

THE PUBLIC ENTERPRISE IN PORTUGAL AND SPAIN
Analysis from the point of view
of competition policy



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THE PUBLIC ENTERPRISE IN PORTUGAL AND SPAIN

Analysis from the point of view of competition policy

By

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EUROPEAN AND AMERICAN
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LISBON

Document

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PREFACE

This work forms part of a programme of studies on the functioning of the competitive process in the economy of the European Community.

Various national institutes and experts have been appointed by the Commission to carry out the study programme.

In view of the specific and general interest of these studies and the undertakings given by the Commission to the European Parliament, they are published in full in their original version.

The Commission refrains from commenting, except to say that responsibility for the data and views set out in each study lies entirely with the institute or expert who produced it.

The other studies in the same series will be published by the Commission as soon as possible.

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SUMMARY

The present study examines the subject of the organization and functioning of Public Enterprises in Portugal and Spain. It investigates their importance in the respective economies and then proceeds to an analysis of the system of competition in various sectors, taking into consideration the recent adhesion of the two countries to the European Economic Community.

As a general framework for the study, we shall begin by establishing an operating concept of the Public Enterprise, and what results and an explanation of the State Company Sector of the Iberian economies.

The treatment of the entirety of the Public Enterprises in both Portugal and Spain, has been made the basis of statistical data available (the year 1985, taking into consideration possible actualizations with reference to 1986 and 1987), as well as legislation in force at present.

Lisbon, October 1987

INTRODUCTION

The study proceeds to an exhaustive analysis of the State Company Sector in Portugal and Spain, based on the following:

- i) Legal analysis of the problem of public enterprises and of state held monopolies;
- ii) Economic analysis of the substantive structure of the state held companies;
- iii) Analysis of the behavior of public agents as factors which may eventually distort the equality of competition.

Questions of the adaption of state monopolies of a commercial nature, which derive from the Act of Accession, and questions concerned with the State's (financial) support as well as the financial relationship between the State and state held companies are considered in depth.

With respect to Portugal, limiting the sphere of the work to the contours of the definition of the State Companies Sector in the Communities, of a potential entirety of 337 companies that could be grouped under this concept (77 Public Enterprises and 260 with majority participation and those which have been nationalized), the present analysis encompasses 237 (77 Public Enterprises and 160 Participating in the Continent), which is a representative sample, not only from the quantitative point of view, but also from the qualitative. These companies in their entirety, and, on the average, in the period between 1983 and

1985, represent about 28 per cent of the gross value added (GVA) of the total of the economy, 32 per cent of the Gross Formation of Fixed Capital (GFFC) and 7.5 per cent of Employment, an amount that reaches ten per cent, if we exclude agriculture, where the State Company Sector plays a less important role.

With respect to Spain one can say that the Non-financial Public Enterprises represented in 1985, based on the data on Chart VI, 9.2 per cent of the Gross Internal Product, 16 per cent of the Gross Formation of Fixed Capital and 4.6 per cent of Employment, the latter percentage increasing to 5.5 per cent if one excludes agriculture.

Thus, the entire analysis of the typology of competition, which constitutes the focal point of this study, has been elaborated having from the perspective of the removal of active intervention by the State which has been announced in both Portugal and Spain.

Particular attention has been given to the analysis of the most relevant economic sectors in which Public Enterprises operate. The third part of this study deals with those sectors.

Each of the sectors of the analyzed sectors of the Portuguese economy has been considered in the following terms:

- Brief general description / introduction;
- Control of activity by the State;

- Market Shares;
- Financial Relations between the State and Public Enterprises;
- Price Regime;
- Accession to production factors;
- Public Markets;
- Philosophy of Competition.

The methods used as concerns the Spanish economy, despite some formal differences, give essentially the same results, i. e., they describe the operations and behavior of Public Enterprises in the market from a critical perspective.

The different methods used in the study are related to the differences in the organization of the statistical regimes of the two Member-States, although final objectives of the study are the same.

As concerns Portugal, at the end of 1985, the last period for which data is available for the study of the State Company Sector, coincides with the end of a specific phase in the Portuguese political economy and with the beginning of a change, both in strict political terms and at the level of the orientation of short-term policy. The latter benefitted from very favorable economic conditions, both internal and external.

Thus, the period of economic austerity which coincided with the years 1983 to 1985, permitted the control of the principal economic restraints, such as the external and budgetary deficit, external debts and inflation.

At the beginning of this new phase, the macro-economic strategy adopted was one of controlled increase of production and investment and, consequently, of employment, in order not to compromise the equilibrium of the other variables.

These internal factors were reinforced by other external factors, which were also favorable: the fall in the price of petroleum together with the fall in the value of the dollar and the fall in interest rates in the international markets, which, in the period analyzed, constituted a strong constraint on our economy.

Simultaneously, the entry of Portugal into the EEC and the beneficial effects which were occasioned by the integration, were reinforced by the favorable conjunction in the evolution of the Portuguese economy.

In this context, it was assumed that the role of the State in the economy would be less important than it had been up to that time and that private initiative would reinforce its contribution as the motor of social and economic development.

As a result of this orientation, the role of the State had already begun to diminish slightly in importance both in reference to its patrimony and to its interventions and regulations.

This tendency has had the tendency to reinforce itself and will be still greater in the future, particularly after the elections of 19 July 1987. These elections created a stable majority for the government for the next four years, maintaining the same team which had developed the previous economic orientation, which creates a favorable picture of the potential for movement toward reprivatization. At this moment, structural changes in the Fundamental Portuguese Law (Lei Fundamental Portuguesa) - the Portuguese Constitution (Constituição da República), which sanctions socialization of the economy, nationalization and the enlargement of the role of the public sector) - are awaited. The foreseeable orientation of other basic documents as grand planning options for 1988 as well as the budget are not to be forgotten.

The more recent State budgets have already revealed a reduction of amounts available for the State Company Sector and it is expected that this trend will become more pronounced.

On the other hand, several methods of attempted reprivatization of some Public Enterprises, or companies where the State was the majority participant, have been tested and although evolution was gradual, it was sometimes obstructed in the Assembly of the Republic (Assembleia da República).

