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ROYAL DECREE 1443/2001, OF 21 DECEMBER, IMPLEMENTING THE COMPETITION ACT 16/1989, OF 17TH JULY, REGARDING THE CONTROL OF ECONOMIC CONCENTRATIONS

(“Official State Gazette” No. 16, of 18th January 2002)

(Non-official Text)

The Competition Act 16/1989, of 17th July, was implemented by Royal Decree 1080/1992, of 11th September, which specified the applicable proceedings with regard to economic concentrations described in Chapter II, Title I of said Act.

Over the last few years, Chapter II of Title I of Act 16/1989 was significantly amended by various provisions, the main effect of which was a change from a system based on voluntary notification to one based on a system of prior and compulsory notification required for economic concentrations.

Thus, Article 10 of Chapter VII of Royal Decree-Law 6/1999, of 16th April, regarding Urgent Liberalisation Measures and Increase in Competition, introduced significant changes to the duty to notify economic concentrations and proceedings after the notification.

Subsequently, Act 52/1999, of 28th December, which amended Act 16/1989, introduced a new Article 57, which established a fee for analysing and examining economic concentrations (to be executed and managed as established in future regulations). This Article 57 was then amended by Royal Decree-Law 6/2000, of 23rd June, on Urgent Measures to Intensify Competition on the Goods and Services Markets.

Said Royal Decree-Law 6/2000, of 23rd June, established the obligation to suspend the execution of concentrations until the corresponding authorisation is obtained. It also reduced the deadlines for file examinations. Nevertheless, the Ministry of Economy may lift this suspension if proposed by the Competition Service (Servicio de Defensa de la Competencia), at the notifier’s request.

Finally, the regulations applicable to the control of concentrations were affected by Act 9/2001, of 4th June, which modified the sixth transitional provision of Electricity Sector Act 54/1997, of 27th November, some articles in Competition Act 16/1989, of 17th July, and other articles in Act 46/1998, of 17th December, on the Introduction of the Euro. In particular, this regulation has

redrafted Article 17 of Competition Act 16/1989, of 17th July, in more detail and has amended Article 18 thereof, establishing the possibility of imposing penalty fines for breaching the Agreements adopted by the Council of Ministers in concentration control matters.

Apart from the need to adapt the procedure for concentration control to the new provisions described above, the experience gathered by the Competition Authorities in the last few years suggests the need to improve the legal implementation of Act 16/1989.

As a result, this Royal Decree implements Competition Act 16/1989, of 17th July, regarding the procedure applied to concentration control and the form and content of the corresponding notifications, replacing Royal Decree 1080/1992, of 11th September, which is hereby repealed.

By virtue of which, as per the Minister of Economy's request and after receiving approval from the Minister of Public Administrations, according to the Council of State and after the Council of Ministers conducted the necessary discussions at the meeting held on 21st December 2001.

DECLARE:

CHAPTER I

Common Provisions

Article 1. Scope of application

The present Royal Decree shall apply to the procedure followed by the Competition Authorities to control economic concentrations, as provided in Chapter II, Title I, of Competition Act 16/1989, of 17th July.

Article 2. Definition of concentration and control

1. Any permanent change in the control structure of a company or part of a company shall be deemed to be a concentration, irrespective of whether the company or part of the same is an independent legal entity.
2. The mere reallocation of securities or assets amongst the companies belonging to the same group shall not be deemed to be an economic concentration, given that the control structure is not modified.
3. For the purposes of section 2, Article 14, of Competition Act 16/1989, of 17th July, control shall be deemed to exist whenever, as a result of executing agreements or acquiring rights over a company's share capital or assets, or by

any other means, the possibility exists of exercising a decisive influence on the company's activities. In any case, said control shall be deemed to exist:

a) Whenever a decisive influence is exercised over the composition, discussions or decisions adopted by the company's bodies.

b) Amongst the companies belonging to the same group, pursuant to Article 4 of the Stock Market Act 24/1988, of 28th July.

Article 3. Calculation of turnover

1. For the purposes of section 1.b) of Article 14 of Competition Act 16/1989, of 17th July, the aggregate turnover in Spain shall consist of the figure resulting from the sale of products and the provision of services corresponding to the ordinary activity carried out by the companies participating in the merger during the last financial year, after deducting any bonuses and other reductions on sales, the corresponding Value Added Tax and other taxes that directly apply to the turnover.

2. Whenever a company participating in the merger belongs to a group of undertakings, as described in Article 4 of the Stock Exchange Market Act 24/1988, of 28th July, the undertaking's turnover shall be increased by the aggregate turnover of the other undertakings belonging to the group. However, for the purposes of calculating the turnover, transactions executed between group companies or carried out outside Spain shall not be taken into account.

