismissal occurs within a year of the appointment, the limit foreseen in the first paragraph of this item shall not apply and the term of office may be renewed twice.

3. The members of the Court shall have key position status. When an active civil servant at any of the Public Administrations is appointed, he/she shall be given special leave or equivalent status.

4. The Court shall appoint a Vice President from among the members. In the case of a draw, the most senior member in terms of years of office shall be chosen. If there is still a draw between two candidates, the eldest of the two shall be appointed. The Vice President shall stand in for the President in the latter's vacancy, absence or illness.

5. Until the Vice President is appointed and in the case of absence of the President and Vice President, the Presidency shall be exercised by the most senior member in years of office and in the case of a draw, by the eldest member.

6. The Court shall be assisted by a Secretary.

Article 22. Incompatibilities of members.

1. The President and the Members of the Competition Court shall be fully dedicated to the exercise of their functions and their posts shall be governed by the incompatibilities generally established for the highest posts in the State Administration.

2. The foregoing does not include occasional collaboration with or activities in International Bodies in representation or at the request of the Spanish Government, for which no remuneration shall be received apart from the regulatory daily allowances or compensation that may be applicable.

Article 23. Causes for dismissal and suspension in the exercise of the post.

The President, Vice President and the Members of the Competition Court may leave their posts in the following cases:

- a) Resignation;
- b) Expiration of their term of office;
- c) Sudden incompatibility;
- d) Conviction of an intentional crime;
- e) Permanent invalidity;

f) Dismissal, determined by an intentional failure to comply with the duties inherent to the post at the request of three-quarters of the Court.

2. The President, Vice President and Members of the Competition Court may only be suspended from the exercise of their posts in the following cases:

a) When a instruction or procedural order is issued against them due to an intentional crime;

b) When a disciplinary file is opened or transitory incapacity is declared;

c) In the case of a binding conviction that imposes suspension as the main or accessory punishment.

SECTION 2

Functions and Faculties of the Court

Article 24. How the Court Functions.

1. The Plenary Session of the Competition Court is deemed to be properly constituted by the attendance of the President or Vice President and five members.

2. The agreements shall be adopted by means of an absolute majority vote cast by the attendants. In the case of a draw, the vote of the chairing member shall decide.

3. The Court may agree to draw up an internal regulation to lay down the terms of its internal organisation and functioning. This internal regulation shall be published in the "Official State Gazette".

Article 25. Tasks.

The Competition Court is entrusted with the following tasks:

a) To settle and issue reports on the issues assigned to it by this Act.

b) To authorise the agreements, decisions, recommendations and practices referred to in Article 1, in the cases and according to the requirements foreseen in Article 3.

c) To apply in Spain articles 85.1 and 86 of the Treaty Establishing the European Community and its developing Laws.

- d) To inform on the economic concentration transactions of community dimensions as are forwarded by the European Commission in application of the community regulations on the Commission's control over concentrations.
- e) To pass sentence on the projects to open large commercial outlets, as described in Act 7/1996, of 15th January, on Organising Retail Commerce.
- f) To require the Competition Service to instruct proceedings.
- g) To carry out the functions of arbitration, according to the law and in an impartial manner, as entrusted to it by the legislation and specifically, the functions established in article 7 of Act 21/1997, of 3rd July, on broadcasting and re-broadcasting of sports competitions and events.
- h) To draw up the report on compensation for damages as foreseen in article 13 of the present Act.
- i) To draw up the report on State aids as foreseen in article 19 of this Act.

Article 26. Consultative Functions.

1. The Competition Court may be consulted on the matter of competition by the Legislative Chambers, the Government, the various ministerial Departments, the Autonomous Communities, Local Corporations, Chambers of Commerce and business organisations, trade unions or consumer and user associations.
2. The Court shall promote and carry out research projects and studies on the subject of competition.
3. The Court shall inform as to the government bills or draft laws by which the present Act is partially or wholly amended or repealed and as to the draft regulations following on from same.

Article 27. Powers of the Plenary Session.

The Plenary Session of the Competition Court shall have the following functions:

- a) To draw up its internal regulation, which shall establish its administrative functioning and how its departments shall be organised.
- b) To choose a Vice President from among its members.

- c) To settle the disciplinary objections, incompatibilities and corrections and decide on the incapacity or intentional failure to comply with the pertaining functions on the part of the President, Vice President and members.
- d) To appoint and agree upon the dismissal of the Secretary.
- e) To propose or, as the case may be, inform as to the draft list of posts for personnel working to the Court.
- f) To prepare the draft version of the general budget for the Court's expenses.
- g) To draw up an annual report.
- h) To build relations with other analogous bodies.

Article 28. Functions of the President.

1. The President of the Competition Court shall have the following functions:

- a) To summon the Plenary Session on his/her own initiative or at the request of at least three members and to chair the Plenary Session.
- b) To establish the criteria for distributing issues among the various Divisions and Articles.
- c) To vouch for law and order in the Court.
- d) To provide for such vacancies in the Court.
- e) To settle issues that have not been assigned to the Plenary Session of the Court.
- f) To represent the court in its relations with other public bodies.
- g) To exercise a leading position over the Court staff.
- h) To arrange the Court's expenses.