The change of Public Enterprises to companies with State held capital has been observed, as well as the sale of parts of some

companies of the State Company Sector, including some companies of the financial sector, in the stock exchange as a result of the reanimation of the capital markets. In addition, some companies have merged, with the merger justified by arguments of increased economic rationalization and current management.

Thus, to conclude this study and project a view of the future, it seems adequate to use as our basis the program of the eleventh government, approved by the Assembly of the Republic, which planned a basic reform of the State Company sector.

This reform is going to be established in three main directions:

- i) Transformation of the Public Enterprises into corporations of mixed economy (with a majority of the State or of other public agencies);
- ii) Sale or change of the patrimonial elements of Public Enterprises;
- iii) Sale of shares belonging to the State or other public agencies.

As concerns the first of these directions, the Government -- in conformity with its particular program -- intends:

to assure the entry of private risk capital into the Public Enterprises which are in the situation of selling shares on the stock market;

to develop a strong component of small stockholders, benefitting particularly the employees of said companies;

to obtain financial means to be used toward other ends, both for reequilibrium of other large Public Enterprises which have run up excessive debts and to proceed to the anticipated amortization of public debt, and finally, to compensate, in part at least, the debt service resulting from nationalization and expropriation during the years 1975 and 1976.

It is assumed that the process of privatization of the State Company sector will be initiated prior to the constitutional revision of the beer, tobacco, concrete and cellulose sub-sectors. It will result in the sale of a maximum of 49 per cent of the corporate capital, with amounts limited to ten per cent per entity or group.

As concerns the second of these programatic directions, the Government especially intends:

to create conditions favorable to the economic restructure and recovery of these companies, which, in the present legal picture, have been prevented from proceeding with divestment of certain assets, even when the assets do not affect the principal goal.

As concerns the third programatic direction, the Government proposes to distinguish two sales regimes, one for the State as minority holder, the other for the State as majority holder.

As regards the former, the rule of freedom of negotiation will be implemented.

As regards the latter, sales will be made using the mechanisms institutionalized in the capital market, when the size of the State justifies it.

Lastly, the Government intends to reduce the State Company Sector exclusively to those State companies which assure essential public services; both through the Public Enterprises "stricto sensu," as well as through public corporations or corporations of mixed ownership.

"The entirety of the State companies" -- to paraphrase the program of the eleventh Government -- "is to be reduced to companies of truly public service, which have; of course, special obligations of social interest, and in which it is necessary to protect the most disadvantaged users. These companies will be compensated for the social component of goods and services they provide."

In conclusion: in the short and medium term, a lesser intervention on the part of the State in general and in the State Company Sector in particular, in the functioning of the Portuguese economy will take occur. This does not mean, however, that long time habits of tutelage in the form of one-time instances of discrimination on the part of the State to the benefit of this or that company are going to disappear. The present study contains numerous examples of this sort of discrimination.

As far as Spain is concerned, we can also mention the existence of political tendencies in the direction of privatization and in subordinating the role of the State to the criteria of economic profitability. Spain is already integrated into the European Economic Community on a solid economic basis, but, like the situation that exists in other European countries, it has a series of Sectors which are in crisis, due to a marked excess of capacity (Steel Industry, Naval Construction, Minerals, etc.). The policy followed in these sectors, is a the implementation of a new structure by means of an adjustment of capacity and restructuring.

Among the instruments contemplated to make a State company efficient it is necessary to mention the financial policy. As concerns financial policy, one must distinguish between those companies which compete in free markets with others private, national or foreign companies, distinguishing the companies which are part of the Sectors in crisis, and those which provide public services.

The companies which participate in Sectors of the free market not in crisis adjust to the free functioning of the market.

The public companies which are part of the Sectors in crisis, in general, need to be restructured, in order to assure their viability.

Lastly, the public companies which provide public services oblige the State-Entrepreneur to waive normal profits.

The State finances its companies, via apportionment of capital, as if it were a private stockholder, in proportion to the expected profits, but the State has more complex motives as concerns the expected profits. Another form of financing of State companies is by means of direct subventions for exploitation (RENFE), which are justified on rare occasions, except for reasons of public service. Lastly, it finances the companies by means of subventions of public credit or by assumption of the debts of its companies on the part of the State. Use of this last finance mechanism is exceptional, except in the process of reconversion or change of character of the company. The problem is that according to EEC Treaty, most of these financial instruments are now forbidden.

To consider the role of the State as Entrepreneur, we are taking as an example of Public Enterprises, the companies of Grupo INI, which were the first to participate in the free market.

The strategy the State has adopted as regards the INI, a short term reduction of losses, in order to reinstitute the competitiveness of the firms, and in the middle term, their consolidation in the EEC market.

Further, the INI has begun with the process of partial privatization using the Borse to sell shares of its most profitable companies, including ENDESA, the parent company of the public electricity mini-holding; as well as to quote shares of a small number of other companies, a practice they plan to extend to their other companies. When shares of GESA were offered for sale, the public offer was a success with demand

exceeding the offering threefold. Other companies like ENCE or ENFERSA will be placed on the market in the near future.

The "Dirección General del Patrimonio (General Direction of Patrimony)," has also privatized part of its companies, among them Hilaturas Gorzypium, which has been sold to a Catalan textile group. A company group headed by the Compañía Transmediterránea, and including Imepiel, Tracsa, Rumasa Hytasa and Intelhorse, is perhaps looking for a purchaser.

As concerns the Compañía Telefónica, in which the State owns 47 per cent of the capital, the State has opted to sell a part, in order to make investments. The first sale took place at the beginning of 1986, when the shares of Amper were sold on the Borse and rapidly absorbed by the market.

More privatizations will follow this one; now the sale of Telettra and Intelsa is being negotiated.

There is also discussion of the possible privatization of Aldeasa, the successful company which manages the duty free shops in the airports.

The fever of privatization has already spread to the public petroleum holding, INH, which will be transformed from an entity under public law into a corporation, whose capital can, in part, be purchased on the Borse.

This government policy favorable to privatization as well as to the abandonment by public companies of some industrial and service sectors, allows the prediction that the State Company Sector will be reduced, and at the same time strengthened.

I

GLOBAL FRAMEWORK

1. The Concept of Public Enterprise

There are substantial distinctions between the concept of public enterprise under Portuguese law on the one hand, and Spanish and Community law on the other. Thus, it is important immediately to proceed to an indispensable conceptual clarification, prior to any sort of discussion of the themes of the present study.