3. In the event of joint control of a company, the volume of the company's turnover shall be allocated in equal parts to the controlling parties.

4. Whenever the concentration involves the acquisition of a branch of activity, business unit, establishment or, in general, part of one or several undertakings, irrespective of whether the corresponding part of the company is an independent legal entity, only the turnover obtained by the part being acquired shall be taken into account, with respect to the seller.

5. Without prejudice to the foregoing, the following specific rules shall apply:

1^a. In the case of credit entities and other financial entities, the turnover shall be replaced by the sum of the following products obtained by the company in Spain, as defined in EEC Council Directive 86/635, of 8th December, regarding the consolidated income statements of banks and other financial entities, after deducting, whenever applicable, the corresponding Value Added Tax and other taxes directly related to said products:

- a) Interest and assimilated products.
- b) Yield on securities, whether shares, participations and equities, including stakes in group companies.
- c) Fees already paid.
- d) Net profits derived from financial transactions.
- e) Other operating income.

2^a. In the case of insurance companies, the turnover shall be replaced by the value of gross premiums issued, including all amounts collected and outstanding for insurance contracts entered into by the companies or on account of the same, including the premiums assigned to re-insurers and after deducting the charges debited to the premium amount or total volume thereof, taking into account any gross premiums paid by residents in Spain.

CHAPTER II

Procedure

SECTION 1

NOTIFICATIONS

Article 4. Obligation to notify

1. The notification of concentrations that fall within the scope of Article 14 of Competition Act 16/1989, of 17th July, 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 conditions, under the terms established in Article 17 of Act 16/1989.

2. Notifications may be made from the moment the concentration project or agreement comes into existence. For these purposes, a concentration project or agreement shall be deemed to exist from the moment the participants thereof agree to carry out the merger, setting up a joint venture or transaction enabling a takeover, as well as specifying the mode, term and conditions under which it shall be executed.

Whenever the participants were companies, an agreement shall be deemed to exist whenever it is taken, in its own right or by proxy, by the management body, even if it is required to be subsequently adopted or ratified by another

company body, pursuant to legal or statutory provisions, without prejudice to section 8 of the present Article.

The existence of clauses that may affect the future signature or execution of said agreement, in any way whatsoever, shall not exclude the duty to notify.

3. In the event of mergers, a concentration project or agreement shall be deemed to exist whenever the provisions established in section 1 of Article 234 of the Corporate Act, approved by Royal Legislative Decree 1564/1989, of 22nd December, are complied with.

4. The notifier may request, together with the corresponding notification, the lifting of the suspension preventing execution of the transaction, describing the potential detrimental effects of the suspension on the transaction and suggesting, if appropriate, possible measures to remove the potential detrimental effects of the concentration on competitors or competition in general.

5. Without prejudice to the provisions of Article 9, whenever the concentration is materialised through a takeover 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 Article 15.2 of Competition Act 16/1989, of 17th July, the provisions established in Article 37 of Royal Decree 1197/1991, of 26th July, on the regime applicable to takeover bids, shall apply.

6. Notification of the concentration, pursuant to Article 14 of Competition Act 16/1989, of 17th July, shall be made:

a) Whenever the concentration involves a merger between undertakings, by all the parties participating therein.

b) Whenever all or part of an undertaking or a group of undertakings is taken over by the purchaser.

c) Whenever a joint venture is being incorporated and, in general, a company is jointly taken over by all the acquiring parties.

7. If the notification is filed by the parties' representatives, the representatives must verify their position with a duly certified power of attorney.

8. In the event that, once the concentration project is notified and before the proceedings are resolved, the parties abandon the concentration, the notifier

shall duly inform the instructing body and shall give formal evidence of the situation, in light of which the Minister of Economy may order the proceedings to be filed, without taking any further action.

9. The notification of the economic concentrations to which this Royal Decree refers shall be without prejudice to the notification established in Article 110 of Corporate Tax Act 43/1995, of 27th December.

Article 5. Form and content of the notification

1. The notification shall be filed in the official form established in the Annex hereto. The notifier(s) shall provide all the information requested in the form, without prejudice to any additional information that may be requested at any time during the proceedings.

2. In any case, the official notification form shall include:

a) A copy of the annual management reports and financial statements corresponding to the last three financial years of the undertakings involved in the concentration.

b) A copy of the documents verifying the contract, agreement or acquisition of rights giving rise to the concentration, together with the modifications, if any, made thereto after the date of execution.

c) The receipt of payment of the corresponding fee charged for an analysis and examination of concentrations, pursuant to Article 19 herein.

3. In the event of a takeover bid, the offering prospectus filed before the Spanish Securities and Exchange Market Commission should also be included.

