The Spanish decentralized competition enforcement system: When David met Goliath

When it comes to the enforcement of Competition law, the Spanish system is characterized by its decentralization, which entitled the transference of certain competences from the central government to regional governments. While the benefits of the referred decentralization are diverse, the existence of a multidivisional plurality of competition enforcers forces to resort to conflict management techniques in order to allocate the competent organization to hear over a particular competition law infringement. However, given the practice of the *Junta consultiva en materia de conflictos de competencia*, the different level playing field for the national competition authority and the regional competition authorities in relation with the system to solve disputes regarding the attribution of competences damages the decentralized enforcement system recognized in the Spanish Constitution.

Con relación a la aplicación del Derecho de la competencia, el sistema español se caracteriza por su descentralización, que supuso la transferencia de ciertas competencias del gobierno central a los gobiernos regionales. Si bien los beneficios de la referida descentralización son diversos, la existencia de una pluralidad multidivisional de autoridades encargadas de su ejecución obliga a recurrir a técnicas de gestión de conflictos para poder asignar el organismo competente para decidir sobre una determinada infracción de la Ley de competencia. Sin embargo, analizada la práctica de la Junta consultiva en materia de conflictos de competencia, se aprecian desigualdades entre la autoridad nacional de competencia y las autoridades regionales de competencia con relación al sistema de resolución de conflictos en materia de atribución de la competencia, lo que perjudica el sistema de aplicación descentralizada reconocido en la Constitución española.

Lehia zuzenbidearen betearazpenari dagokionez, sistema espainiarra deszentralizatua da; horrek ekarri zuen gobernu zentralak erregio-gobernuei eskumen zehatzak eskualdatu behar izatea. Aipatutako deszentralizazio horren onurak anitzak diren arren, Lehia zuzenbidearen betearazpenaz arduratzen diren agintaritzak ugari eta eremu ezberdinetakoak direnez, sor daitezkeen eskumen-gatazkak konpontzeko liskarren inguruko kudeaketa-teknikak erabili behar dira lehiari lotutako arau-hauste zehatz bat nork ebatziko duen ezagutu ahal izateko. Hala eta guztiz ere, Lehiaren gatazken inguruko batzorde aholkuemailearen jarduna aztertuta, eskumen-esleipenaren inguruan sor daitezkeen gatazkak ebazteko sistemari dagokionez, estatuko lehia agintaritzaren eta erregioen lehia agintaritzen arteko ezberdintasunak begibistan daude; eta horrek Espainako Konstituzioan aintzatetsi duen aplizazio deszentralizatuaren sistema kaltetzen du.

Noemí Angulo Garzaro*
Department of Security of the Basque Government
Amaya Angulo Garzaro
Department of Tourism, Trader and Consumer of the Basque Government

Table of contents

Keywords: decentralization, competition law enforcement, regional competition authorities, attribution of competences.

Palabras clave: descentralización, cumplimiento del Derecho de competencia, autoridades regionales de la competencia, atribución de competencias.

JEL codes: K21, D18, L44

Entry date: 2018/10/02 Acceptance date: 2018/12/11

1. INTRODUCTION

The enforcement of State legislation by the Autonomous Communities characterizes our constitutional regime.[1] Competition law is just another branch of the Spanish legal corpus that exemplifies it. The existence of a multidivisional

* The authors wish to thank the anonymous reviewers for their insightful comments and suggestions during the evaluation process.

[1] The legal pluralism is one of the main characteristics of the Spanish decentralized model of distribution of powers. This legal pluralism results from the attribution of regulatory competences to the Autonomous Communities in certain matters. For an extended explanation on the genesis of the distribution of competences within the framework of the Spanish Constitution vide ARZOZ SANTISTEBAN, X. «Alternativas a la solución judicial de los conflictos competenciales en materia de Defensa de la Competencia», in Revista de la *Administración Pública*, no. 164, May-August, 2004, p. 88; VELASCO RICO, C.I. *Delimitación de competencias en el Estado autonómico y puntos de conexión.* Barcelona, Generalitat de Catalunya, 2012, p. 39.

plurality of competition enforcers forces to resort inevitably to conflict management techniques in order to allocate the competences of each so-perceived empowered entity[2].

Several improvements have been envisaged to reduce the traditionally contentious nature of the disputes over the competences to enforce competition legislation. However, practice shows what seer scholars had already announced: the system currently in force was conceived mainly to solve disputes, not to avoid them[3].

In our research we aim at demonstrating that, despite the burdensome procedure designed to solve dubious allocation cases, the regional competition authorities are essential and desirable when it comes to an effective enforcement of the Spanish Competition law[4]. In doing so, we will devote the first part of our research to analyze the basics of the Spanish competition law enforcement system, as its actual shaping is due to the perception that, given our legal tradition, the benefits of a decentralized system outweigh its disadvantages. Whereas, in the second part of our research, we will focus on the mechanism envisaged to solve the disputes that may arise when allocating the competence to hear over a specific competition law case, as it has been subject to criticism and it is key when it comes to discern which authority is ultimately competent for the enforcement of competition law. In this regard, we will conclude that, analyzed the cases solved by the *Junta consultiva en materia de conflictos de Defensa de la Competencia* (hereinafter, *Junta consultiva en materia de conflictos*), there is a different level playing field for the national competition authority and the regional competition authorities in relation with the system to solve disputes regarding the attribution of competences, which ultimately risks damaging the decentralized enforcement system.

---

[2] According to article 15 of the 15/2007 Spanish Competition Act, BOE n. 159, of 4 July 2007 [hereinafter, 15/2007 LDC], http://www.boe.es/buscar/act. php?id=BOE-A-2007-12946 (last consulted: 20.07.2018): «The coordination between the National Competition Commission [current, *Comisión Nacional de los Mercados y la Competencia* (CNMC)] and the competent Autonomous Communities will be done in accordance to the Law 1/2002, of 21 February, on the coordination of the competences of the State and the Autonomous Communities in matters of Defense of Competition».

[3] Although in the following section we will come back to how the literature perceived the system to attribute the competence to enforce competition law, for all *vide* CRUCELEGUI GÁRATE, J.L. «Los modelos de aplicación descentralizada del derecho de la competencia en la UE y en el Estado español», in *Cuadernos Europeos de Deusto*, Vol. 38, 2008, pp. 81-129.

[4] Law 1/2002, of 21 February, on the coordination of the competences of the State and the Autonomous Communities in matters related to the Defense of Competition, BOE no. 46, of 22 February 2002, http://www.boe.es/buscar/act.php?id=BOE-A-2002-3590 (last consulted: 20.07.2018) [hereinafter, Law 1/2002].

2. THE COMPETITION LAW ENFORCEMENT SYSTEM IN SPAIN: AN APPROACH TO THE SPANISH DECENTRALIZED ENFORCEMENT SYSTEM

There can be observed two types of structures when it comes to Competition law enforcement: decentralized and centralized[5]. While in the first structure –decentralized– part of the enforcement power of central competition authorities is delegated to regional or sub-national competition authorities, in centralized structures central competition authority retains the enforcement power.

The Spanish competition enforcement system presents a decentralized structure, where the *Comisión Nacional de los Mercados y la Competencia* (hereinafter, CNMC) is the central competition enforcement authority and the autonomous bodies for the defense of competition are the sub-national competition enforcement authorities[6]. This process of decentralization is inspired both by the German and the EU system[7].

2.1. Opting for a decentralized enforcement system: a descriptive evaluation of the advantages and disadvantages of such an option

Economic analysis has pointed out several benefits of a decentralized system[8]. On one side, a decentralized structure may enable competition between various ju-

---

[5] UNCTAD. *The attribution of competence to community and national competition authorities in the application of competition rules*, TD/B/COM.2/CLP/69, Geneva, 23 May 2008, p. 3.