Beginning with the Portuguese case -- as opposed to what previously existed in Portugal -- since 1976, there is a concept of legal restriction of the entirety of Public Enterprises, verified in Decree-Law No. 260/76, of 8 April, which approved the "General Basis of Public Enterprises."¹

In accordance with this document, the only Public Enterprises to be considered, are "the nationalized enterprises and the enterprises created by the State with its own capital, or founded by other public entitites, for an exploration of activities of an economic and social nature in accordance with the national plan for the economy..."

¹ Exclusive legal regime for Public Enterprises, regulating the attribution of legal personality and the measure of its capacity, also defining the creation, organization, management and abolishment of Public Enterprises.

In order to apply this concept, the number of Public Enterprises "stricto sensu," thus legally entitled, is just 77, together with about 300 companies with majority participation by the State and another 700 in which the State has a direct or indirect minority participation.

One cannot, however, find a legal definition of Public Enterprises in the other EEC countries; thus, one has had to find doctrinal concepts to classify a certain organization as a Public Enterprise.

As legal criteria would be comprehensible and unifying only with difficulty, due to the various legal forms assumed in each country by the same economic reality, factually and economically based criteria were pragmatically chosen, which emphasised the autonomous economic criteria and avoided legal criteria.

In this way, objective notions based on predominantly economic considerations, were instituted in Europe, with a field of application larger than that presently in force in Portugal.

This is the case with the definition adopted by the OCDE, for the purposes of a Normalised System for National Accounting:

The Public Enterprises are production units of a commercial nature, managed by the State, whether or not they have a company form, if they are, whatever the case may be, wholly or partially owned by the Public authorities and/or are controlled by said authorities and, due to their type of activity, use of technology and operation-

al form are to be included in the sector of activities of a commercial nature.

The concept adopted by the International Commission of the European Center for Public Enterprises -- CEEP, with headquarters in Brussels, is similar:

Est considérée comme entreprise publique toute cellule économique qui vend des produits ou des services industriels, commerciaux ou agricoles dans laquelle l'État, les collectivités ou établissements publics, les autres entreprises publiques sont propriétaires séparément ou ensemble, directement ou indirectement, d'une part de capital, dit capital public, dont l'importance:

- soit excède la moitié du capital de l'entreprise;
- soit même n'est que minoritaire, si dans ce dernier cas se conjuguent avec celle-ci des droits spécifiques permettant à la puissance publique de disposer effectivement du pouvoir dans l'entreprise.²

Finally, Directive N° 80/723/EEC, of June 25, 1980, the Commission explained its understanding of the concept of "Public Enterprise," defining it in Article 2 as:

any company in which the Public authorities (State or other territorial legal entity) may exercise, directly or indirectly, a dominant influence as a consequence of ownership, financial participation or rules which regulate it,

adding that:

² With detail, e.g. Doc. CEEP 86/STAT.14/Comité Statistiques.

one presumes the existence of dominant influence when Public authorities, directly or indirectly, own the majority of available corporate capital, have a majority of votes or are able to nominate more than half the members of the administration, directorate or supervision of the company.

In Spain, the concept of Public Enterprise is similar to that of the EEC, being substantially different than that of Portugal.

In fact, Article 6, nº 1, line 1) of the General Budget Law of January 4, 1977, states that Public Enterprises are "companies in which the participation of the State and/or Autonomous entities is a majority," and one can find the identical definition in the fourteenth additional rule to the Law Nº 44/83, of December 28.

On the other hand, the law of the Autonomous State Entities determines that the participation of the State and/or Autonomous Entities should be a majority, except when a smaller participation is expressly authorized.

Vis-a-vis the fluidity of the concept of a Public Enterprise, one must limit it within the entirety of the Public Sector, drawing attention to the three necessary characteristics for the qualification of an entity as a Public Enterprise:

- That the State (Central Government) is majority owner;
- That the main activity consists of the production of goods and services, including financial services and excluding those considered to be Public Administrative services;
- That they have a legal personality different than that of the State and Local Autonomous Governments.

Thus, Spanish Public Enterprises are all companies in which the State has majority ownership, which have a separate legal personality and whose main activity is the production of goods and services, excluding those considered to be Public Administrative Services.

In this study, we will adopt the EEC concept of Public Enterprise, both for the Portuguese and the Spanish case.

2. The Importance of the State Company Sector

2.1. In Portugal

The relative impact of the State Company Sector in the entirety of the productive activity in Portugal was, without a doubt, one of the most relevant in Europe from 1974 until the present time.

The weight the companies of the Public Sector have, and the role that they play, in the Portuguese economy are of fundamental importance, owing to their domination over the key sectors of the economy and their role as an instrument of political economy, and by their insertion in the matrix of inter-Sector relations, and of inter-regional articulation, which can assure sectoral and global connection.

For the realization of the present work, we will discuss the elements referred to in Point a:

- Seventy-seven companies legally constituted as Public Enterprises; included among these 54 which are non financial and 23 which are financial, of which 14 of the latter are Banks and 9 are Insurance Companies (Cf. Annex 1: Lists 1, 2 and 3).

- 160 companies with majority participation,³ directly or indirectly by the State, of which 43 are with State "holding" participation ("IPE - Investimentos e Participações do Estado, SA"); in practical effects the companies of public capital⁴ were included in connection with this⁵ (Cf. Annex 1: List 4).

³ Concepts explained *infra*.

⁴ Ibid..

⁵ Except IPE, SA, which traditionally is included with the

It should be noted that the total of State participation rises to about 1,000 companies; this entirety is confined to the 326 if we consider only those companies in which the State has more than fifty per cent of the corporate capital (Cf. Annex 1: Lists 5 and 6).

This sub-grouping is reduced to about 260 if we exclude the foreign companies as well as those which are bankrupt or in some other irregular situation.

The sample used in our study, of about 160 companies, encompasses the most important from the economic and financial point of view.

In summary, limiting the sphere of the work to the contours of the definition of State Companies Sector in the Communities, of a potential entirety of 337 companies that could be grouped under this concept (77 Public Enterprises and 260 with majority participation and those which have been nationalized), the present analysis encompasses 237 (77 Public Enterprises and 160 participating on the Continent⁶), which is a representative sample, not only from the quantitative point of view, but also from the qualitative.

non-financial Public Enterprises.