4. The notifier may also provide as many analyses, reports or studies made on the transaction which it deems relevant.

5. The notifier shall provide details of any modification affecting the transaction, in the course of the proceedings.

Article 6. Incomplete notifications and the Service's requests for information

1. If the information provided on the official notification form were incomplete, or if the documents required under Article 5 were not included, the Competition Service shall request the notifier to remedy the defect within a term of ten days.

The one-month term applied for tacit authorisations shall be suspended as from the next day following the notifier's receipt of the request for information and shall recommence as from the next day following the Service's receipt of the notifier's reply. In order to determine the new expiration date for the one-month term applied to tacit authorisations, the last day during which the term is suspended shall be added to the calendar days elapsed between the commencement of the suspension and until the initial expiration date of the term.

2. The request for information shall include a warning that if the notification is not made or is submitted outside the ten-day term established for this purpose, tacit authorisation shall not apply.

Article 7. Consultation prior to notifications

1. The consultation described in section 5 of Article 15 of Competition Act 16/1989, of 17th July, may be addressed in writing to the Competition Service by any company participating in the transaction.

2. Said consultation must provide the Service with a description of the transaction and intervening parties, the turnover of the participating companies during the last financial year, pursuant to Article 3 herein, and any information that is relevant to determine which markets are affected and the share held therein by the undertakings concerned, pursuant to sections 5.1 and 5.2. of the official notification form.

3. If the information provided for the consultation were deemed insufficient, the Service shall request the parties to remedy the defect within a term of ten days, pointing out that, otherwise, they shall be deemed as having waived their consultation and that section 4 of Article 15 bis of Competition Act 16/1989, of 17th July, may apply.

4. The provisions established in section 5 of Article 15 of Competition Act 16/1989, of 17th July, shall only apply whenever sections 1 and 2 of said Article 15 are not complied with.

5. If the consultation does not follow the object established in section 5 of Article 15 of Competition Act 16/1989, of 17th July, a resolution of non-admission shall be issued.

SECTION 2

INSTRUCTION BEFORE THE SERVICE AND THE MINISTER'S DECISION

Article 8. Instruction of the proceedings

1. Once the notification is received in due form, the Competition Service shall open the proceedings and shall issue a confidential report for the Ministry of Economy, expressing its opinion on whether the notified transaction may hinder effective competition on the market.
2. For the purposes of the foregoing section, the Competition Service may request any individual or legal entity to provide as many details and information it deems necessary. To do this, the Service may exercise the powers conferred by Articles 32, 33 and 34 of Competition Act 16/1989, of 17th July.

Article 9. Instruction of the proceedings and application of Community Regulations

1. If the European Commission refers a case that falls within the scope of the European Community, by virtue of Article 9 of EC Council Regulation 4064/89 of 21st December on the control of Concentration Transactions, as amended by EC Council Regulation 1310/97, of 30th June, the Service shall initiate proceedings and file the same according to the provisions of the Competition Act and the present Royal Decree.
2. If the Director of the Competition Service decides, pursuant to Article 31 bis, paragraph f), of Competition Act 16/1989 of 17th July, to apply the provisions of section 3 of Article 22 of the aforementioned EC Regulation 4064/89, such decision shall be notified to the companies participating in the transaction, who shall be warned of the European Commission's authority to adopt a decision on the matter and of the non-application of the tacit authorisation established in section 2 of Article 15 bis of Competition Act 16/1989, of 17th July.

Article 10. Forwarding of the proceedings to the Competition Court (Tribunal de Defensa de la Competencia).

1. The Minister of Economy, upon request from the Competition Service and through a Resolution, shall submit the Court any proceedings related to the concentration projects or transactions it deems may hinder the maintenance of effective competition on the market.
2. In its Resolution, the Minister of Economy, on a proposal from the Service and upon request from the notifier, may lift the suspension of the transaction,

after assessing the potential detrimental effects of the suspension, and subject its decision to the notifier's compliance with certain conditions.

3. Pursuant to section 2 of Article 15 bis of Competition Act 16/1989, of 17th July, and without prejudice to the obligation to pay the fees established in Article 19 herein, the Administration shall be deemed to accept the transaction if it is not referred to the Court within the month after the notification date.

4. The Service shall notify the interested parties of the date on which the proceedings were referred to the Competition Court.

Article 11. Confidential nature of the proceedings

1. Any steps that are taken in relation to the notification by the Competition Service shall be confidential until the Minister of Economy issues a resolution, as the case may be, to refer the proceedings to the Competition Court, without prejudice to the provisions established in Article 53 of Competition Act 16/1989, of 17th July. The foregoing rule shall not apply to the fact of having notified the transaction, which shall be made public.