[6] To date, the Spanish regional organisms are the following: Agency of Defense of Competition of Andalusia, Basque Competition Authority, Catalonian Competition Authority, Galician Competition Council, Court for the Defense of Competition of Castilla-León; Jury for the Defense of Competition in Extremadura; Commission for the Defense of Competition of the Valencian Community and Court for the Defense of Competition of Aragón, as listed by the CNMC, https://www.cnmc.es/2017-02-21-la-cnmc-y-las-autoridades-de-competencia-autonomicas-han-celebrado-en-madrid-el-consejo (last consulted: 20.07.2018). As for the case of Madrid, the Canary Islands, the Region of Murcia and The Foral Community of Navarre, their regional organisms are in charge of conducting the pre-trial phase, while the CNMC is in charge of the resolution. There is no regional organism in charge of competition enforcement in the following Autonomous Communities: Asturias, Castilla La Mancha, Balearic Islands, La Rioja and Cantabria.

[7] The former is characterized by a decentralized enforcement of the competition law by the German State and the Länders since 1958; whereas the latter culminated with the approval of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal of the European Communities L1/1, of 4 January 2003, *vide* PASCUAL PONS, C. «La descentralización de la defensa de la competencia en España y la UE», in *La Reforma de la Defensa de la Competencia: claves y retos de futuro*, San Sebastián, 2-4 July 2007, p. 2.

[8] For an in-depth comparative analysis between the desirability of a decentralized competition enforcement structure versus those of a centralized structure, *vide* JIMÉNEZ GONZÁLEZ, J.L. and CAMPOS MÉNDEZ, J. «Efectos de la descentralización de la política de defensa de la competencia», in *Universidad de las Palmas de Gran Canaria,* Documento de trabajo 2004-09, September 2004, http://www2.ulpgc.es/hege/almacen/download/43/43984/jimenez_campos_2 004_efectos_de_la_descentralizacion_de_la_pdc_dt_ulpgcull.pdf (última consulta: 20.07.2018), pp. 7-11.

risdictions –in the case of the Spanish system, between sub-national jurisdictions–. Thus, competition between jurisdictions may foster a learning process whereby understanding concerning the effects of alternative legal solutions to similar problems may be increased[9]. On the other side, decentralization addresses informational asymmetries between competition agencies and enterprises –the principal-agent relationship–[10]. Placing an authority closer to the enterprises may reduce agency costs, as it will enable to thoroughly monitor their activity; in fact, practice shows that agents tend to conceal and provide false information to the authorities to protect their interests[11].

Centralization allows economies of scale – knowledge and resources are applied to the various cases and, as a general rule, the bigger the agency, the higher its deterrent effect is, as the detection (and sanctioning) of anticompetitive practices increases[12]. However, the high workload that a centralized competition authority has to face increases unnecessarily the time to solve the cases, and, consequently, it leads to the risk of leaving numerous practices unattended[13]. Moreover, the majority of the best competition agencies, and presumably the most efficient, exhibit a decentralized structure – for all, the system of the US (both Federal Trade Commission and Department of Justice) and that of the EU[14].

---

[9] FAURE, M. and ZHANG, X. *Competition policy and regulation: recent developments in China, the US and Europe*. Chentelham, Edward Elgar Publishing, 2011, p. 59-60.

[10] In the context of competition, competition authorities are principals, while enterprises are agents, *vide* VAN DEN BERGH, R. «Economic criteria for applying the subsidiarity principle in the European Community: the case of competition policy», in *International Review of Law and Economics*., Vol. 16, 1996, pp. 363–383, mentioned in UNCTAD. *The attribution of competence to community and national competition authorities in the application of competition rules*, TD/B/COM.2/CLP/69, Geneva, 23 May 2008, p. 3.

[11] *Vide* UNCTAD. *The attribution of competence… op. cit.*, p. 3, and JIMÉNEZ GONZÁLEZ, J.L. and CAMPOS MÉNDEZ, J. «Efectos de la descentralización… *op. cit.*, p. 6.

[12] JIMÉNEZ GONZÁLEZ, J.L. and CAMPOS MÉNDEZ, J. «Efectos de la descentralización… *op. cit.*, p. 6; PASCUAL PONS, C. «La descentralización… *op. cit.,* p. 6.

[13] In this sense, it must be borne in mind that an excessive concentration of the economic and political power can hamper the Social market economy, as it turns unmanageable; thus, the majority of the decisions related to politics and economics that are crucial for the society have to be taken and implemented in a decentralized way, as stated by RESICO, M.F. «Política de defensa de la competencia», in *Introducción a la Economía Social de Mercad*o, Konrad Adenauer Stiftung, 3 November 2011, p. 230. For an indepth analysis on other disadvantages of a centralized system *vide* NEVEN, D.J. and RÖLLER, L.H. «The allocation of jurisdiction in international antitrust», in *Université de Lausanne*, Santiago de Compostela, 1999, pp. 4-5.

[14] GCR. «Rating Enforcement: The annual ranking of the world's top antitrust authorities», in *Global Competition Review*, London, Law Business Research, 2014. For an analysis on the results of this rating *vide* KONKURRENCE- OG FORBRUGERSTYRELSEN. «Press note on the Global Competition Review 2014», in *Kfst* webpage, https://www.kfst.dk/Indhold-KFST/Nyheder/Pressemeddelelser/2014/~/media/21131F417EA74FADA694F8A2F3926A23.ashx (last consulted: 20.07.2018), p. 1: «The US Department of Justice's antitrust division keeps its five-star rating after a series of court victories and the steady operation of perhaps the world's most efficient and feared cartel enforcer. The European Commission stays at five stars, having led the way in punishing the Libor rate-fixing ring and secured its

Notwithstanding, the main drawback of a decentralized enforcement structure is the risk caused by the economic phenomenon of regulatory capture. In this regard, the decentralization will be optimal provided that the level of regulatory capture is less than the information advantage of the regional agency *vis-à-vis* the national agency[15].

Figure 1. **CENTRALIZATION AND INDEPENDENCE OF THE COMPETITION AGENCIES**

Source: CAMPOS, J. y JIMÉNEZ J. L. «La descentralización de la política de la competencia: algunas implicaciones sobre las estrategias empresariales», p. 395.[16]

The Spanish competition authorities' decentralized enforcement structure, for its part, exhibits still today some weaknesses that might challenge the appropriate enforcement of competition law. The procedure put in place by the central Parliament in order to solve the disagreements that may arise in relation to the competent

long-sought private damages package in the EU Parliament». In this line, the US system of territorial distribution of competences –decentralized structure– has proven to offer advantages for the effective deterrence of anticompetitive restrictions that represent a threat for the existing market model, as set forth by JELETCHEVA, M. «Las autoridades de defensa de la competencia en España», in *Teoría General de la Competencia*, Ed. Centro Europeo de Regulación Económica y Competencia, 2007, p. 351.

[15] JIMÉNEZ GONZÁLEZ, J.L. and CAMPOS MÉNDEZ, J. «Efectos de la descentralización… *op. cit.*, p. 22.

[16] CAMPOS, J. and JIMÉNEZ J.L. «La descentralización de la política de la competencia… *op. cit.*, p. 395.

authority, despite being regarded, at the time, as innovative (see *Figure 1*), it has proven not to be sufficient[17].