⁶ The autonomous regions of Madeira and the Azores are not included here.

Using as a basis the most important macro-economic indicators, relative to the period 1979 to 1985, the influence which the companies have exercised in the last years in the entirety of global economic equilibrium, is revealed in Chart I.

C H A R T I

COMPARATIVE EVOLUTION OF THE STATE COMPANIES SECTOR (SCS)
AND OF THE NATIONAL ECONOMY (1979-1985)

In 10⁹ Portuguese escudos: current prices

YEAR	Gross Value Added			Gross Formation of Fixed Capital			Employment (10 ³)				
	SCS	NE (a)	$\frac{(1)}{(2)} \times 100$	SCS	NE	$\frac{(4)}{(5)} \times 100$	SCS	NE	$\frac{(7)}{(8)} \times 100$	Excluding agriculture	$\frac{(7)}{(10)} \times 100$
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1979	195.7	918.6	21.3	76.4	264	28.9	29.3	3852	7.6	2676	10.9
1980	239.7	1115.9	21.5	108.4	357.8	30.3	300	3924	7.6	2804	10.7
1981	307.1	1334.4	23.0	161.8	458.7	35.3	303	3969	7.6	2910	10.4
1982	404.4	1678.0	24.1	224.0	586.5	38.2	309	3959	7.8	2934	10.5
1983	527.7	2079.9	25.4	209.5	672.4	31.8	318	4155.9	7.7	3178	10.2
1984	608.0	2591.7	28.0	237.7	669.9	35.5	307.7	4079.6	7.5	3081.5	10.2
1985	945.5	3177.6	30.0	317.0	766.7	30.2	297.4	4048.8	7.3	3115.4	9.7
Absolute increase between 1983 and 1985	418.1	1097.7	38.0	17.7	94.3	18.8	-20.6	-107.1	19.2	-62.6	32.9
Average rate increase between 1983 and 1985	0.34	0.24	-	0.04	0.07	-	-0.03	-0.01	-	-0.01	-

Source: Records of the CEEP (Centre Européen des Entreprises Publiques)

These companies in their entirety, and, on the average, in the period between 1983 and 1985, represent about 28 per cent of the gross value added (GVA) of the total of the economy, 32 per cent of the Gross Formation of Fixed Capital (GFFC) and 7.5 per cent of Employment, an amount that reaches ten per cent, if we exclude agriculture, where the State Company Sector plays a less important role.

These relatively high percentages can be explained principally by the surge of nationalization which took place in Portugal in 1975 and which drew a considerable number of companies into the State Company Sector with which there were connections and which thus, indirectly, became integrated in this entirety. Adding also that the activities of the companies connected to the public sector grew more quickly than those in the private sector, despite the fact that in the period under analysis an economic recession and an economically restrictive policy affected said companies, of which they were the one of the principal instruments of practical execution.

The entirety of the companies of the State Company Sector enlarged their contribution to the GVA of the economy in its entirety, increasing from about 25 per cent in 1983 to 30 per cent in 1985 (Chart I). This behavior is fundamentally due to the Public Enterprises which enlarged their participation of product from about 23 per cent to 27 per cent in

C H A R T I I

RELATIVE IMPORTANCE OF THE VARIOUS INSTITUTIONAL SECTORS
IN THE PORTUGUESE ECONOMY (per cent)

Institutional Sectors	G V A			G F F C			Employment		
	1983	1984	1985	1983	1984	1985	1983	1984	1985
Participating Companies	2.8	2.9	3.0	6.9	6.5	3.9	1.1	1.0	0.9
Total Public Enterprises	22.6	25.1	26.9	24.2	29.0	25.7	6.6	6.5	6.4
- Non-Financial Public Enterprises	15.5	17.7	17.5	22.4	21.5	18.1	5.0	4.9	4.7
- Financial Public Enterprises	7.1	7.4	9.5	1.8	7.5	7.7	1.7	1.7	1.7
Total of SCS	25.4	28.0	30.0	31.1	35.5	29.6	7.6	7.5	7.3

Source: CEEP

This fact contributed to an increase of approximately two percentage points both in Non-financial Public Enterprises from 1983 to 1984 -- a value which stabilized in 1985 -- and in the Financial Public Enterprises which also increased from about 7 per cent in 1983 and 1984 to 9.5 per cent in 1985. On the other hand, participating companies maintained a stable trend, although increasing, in this phase (Chart II).

The continuing trend of increasing the amount of the value added by this sector of the economy is remarkable when one notes the trend of decreasing employment during the same period.

In fact, the average nominal growth of the Gross Internal Product c. f. was 24 per cent between 1983 and 1985 (Chart I), revealing a less dynamic evolution than the evolution of the State Company Sector (34 per cent). In the latter case, however, attention must be called to the growth of Financial Public Enterprises (43 per cent), as opposed to 31 per cent for Non-financial companies, and 29 per cent for companies in which the State is the majority participant (Chart III).

CHART III

(Portugal)

EVOLUTION OF SCS BY INSTITUTIONAL SECTOR

A - Non-Financial Sector

In Millions of Portuguese Escudos: current prices

YEAR	Public Enterprises				Companies in which the State is the majority participant				TOTAL			
	GVA	GPV	GFFC	GPV	GVA	GPV	GFFC	Employment	GVA	GPV	GFFC	Employment*
1983	323.2	823.1	150.7	205.7	57.5	184.4	46.4	43.6	380.7	1007.5	197.1	249.3
1984	459.3	1078.3	143.8	198.2	75.5	231.7	43.4	40.7	534.4	1310.0	187.2	238.2
1985	555.1	1199.8	142.6	189.4	96.3	273.0	29.9	39.3	651.4	1472.8	172.5	228.7
Absolute Growth Annual Growth	231.9	376.7	-8.1	-16.3	38.8	88.6	-16.5	-4.3	270.7	465.3	-24.6	-20.6
Average Rate of Annual Growth	0.31	0.21	-0.03	-0.04	0.29	0.22	-0.20	-0.05	0.31	0.21	-0.06	-0.04

B - Financial Sector

YEAR	Banks (a)				Insurance Companies				TOTAL			
	GVA	GPV	GFFC	Employment*	GVA	GPV	GFFC	Employment*	GVA	GPV	GFFC	Employment*
1983	134.5	151.0	122.0	58.7	12.6	52.2	0.2	10.0	147.1	203.1	12.4	68.7
1984	172.9	194.0	502.0	59.0	17.5	63.7	0.3	9.7	190.4	257.7	50.5	68.7
1985	279.2	313.3	581.0	59.0	21.8	77.1	0.6	9.6	301.0	390.4	58.7	68.6
Absolute Growth	144.7	162.3	459.0	0.3	9.2	24.9	0.4	0.4	153.9	187.3	46.3	-0.1
Average rate of Annual Growth	0.44	0.44	1.18	0.0	0.32	0.22	0.81	0.0	0.43	0.39	1.18	0.00

(a) - Included companies with banking functions

* - Thousands

Source: CEEF

The significance of this evolution is that the behavior of the State Company Sector served to stabilize somewhat the entire recession from which national production was suffering.