2. In particular, the Competition Service shall publish the report described in Article 8.1 herein once the Minister of Economy has issued a resolution to refer the proceedings to the Competition Court or once the transaction has been tacitly authorised, after examining any confidential aspects thereof.

Article 12. Breach of the duty to notify

1. If a concentration between undertakings complies with section 1 of Article 14 of Competition Act 16/1989, of 17th July, and were not notified prior to execution thereof, pursuant to the provisions of Article 4 of this Royal Decree, the Service shall demand ex officio that the corresponding notification be presented within a non-extendable term of twenty days following the receipt of this demand, in order for the corresponding allegations to be filed within this term regarding the possibility of applying the sanction established in Article 18.1 of Competition Act 16/1989, of 17th July. The power of the Service to make this ex officio demand may be executed within four years following the execution of the transaction.

2. Upon expiration of the term to which the preceding section refers, the Director for the Service shall issue a resolution on whether to impose the sanction foreseen in Article 18.1 of the Act. Likewise, the Director shall be entitled to impose penalty fines under the terms established in Article 18.2 of the Act if the notification is not made within this term.

3. Without prejudice to the foregoing provisions, if a concentration between undertakings which exceeds the limits established in Article 14 of Competition Act 16/1989, of 17th July, were not duly notified, the Director of the Service may agree to initiate the proceedings. The Service may request the undertakings concerned and third parties to provide any appropriate information, by virtue of Article 32 of Competition Act 16/1989, of 17th July.

4. Once the proceedings are initiated, the Director of the Service shall submit his proposed resolution to the Minister of Economy, for the purposes of Article 15 bis 1 of Competition Act 16/1989, of 17th July, without applying the tacit authorisation provided in Article bis 2.

Article 13. Termination by agreement

1. Once the Competition Service has issued a report as foreseen in section 1 of Article 15 ter of Competition Act 16/1989, of 17th July, stating that the concentration's hindrance of competition is easily remedied, the Minister of Economy may decide that the parties propose remedies or modifications to the transaction, in order to remove or counteract the described restrictions on competition. The Minister's resolution shall be public.

2. The Minister's resolution shall be notified to the participating undertakings, which shall enjoy a one-month term in which to propose the remedies or modifications of section 1 above to the Competition Service. Such remedies or modifications shall be confidential.

3. Within a term of twenty days after the corresponding remedies are submitted, the Minister of Economy, after receiving the report from the Service, shall resolve whether to adopt a clearance decision or refer the proceedings to the Court. The Minister of Economy's resolution shall be public and reasoned, without prejudice to the Service ordering the secrecy of certain confidential issues included therein, ex officio or upon request from the parties.

SECTION 3

COURT PROCEDURE

Article 14. Prior steps taken by the Competition Court.

1. After the Court receives the proceedings, the President shall assign a rapporteur or a commission in order to draft a discussion document to be used as the basis of the Court's report.

2. In order to collect the opinion of any affected third parties, the rapporteur or the commission appointed shall draft a brief note on the main points of the

proceedings and the features of the project or transaction. The Court shall summon the notifier in order to make a written statement, within a maximum term of two days, on which parts of the information contained in the note should be kept confidential.

This brief note shall be notified to the individuals or legal entities which the Court believes may be affected and, if applicable, to the Council of Consumers and Users and consumers'/users' associations, so that they may express their reasoned opinion on whether the project or transaction hinders effective competition on the market or, where appropriate, makes any improvement under the terms established in paragraph 1 of Article 16 of the Act.

3. The Court may request any reports from other administrative bodies that it deems necessary, specifying the subject(s) on which the information is requested. Likewise, it may request details and information from any individual or legal entity under the terms established in Article 29 of Competition Act 16/1989, of 17th July.

4. The individuals and legal entities to which sections 2 and 3 of this Article refer shall enjoy a ten-day term in which to present any allegations, reports or information that may be requested.

Article 15. Summons and hearing of notifiers and interested parties.

1. The Court may summon the notifier as many times are necessary to obtain clarifications or accuracies on the transaction. Likewise, it may request that it present in writing, within the term established, any additional details and information required to draft the report.

2. The Court shall issue a decision on the applications to obtain status as an interested party in the proceedings, according to the provision established in Article 31 of Act 30/1992, of 26th November, on the Legal Regime applicable to Public Administrations and the Common Administrative Procedure.

For these purposes, any individuals or legal entities affected by the mere fact of receiving a request for information, pursuant to the foregoing Article, shall not be deemed to be interested parties.

3. The Court shall hear the interested parties within a term of ten days minimum and fifteen days maximum, in order to make allegations before the Court issues its report.