2. The President may delegate such faculties as deemed appropriate on the Vice President.

Article 29. Sanctions for the failure to comply with the duty to provide information.

1. All natural and legal persons shall be obliged to collaborate with the Competition Court and to provide any such data and information as may be necessary at the latter's request in applying this Act.

2. The Competition Court may impose fines of up to 1.000.000 pesetas (6.010,12 euros) to those natural or legal persons who deliberately or through negligence, fail to provide data or information or do so in an incomplete or inaccurate way.

CHAPTER II

The Competition Service

SECTION 1

Secondment and functions of the Service

Article 30. Secondment.

The Competition Service shall be seconded to the Ministry that is competent by virtue of the issue.

Article 31. Functions of the Competition Service.

The functions of the Competition Service are as follows:

- a) To instruct the proceedings for conduct included in this Act.
- b) To vouch for the execution and compliance with the resolutions adopted in applying this Law and, as the case may be, declare the prescription for the action to request compliance with the sanctions foreseen in article twelve of this Act.
- c) To keep the Competition Defence Register.
- d) To study and carry out research on the economic sectors, analysing the situation and degree of competition present in each one of them, as well as the possible existence of practices that restrict competition. As a result of the studies and research that is carried out, it may propose the adoption of measures to remove the obstacles on which the restriction is based.
- e) To inform, provide advisory services and proposals on the matter of restrictive agreements and practices, the concentration and association of undertakings, the degree of competition in the internal and external market in

comparison with the domestic market and on the other issues pertaining to competition defence.

f) To co-operate on the issue of competition with foreign bodies and international institutions.

g) To carry out the tasks of collaboration between the Spanish Administration and the European Commission to apply the community regulations on competition in Spain. These functions shall be carried out in co-ordination with the competent sectorial Departments in the Public Administration.

h) To exercise the powers assigned to it by articles 15 to 18 of this Act on the matter of merger control.

i) To promote and agree on the termination by agreement of the proceedings as a derived from conduct that is prohibited by this Act.

j) To inform as to the draft versions of regulations affecting competition.

k) To direct reports and/or recommendations on matters related to competition defence to any of the ministerial Departments, Autonomous Communities, local Corporations, Chambers of Commerce and business organisations, trade unions or consumer and user associations.

l) To study and submit to the Government the opportune proposals for amendment of the Competition Act, in accordance with the experience in applying national and community Legislation.

Article 31 bis. Functions of the Director of the Competition Service.

1. The Director of the Competition Service has been entrusted with the following duties:

a) To propose to the Minister of Economy and as the case may be, request the latter to bring before the Council of Ministers, the guidelines for competition defence policy within the framework of the economic policy.

b) To propose that the Government should adopt the exemption regulations foreseen in the fifth article of this Act regarding the categories of agreements, decisions, recommendations and practices referred to in articles 3.1 and 3.2 of this Act.

c) To pass an annual plan to assess the consequences of applying the rules of competition, with a view to better directing resources, evolution of the doctrine and the solutions that are adopted.

- d) To represent the Competition Service.
 - e) To publish the exemption regulations referred to in article 5 of this Act in the “Official State Gazette”.
 - f) To decide on the convenience of urging the application of the terms of item 3 of article 22 of the Community Regulation on Merger Control.
 - g) To exercise the powers assigned by articles 15 and 18 of this Act.
2. The Director of the Competition Service has authority over the Service and may exercise all the powers assigned to the Service by the present Act.

SECTION 2

Collaboration with the Administration and the Faculties of the Competition Service

Article 32. Duties of collaboration and information.

1. All natural and legal persons are obliged to collaborate with the Competition Service and to provide at the latter’s request, within a ten-day term, all such data and information as may be necessary in applying this Act.

The ten-day term referred to in the previous paragraph may be extended by the Competition Service, *ex officio* or at the request of the required person, when the difficulty in obtaining data or information so justifies.

2. Failure to comply with the obligation laid down in the previous item shall be sanctioned by the Director of the Service with coercive fines of between 60,10 and 3.005,06 euros for every day’s delay in complying with the duty to provide the data and information in the term referred to in the previous item.

3. Provision of taxation data or records shall be governed by the terms of article 113 in the General Act on Taxation.

Article 33. Research and inspection functions.

1. Staff that are duly authorised by the Director of the Competition Service may carry out the necessary investigations aimed at proper application of this Act.

2. In the course of their inspections, the civil servants may examine, obtain copies or take extracts from books and documents, including accountancy documents and if necessary, retain them for a maximum of ten days. In the

course of their inspections, the civil servants may also request verbal explanations on location.

3. They may be accompanied in their inspection by experts or specialists on the matters contained in such documents.

4. Obstruction of the labour of inspection may be sanctioned by the Director of the Service by a continuous fine of up to 150.000 pesetas (901,518157 euros) per day.

Article 34. Domiciliary Investigation.