In reality, the growth rate of the Gross Internal Product p. m., corrected for inflation, was stationary in 1983 (-0.3 per cent), suffered a slight loss in 1984 (- 1.7 per cent) and, finally, made a moderate recovery in 1985 (3.3 per cent).

In fact, despite the previously-mentioned global economic crisis, the abolishment of important Public Enterprises in the State Company Sector during this period and the financial difficulties some companies which were integrated into this entirety suffered, the State Company Sector continued to play a positive role in the maintenance of national production.

As concerns the Gross Formation of Fixed Capital, the average annual rate of increase in this period was much less than that of the national economy, four per cent as opposed to seven per cent (Chart I). Although the relative place of the State Company Sector in the economy remains large, it decreased from 1984 to 1985 (35.5 per cent to 29.6 per cent), due to existing restrictions on investment, e. g. in the Public Enterprises, which, in the context of a transi-

tionary policy of contraction, represent an instrument of easy control for those responsible for economic policy.

The Gross Formation of Fixed Capital was one of the indices which evolved least favorably in terms of national economy. The role of the Public Enterprise sub-grouping (traditionally very capital intensive) was very important for this evolution because the State controls the investment policy which, as a result of the emergency economic plan, was deliberately restricted.

It was, however, the Financial Public Enterprises which prevented a larger drop in global investment in 1985, as a reduction of about half the amount of the Gross Formation of Fixed Capital in the companies in which the State was a majority participant occurred. An approximately three point reduction occurred in the Non-financial Public Enterprises, which represented an average annual decrease of four per cent, as opposed to a decrease of twenty per cent among the companies in which the State participated (Chart III).

To stress the important contribution of the electric energy branch in the maintenance of investment, this branch, which is totally nationalized in Portugal, registered the greatest increase in value (more than thirty per cent of the total investment in Non-financial Public Enterprises), having shown long years of high rates of increase (Cf. Annex 1:

List 7).

Attention must also be called to the high values shown by the Post and Telecommunications branch and the losses registered in the Petroleum and Chemical branches, which in part, owed to divestment by some of the large investors.

In contrast to this restrictive policy, the Public Enterprises were able to lower the level of their debt, particularly as concerns external debt (which they were obliged to reduce, above all in previous years, in high amounts disproportionate to internal credit), in order to contribute to the financing of the balance of payments.

Being a powerful instrument of economic policy of the government had further fatal implications in their investment, due to their contribution to the reduction of the deficit of the General Budget of the State (via reductions and delay in concession of capital endowment and compensatory indemnity, which were necessary in view of the investment effort, sometimes over-extended; and to maintain prices lower than the real cost of production, which were imposed at certain times by the Government in order to control inflation.

It should be noted that, after all, the Public Enterprises contributed in a relevant form to the maintenance of some

important industrial sectors, such as civil construction and ironworks, through excessive stimulation of investment, which permitted the activity of those sectors to continue. In addition, they prevented the financial situation of some entities outside the State Company Sector from worsening, permitting delays in accounts receivable (for example, the case of the electrical company "EDP").

This set of factors was made worse in some Public Enterprises by the international economic crisis which, for example, affected the ironworks, chemical and shipbuilding sectors and some other companies which had started operating recently.

The situation had some unfavorable repercussions in the economic and financial structure of the companies.

The relative weight of financial charges had a substantial increase, following the trend initiated during the previous years and recently stopped. Some items, like personnel expenses, decreased.

Net profits decreased in some companies, the devaluation of the Portuguese escudo having contributed to this situation.

Structural indices in the balance sheets of Non-financial Public Enterprises showed a deterioration in the degree of

financial autonomy, solvency, covering of assets and of fixed assets and of borrowing capacity.

In the entirety of the companies in which the State is a majority participant, its use as an instrument of economic policy varied, both due to the smaller State share holding and to the fact that capital was held by other companies.

A similar phenomenon occurred, although to a lesser degree, in employment, which represented 7.7 per cent of the total in 1983, diminishing at a rate of 0.2 per cent per annum to 7.3 per cent in 1985 (Chart I).

The economic crisis during this period was reflected primarily in the employment figures of the State Company Sector, which decreased by three per cent, as opposed to one per cent in the global economy. If agriculture is excluded, the evolution is even more notable.

The reduction of employment both in the Non-financial Public Enterprises (minus four per cent) and in those in which the State participates (minus five per cent) was particularly notable; this kind of evolution was stopped by the stabilization of the financial Public Enterprises (Chart III).

The closing of some companies, the sale of others, together with some economic difficulties, explain this evolution

which was less grievous than expected, due to various factors. These factors include the strategy of the unions, yielding in negotiations for salary increases to avoid the licensing of workers, as well as a State subsidy policy for the maintenance of working places and, in certain cases, avoiding bankruptcies.

There were, however, frequent cases of companies delaying payment of salaries; situations in which there would have been unemployment in an economic situation of pure competition were disguised by shorter working hours and in which unemployment was simply hidden were also frequent at this time.

It should be noted that the State Company Sector, although including sectors which are basically capital-intensive, also had a policy of maintaining work places or reducing them, whenever necessary, through retirement of its employees. For example, during this period, the State held holding company for State participation ("IPE") initiated a policy of sale of some shares.

In analysing the above mentioned factors, a rise in productivity must be noted. Various groups, for example, the case of the Non-financial Public Enterprises, show a different evolution of GVA and GVP, which showed increases, and of GFFC and employment, which showed decreases.