2.2. **The implementation of a decentralized enforcement system: an analytical evaluation of the basics of the Spanish decentralized enforcement system**

The implementation of a decentralized enforcement system implies the introduction of a system to allocate competition cases among the different authorities that may perceive themselves competent to hear over a specific case. There is an undeniable landmark in the allocation of competences between the State and the Autonomous Communities to hear about conducts that may infringe Spanish Competition Law: the ruling of 11 November 1999 of the Spanish Constitutional Court[18]. This ruling, of utmost importance for the recognition of competences to the regional competition authorities, declared unconstitutional a clause contained, expressly or by reference, in several articles of the Spanish Competition Act[19]. It made reference to practices that affect «the whole or part of the national market» and, as a general rule, it granted the application of the competition rules to the two existing administrative bodies of centralized nature: the Court of Defense of Competition and the Service of Defense of Competition[20].

---

[17] «The own drafting of the Law [1/2002] may be regarded as the main source of competence conflicts between the State and the Autonomous Communities, or between the Autonomous Communities themselves», in ARZOZ SANTISTEBAN, X. «Alternativas a la solución judicial... *op. cit.,* p. 47; CAMPOS, J. y JIMÉNEZ J. L. «La descentralización de la política de la competencia: algunas implicaciones sobre las estrategias empresariales», In *Anuario Jurídico y Económico Escurialense*, XLI, 2008, [pp. 389-406] pp. 394-395; or, to put it in other words, «When the Law on the coordination of competences was written, the legislator focused on how to solve the conflicts rather than on how to avoid them», as expressed by CRUCELEGUI GÁRATE, J.L. «Los modelos de aplicación descentralizada… *op. cit.*, pp. 81-129; «the Law [1/2002] does not reflect the reality of the Autonomous Communities and it does not ensure the coordination and cooperation amotn the different organisms of defense of competition; […] it has born limp; […] the Central government has just make a legal transplant of the current European model», those are words of ZENARRUZABEITIA, a current member of the Counsil of the CNMC and, at the time, vicepresident of the Basque Country, in TRIBUNAL VASCO DE DEFENSA DE LA COMPETENCIA. «Apariciones en prensa escrita relativas al Curso de Verano 'La reforma de la defensa de la competencia: claves y retos de futuro'», in TVDC, http://www.euskadi.eus/r332288/es/contenidos/informacion/conferencias_y_retransmisiones/es_conretra/adjuntos/curso%20verano%20%20dossier%20prensa.pdf (last consulted: 20.07.2018), p. 4.

[18] It must be noted that all references to «State» contained in the present study will be done in relation to either the central government or the Parliament of the Spanish State, as opposed to the government and legislative chamber of each Autonomous Community. Spanish Constitutional Court Ruling 208/1999, of 11 November 1999, BOE no. 300, supplement of the Constitutional Court, of 16 December 1999, http://www.boe.es/buscar/doc.php?id=BOE-T-1999-23950 (last consulted: 20.07.2018).

[19] At the time, it was in force the 16/1989 Spanish Competition Act, BOE n. 170, of 10 July 1989 [hereinafter 16/1989 LDC], which has been repealed by the 15/2007 LDC.

[20] The referred clause was contained in the following articles: 4, 7, 9, 10, 11, 25.a) and c) of the 16/1989 LDC. *Vide* VELASCO RICO, C.I. *Delimitación de competencias… op. cit.,* p. 187. The institutional system has been modified first by the 15/2007 LDC, art. 12 and the 5.2 Additional Provision, which consolidated both bodies in the National Competition Commission (CNC); and, lately, by the Law 3/2013, of 4 June, on

The ruling generated the necessity to clearly define a framework to develop the executive competences of the State and of the Autonomous Communities contained in the Spanish Competition Act (hereinafter, LDC)[21]. While the State retains the whole legislative competence, it is for both, the State and the Autonomous Communities, to exercise the executive competences.

The Spanish Constitutional Court based its decision upon the acknowledgment that the Spanish Constitution does not expressly attribute to the State the competence over the subject «defense of competition», as such; therefore, as long as the set of competences attributed to the State do not impede it, the referred competence may be assumed by the Autonomous Communities in their respective Statutes of Autonomy[22]. In line with it, the Court determined that the subject of defense of competition could be included in that of the internal market[23].

In relation to the latter –the internal market–, the Statutes of Autonomy recognize an exclusive legislative competence to the State[24]. Therefore, if we read both texts in conjunction –the Statute of Autonomy that may result applicable and the

---

the creation of the National Markets and Competition Commission, BOE no. 134, of 5 June 2013, which created the super-regulator. For a more detailed analysis on the evolution of the institutional system, *vide* MAGIDE HERRERO, M. «Del esquema institucional para la aplicación de esta ley», in MASSAGUER, J.; SALA ARQUER, J.M.; FOLGUERA, J. and GUTIÉRREZ, A. (Dirs). *Comentario a la Ley de Defensa de la Competencia*. Cizur Menor, Civitas – Thomson Reuters, 2012, 3rd ed., pp. 561-572.

[21] In our study, when we make generical reference to the Spanish Competition Act, we will just say «LDC» (Ley de Defensa de la Competencia), no matter if it is the 16/1989 LDC or the 15/2007 LDC, provided that provisions contained in both legal texts match.

[22] Spanish Constitutional Court Ruling 208/1999, of 11 November 1999, §§ 5-6, and *vide* JIMÉNEZ GONZÁLEZ, J.L. and CAMPOS MÉNDEZ, J. «Efectos de la descentralización… *op. cit.*, p. 3.

[23] The Constitutional Court had already established that the defense of competition includes all regulations aimed at defending the freedom of competition through the prevention and, when needed, repression, of the situations that create potential obstacles to the development of the competition in the market. Therefore, the defense of competition is one of the competences that contributes to the regulation of the internal market, *vide* Spanish Constitutional Court Ruling 71/1982 of 30 November 1982, http://hj.tribunalconstitucional.es/HJ/es-ES/Resolucion/S how/SENTENCIA/1982/71 (last consulted: 05.04.2015), § 15; Spanish Constitutional Court Ruling 88/1986 of 1 July 1986, http://hj.tribunalconstitucional.es/HJ/es-ES/Resolucion/Show /SENTENCIA/1986/88 (last consulted: 05.04.2015), § 4; and Spanish Constitutional Court Ruling 264/1993 of 22 July 1993, http://hj.tribunalconstitucional.es/HJ/es-ES/Resolucion/Show /SENTENCIA/1993/264 (last consulted: 05.04.2015), § 4.

[24] According to the 149.1.13 article of the Spanish Constitution, the State has the exclusive competence to set the bases and to coordinate the general planning of the economic activity. With respect to that constitutional principle, all Statutes of Autonomy –the specific articles are registered below–, when defining their exclusive competence over the internal market, they specifically exclude from it the competence to legislate on the defense of competition, to fix the general policy on prices and to guarantee the free circulation of goods within the State. The three of them are exclusive competences of the State. In fact, those Statutes of Autonomy recently reformed –in the reforming wave of 2007– make, on one hand, subtle references, if any, to the «internal market» and, on the other hand, a clearer distinction on what aspects of the competence on defense of competition are retained by the State and what are attributed to the Autonomous Community; in doing so, they include the competence on defense of competition among the exclusive executive competences of the Community, «without

Spanish Constitution–, the Autonomous Communities are constraint to assume just the executive competence over the internal market –and, thus, on the defense of competition– since they are bound to respect the set of competences expressly attributed to the State, namely, the legislative competence over the internal market –article 149.1.13 of the Spanish Constitution–.

In addition, not only are the Autonomous Communities limited to the executive competence over the defense of competition, but also, in order to be able to exercise it, they are obliged to have specified it in their respective Statutes of Autonomy; otherwise, in the absence of an express assumption by the Autonomous Community, the closing close established in article 149.3 of the Spanish Constitution would enter into play and the execution of the defense of competition would fall automatically under the competence of the State.