1. Access to premises may be made with the consent of the occupants or by means of a court order.

2. In the case of consent given by the occupants, the authorised civil servant shall show the official document and hand over a copy of his/her appointment by the Director of the Competition Service, the subjects to be investigated, the data, documents and operations to be inspected, the date on which the inspection is to be carried out and the scope of the investigation.

3. In the case of proven or potential opposition to access to the premises, the Director of the Service shall request authorisation to entry the premises at the Court for Contentious Administrative Proceedings and the official document shall include the details foreseen in the previous item as well as any data required for correct identification of the premises to which access is requested.

The competent Court shall pass its decision in a term of at most forty-eight hours.

4. An official document shall be drawn up for each access to premises and inspection and it shall be signed by the authorised civil servant and by one of the occupants. This document shall also, if needs be, give details as to the list of documents that have been temporarily retained.

5. The civil servant shall issue a copy of the document in the name of the person who has authorised entry to the premises. If the entry and inspection have been carried out by virtue of a legal authorisation, the original copy of the official document and the documents retained, as the case may be, shall be handed in to the corresponding Court, whose Secretary shall prepare a copy for the civil servant who has carried out the inspection and another in the name of the occupant in whose presence the investigation was carried out. If needs be, the civil servant shall also be given the documentation that was retained.

6. The date and information obtained may only be used for the purposes foreseen in this Act.

SECTION 3

The Competition Register

Article 35. The public nature of the Register and the acts that may be registered therein.

The Competition Register shall be public and shall contain such agreements, decisions, recommendations and practices as authorised by the Court and those which have been declared partially or wholly prohibited. It shall also contain a register of the corporate concentration or take-over transactions referred to in articles 14 and 15 of this Act.

Thus the Court shall transfer its resolutions to the Service.

TITLE III

Procedure

CHAPTER I

Procedure on the matter of prohibited and authorised agreements and practices

SECTION 1

Procedure before the Service

Article 36. Initiating the procedure.

1. The procedure shall be initiated by the Service *ex officio* or at the request of the interested party.

The public is allowed to report the conduct that is prohibited by this Act; any person, whether they are an interested party or not, may lodge a complaint with the Service, which shall initiate proceedings when there are reasonable indications of the existence of conduct prohibited by this Act.

2. The complaint shall be submitted in the form and with the content that are set down in the regulations, which should contain at least the following:

- The name or company name and address of the plaintiff and, in the case of lodging the complaint through a representative, accreditation of the

representation and the address to which any notifications should be forwarded.

- Name or company name and address of the accused party/ies.
- Facts from which the existence of the breach is derived and proof of same, as the case may be.
- Legitimate interest according to article 31 of Act 30/1992, in order to be considered an interested party in the sanction proceedings.

3. In the event of the possible existence of an infringement, the Service may proceed to instruct reserved information before resolving to initiate the sanction proceedings, including domiciliary investigation of the undertakings involved. When the Service deems that there are no indications of infringement of the Act for Competition Defence, it may not initiate the proceedings and agree to shelve the file.

4. In the event that the Service agrees to initiate the proceedings, an Instructor and also, as the case may be, a Secretary, shall be appointed. The interested parties shall be informed of such appointments.

5. Once the proceedings have been initiated, a brief note may be published regarding the basic scope of same, so that any party may provide information within not more than fifteen days.

The aforementioned note may be published in the Official State Gazette and as the case may be, in any other media that ensures sufficient publicity.

6. The Service, whether on its own initiative or at the request of the interested parties, may accumulate proceedings when there is a direct connection between them.

7. The Service shall inform the Competition Court as to the complaints that have been received, the shelving of proceedings, the pacts on terminations by agreement and the procedures to initiate proceedings, either *ex officio* or at the request of the interested party.

Article 36 bis. Cases of inadmissibility and termination by agreement.

1. The Competition Service may:

a) Agree not to initiate proceedings derived from presumably committing the acts prohibited by articles 1 and 6 which, due to their relative unimportance, do not have a significant effect on the competition conditions.

b) Agree not to initiate the proceedings derived from presumed commission of the conduct prohibited in article 7 of this Act when it deems that the circumstances foreseen in the aforementioned article have not been met.

c) Agree on termination by agreement of an investigation that has begun *ex officio* or at the request of the interested party due to a possible breach of articles 1, 6 and 7 of the Act, as long as such a termination does not contradict the terms of this Act and is directed at ending the administrative proceedings.

2. In the proceedings for termination by agreement, the Service shall determine who are the interested parties in the affair, with the aim that they may be heard in the course of same.

Termination of the proceedings by agreement may not be agreed in such cases as may contradict the legal order and prove damaging to third parties. Neither shall termination by agreement be allowed once the document specifying the facts has been notified.

The agreements for termination of an investigation by agreement shall establish at least the identity of the intervening parties, the personal, territorial and temporal scope, the object of the undertakings and the scope of same. Such agreements should be adopted by the Director of the Service and by the interested parties.