Special reference must be made to the holding group of State participation "IPE - Instituto das Participações do Estado," because of the number of companies it controls, its qualitative importance, and its weight in the national economy (See Charts IV and V).

It must be noted, however, that a large part of the State participation still occurs through Public Enterprises.

In 1985, the whole of the IPE group approximately three per cent of the GVA and GFFC controlled almost five per cent of the total exports from the country and employed less than two per cent of the non self-employed work force (Chart V).

From 1983 to 1985, some loss in the weight of all indices was registered. Only companies in which the State is a majority participant are being considered for the purposes of global calculation; data concerning the volume of turnover, exports, investment, cash-flow, GVA and employment can be found in Chart IV.

Today, the IPE is a company with Publicly held capital, its corporate capital being shared by the State (Treasury), the Social Security Administration and some Public Enterprises.

During this period, the holding was a paradigm of what happened in companies in which the State was a majority holder, as some sales and restructuring were made with the objective of improving the financial and economic situation of some companies.

C H A R T I V

IPE INDICES (Group)

In Millions of Portuguese escudos

Indices/Year	a)		b)	
	Companies in which the State is a majority part.		Companies in which the State is a minority part.	
				TOTAL
Turnover	1983	71 094	91 428	162 522
	1984	85 185	112 828	198 013
	1985 *	113 244	119 011	232 255
Exports	1983	13 535	27 746	41 281
	1984	17 066	37 987	55 053
	1985 *	26 781	41 260	68 041
Investment	1983	24 894	8 260	33 154
	1984	23 429	10 017	33 446
	1985 *	17 028	8 815 **	25 843 **
Cash Flow	1983	9 259	(1 120)	8 139
	1984	12 672	(3 744)	8 928
	1985 *	10 945	(2 198)	8 747
GVA	1983	42 044	29 246	71 290
	1984	48 685	35 887	84 572
	1985 *	55 028	39 841	94 869
Employment	1983	25 668	30 394	56 062
	1984	22 011	29 845	51 856
	1985 *	22 238	28 167	50 405

* - Provisional data

** - Data not available for Abriqada, Central and Eurofer.

Note: Euromina has not been considered in any of the years.

Source: IPE, SA.

a) Companies in which the State owns a participation of over fifty per cent.

b) Companies in which the State owns a participation equal to or less than fifty per cent.

C H A R T V

COMPARATIVE DATA

	<u>Exports</u>		
	<u>IPI Group</u> (1)	<u>NATIONAL ECONOMY</u> (2)	% (1)/(2)
1983	41,3	685,4	6,0
1984	55,1	1 025,1	5,4
1985	68,0	1 380,0	4,9

	<u>GVA</u>		
	<u>IPI Group</u> (1)	<u>NATIONAL ECONOMY</u> (2)	% (1)/(2)
1983	71,3	2 279,2	3,1
1984	84,6	2 804,0	3,0
1985	94,9	3 525,0	2,7

	<u>Investment</u>		
	<u>IPI Group</u> (1)	<u>NATIONAL ECONOMY</u> (2)	% (1)/(2)
1983	33,2	672,5	4,9
1984	33,4	653,7	5,1
1985	25,8	757,0	3,4

	<u>Employment</u>		
	<u>IPI Group</u> (1)	<u>NATIONAL ECONOMY</u> (2)	% (1)/(2)
1983	56,1	3 101,3	1,8
1984	51,9	2 980,0	1,7
1985	50,4	2 900,0	1,7

Source: IPI, SA.

2.2..In Spain

Both the evolution of the Public Enterprises and their contribution to the Spanish economy are to be quantified, for the years of 1984 and 1985, in terms of National Accounting.

The State Company Sector includes the entities (depending on the Central Administration) which participate in Non-financial activities, including the Autonomous Commercial or Industrial Entities (O. A. C. I. S.), the Public entities and Companies with a majority Public participation or, in the case of minority participation, when political control by the State exists (Cf. Annex 2, Lists 1 and 2).

The evaluation of the contribution of the Non-financial State Company Sector in the Spanish economy was considered in terms of Gross Value Added at market prices (GVA m.p.), payment of workers, Gross Formation of Fixed Capital and Employment.

If the GVA pm is used as a basic index, both taxes on Tobacco and Petroleum products and taxes on the use of telephone, increasing the value of production must be considered.

The amounts corresponding to these products are, in millions of Spanish pesetas:

	1985	1986
Petroleum income	100,036.-	82,866.-
Tobacco income	33,013.-	28,693.-
Stamp income	97,191.-	91,499.-
Telephone "canon"	23,435.-	20,846.-
Taxes on Petroleum	385,901.-	364,781.-
Taxes on Tobacco	90,566.-	78,991.-
Taxes on Telephones	64,233.-	58,533.-

In 1985, the Non-financial Public Enterprises represented, based on the data on Chart VI, 9.2 per cent of the Gross Internal Product, 16 per cent of the Gross Formation of Fixed Capital and 4.6 per cent of Employment, the last percentage increasing to 5.5 per cent if agriculture is excluded.

C H A R T V I

COMPARATIVE EVOLUTION OF PUBLIC ENTERPRISES - O.A.C.I.S. AND THE NATIONAL ECONOMY

Years	GVA			GFFC			EMPLOYMENT				
	PE	NE	$\left(\frac{1}{2}\right)_{100}$	PE	NE	$\left(\frac{4}{5}\right)_{100}$	PE	NE	$\left(\frac{7}{8}\right)_{100}$	Agriculture excluded	$\left(\frac{7}{10}\right)_{100}$
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1983	1652,8	22 682,8	7,76	692,7	4 207,8	16,4	506 548	10 886 400	4,6	8 829 200	5,73
1984	2255,8	25 121,3	8,97	579,5	4 762,6	12,16	509 367	10 668 200	4,76	8 703 400	5,83
1985	2575,9	27 929,6	9,22	654,1	5 335,9	16,-	488 083	10 570 800	4,61	8 644 800	5,52
Absolute Growth between 1983 and 1985	923,1	5 246,8	17,5	161,4	1 128,1	14,3	-18 463	-295 600	6,25	-184 800	100
Average Rate of Annual Growth	0,23	0,11	--	0,11	0,12	--	-0,02	-0,015	--	-0,013	--

Source: Estimate based on the publication of the Ministry of Economy and Finance "Sector Público Empresarial non Financiero 1984 - 1985" (Non-Financial State Company Sector 1984-1985).