Article 16. Report issued by the Court.

1. After hearing the proposal made by the rapporteur or the commission appointed, the Court, within a two-month term, shall issue its report under the terms and scope established in Article 16 of Competition Act 16/1989, of 17th July.
2. As a conclusion, the report shall include its opinion on the concentration, pointing out, if applicable, any conditions to which its approval shall be subject and the appropriate measures to be taken in order to restore effective competition.
3. The Court shall inform the notifiers of the date its report is referred to the Minister of Economy, in order to be forwarded to the Government. The Court's report shall not be submitted or notified, neither to the notifiers nor to any other interested party.
4. The Court shall publish its report once the Council of Ministers has made its decision and resolved, if applicable, on any confidential aspects thereof.

SECTION 4

EXPRESS RESOLUTION

Article 17. Decision of the Government

The Government's decision shall be notified to the Competition Service in order to be recorded at Registry B of Economic Concentrations, notified to the interested parties and the Competition Court and published in the "Official State Gazette".

Article 18. Compliance with the Council of Ministers' Agreement

The Competition Service shall ensure compliance with the Council of Ministers' Agreement, pursuant to the provisions established in Article 18.3 of Competition Act 16/1989, of 17th July. If the Agreement were not complied with and this fact is stated according to Article 17 of the aforementioned Act, the Service, after hearing the interested parties, may recommend to the Government that the sanctions foreseen in sections 3 and 4 of Article 18 be imposed.

With respect to the sanctions foreseen in section 4 of Article 18 of Competition Act 16/1989, of 17th July, in order to determine the turnover of the undertakings concerned, the provisions of Article 3 herein shall apply.

Article 19. Fees to analyse and study of concentrations

1. The management and collection of the fees foreseen in Article 57 of Competition Act 16/1989, of 17th July, is entrusted to the Competition Service, excluding tax collection in executory proceedings that shall be handled by the corresponding tax collection bodies integrated in the State Agency for Tax Administration.

2. The fees shall be self-assessed by the taxpayer. The self-assessments shall be paid in at deposit entities which are authorised to act as collaborating tax collection entities, pursuant to Article 8.3, paragraph 2, of the General Regulations for Tax Collection and the Order of 4th June 1998, governing certain aspects of tax collection management, as rights of the Public Treasury.

3. The payment receipt shall be presented at the Service for Competition Defence, together with the notification form.

Voluntary payment of the Fees shall be made upon presentation of the notification, including the receipt of the corresponding deposit. If upon presentation of the notification an unpaid self-assessment were filed, its exaction shall be carried out in attachment proceedings, without prejudice to the Service initiating the concentration proceedings.

In the event of payments due to this self-assessed fee deposit outside the corresponding term without giving prior notice, the amount due shall be increased by the surcharges established in the General Taxation Act.

4. The fee amount shall be calculated according to section 6 of Article 57 of Competition Act 16/1989, of 17th July. For the purposes of calculating the participants' global turnover, the last financial year shall be taken into account and the provisions of Article 3 herein shall apply.

5. The Competition Service shall be in charge of handling any applications for deferring the payment of fees, presented within the voluntary term, and shall be subject to the general provisions established in General Tax Collection Regulations.

SINGLE ADDITIONAL PROVISION. MODIFICATION OF ROYAL DECREE 1197/1991.

The following modifications are introduced in Royal Decree 1197/1991, of 26th July, on the regime applicable to takeover bids.

1. Paragraph c) of Article 24.1 shall be worded as follows:

"c) In the events foreseen in the second section, letters b) and c) of the fourth section and letters b) and c) of the seventh section of Article 37."

2. Article 37 shall be worded as follows:

"Article 37. Procedure to be followed before the Spanish bodies for Competition Defence.

1. In the events established in Article 14 of Competition Act 16/1989, of 17th July, the offeror must notify the concentration to the Competition Service, pursuant to Article 15 of said Act and within five days following the filing of the application for acceptance of the offer before the Spanish Securities and Exchange Market Commission, if the Service had not been previously notified.

Without prejudice to the foregoing, the Spanish Securities and Exchange Market Commission, if it believes that the events foreseen in said Article 14 of Act 16/1989 may arise and this fact were not recorded in the corresponding prospectus, shall notify the Competition Service of the offer in order that it may, if it deems it appropriate, require the offeror to present the notification.

2. In the event that the Minister of Economy refers the proceedings to the Competition Court, the Competition Service must duly notify the offeror on the same day the proceedings are sent. In this case, the offeror may abandon the offer as long as this is notified to the Spanish Securities and Exchange Market Commission on the next day following the notification.