Those who prove to have a legitimate interest in the matter and who have not taken part in the agreements for termination by agreement may appeal such a decision before the Competition Court, as foreseen in article 47 of this Act.

Article 37. Instruction of sanctioning proceedings.

1. The Competition Service will conduct the necessary instruction proceedings in order to clarify the circumstances and determine responsibilities.

The actions which may be considered a breach will be recorded in a writ of findings to be notified to the alleged offenders so that within the term of fifteen days they may reply to the same and if applicable, request the discovery of evidence deemed appropriate by them, and once the period of evidence has concluded, a term of ten days is given to assess the evidence examined.

The evidence proposed by the alleged offenders shall be recorded in the report issued by the Competition Service, which shall resolve on whether to allow the discovery of evidence or refuse the same.

2. The parties thereto may at any moment during the proceedings file pleadings which will be taken into account by the Service when drafting the report contemplated below.

3. The Service, once the instruction proceedings have concluded, will submit these to the Competition Court attaching a report setting out the conducts observed, their back-ground, the perpetrators, the impact of such conduct in the market, the legal consideration of those actions and the responsibilities attached to the offenders.

4. When, after conducting the appropriate instruction proceedings, the Service considers that no banned practices have been carried out, it will draft a proposal for the nonsuit of the proceedings which will be notified to the parties within the term of ten days, during which they may file any pleadings thereon. Once the above term has elapsed the Service may resolve to supersede the suit filing all proceedings. Against such resolutions, the parties may lodge an appeal in the terms contemplated under Articles 47 and 48 of this Act.

Article 38. Instruction authorization proceedings.

1. The procedure to authorize agreements, decisions, recommendations and practices contemplated in Article 3 will commence at the request of the interested party.

2. The application request for an authorization must include in any event all necessary data to assess the nature and impact of the conduct and in particular the circumstances of the parties involved, the object of the application and information on the market(s) affected.

3. When proceedings are initiated to verify the existence of forbidden agreements, decisions, recommendations or practices in the terms of Article 1, the interested parties may request that they be authorized pursuant to Article 3.

4. Authorization proceedings by the Competition Service will include publication of a brief note by the latter as foreseen under Article 36.5 of this Act, and the Service will also carry out the necessary inquiries, hearing the parties involved and will submit the proceedings to the Court within the maximum term of thirty days, with the legal considerations it considers fitting.

5. When the Service considers that the information provided is clearly insufficient to issue a legal recommendation, it will request from the applicant that it furnishes the necessary data and information within the term of ten days, and the legal period of thirty days will be held in abeyance until such request has been complied with.

6. In the events contemplated under Article 3.1 of this Act, it will be mandatory to request a report from the Consumers and Users Association.

SECTION 2

Proceedings before the Competition Court

Article 39. Admission of Proceedings.

The Court, once the proceedings have been submitted, will decide on their admission considering if the relevant background has been supplied. Otherwise, it will request from the Service to conduct the appropriate inquiries, which may be supplemented by any others deemed expedient by the Court.

Article 40. Inspection of evidence stage.

1. If the Court decides on the admission of the proceedings, it will notify the interested parties of this within the term of fifteen days, within which they may request that a date for the hearing be set and propose the discovery of evidence considered appropriate to their interests, and the Court will resolve on the inspection of evidence within the term of five days.

2. The Court may resolve on the inspection of whatever evidence it considers expedient provided that they are not the same as those carried out before the Competition Service, with the intervention of the interested parties.

3. The result of the inspection of evidence will be notified to the parties which may, within the term of ten days, invoke whatever they deem expedient as to its scope or relevance.

4. The decision of the Court on the discovery of evidence is not subject to any further administrative appeal.

Article 41. Hearing or Final Pleadings.

1. The Court will resolve on the celebration of a hearing when it deems it expedient. Otherwise, it will grant a fifteen day period to the interested parties to file their final pleadings.

2. The hearing will be private with the intervention of all parties concerned, their representatives and the Competition Service. The Court may also summon any persons to the hearing when their presence is considered necessary.

Article 42. Additional inquiries decreed by the Court.

1. After the hearing or once the term to submit the final pleadings has expired, prior to issuing a decision, the Court may resolve to conduct any additional inspection of evidence in view of the future resolution to be given, even requesting the deposition or acknowledgment of the parties thereto, and request further reports from the Competition Service or from any other private or public Body, from authorities or private individuals on any matters considering necessary by the Court.
2. The Court order resolving on these further proceedings must determine the period on which they are to be carried out, if it were possible to set a deadline, and the involvement of the parties in these proceedings.
3. All evidence agreed to be carried out as an extension of the proceedings will be conducted before the Court or the Magistrate appointed to this end.

Article 43. Hearing of the Instructor and decision on the proceedings.

1. The Court, when deemed expedient, may summon the Instructor to report on certain points of the proceedings.

The Instructor will be heard in any event when the Court on giving its decision, considers that the matter submitted for its examination has not been adequately considered by the Service as it merits another legal consideration. The new legal consideration will be notified to the parties so that within the term of fifteen days they may file whatever pleading they consider appropriate, and the legal period to issue a decision will be suspended for that time.