Finally, the Constitutional Court stated that the exercise of the executive competences over the defense of competition has to be harmonized with the need to protect the unity of the national economy and with the requirement of a single market that allows the State to develop its constitutional competence to set the grounds for and coordinate the general planning of the economic activity[25].

As a consequence, on one hand the State does not only retain for itself the legislative competence over the defense of competition, but it is also competent when it comes to the executive activities that may have an impact on the determination of the actual configuration of the national market. It does not matter that the effects of those executive activities are to be deployed over the territory of a single Autonomous Community[26]. Thus, the objective competence of the Autonomous Communities over the defense of competition is subject to two limitations: (a) the executive activities have to be carried out in the territory of the Autonomous Community of reference –principle of territoriality– and (b) they cannot have an incidence or impact on the supra-autonomic market[27]. But, in the light of the decisions taken by the

---

prejudice to the exclusive legislative competence of the State» (for a comprehensive list of the specific articles of the various Statutes of Autonomy, *vide* Annex I).

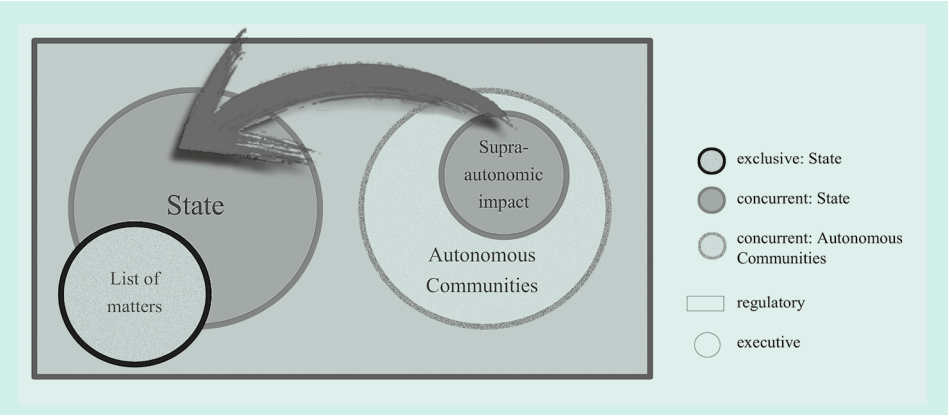
[25] Spanish Constitutional Court Ruling 208/1999, of 11 November 1999, § 6.

[26] Articles 1.1. and 1.2 and preface of the Law 1/2002.

[27] *Supra*, preface and settled case law of the Spanish Constitutional Court: Spanish Constitutional Court Ruling 208/1999, §§ 6-7; Spanish Constitutional Court Ruling 124/2003, of 19 June, BOE no. 170, of 17 July 2003, http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-T-2003-14319.pdf (last consulted: 20.07.2018), § 4; Spanish Constitutional Court Ruling 157/2004, of 23 September 2004, BOE no. 255, of 24 October 2004, http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-T-2004-18113.pdf (last consulted: 20.07.2018), § 4; Spanish Constitutional Court Ruling 71/2012, of 16 April 2012, BOE no. 117, of 16 May 2012, supplement of the Constitutional Court, http://www.boe.es/boe/dias/2012/05/16/pdfs/BOE-A-2012-6481.pdf (last consulted: 20.07.2018), § 5. In relation to the executive competences that, having a supra-autonomic scope, are exercised by the State, it is argued, in order to justify such assumption by the State, that either those competences are not executive, but quasi

Junta consultiva en materia de conflictos, this conception of the exhaustion of the effects in the territory of a single Autonomous Community must be tempered[28].

Figure 2. **DISTRIBUTION OF COMPETENCES OVER COMPETITION ENFORCEMENT WITHIN THE SPANISH TERRITORY**



Source: Made by the authors on the basis of the distribution above mentioned.

On the other hand, the Law 1/2002, in its article 1.5, expressly includes some matters among those of exclusive competence of the State –listing principle–: (a) the application of the rules concerning restrictive or abusive agreements and practices, and rules concerning mergers and acquisitions; (b) the representation in matters related to the defense of competition in front of other national authorities, international forums and bodies and, in particular, in front of the European Union, the OECD, the WTO and the UNCTAD; and the application in Spain of articles 101 and 102 TFEU, and its secondary legislation[29].

regulatory, or they are executive actions that have a basic nature, *vide* VELASCO RICO, C.I. *Delimitación de competencias… op. cit.,* pp. 67-68.

[28] As we will explain in the following section, in the sphere of commercial trade, there is not possible to find out practices that exhaust their effects completely in a given territory, as put forward by the Competition Tribunal of the Autonomous Community of Madrid in the Report of the *Junta consultiva en materia de conflictos* of 21 December 2005, case *Spanair/AENA*, p. 7. Despite the fact that the *Junta consultiva en materia de conflictos* leant towards the allocation of the competence to the State, one cannot obviate the strength of the legal reasoning put forward by the Competition Tribunal of the Autonomous Community of Madrid and, furthermore, the *Junta consultiva en materia de conflictos* itself acknowledged in the Report (p. 10) that it had not the means, neither the time, to develop the economic research that taking a decision like the one at stake implies – whether to allocate the competence to the State or to the Autonomous Community; thus, such an acknowledgement lead us to consider the debatable nature of the decisions adopted by the *Junta consultiva en materia de conflictos*.

[29] The approval of the 15/2007 LDC led to the suppression of the individual authorizations, whose concession was competence of the State, *vide* 15/2007 LDC, preamble, recital II. In relation to the application of articles 101 and 102 TFEU by the CNMC, it is applicable the article 53.1.a) and the 5.1

Therefore, the procedure to determine the competent authority would consist on two steps: firstly, (a) the *main connection point* will be examined –listing principle and territoriality principle are to be applied– and, if the competence is on the State –due to the fact that the matter is among the listed ones or that the practice deploys its effects over the territory of more than one Autonomous Communities– no further analysis is, in principle, required; however, if, as a consequence of the application of the first step, the competence is on an authority of an Autonomous Community, (b) the *specific additional connection points* need to be examined, in order to verify whether the practice could have affected the unity of the national market and, consequently, would fall under the competence of the State[30].

3. THE DISPUTE RESOLUTION MECHANISM WITHIN THE SPANISH COMPETITION ENFORCEMENT SYSTEM: A CRITICAL INSIGHT

The technique used by the legislator to define the scheme of distribution of competences prompts the so-deemed competent authorities to first resort to the interpretation of the sometimes obscure rules contained in the Law 1/2002 in order to, then, discern which body is competent to hear over the case – difficulties arise particularly in relation to those rules introduced to safeguard the unity of the market, that is, those containing additional connection points[31]. In the light of such a wide margin of interpretation of the Law 1/2002, its Articles 2 and 3 envisage a dynamic and balanced mechanism to solve the conflicts that may arise in the course of its application[32].

Additional Provision of the 15/2007 LDC and the Royal Decree 2295/2004, of 10 December, on the application in Spain of the EU competition rules, BOE no. 308, 23 December 2004, http://www.boe.es/buscar/doc.php?id=BOE-A-2004-21496 (last consulted: 20.07.2018), in relation to art. 35 of the Regulation 1/2003. For an insight on the EU competition rules and on the allocation of cases between the National Competition Authorities and the European Commission, *vide* CALVO CARAVACA, A.L. *Derecho antitrust europeo. Tomo I. Parte General. La competencia*. Madrid, Colex, 2009; KORAH, V. *An introductory guide to EC competition law and practice*. Oxford, Hart Publishing, 2007, 9th ed.; MIKROULEA, A. «Case Allocation in Antitrust and Collaboration between the National Competition Authorities and the European Commission», in LIANOS, I. and KOKKORIS, I. (eds). *The reform of EC competition law: New challenges*. The Hague, Kluwer Law International, 2010.