3. If suspension of the concentration is not lifted and the corresponding proceedings are initiated before the Competition Defence bodies, the announcement foreseen in Article 18 shall not be published, nor shall the term for acceptance begin, insofar as the Administration does not issue its express or tacit authorisation.

4. If the suspension of the transaction is lifted, the offer shall be made subject to condition and, without prejudice to the provisions of section 2, shall have the following effects:

a) If the transaction is tacitly accepted before the term for acceptance of the offer elapses, the offer shall be fully enforceable.

b) If the Government issues its resolution before the term for acceptance of the offer elapses, such resolution shall apply, pursuant to section 7.

c) If no express or tacit resolution is issued before the term for acceptance of the offer elapses, the offeror may abandon the offer.

5. If initiation of the proceedings before the Competition Service were a result of the Service's demand to the offeror to present the corresponding notification, the foregoing points shall apply (excluding any tacit authorisation).

6. If the transaction is approved, according to Articles 15.bis.2 and 15 ter of Competition Act 16/1989, of 17th July, the second chapter herein shall apply. If the resolution to carry out termination by agreement were issued after the Spanish Securities and Exchange Market Commission has authorised the offer, an additional prospectus shall be published to describe the terms of the agreement, which shall be verified by the Commission.

7. The Government's resolution shall have the following effects:

a) If the Government does not oppose the concentration, the offer shall be fully enforceable.

b) If the Government declares inappropriate the transaction proposed, the offeror shall abandon the offer pursuant to the provisions of Article 24.

c) If the Government subjects its authorisation to any condition, the offeror may abandon the offer pursuant to the provisions of Article 24.

8. The effects derived from the filing of proceedings before the bodies for Competition Defence and any abandonment, if applicable, must be published in the manner described in Article 18, within a maximum term of two days following the tacit or express administrative resolution, or after the date of abandonment for any other legal cause, after notifying the Spanish Securities Market Commission.

9. If an initial offer which fulfils the conditions for compulsory notification (as per Article 14 of Competition Act 16/1989, of 17th July) is issued at the same time as another offer which does not fulfil the conditions, the latter shall be suspended until the former is published, according to Article 18 herein".

SINGLE TRANSITIONAL PROVISION. TRANSITIONAL REGIME APPLIED TO PROCEDURES.

The aforementioned proceedings that are initiated as a result of notifications, requests or agreements issued by the Competition Service prior to the coming into force of this Royal Decree, shall be subject to the previously existing law as regards any procedural aspects. However, the provisions on termination by agreement contained herein shall apply, provided that this is possible at the stage of the proceedings.

SINGLE REPEALING PROVISION. SINGLE STATUTORY REPEAL.

Royal Decree 1080/1992, of 11th September, which approves the procedure applied by the Competition Defence bodies to economic concentrations and the form and content of voluntary notifications, is hereby repealed.

FIRST FINAL PROVISION. ABILITY TO MODIFY.

The Minister of Economy may issue an Order modifying the official form annexed hereto.

SECOND FINAL PROVISION. ENTRY INTO FORCE.

The present Royal Decree shall come into force twenty days after it is published in the “Official State Gazette”.

ANNEX

Form for notifying economic concentrations

To the Competition Service

General Secretariat of Economic Policy and Competition Defence

Notes:

1. This form shall include the information and documentation provided for notification purposes, pursuant to Article 5 of this Royal Decree, for concentrations involving undertakings that fall within the scope of application of Article 14 of Competition Act 16/1989, of 17th July.

For completion of the form, the provisions established in Title I, Chapter II, of Competition Act 16/1989, of 17th July, shall apply, as well as the Royal Decree to which this form is annexed.

2. The form consists of:

a) A front page indicating the identity of the participants, the nature of the transaction and economic sector, as well as the place, date and signatures of the notifiers.

b) The information requested in Sections 1 to 7. It is suggested that such information be provided in order, on a separate page, specifying the marginal reference number.

3. The notifier shall provide all the information and documentation requested in the form, including any additional documents that are necessary as well as any that the notifier deems appropriate. However, if a reply cannot be issued in good faith or may only be issued in a limited manner, according to the information available, this fact shall be recorded and reasoned.

If a lack of information were not duly reasoned, the provisions established in Article 6 of this Royal Decree shall apply.

4. The completion of this form shall not exclude the possibility of requesting additional information.

5. The party/parties shall point out in the notification any information that should be confidential vis-à-vis third parties or any participant in the transaction, as the case may be, and the reasons for the same.

According to the provisions of Article 53 of Act 16/1989, the Competition Service and the Competition Court, at any stage in the proceedings, may order, ex officio or at the interested party's request, that the secrecy of any confidential information or documents be maintained, as a separate part of the proceedings.