2. The Court, once the proceedings have concluded, will issue a Resolution within the maximum period of twenty days.
3. The resolutions issued by the Court imply the end of the administrative proceedings.

Article 44. Concurrent proceedings with Community Institutions.

1. The Court may delay its decision, at the request of the parties, if documentary evidence is provided that similar proceedings are being conducted before Community Institutions for the same circumstances. The suspension will be lifted when a final decision is given by said Institutions. The parties invoking a demurrer must inform the Court about the decision given, within the term of one month reckoned from the date in which it became aware of the same.

2. If the Community Institutions have imposed any sanctions, the Court must take into account when grading the applicable sanction pursuant to this Act, and it may offset one against the other, notwithstanding declaring the existence of a breach.

SECTION 3

Cautionary measures

Article 45. Different types and procedure to decree them.

1. The Service, once proceedings have been instituted, may propose to the Competition Court, either *ex officio* or at the request of the interested parties, to decree the necessary cautionary measures in order to ensure the efficacy of any future decision given, and in particular, the following:

a) Cease orders or impose specific conditions to prevent that the conducts to which the proceedings refer may cause further damage.

b) Any type of guarantees, except personal security, considered sufficient by the Court to meet any future compensation for the damages caused.

In the event that the parties themselves propose the adoption of cautionary measures, the Court may request them to provide a guarantee.

2. Cautionary measures which may lead cause irreparable damage to the parties or entail a breach of their fundamental legal rights may not be decreed.

3. The Court will hear the parties within the term of five days and will issue a resolution within three days on whether cautionary measures are to be adopted.

4. The Court, either of its own accord or following a proposal of the Service, may secure compliance of such cautionary measures by imposing coercive fines with the guarantees and amounts contemplated in Article 11.

5. The Service may propose to the Court, either *ex officio* or at the request of any of the parties, and at any time during the proceedings to suspend, amend or revoke the cautionary measures due to subsequent or unforeseen circumstances when these were adopted.

6. The adoption of cautionary measures may not exceed six months in any event and will cease, in any case, when the decision of the Court is enforced.

SECTION 4

Court Resolutions

Article 46. Contents, clarification and publicity.

1. The resolutions of the Court may declare:
 - a) The existence of forbidden practices or agreements.
 - b) The existence of an abusive dominant position.
 - c) The existence of forbidden practices has not been proved.
 - d) The authorization of agreements or practices that may be excepted.
2. The resolutions of the Court may include:
 - a) A cease order for the forbidden practices for a given period of time.
 - b) Impose specific conditions or obligations.
 - c) The order of removing the effects caused by the forbidden practices against public order.
 - d) Impose fines.
 - e) Decree that such practices are authorized.
 - f) And any other measures that may be adopted pursuant to this Act.
3. The resolution refusing an authorization will oblige the applicants, when applicable, and to the other perpetrators of forbidden practices which have been party in the proceedings, to desist from these, warning them that if they continue pursuing such practices after the resolution of the Court has been notified to them, they shall incur in the sanctions foreseen under Article 10.
4. The Court may either, ex officio or at the request of the parties, clarify obscure issues or complete any omission detected in its decisions.

Clarifications and additions may be made within five working days after the resolution was notified, or when applicable, to the clarification or addition request, which must be filed within the term of three days –and may not be extended- reckoned from the date on which such notice was served.

Material and arithmetical errors may be rectified at any moment.

5. The sanctioning resolutions of the Court, once they have been notified to the parties will be published in the Official State Gazette and, in the manner deemed appropriate by the Court, in one or several newspapers of national coverage or in the provinces where the persons or companies that have been sanctioned reside or have carried out their practices. The cost of placing such advertisements will be met by the person or company that has been sanctioned.

The Court may also resolve to publish its non-sanctioning resolutions as provided in the preceding paragraph.

6. Any breach of the Court's orders by the parties will be punished as provided under the Spanish Criminal Code.

SECTION 5

Appeals

Article 47. Appeal against decisions issued by the Competition Service.

Decisions issued by the Competition Service which decide directly or indirectly on the matter at issue, or determine that certain proceedings may no longer be continued, or entail the defencelessness or cause irreparable damage to legitimate interests or rights, may be appealed before the Competition Court within the term of ten days.

It will be deemed that such defencelessness does not exist in the event that the discovery of evidence requested by a legitimate party is refused when such decision includes the grounds for such refusal and the discovery of evidence requested is clearly inappropriate or untimely, and in any case, when their discovery may be conducted before the Court.

In those cases, and in all others when the appeal lodged lacks sufficient legal grounds, the Court may dismiss the same by means of a resolution including the grounds for such denial.

Article 48. Proceedings and resolution.

1. The appeal will be lodged before the Competition Court which will order the Competition Service to submit the proceedings and its report within the term of five days.

2. In the event that the Court ascertains that the appeal has been lodged in an untimely manner, it will dismiss the appeal with no further leave.