C H A R T V I I

RELATIVE WEIGHT OF THE INSTITUTIONAL SECTORS OF THE SPANISH ECONOMY

Institutional Sectors	GVA			EFFC			Employment		
	1983	1984	1985	1983	1984	1985	1983	1984	1985
Non-Financial Public Enterprises	7	8,18	8,31	14,9	10,12	14,24	3,8	3,11	2,03
O.A.C.I.S. (Commercial and Industrial Autonomous Entities)	0,30	0,35	0,44	1,5	2,04	1,76	0,10	1,73	1,57
Financial Public Enterprises	0,46	0,44	0,47	-	-	-	0,10	0,11	0,11
TOTAL	7,76	8,97	9,22	16,4	12,16	16	4	4,95	4,61

Source: Estimate based on the publication of the Ministry of Economy and Finance "Sector Publico [Empresarial] non Financiero 1984 - 1985" (Non-Financial State Company Sector 1984-1985).

The participation of the State Enterprises increased during the years under discussion, from 7.8 per cent of the Gross Internal Product in 1983 to 9.2 per cent in 1985.

The Value Added by the Public Enterprises grew at a cumulative annual rate of 23 per cent, which was greater than the rate of the national economy, at 11 per cent (Chart VI).

For the entirety of the EEC countries, the GVA of the Public Enterprises was of 30 per cent in 1983. These figures show that the importance of the Public Enterprises in the national economies of the EEC Member-States is greater than the same figures referred to in Spain.

According to said chart, the most important contributions are: Commerce, Communication, Electrical Energy, Gas, Steam and Water, Petroleum and Natural Gas.

Based on employment, the most relevant sectors are Communication and Transportation.

Employment in Public Enterprises represents almost five per cent of the total employment in the national economy.

3. Portuguese and Spanish Institutions which are part of the EEC concept of Public Enterprises

After analysing the different legal concepts of Public Enterprises in the two countries under discussion and mentioning their weight in both economies in the introduction, the creation and development of the entirety of State controlled companies in the Iberian peninsula must be explained. This explanation concludes with a "listing" identifying those companies fitting into the selected operative concept of Public Enterprises, i. e. the EEC concept (Cf. Annexes 1 and 2).

3.1. Creation and Development of the Entirety of Public Enterprises in Portugal

A long term favorable trend toward state control of productive services can be seen in Portugal.

Examples of this trend are to be found in the "Casa da India" (House of India), which in 1506 had the monopoly of commerce with the Orient or in the Commercial Companies (Companhias Comerciais) which proliferated in Portugal in the seventeenth and eighteenth centuries. The centuries old "Fábrica de Vidros da Marinha Grande" (whose name was later

changed to "Fábrica-Escola dos Irmãos Stephens") and the "Fábrica Nacional da Cordoaria," which are notable for their age, became connected with the tobacco and match monopolies as well as the State Railway companies at the beginning of the twentieth century.

By the beginning of the 1870s, the State already exercised a diversified business activity.

There was an explosive fever of nationalizations after the April 1974 Revolution which reached its height at the zenith of the so-called "Gonçálvismo," during the preconstitutional period of 1975 - 1976. The State was forced to intervene actively, assuming the risk of management, in fundamental sectors of economy, serving the political project of radical modification of the economic structure.

In illustration:

- Issuing Banks (Decrees-Law Nº 450/74, 451/74 and 452/74, of September 13);
- Banking institutions and other monetary and financial entities (Decree-Law Nº 132-A/75, of March 14 and Decree-Law Nº 561/75, of October 02);
- Insurance companies (Decree-Law Nº 135-A/75, of March 15);
- Ironworks (Decree-Law Nº 205-F/85, of April 16);
- Production, transportation and distribution of electricity (Decree-Law Nº 205-A/75, of April 16);

- Refining and distribution of petroleum products (Decree-Law N^o 205-A/75, of April 16);
- Cement industry (Decree-Law N^o 221-A/75, of May 09);
- Cellulose (Decree-Law N^o 221-B/75, of May 09);
- Glass industry (Decree-Law N^o 432/75, of August 13);
- Mining industries (Decree-Law N^o 434/75, of August 14);
- Food industries (Decree-Law N^o 474/75, of August 30);
- Ship building and repairing (Decree-Law N^o 478/75, of September 01);
- Agriculture, forestry and cattle breeding (Decree-Law N^o 407-A/75, of July 30);
- Radio, television, and related activities (Decrees-Law N^o 674-C/75 and 674-D/75, of December 02);
- Fishing and related activities (Decree-Law N^o 572/76, of July 20);
- Graphic arts and publishing industry (Decree-Law N^o 639/76, of July 29).

Legislators expressly named the companies to be nationalized, at the same time coersively transferring all the patrimony of the identified companies (assets and liabilities) to the State and abolishing said companies "ipso jure."

Sometimes nationalization of part of the capital occurred, for example with respect the share held by foreign investors (examples: Decree-Law N^o 205/75, of April 16 as concerns the "Soponata"; Decree-Law N^o 228-A/75, of May 13 as concerns the "Empresa Madeirense de Tabacos"; Decree-Law N^o 432/75, of August 14 as concerns the "Pirites Alentejanas" and Decree-Law N^o 502/76, of June 30 as concerns the "Carris").

Other nationalizations of property occurred without affecting the legal existence of the companies to which the property had belonged. This was also the case of the establishment of production and distribution of electricity which had belonged to other companies with other corporate objectives (Decree-Law Nº 205/75, of April 16 and Decree-Law Nº 502/76, of June 30).

Following these nationalizations, a uniform basic legal regulation which defined Public Enterprises and regulated their creation and operation became necessary; thus the publication of said Decree-Law Nº 260/76, of April 08.