[30] Report of the *Junta consultiva en materia de conflictos* of 20 November 2013, case *Desmotadoras de Algodón*, p. 20; and Report of the *Junta consultiva en materia de conflictos* of 6 May 2008, case *Euskaltel/Telefónica,* p. 12.

[31] For a critical view on the unclearness of the Law 1/2002, specifically with reference to the contested connection points, *vide.* ARZOZ SANTISTEBAN, X. «Alternativas a la solución judicial... *op. cit.*, p. 89.

[32] The inspiration of the legislator to establish such a mechanism is not to be found in the Spanish Constitutional Court Ruling 209/1999, as it never made reference to the need or the appropriateness of setting a formal dispute resolution system, neither the Law 52/1999 did, *vide* Law 52/1999, of 28 December, on the reform of the Law 16/1989, of 17 July, on the Defense of Competition, BOE n. 311, of 29 December 1999, particularly, its Final Second Provision, where it reminds the Government of its

The system is primarily based on the coordination among the administrative bodies, who heavily rely on a reciprocal and symmetrical information-providing system about the complaints received or the proceedings commenced *ex officio*; if differences arise over who should be the competent authority to instruct and decide on a case, after a prudential period of time –that allows authorities to reflect on the issue–, the controversy would be submitted to the *Junta consultiva en materia de conflictos* [33]. Such body, as its name clearly points out, it is of advisory character and its resolutions are non-binding[34].

However, no matter how specific and all-encompassing the procedure contained in the Law may (intend to) be, it results actually impossible to clearly define the coordination criteria which, in practice, will indeed be developed on a case-by-case basis[35].

All in all, the controversies that may arise will be purely applicative: in the event of a positive conflict of competences, the parties –competition authorities– will tend to discuss the circumstance or factual issue that determines the competence, rather than the 'ownership' of the competence itself –competency–; that is, both competition authorities –or all, if eventually there are several authorities that claimed themselves to be competent– may agree on the market definition and on the fact that the effects of the conduct are deployed over the territory of a single Autonomous Community, but they might disagree –and here is where the conflict arises– on the interpretation of the consequences in relation with the competency of such market and effects definition[36].

Up to date, all the cases that have gone through the dispute resolution mechanism to the point of submitting the controversy to the *Junta consultiva en materia de conflictos* were the result of a failure to reach a compromise over the exhaustion of

---

obligation to comply with the Spanish Constitutional Court Ruling 208/1999; and NADAL, M. and ROCA, J. (Coords) *La descentralización de la política de competencia en España… op. cit.*, p. 63.

[33] Article 2 of the Law 1/2002.

[34] The *Junta consultiva en materia de conflictos* is formed by a President (appointed by the Minister of Economy, heard the Competition Defense Council) and by a several board members appointed both by the Ministry of Economy and by the Autonomous Communities concerned. In search for parity among the members appointed by the State and those appointed by the Autonomous Communities, as it is for the State to appoint the President, the State will appoint one board member less than the number of board members appointed by the Autonomous Communities. In any case, for an in depth analysis on the composition and functioning of the *Junta consultiva en materia de conflictos*, *vide* TRIBUNAL VASCO DE DEFENSA DE LA COMPETENCIA. Estudio sobre el reparto de competencias en materia de defensa de la competencia: análisis comparativo del régimen jurídico europeo, alemán y español, octubre 2010, pp. 45-50.

[35] NADAL, M. and ROCA, J. (Coords) *La descentralización de la política de competencia en España… op. cit.*, p. 47.

[36] ARZOZ SANTISTEBAN, X. «Alternativas a la solución judicial... *op. cit.,* pp. 46-49.

the effects of the conduct in the territory of the respective Autonomous Community –territoriality principle–[37]. There have been five cases so far[38].

After a close examination of the referred cases –which may not result a burdensome task, due to the reduced number of them–, some conclusions may be drawn in relation to the practical application of the procedure set out in the Law 1/2002. In fact, although one cannot obviate the non-binding character of the reports of the *Junta consultiva en materia de conflictos*, they turn out to be a precious 'food for thought' in relation to the allocation of competences – they systematize all the plausible arguments that a competition authority may, and actually do, wield to retain its competence over a case, while calling into question the pure validity of the conclusions reached in its reports[39].

---

[37] GUZMÁN ZAPATER, C. «Aplicación de la Ley 1/2002, de 21 de febrero, de Coordinación de las competencias del Estado y las Comunidades autónomas en materia de defensa de la competencia, durante el periodo 2008-2010», in CASES, L. (Dir.) *Anuario de la Competencia*. Bellaterra, Universitat Autónoma de Barcelona, 2010, [pp. 45-66] p. 48. In the Report on the case *Spanair/AENA*, although the State tried to solve the conflict by means of applying the article 82 TEC [nowadays, 102 TFEU], and, thus, allocating to itself the competence to hear over the case, the *Junta consultiva en materia de conflictos* wisely pointed out that a potential resort to EU Competition Law instruments cannot be used as a tool by the State authority to automatically attract the competence over a case, let alone if such article is ultimately not applicable. Furthermore, it emphasizes that the factual situation established in the TFEU articles cannot be deemed to be connection points that solve conflicts regarding the allocation of competences, not even conflicts over the applicable law, since both legal orders are not alternative to each other and they can both be well applied together, *vide cit.*, p. 8, as set forth in the article 3(1) of the Regulation no. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, *Official Journal of the European Communities*, L 1/1, of 4 January 2003 [consolidated version: 28.9.2006]: «Where the competition authorities of the Member States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 81(1) [nowadays, 101(1)] of the Treaty which may affect trade between Member States within the meaning of that provision, they shall also apply Article 81 [nowadays, 101] of the Treaty to such agreements, decisions or concerted practices. Where the competition authorities of the Member States or national courts apply national competition law to any abuse prohibited by Article 82 of the Treaty, they shall also apply Article 82 [nowadays, 102] of the Treaty». On the joint application of national and EU competition law, *vide* CALVO CARAVACA, A.L. *Derecho antitrust europeo*, *op. cit*., pp. 382-385.

[38] It should be noted, even if anecdotally, that out of the five reports, just in one the competency has been granted to a regional competition authority – namely, it was granted to the Basque Competition Authority [at the time, Basque Office for the Defense of Competition, integrated in the Basque Competition Authority by virtue of the Basque Law 1/2012, of 2nd February, on the Basque Competition Authority, BOPV no. 29, of 9 February 2012, Additional Provision 1(2)] in the Report of the *Junta consultiva en materia de conflictos* of 6 May 2008, case *Euskaltel/Telefónica*. However, given the scarce sample available, it does not appear to be worth to draw any conclusions from analyzing the side with which the *Junta consultiva en materia de conflictos* has aligned most. To gain access to the Reports issued so far, the CNMC has uploaded them to its website: COMISIÓN NACIONAL DE LOS MERCADOS Y LA COMPETENCIA. «Coordinación con CCAA», in CNMC webpage, https://www.cnmc.es/ambitos-de-actuacion/competencia/coordinacion-con-ccaa (last consulted: 26.11.2018).

[39] *Vide* the critics, previously referred to, included in the Report of the *Junta consultiva en materia de conflictos* in the case *Spanair/AENA* to the lack of means and time to conclude an adequate research on the situation, p. 10.