3. Once the proceedings have been received at the Court, it will be notified to the legitimate parties so that within the term of fifteen days they may invoke and submit the documents and evidence they consider appropriate.

4. Once the foregoing proceedings have been complied with, the Court should decide within the ten next following days, without exceeding in three months the period of time passed as from the date of notice of the appeal to the date when its resolution is pronounced and notified. When an appeal is lodged against a resolution of the Competition Service to supersede or filing the proceedings, the maximum term to issue and notify the resolution of the appeal will not exceed of twelve months reckoned from the date on which the appeal was lodged.

Article 49. Appeals against resolutions issued by the Court.

The decision on cautionary measures or final resolutions issued by the Competition Court are not subject to any further administrative appeal and may only be lodged a contentious-administrative appeal before the law courts.

CHAPTER II

Common provisions

Article 50. The Spanish “*Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*” [The Public Administrations and Common Administrative Procedure Act] will be applicable in default of this Act.

Administrative proceedings concerning competition defence will be governed by their specific regulations and in default of these, by Act 30/1992, November 26th, - The Public Administration and Common Administrative Procedure Act -

Article 51. Cooperation with Public Administrations.

1. All Public Administrations are obliged to provide information or issue the reports that may be requested from them.

2. The Competition Court and the Competition Service may at any stage of the proceedings request the co-operation of the Autonomous Communities. To that purpose, the findings of the proceedings which may be relevant shall be submitted to them in order to receive the desired co-operation.

3. Autonomous Communities, in their turn, may provide information and make any observation which they deem expedient, which will be attached to the proceedings.

Article 51 bis. Relations with other Public Administrations.

1. The bodies foreseen in this Act are the only ones with powers for the instruction and resolution on the proceedings herein contemplated with regard to competition defence. In the event that other public administrations, by virtue of their functions, become aware of any other facts which may be contrary to the provisions of this Act, they will simply report these and submit all available documentation in their power to the Competition Service, so that, if applicable, the corresponding proceedings may be instituted.

2. The Competition Service may request the cooperation of other competent bodies of the Autonomous Communities when it is deemed necessary to discharge their functions. To that end, the competent bodies of the Autonomous Communities may draft reports concerning the existence of practices, agreements or conducts which are considered in breach of this Act in order to submit these to the Competition Service.

Article 52. Duty of secrecy.

1. All persons involved in handling the proceedings foreseen in this Act or become aware of said proceedings by reason of their profession or the post they hold, are obliged to secrecy with regard to the facts which they have learnt due to the above circumstances.

2. Notwithstanding the civil and criminal liability in which the person or person(s) in breach of this duty may be subject to, such infringement will always be considered as major disciplinary offence.

Article 53. Treatment of confidential information.

The Competition Court and Service may order at any moment of the proceedings, either ex officio or at the request of an interested party, to uphold the confidentiality of the data or documents which they consider confidential, and separate proceedings will be instituted with regard to these.

Article 54. Sanctions.

1. Sanctions imposed pursuant to the application of this Act will be construed notwithstanding other liabilities which may be assessed in each case.

2. Enforcement proceedings for the collection of fines will comply with the *Reglamento General de Recaudación*. [General Collection Regulation]

3. The amount of the fines foreseen in this Act will be paid to the Public Exchequer.

Article 55. Pre-judicial consequences of the Criminal Proceedings.

Criminal proceedings before the Courts will suspend any decision on the administrative proceedings instituted on the same matters.

Article 56. Maximum procedural periods.

1. The maximum term for sanctioning proceedings conducted by the Competition Service will be of twelve months reckoned from the date on which they were formally instituted until the proceedings are submitted to the Competition Court or following notice of the resolution which, in any other way, ends the proceedings conducted before the Service.

When the Competition Court send back the proceedings due to the admission of an appeal against a resolution to supersede or in order to conduct the appropriate inquiries as foreseen under article 39 of this Act, the Competition Service will have a maximum term of six months, reckoned from the date of notice of the resolution of the Court, to conduct the necessary complementary instruction proceedings in order to complete the clarification of the circumstances and to determine responsibilities.

The provisions of this section will be construed notwithstanding any possible extension of the term pursuant to the provisions set forth in Paragraphs 5 and 6 of Article 42 of Act 30/1992, November 26th, - *Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*. [On the Public Administration Legal System and the Common Administrative Proceedings]

In any case, the term referred in this paragraph will be interrupted in the event that the administrative appeal is filed pursuant to Article 47 of this Act, or when incidental issues are filed which qualify for the suspension of proceedings provided under Article 42.5 of Act 30/1992, November 26th, - *Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común* – [On the Public Administration Legal System and the Common Administrative Proceedings]- or when co-ordination with the European Union is required or co-operation with competition authorities of other countries. In those cases, the Service must inform of the suspension decision to the interested parties.

Once the term foreseen in this paragraph has elapsed, as well as the extension term, if applicable, without the Service having submitted the proceedings to the Competition Court for its resolution or the dismissal of the proceedings has ensued, either ex officio or at the request of any interested party, lapsing may be declared.