6. The notification shall be presented at the Competition Service, in Madrid.

Front page

Notifier (interested party or legal representative)

Other participants:

Type of transaction:

Economic sector:

HEREBY REQUESTS: That this notification be taken into account for the purposes, established in Article 15 of Competition Act 16/1989, of 17th July.

The signatories below declare that the information provided in this form and annexes thereto are true, that their opinions are authentic and that all assessments were made in good faith.

Place, date and signature.

FIRST SECTION - INFORMATION ON THE PARTIES

1.1. Information on the party/parties making the notification.

Please include:

1.1.1. Full company name.

In the case of individuals or companies that are not legal entities and operate under a commercial name, please include the full name of the individual(s) or the company name.

1.1.2. Registered address and fiscal identification number or code.

1.1.3. Nature of the undertaking activities.

1.1.4. Person to contact and the position held. Address, telephone number, fax and e-mail address.

1.2. Information on the other parties involved in the concentration.

1.2.1. Full company name.

1.2.2. Registered address and fiscal identification number or code.

1.2.3. Nature of the undertaking activities.

1.2.4. Person to contact and the position held. Address, telephone number, fax and e-mail address.

1.3. Notification made by a representative.

A notification may be made by the legal representative of the corresponding company/companies, in which case please include:

1.3.1. Name of the persons or entities appointed as representatives.

1.3.2. Registered address and fiscal identification number or code.

1.3.3. Person to contact and the position held. Address, telephone number, fax and e-mail address.

1.3.4. Please include a duly notarised copy of the power of attorney or certified true copy of the same, with a sworn translation if the power of attorney is not drafted in one of Spain's official languages.

SECOND SECTION – NATURE AND CHARACTERISTICS OF THE CONCENTRATION

2.1. Description of the transaction.

Please give a brief description of the concentration, including, amongst others:

2.1.1. Whether the concentration amounts to:

- a) A merger between companies that were previously independent.
- b) An acquisition of assets.
- c) An assignment agreement or exploitation management agreement.
- d) An acquisition of any kind of stake that enables a takeover of another company.
- e) The setting of a joint venture and, in general, the acquisition of joint control over an undertaking which basically amounts to a concentration since the participated company permanently acts as an independent economic entity and its main object/effect is not the coordination of the participants' competitive behaviour.
- f) Any other means whereby direct or indirect control is obtained, pursuant to the provisions established in Article 2 herein.

2.1.2. If the transaction affects all or part of the participating undertakings.

2.1.3. If an individual or company makes a public offer to acquire another, indicate if the transaction has been approved by the management body of the latter company.

2.2. Economic and financial components of the transaction.

Briefly explain the economic and financial details of the transaction, particularly including, where applicable:

2.2.1. The assets or securities and the amount and form of consideration (e.g. funds paid or bonds) that is offered or agreed upon.

2.2.2. The conditions of any other takeover bid made.

2.2.3. If one or more of the parties to the transaction has received financial support, whether or not public, specifying the nature and amount of the same.

2.2.4. The assets and control structure after the transaction is carried out.

2.2.5. The schedule of the transaction, particularly referring to the date on which the concentration project or agreement was reached and the date foreseen or proposed for the events giving rise to execution of the transaction.

2.2.6. Please include the economic logic of the notified transaction.

THIRD SECTION – ECONOMIC SECTORS AFFECTED, TURNOVER OF THE PARTIES AND SCOPE OF THE TRANSACTION

With respect to each affected party, the following shall be included:

3.1. The economic sectors affected by the transaction, indicating any existing sector associations.

3.2. The notifying party shall indicate the following information, with respect to all the participants in the concentration, during the last three financial years, pursuant to Article 3 herein.

3.2.1. Turnover worldwide.

3.2.2. Turnover in the European Community.

3.2.3. Turnover in Spain.

3.3. Please indicate why the notified transaction does not fall within the scope of application of EEC Council Regulation No. 4064/89, of 21st December 1989, on the control of concentrations between undertakings.

3.4. Point out in which other countries and on what date the concentration has been or will be notified.

FOURTH SECTION – EXISTING OWNERSHIP AND CONTROL

Each of the parties taking part in the concentration shall provide a complete list of all the undertakings belonging to the same group.

For the purposes of group membership, a relationship of control shall be construed according to Article 2.3 of this Royal Decree and Section 2 of this Annex, regarding the nature and characteristics of the concentration.

The list shall include a full description of:

4.1. All the companies that are directly or indirectly controlled by the parties to the concentration.

4.2. All the companies or individuals which directly or indirectly control the parties to the concentration.

4.3. All the companies that are directly or indirectly controlled by each of the companies or individuals listed above.

All the cases included in the aforementioned description shall indicate the corresponding form and means of control and the nature of the activities carried out by the companies.