In relation to the Spanish decentralized competition law enforcement system, the *Junta consultiva en materia de conflictos* has appropriately pointed out that it is not characterized by the predominance of one of the bodies over the other: the system to allocate competition cases between the European Commission and the national competition authorities is based on the predominance of the former, whereas the Spanish enforcement system is grounded on the distribution of competences between two enforcement bodies that stand on equal foot; accordingly, in general terms, a competition authority will be declared competent if the executive actions to enforce competition rules have to be carried out within its territory[40].

However, one may just scan the Reports to realize that the reality is well far from the theory: the design of the system enshrined in the Law 1/2002 does not endorse the 'equal footing' principle that, in theory, should inspire the process to allocate competencies among the competition enforcement bodies. The Reports have brought to light the fact that, even if, apparently, both the national competition enforcer and the regional enforcers are placed at the same level, since, unlike in the EU system, the potential disputes will be submitted to and solved by a neutral administrative body –namely, the *Junta consultiva en materia de conflictos* –, the Law 1/2002 does not intend to provide a parity treatment to the State and the Autonomous Communities; instead, the Law places the State in a position of quasi-supremacy.

To illustrate this statement, the *Junta consultiva en materia de conflictos* relates the following examples: (1) the State is granted with some exclusive competences –listing principle– that would be otherwise of the Autonomous Communities (article 1(5)); (2) the obligation to notify the complaints is wider for the Autonomous Communities –copy of the complaint– than for the State –prompt note– (article 5(2)); (3) article 1[2]a, when it defines when a practice is able to affect the supra-autonomous market or the (unity of the) national market, it merely confines itself to gather the criteria compiled in the LDC (article 64 LDC) to assess whether an infringement is serious: the dimension of the affected market, the market-share of the company, the nature and extent of the restriction or its effects on potential or effective competitors and consumers and users, so, as long as an infringement is preliminary assessed to be serious, it is subject to fall under the scope of the State; and (4) if the State 'allows' the Autonomous Community to retain the executive competence over a case, it may appear as an interested party in the autonomous proceedings to

[40] This implies that, since the moment when a potentially restrictive practice is detected, none of the enforcement bodies is granted with privileges that may help it get the competence over a case allocated to the detriment of the unprivileged enforcement body, which may well also deserve to be allocated the competence over the case; both competition enforcement authorities are treated equally, they are on a level playing field, *vide* Report of the *Junta consultiva en materia de conflictos* in the case *Estación autobuses Madrid*, p. 10.

exercise a monitoring and tutelage power over the regional competition authority, as well as it may even appeal the decisions taken in such proceedings[41].

As a consequence, one can easily perceive the higher position of the national competition authority *vis-à-vis* the regional competition enforcers. This hardens ultimately the consecution of the desired equilibrium between the unity of the national market and the respect of the executive competences over the enforcement of competition law attained by (some of) the Autonomous Communities in their respective Statutes of Autonomy. Furthermore, the preservation of such a different level playing field restraints the attainment of the decentralized competition enforcement system as it was conceived and consecrated in the constitutional block.

Furthermore, the Reports have revealed the existing discrepancies in relation to the identification of the keystone to allocate the executive competencies over the enforcement of competition law – for the regional competition authorities the focus should be placed on the *relevant geographical market*; whereas for the national competition authority, the attention should be drawn to the likeliness for the practice to alter the free competition in a geographical scope wider than an Autonomous Community, that is, it should be drawn to the *territorial scope of the restrictive effect*[42].

---

[41] Report of the *Junta consultiva en materia de conflictos,* in the case *Spanair/AENA*, pp. 9-10.

[42] Report of the *Junta consultiva en materia de conflictos* in the case *Spanair/AENA*, pp. 4-6: the Competition Tribunal of the Autonomous Community of Madrid put forward that the relevant geographical market was the Barajas airport, in relation to the management services to airport customers; the Spanish Competition Tribunal [nowadays, CNMC], instead, pointed out that the territorial effects had an scope wider than the Barajas airport, since the practice affected the market on air transport to and from Barajas.
Report of the *Junta consultiva en materia de conflictos* of 6 May 2008, case *Euskaltel/Telefónica*, pp. 6-10: the Basque Office for the Defense of Competition stated that the complaint filed by Euskaltel referred to the exclusionary abuse of the dominant position of Telefonica; therefore, the market is the Basque Country; the national competition authority, on its side, claimed that, even if the practice has been directed against Euskaltel, there are two abuses of dominant position – i.e., one exclusionary (against Euskaltel) and the other exploitative (against consumers, who are charged a higher price if they call to mobile phones from Euskaltel); thus, the effects are suffered all around Spain.
Report of the *Junta consultiva en materia de conflictos* in the case *Estación autobuses Madrid*, pp. 4-6: the Competition Tribunal of the Autonomous Community of Madrid considered that the relevant geographical market was local, while the Spanish Competition Tribunal claimed the effects to be, at least, supra-local, since the sale of transport tickets is an instrumental and imperative activity for the provision of transport services by road. Report of the *Junta consultiva en materia de conflictos* in the case *Desmotadoras de algodón*, pp. 8-17: this Report's legal arguments could be criticized, but the tedious task of discerning what the arguments of the *Junta consultiva en materia de conflictos* were has prevented us from embarking in such an enterprise. It constitutes the perfect example of a systematic compilation of both parties' arguments without further entering into any kind of legal analysis that allows us to follow the logical thread that leads the decision body –in this case, the *Junta consultiva en materia de conflictos* – to adopt this conclusion and not the opposite. According to the *Junta consultiva en materia de conflictos,* who endorses the arguments of the national authority, the apparent crystal clearness of the supra-autonomous effects of the practice, due to the fact that cotton ginning and manufacturing of cotton fiber, albeit the fact that cotton is almost only manufactured in Andalusia, are, respectively, an intermediate product and a raw

It is clear that the competence allocation system, as designed by the Law 1/2002, aims at focusing on the territorial scope of the restrictive effect, since the identification of the relevant geographical market requires a careful analysis and appreciation of the facts claimed and proven, and of the legal and economical context in which the conduct has been carried out; indeed, the definition of the relevant geographical market has not been granted the function of demarcating the executive competences of the different competition enforcers[43]. Therefore, one may pay attention to the extra-territorial (in the sense of 'supra-autonomous') effects of the potential anticompetitive practice[44].

4. CONCLUSIONS

The Spanish decentralized competition enforcement system is based on the transference of certain competences –i.e., executive– to the competition enforcement bodies of the Autonomous Communities – wherever they exist. The system designed to deal with the –sometimes– contentious allocation of competences may be far from been ideal if we are to avoid the emergence of attribution-conflicts, but, applied in the way that it is currently being, it also risks harming the basics of the constitutional distribution of competences between the State and the Autonomous Communities.

Acknowledging a narrow interpretation of the exhaustion of the effects theory implies the automatic denial of the competences of the regional competition authorities over a case that, in the light of the constitutionally recognized decentralized enforcement model, would have been assigned to the regional enforcer. Moreover, such an interpretation empties the substance of the principles that, put forward by the Spanish Constitutional Court in its Ruling 208/1999, inspired the adoption of the Law 1/2002.

---

material, implies that the practices affect the market where final products are commercialized –the national market– and, therefore, the competence should be undoubtedly allocated to the State.
Report of the *Junta consultiva en materia de conflictos* of 18 April 2017, case *Abogados*, pp. 7-24: with regard to the collective recommendation on prices of several professional bodies, the CNMC considered that the practice could affect the unity of the national market, whereas the regional competition authorities of Andalusia and Catalonia claimed that the practice did only impact the free competition within the respective Autonomous Community where the professional body was located.