2. The Court will issue a resolution and shall notify it within the maximum period of twelve months reckoned from the date on which the proceedings were lodged. The above term will be interrupted when incidental issues entailing the suspension of proceedings according to this Act are filed, or appeals are lodged, and the competent judiciary body decides to suspend the proceedings, or additional proceedings in order to obtain better evidence are provided by the Competition Court, or the legal consideration applicable to the proceedings as foreseen under Article 43.1 of this Act must be amended, or the suspension is agreed on account of concurrent proceedings sustained before Community Institutions, or due to the existence of criminal proceedings, or if a pre-trial issue is submitted before the Court of Justice of the European Communities. In this case, the provisions contemplated under Article 42.5 of Act 30/1992 - *Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común* – [On the public Administration Legal System and the Common Administrative Proceedings] will also be applicable in this case.

Once thirty days have elapsed since the term abovementioned expired, the Court shall declare, either ex officio or at the request of any of the parties that the proceedings have lapsed if no decision has been given within that period.

Article 57. Fees for examination and study of concentration operations.

1. A fee for the examination and study of concentration operations is herein established which will be governed by Article 9 of this Act and by another legal sources which are set forth in Article 9 of Act 8/1989, April 13th – *Ley de Tasas y Precios Públicos* [Administrative Fees and Charges Act] with regard to administrative fees.

2. The taxable event leading to the application of the administration fee is the examination and study of concentration operations conducted pursuant to Article 14 of this Act.

3. Prior consultation as provided under Article 15 (Paragraph V) of this Act is not subject to any fee.

4. The companies obliged to notify the concentration operation will be responsible for payment of this fee.

5. Said fee shall accrue when the assessed companies submit the notice provided under Article 15 of this Act, whereby the administrative proceedings or activities are instituted.

6. The amount of the fee contemplated in this Article will be as follows:

a) 3.005 euro when the aggregate turnover in Spain of all participants considered jointly which take part in the concentration agreement is equal or below 40.000 million pesetas, that is, 240.404.841,75 euro.

b) 6.010 euro when the aggregate turnover in Spain of all participants considered jointly which take part in the concentration agreement exceeds 40.000 million pesetas, that is, 240.404.841,75 euro, and is equal or below 480.800.000 euro.

c) 12.020 euro when the aggregate turnover in Spain of the participating companies exceeds 480.800.000 euro and is equal or below 3.000.000.000 euro.

d) A fixed amount of 24.000 euro when the turnover in Spain of all participating companies jointly exceeds 3.000.000.000 euro, plus 6.000 euro in addition for each 3.000.000.000 euro in excess of the turnover limit mentioned above, with a maximum limit of 60.000 euro.

7. This fee will be paid in cash, as foreseen under the current General Collection Regulation.

8. This fee will be handled by the Competition Service as per the terms contemplated in the regulatory provisions issued in development of this Act which may foreseen the obligation of those responsible for its payment by means of a tax self-assessment form.

9. 50 per cent of the revenue collected by means of this fee will be attached to the resources of the Competition Court as part of its own resources.

Temporary Provisions

First. 1. The agreements, decisions, recommendations and practises foreseen in the article 1 of this Act and existing at the entry into force of this Act, in relation to which the interested parties attempt to obtain the authorization referred in article 4, will have to be reported to the Service for Competition Defence, to the effects established in the article 38, within the term of six months since the publication of this Act in the Official State Gazette.

2. Those agreements and decisions authorized by the Court for Competition Defence in compliance with article 5 of the Act 110/1963, of 20th July are excluded of the obligation established in the prior number.

Second. The inscriptions contained in the Restrictive Practises Register created in the Act 110/1963 will pass to belong to the Register referred in article 5.

Third. The proceedings initiated prior to this Act will be handled and solved according to the provisions which had been enforceable to this date.

Forth. The first renewal of the members of the Court for Competition Defence will be done by drawing when this Act enters into force.

Fifth. Until the legal opportune disposition is approved, the resolutions of the Court for Competition Defence will be appealed directly before the Administrative Section of the Crown Court.

Repeal Provision

The Act 110/1963, July 20th, for the repression of competition restrictive practises is abrogated and, in everything what is opposed to this Act, the Decrees 538/1965, March 4th, that approves the Regulation of the Court for the Competition Defence; 422/1970, February 5th, that approves the Regulation of the organization, functions and proceedings of the Service for the Competition Defence; 3564/1972, December 23rd, that amends and refunds certain articles of the Regulation of the Service for the Competition Defence; Order of September 28th of 1973, that develops article 9 of the Regulation of the Court for Competition Defence: article 4 of the Royal Decree-Law 18/1976, October 8th about economic measures, and the Royal Decrees 2574/1982, September 24th, that amends certain articles of the Regulation of the Court for the Competition Defence, and 1936/1985, October 9th, that updates the Statute of the members of the Court for the Competition Defence, are abrogated.

Final Provision

The Government is authorized to issue necessary regulations for the development and implementation of this Act.

The Government is also authorized to amend through a royal decree the thresholds established in article 14.1 of this Act.