The information provided in this section may include graphs or diagrams to better explain the control structure of the companies, before and after the transaction.

4.4. With respect to the companies or individuals referred to in this section, a list of the heads of the administration or management bodies, who occupy the same position in any other company that is active in the relevant markets, shall be provided.

FIFTH SECTION – MARKET INFORMATION

5.1 Definition of the relevant market.

5.1.1. Description of the goods or services commercialised by each of the companies participating in the concentration, grouping them into significant commercial categories and, if applicable, any changes in the product or services portfolio that are envisaged in the concentration.

5.1.2. Description of the substitute goods and services that are usually taken into account in this market, due to their physical and technical characteristics, use or functions, consumer or user opinion, price level, distribution system or any legal or regulatory product definitions.

5.1.3. Definition of the relevant market in the transaction, with the corresponding explanations. The information that is requested below shall be provided individually for each product or service line.

5.2. Market shares.

With respect to the national market and any local markets affected by the transaction, indicate for the last three financial years:

a) The estimated total size of the market, as a value and in the type of units usually used in the sector.

b) An estimation of the part corresponding to each one of the companies and groups that are being concentrated, and to each one of the main companies or groups of competing companies.

This information shall only be required in markets of all scopes when it is estimated that the joint share of the undertakings being concentrated is higher than 10 per cent.

5.3. Prices, distribution, suppliers and competition.

5.3.1. Indicate, for the last financial year, the price levels used by the undertakings that are being concentrated with respect to those of their main competitors, and which methods are used to determine the same.

5.3.2. A detailed description of the distribution channels used by the undertakings that are being concentrated, pointing out to what degree the distribution is carried out by third parties or by the undertakings themselves or other undertakings belonging to their group.

5.3.3. Description of the structure of market supply and demand and a list of the main clients and suppliers, with their respective percentage share in the total sales revenues or purchases of the undertakings participating in the concentration.

5.3.4. Description of the main forms of competition existing on the relevant market.

5.4. Barriers to new undertakings entering the market.

5.4.1. A detailed description of the difficulties that new competitors may encounter when entering the market, including any of the following that may be applicable:

a) Restrictions on the competition of imported products, due to tariff or non-tariff barriers.

b) Limited availability of inputs, such as raw materials, intermediate goods, technology or qualified staff.

c) Restrictions on the creation of a distribution network, pointing out the relevant causes.

d) Difficulties derived from the total of entrance cost incurred by a new competitor due to the need for capital, promotion, publicity, distribution, maintenance, etc.

e) Restrictions on market access due to the need to obtain administrative authorisations or legal/administrative controls.

5.4.2. Point out if any significant undertaking has entered the market during the last three years (or longer, if applicable). If so, provide any information available on these undertakings.

5.5. Co-operation issues.

5.5.1 Point out if any horizontal or vertical co-operation agreements exist amongst the participating undertakings or between these and other competitors on the markets affected by the transaction or related markets and, if applicable, a detailed description of the same.

5.5.2. In the event of notification of a joint venture, point out if the parent companies maintain or shall maintain a significant activity on these markets, whether ascendant or descendant, with respect to the participating company. If so, describe the participation of the parent companies and of the joint venture in each of these markets, indicating the participation held by each one in the turnover of the other companies.

5.6. Vertical matters.

Describe the effects of the transaction on the ascendant and descendant markets of the relevant market, as well as their level of vertical integration.

5.7. Research and development.

Describe the role and significance of the research and development activities carried out to continue on the relevant markets, in long-term competition terms, pointing out the amount of I+D expenses with respect to the turnover.

SIXTH SECTION – GENERAL MATTERS

6.1. Describe and quantify the contribution that the concentration may make to:

6.1.1. Improve production or commercialisation systems.

6.1.2. Encourage technical and economic progress.

6.1.3. Favour the interests of consumers or users.

6.2. Point out the Community and worldwide contexts in which the transaction is located and the position of the parties therein. Point out any foreseeable effects on the parties in the transaction regarding these contexts, particularly regarding their international competitiveness.

SEVENTH SECTION – ATTACHED DOCUMENTS

- a) A copy of the annual management report and financial statements for the last three financial years of the undertakings participating in the transaction.
- b) Copies of the final or most recent version of the documents regarding the concentration agreement, drafted in an official language used in Spain.
- c) Any analyses, reports or studies that are deemed relevant.
- d) In the case of takeover bids, the following should also be included:

The offering prospectus filed before the Spanish Securities Market Commission.

The receipt of payment of the fees, pursuant to the provisions established in Article 19 herein.