[43] Report of the *Junta consultiva en materia de conflictos* in the case *Estación autobuses Madrid*, p. 11, confirmed by the Spanish Constitutional Court Ruling 71/2012, § 6, which considered that the denial of the ticket office could have an effect on the supra-autonomous market of passenger transport.

[44] Report of the *Junta consultiva en materia de conflictos* in the case *Spanair/AENA*, p. 9; Report of the *Junta consultiva en materia de conflictos* of 6 May 2008, case *Euskaltel/Telefónica*, § 3.5, where the *Junta consultiva en materia de conflictos* underlined the necessity to define not only the geographical reach of the effects, but also their temporal scope; Report of the *Junta consultiva en materia de conflictos* in the case *Estación autobuses Madrid*, § 3.2; and Report of the *Junta consultiva en materia de conflictos* in the case *Desmotadoras de algodón*, p. 23; Report of the *Junta consultiva en materia de conflictos* in the case *Abogados,* § 10.

There is an undeniably different level playing field for the national competition authority and the regional competition authorities in relation with the system to solve disputes regarding the attribution of competences; consequently, this hardens the necessary equilibrium between the unity of the national market and the respect to the executive competences assumed by the Autonomous Communities in their Statutes of Autonomy, and, ultimately, it damages the decentralized enforcement system recognized in the block of constitutionality. While the 1/2002 Law made an express stress on the former –by including the unity of the national market among the additional connection points–, the latter, which is the base of the decentralized enforcement system, cannot be obviated and public authorities must work actively for its preservation.

The only solution is to interpret the extraterritoriality principle in an integrative manner, so that it becomes consistent with the Spanish decentralized enforcement system, while preserving the unity of the national market. Thus, an integrative interpretation of article 1(2)(a) of the Law 1/2002 with the decentralized allocation of competences in the realm of the Spanish enforcement system, as recognized in the Constitution, the Statutes of Autonomy –and related amending and development laws–, as well as the interpretative case law from the Constitutional Court, requires to reach the following conclusion: the mere outpouring of the effects should not entitle an automatic allocation of the enforcement competences to the national competition enforcer; instead, the outpouring should be appropriate or, at least, relevant as to alter –rather than just affect– the free competition on the supra-autonomous market. Otherwise, the slightest outpouring of the effects would suppose an uncontestable loss of competences of the regional competition enforcers, to the point of even questioning their *raison d'être*[45].

[45] On this criteria of the 'slight outpouring' that is currently being used in other branches of the Spanish legal order, *vide* RODRÍGUEZ MIGUEZ, J. A. «La reforma del sistema español de defensa de la competencia. La descentralización administrativa de la aplicación del Derecho de la competencia en España», in *Serie Política de la Competencia*, Working Paper no. 22, Universidad San Pablo CEU, 2006, available at http://www.idee.ceu.es/Portals/0/Publicaciones/La-descentralizacion-aplicacion-del-Derecho-Competencia.pdf (last consulted: 20.07.2018), p. 14.

REFERENCES

Arzoz Santisteban, X. (2004): «Alternativas a la solución judicial de los conflictos competenciales en materia de Defensa de la Competencia», in *Revista de la Administración Pública*, no. 164, May-August, 2004.

Calvo Caravaca, A.L. (2009): *Derecho antitrust europeo. Tomo I. Parte General. La competencia*. Madrid, Colex, 2009.

Calvo Caravaca, A.L.; Carrascosa González, J. (2014): *Derecho internacional privado (vol. I)*. Granada, Comares, 2014, 15th ed.

Campos, J.; Jiménez, J.L. (2008): «La descentralización de la política de la competencia: algunas implicaciones sobre las estrategias empresariales», in *Anuario Jurídico y Económico Escurialense*, XLI, 2008, pp. 389-406.

Comisión Nacional de los Mercados y la Competencia: «Coordinación con CCAA», in *CNMC. Available on the web*, https://www.cnmc.es/ambitos-de-actuacion/competencia/coordinacion-con-ccaa.

Crucelegui Gárate, J.L. (2008): «Los modelos de aplicación descentralizada del derecho de la competencia en la UE y en el Estado español», in *Cuadernos Europeos de Deusto*, Vol. 38, 2008.

Faure, M.; Zhang, X. (2011): *Competition policy and regulation: recent developments in China, the US and Europe*. Chentelham, Edward Elgar Publishing, 2011.

Gcr (2014): «Rating Enforcement: The annual ranking of the world's top antitrust authorities», in *Global Competition Review*, London, Law Business Research, 2014.

Guzmán Zapater, C. (2010): «Aplicación de la Ley 1/2002, de 21 de febrero, de Coordinación de las competencias del Estado y las Comunidades autónomas en materia de defensa de la competencia, durante el periodo 2008-2010», in CASES, L. (Dir.) *Anuario de la Competencia*. Bellaterra, Universitat Autónoma de Barcelona, 2010, pp. 45-6.

Jeletcheva, M. (2007): «Las autoridades de defensa de la competencia en España», in *Teoría General de la Competencia*, Ed. Centro Europeo de Regulación Económica y Competencia, 2007.

Jiménez González, J.L.; Campos Méndez, J. (2004): «Efectos de la descentralización de la política de defensa de la competencia», in *Universidad de las Palmas de Gran Canaria,* Documento de trabajo 2004-09, September 2004.

Konkurrence- Og Forbrugerstyrelsen (2014): «Press note on the Global Competition Review 2014», in Kfst webpage, https://www.kfst.dk/Indhold-KFST/Nyheder/Pressemeddelelser/2014/~/media/21131F417EA74FADA694F8A2F3926A23.ashx

Korah, V. (2007): *An introductory guide to EC competition law and practice*. Oxford, Hart Publishing, 2007, 9th ed.

Magide Herrero, M. (2012): «Del esquema institucional para la aplicación de esta ley», in MASSAGUER, J.; SALA ARQUER, J.M.; FOLGUERA, J. and GUTIÉRREZ, A. (Dirs). *Comentario a la Ley de Defensa de la Competencia*. Cizur Menor, Civitas – Thomson Reuters, 2012, 3rd ed.

Mikroulea, A. (2010): «Case Allocation in Antitrust and Collaboration between the National Competition Authorities and the European Commission», in LIANOS, I. and KOKKORIS, I. (eds). *The reform of EC competition law: New challenges*. The Hague, Kluwer Law International, 2010.

Nadal, M.; Roca, J. (coords.) (2003): *La descentralización de la política de competencia en España: situación y perspectivas*. Ed. Instituto de la Empresa Familiar, 2003.

Neven, D.J.; Röller, L.H. (1999): «The allocation of jurisdiction in international antitrust», in *Université de Lausanne*, Santiago de Compostela, 1999.

Pascual Pons, C. (2007): «La descentralización de la defensa de la competencia en España y la UE», in *La Reforma de la Defensa de la Competencia: claves y retos de futuro*, San Sebastián, 2-4 July 2007.

Resico, M.F. (2011): «Política de defensa de la competencia», in *Introducción a la Economía Social de Mercad*o, Konrad Adenauer Stiftung, 3 November 2011.

Rodríguez Miguez, J.A. (2006): «La reforma del sistema español de defensa de la competencia. La descentralización administrativa de la aplicación del Derecho de la competencia en España», in *Serie Política de la Competencia*, Working Paper no. 22, Universidad San Pablo CEU, 2006.