Act 52/1999, 28th December, of modification of Competition Act 16/1989, 17th July, contains these own provisions (3 additional, 1 repeal, 1 temporary and 3 final). Although they don't belong to Competition Act 16/1989 they are important for it.

First additional provision.

Amendment of Article 1.two.2.f) of the *Ley de Liberalización de las Telecomunicaciones* [Liberalization of Telecommunications Act]

Article 1. two.2.f) of Act 12/1997, April 24, *Liberalización de las Telecomunicaciones*, [Liberalization of Telecommunications Act] will have henceforth the following wording:

"Adopt the necessary measures to safeguard the services supply plurality, access to telecommunication networks by operators, network interconnection and network supply in terms of open network and price policy and commercialisation by the services operators. To these purposes, the Commission will perform the following functions:

1st.- It may issue instructions on the matters abovementioned addressed to the operators of the sector which will become binding once they have been published in the Official State Gazette.

2nd.- It will inform the Competition Service of the acts, agreements, practices or conducts which may come to its notice in the exercise of its functions and may be contrary to Act 16/1989, July 17th, for Competition Defence. To that end, the Telecommunication Market Commission will inform the Competition Service of any findings within its scope and, when applicable, will issue a non-binding report on the legal consideration given to said findings.

3rd.- Exercise the powers of the State General Administration to construe the clauses of the enabling titles for rendering telecommunication services which protect free competition in the telecommunication and services market foreseen in number 1, paragraph (2) of this Article.

Second Additional Provision.

Amendment of Article 1.two.2.g) of the Liberalization of Telecommunications Act.

Article 1. two.2.g) of Act 12/1997, April 24th, [*Liberalization of Telecommunications Act*], will have henceforth the following wording:

g) Exercise control on the concentration procedures applicable to companies, equity holdings and agreements between players of the telecommunications and services market foreseen in number one, Paragraph (2) of this Article, in order to guarantee, when applicable, compliance with the mandatory notice to the Competition Service in the terms provided under Articles 14 and ff. of Act 16/1989, July 17th for Competition Defence.

Third Additional Provision.

Article 16 of Act 3/1991, January 10th – Ley de Competencia Desleal [Unfair Trading Act], will have henceforth the following wording:

Article 16. *Discrimination and economic dependency*

1. Discriminatory treatment of the consumer regarding prices and other sales conditions will be considered unfair, unless justified grounds for the same concur.

2. An unfair practice is deemed to exist when a company exploits the economic dependency which their customer companies or suppliers may find themselves if they do not have an equivalent alternative to pursue their activities. This situation will be implied when a supplier, notwithstanding the usual discounts and other standard terms, is obliged to grant its client on a regular basis other additional advantages which are not granted to similar purchasers.

3. Unfair competition is likewise deemed to exist when:

a) A commercial relationship is breached, even in part, without prior and written notice of the same given at least six months in advance, unless it arises from material breaches of the agreed conditions or in the event of force majeure.

b) Obtaining, under threat of terminating a commercial relationship, prices, payment terms, sale systems, payment of additional charges and other commercial co-operation conditions which were not originally included in the supply agreement entered into between the parties.

Sole Temporary Provision

Competition Defence Proceedings instituted prior to this Act coming into effect will be handled and solved according to the provisions which had been enforceable to this date.

Sole Repeal Provision

1. All provisions which are counter to this Act are hereby declared abrogated.

2. Notwithstanding the foregoing, Royal Decree 157/1992, February 21st, which develops Act 16/1989, July 17th, dealing with block exemptions, individual authorizations and the Competition Defence Register and Royal Decree 1080/1992, September 11th, on the procedure to be followed by the

Competition Defence bodies regarding economic concentrations and the form and contents of voluntary notice of these, will remain enforceable until the Government approves subsequent enabling regulations adapted to the provisions of this Act.

First Final Provision. Enabling Regulations of this Act.

1. The Government is hereby authorized to issue enabling regulations governing Competition Defence proceedings within the term of eighteen months.
2. The Government is hereby authorized to approve the regulations foreseen under Article 57 of this Act on administrative fees within the term of one year.

Second Final Provision.

Before October 1st, 2000, the Government will submit a draft to the Parliament on the applicable framework to the connection criteria whereby powers are distributed between the State and the Autonomous Communities, as foreseen within the Competition Defence legal framework, regarding awareness and application of state regulations referred to prohibited and authorized practices, in compliance with the ruling given by the Constitutional Court on November 11th, 1999.

Third Final Provision. Date on which this Act comes into force.

This Act will come into force after three months have elapsed since it was published in the Official State Gazette, with the exception of the provisions contained in Article thirty two hereunder, in what pertains to Article 56, Paragraph (1), of Act 16/1989, July 17th, which will become enforceable on January 1st, 2001, and in what pertains to Article 56, Paragraph 2 of the same Act, already enforceable as from January 1, 1998 by virtue of the Twelfth Temporary Provision of Act 66/1997 on Administrative, Tax and Social Measures (*Medidas Fiscales, Administrativas y de Orden Social*).