Tribunal Vasco de Defensa de la Competencia: «Apariciones en prensa escrita relativas al Curso de Verano 'La reforma de la defensa de la competencia: claves y retos de futuro'», in TVDC, Available on http://www.euskadi.eus/r332288/es/contenidos/informacion/conferencias_y_retransmisiones/es_conretra/adjuntos/curso%20verano%20%20dossier%20prensa.pdf

— (2010): *Estudio sobre el reparto de competencias en materia de defensa de la competencia: análisis comparativo del régimen jurídico europeo, alemán y español*, octubre 2010.

Unctad (2008): *The attribution of competence to community and national competition authorities in the application of competition rules*, TD/B/COM.2/CLP/69, Geneva, 23 May 2008.

Van Den bergh, R. (1996): «Economic criteria for applying the subsidiarity principle in the European Community: the case of competition policy», in *International Review of Law and Economics*., Vol. 16, 1996.

Velasco Rico, C.I. (2012): *Delimitación de competencias en el Estado autonómico y puntos de conexión*. Barcelona, Generalitat de Catalunya, 2012.

ANNEX

Articles of the Statutes of Autonomy on the competence over the internal market

Statute of Autonomy of the Basque Country, art. 10.27, Organic Law 3/1979, of 18 December, on the Statute of Autonomy for the Basque Country, BOE no. 306, of 22 December 1979, http://www.boe.es/buscar/act.php?id=BOE-A-1979-30177 (last consulted: 25.11.2018).

Statute of Autonomy of Catalonia, initially approved by the Organic Law 4/1979, of 18 December, on the Statute of Autonomy of Catalonia, BOE no. 306, of 22 December 1979, http://www.boe.es/buscar/doc.php?id=BOE-A-1979-30178 (last consulted: 25.11.2018), art. 12.1.5, which has been repealed by the Organic Law 6/2006, of 19 July, on the reform of the Statute of Autonomy of Catalonia, BOE no. 172, of 20 July 2006, http://www.boe.es/buscar/act.php?id=BOE-A-2006-13087 (last consulted: 25.11.2018). In this last version, the competence over the internal market is not included as such; instead, it specifically includes the executive competence on the defense of competition in its article 154.

Statute of Autonomy of Galicia, art. 30.1.4, Organic Law 1/1981, of 6 April, on the Statute of Autonomy for Galicia, BOE no. 101, of 28 April 1981, http://www.boe.es/buscar/act.php?id=BOE-A-1981-9564 (last consulted: 25.11.2018).

Statute of Autonomy of Andalusia, initially approved by the Organic Law 6/1981, of 30 December, on the Statute of Autonomy for Andalusia, BOE no. 9, of 11 January 1982, http://www.boe.es/buscar/doc.php?id=BOE-A-1982-633 (last consulted: 25.11.2018), where the competence on the internal market was set out in article 18.1.6; and repealed by the Organic Law 2/2007, of 19 March, on the reform of the Statute of Autonomy for Andalusia, BOE no. 68, of 20 March 2007, http://www.boe.es/buscar/act.php?id=BOE-A-2007-5825 (last consulted: 25.11.2018), where the competence on the internal market is set out in article 58.1.1. and the executive competence on the defense of competition is set out in article 58.4.5.

Statute of Autonomy of Asturias, art. 10.1.14, Organic Law 7/1981, of 30 December, on the Statute of Autonomy for Asturias, BOE no. 9, of 11 January 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-634 (last consulted: 25.11.2018).

Statute of Autonomy of Cantabria, art. 24.13, Organic Law 8/1981, of 30 December, on the Statute of Autonomy for Cantabria, BOE no. 9, of 11 January 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-635 (last consulted: 25.11.2018).

Statute of Autonomy of La Rioja, art. 8.1.6, Organic Law 3/1982, of 9 June, on the Statute of Autonomy of La Rioja, BOE no. 146, of 19 June 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-15030 (last consulted: 25.11.2018).

Statute of Autonomy of the Region of Murcia, art. 10.1.34, Organic Law 4/1982, of 9 June, on the Statute of Autonomy for the Region of Murcia, BOE no. 146, of 19 June 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-15031 (last consulted: 25.11.2018).

Statute of Autonomy of the Valencian Community, art. 49.1.35, Organic Law 5/1982, of 1 July, on the Statute of Autonomy of the Valencian Community, BOE no. 164, of 10 July 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-17235 (last consulted: 25.11.2018).

Statute of Autonomy of Aragón, initially approved by the Organic Law 8/1982, of 10 August, on the Statute of Autonomy of Aragón, BOE no. 195, of 16 August 1982, http://www.boe.es/buscar/doc.php?id=BOE-A-1982-20819 (last consulted: 25.11.2018), where the competence on the internal market was set out in art. 36.1.c); and repealed by the Organic Law 5/2007, of 20 April, on the reform of the Statute of Autonomy of Aragón, BOE no. 97, of 23 April 2007, http://www.boe.es/buscar/act.php?id=BOE-A-2007-8444 (last consulted: 25.11.2018), where the executive competence on defense of competition is set out in article 77.17.

Statute of Autonomy of Castilla-La Mancha, art. 31.1.11, Organic Law 9/1982, of 10 August, on the Statute of Autonomy of Castilla-La Mancha, BOE no. 195, of 16 August 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-20820 (last consulted: 25.11.2018).

Statute of Autonomy of the Canary Islands, art. 31.3, Organic Law 10/1982, of 10 August, on the Statute of Autonomy of the Canary Islands, BOE no. 195, of 16 August 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-20821 (last consulted: 25.11.2018).

Reintegration and Enhancement of the Foral Regime of Navarre Act, art. 56.1.d), Organic Law 13/1982, of 10 August, on the reintegration and enhancement of the foral regime of Navarre, BOE no. 195, of 16 August 1982, http://www.boe.es/buscar/act.php?id=BOE-A-1982-20824 (last consulted: 25.11.2018).

Statute of Autonomy of Extremadura, art. 7.1.33, Organic Law 1/1983, of 25 February, on the Statute of Autonomy of Extremadura, BOE no. 49, of 26 February 1983, http://www.boe.es/buscar/act.php?id=BOE-A-1983-6190 (last consulted: 25.11.2018).

Statute of Autonomy of the Balearic Islands, initially approved by the Organic Law 2/1983, of 25 February, on the Statute of Autonomy for the Balearic Islands, BOE no. 51, of 1 March 1983, http://www.boe.es/buscar/doc.php?id=BOE-A-1983-6316 (last consulted: 20.07.2018), which has been reformed and has lost its validity after the approval of the Organic Law 1/2007, of 28 February, on the reform of the Statute of Autonomy of the Illes Balears, BOE no. 52, of 1 March 2007, http://www.boe.es/buscar/act.php?id=BOE-A-2007-4233 (last consulted: 25.11.2018). This last version of the Statute of Autonomy, being the one currently in force, does include the competence over the internal market in its article 30.42.

Statute of Autonomy of the Community of Madrid, art. 26.3.1.2, Organic Law 3/1983, of 25 February, on the Statute of Autonomy of the Community of Madrid, BOE no. 51, 1 March 1983, http://www.boe.es/buscar/act.php?id=BOE-A-1983-6317 (last consulted: 25.11.2018).

Statute of Autonomy of Castilla-León, art. 28.4, initially approved by the Organic Law 4/1983, of 25 February, on the Statute of Autonomy of Castilla-León, BOE no. 52, of 2 March 1983, http://www.boe.es/buscar/doc.php?id=BOE-A-1983-6483 (last consulted: 25.11.2018), and revised by the Organic Law 14/2007, of 30 December, on the reform of the Statute of Autonomy of Castilla-León, BOE no. 288, of 1 December 2007, http://www.boe.es/buscar/act.php? id=BOE-A-2007-20635 (last consulted: 20.07.2018), where the competence on the internal market is set out in the article 70.1.20.