Following the nationalizations, the rapidly expanded entirety of Public Enterprises changed in some ways:

- a) Public Services and Establishments, which had previously been integrated into, or dependent on, Public Administration, were transformed into the legal form of Public Enterprises (For example, "ANA/EP," created by Decree-Law Nº 122/77, of March 31, through transferring one part of the services which had previously been part of the Direcção-Geral da Aeronáutica Civil; "INDEP," created by Decree-Law Nº 515/80, of October 31, from the factories of the Army; "Dragapor," created by Decree-Law Nº 332/77, of August 10 which assumed the functions of the latter Direcção-Geral de

Portos and Administração-Geral do Porto de Lisboa);

- b) Creation "ex-novo" of organizations to provide for new needs (example: "IPE", "FINANGESTE", "ENATUR");

- c) The restructuring or reorganization of the nationalized sector, with numerous examples. That was the case with "QUIMIGAL, EP" created by Decree-Law Nº 530/77, of December 30, from the merger of three nationalized companies: the "Sociedade Portuguesa de Petroquímica, SARL", the "Amoníaco Português, SARL" and the "Nitratos de Portugal, SARL"; as well as with the "Empresa Mineira e Metalúrgica, EP (EMMA)" created by Decree-Law Nº 510/79, of December 24, from the previously nationalized company "Sociedade Mineira de Santiago, SARL"; "SOCARMAR, EP", created by Decree-Regulation Nº 57/77, of August 25, from the nationalized company "Sociedade de Cargas e Descargas Marítimas, SARL"; the "Estaleiros Navais de Viana do Castelo, EP (ENVC)" created by Decree-Law Nº 850/76, of December 17, from the nationalized company "Estaleiros Navais de Viana do Castelo, SARL"; and the "EDM -- Empresa de Desenvolvimento Mineiro" created by Decree-Law Nº 185/82, of May 06, from the merger of the former Public Enterprises "EDMA" and "Ferrominas"; credit institutes created from the nationalized banks and the insurance companies resulting from the

nationalized insurance companies (Cf. Annex 1).

Presently, the trend is opposite that exhibited during the last decade, with a noticeable movement against the increase of the State Company Sector.

Thus, a wave of reprivatization is expected in the short or medium term, following the Program of the present Government which has indicated that three bills for authorization of the reprivatization process are to be handed to the Assembleia da República (Parliament). Reprivatization is to occur through the conversion of Public Enterprises into Public Limited Companies with mixed funds and through the regulation of sale, exchange or donation as payment, of the patrimony of Public Enterprises. A new law on the sale of State participations or of other public entities is also expected.

There is, in addition to the strong stake of the new Portuguese Government (to be studied in the last chapter):

- the opening to private enterprise of sectors which were previously prohibited to it, following Decree-Law Nº 406/83, of November 19 (fertilizer and cement industries, banks and insurance companies);
- a certain dismantling of the State Company Sector, that has taken place in the last few years, translated, for

example, into:

- a) "ANOP -- Agência Noticiosa Portuguesa, EP," created by Decree-Law Nº 330/75, of July 01, was abolished by Decree-Law Nº 432-A/86, of December 23, and is in the process of being liquidated. Its functions were transferred to the cooperative "Agência Lusa de Informação";
- b) "FRIGARVE," created from the nationalization of the non-State owned shares of capital in "Frigarve -- Empresa Frigorífica do Algarve, Limitada," which operated as a result of Decree-Law Nº 572/76, of July 20, which was abolished by Decree-Law Nº 307/84, of September 19. It is in the process of being liquidated.
- c) "CNN -- Companhia Nacional de Navegação, EP," which resulted from the nationalization of the CNN -- Companhia Nacional de Navegação, SARL" through Decree-Law Nº 205-C/75, of April 16, was abolished through Decree-Law Nº 138/85, of May 03, and is in the process of being liquidated.
- d) "CTM -- Companhia de Transportes Marítimos, EP," whose statutes were approved by Decree-Law Nº 484/77, of November 16, following the nationali-

zation of "CTM - SARL." The former was later abolished by Decree-Law Nº 137/85 of May 03, and is in the process of liquidation. The maritime activities of CTM were transferred to "Transinsular" and "Portline." Transinsular made a public offer of sale of stock (OPV) to disseminate part of the corporate capital and has requested admission to the Lisbon Bourse;

- e) "CPP -- Companhia Portuguesa de Pescas," created by Decree-Law Nº 572/76, of July 20, which resulted from the nationalization of the shares of "CPP - SARL," not belonging to the State, was abolished by Decree-Law Nº 139/84 of May 07, and is in the process of being liquidated.

- f) "DRAGAPOR -- Dragagens de Portugal, EP," created by Decree-Law Nº 332/77, of August 10, was transformed into a corporation;

- g) "SNAPA -- Sociedade Nacional dos Armadores de Pesca de Arrasto," created by Decree-Law Nº 572/76, of July 20, which nationalized "SNAPA - SARL," was abolished by Decree-Law Nº 161/82, of May 07, and is in the process of liquidation;

- h) "EPPI - Empresa Pública dos Parques Industrias," created by Decree-Law Nº 133/73, of March 28, was abolished by Decree-Law Nº 39/86, of March 04, and is in the process of liquidation;

- i) "GELMAR - Empresa Distribuidora de Produtos Alimentares," created following the nationalization of shares of "GELMAR, Lda." by Decree-Law Nº 572/76, was abolished by Decree-Law Nº 57-D/84, of February 20, and is in the process of being liquidated;

- j) "PESCRUL -- Sociedade de Pesca de Crustáceos," which resulted from nationalization of the shares of the "PESCRUL, SARL" by Decree-Law Nº 572/75, saw the State's share of participation transferred to "IPE" holding by Decree-Law Nº 294/86, of September 19.

3.2. Creation and Development of the Entirety of Public Enterprises in Spain

The antecedents of the Public Enterprises in Spain go back to the eighteenth century, with the organization of the Post Office as a Public Service, although royal monopolies, such institutions as the "Companhias Coloniais" (Colonial Companies) which maintained commerce with the Indies and Royal factories previously existed as public companies.

In the nineteenth century some Public Enterprises, in the mining and forestry sectors, were created or consolidated, the latter, for example, having been integrated into the forests owned by the State.

In this century, the Royal Decree Law of June 28, 1927, created the Petroleum Monopoly, with fiscal, social and economic aims.

There was economic intervention especially after 1939, immediately following the civil war.

The Spanish economic situation resulting from this conflict (1936 - 1939), and the conditions imposed by the international context of the time, forced the State to adopt an autarkic formula in industrial management.

The most important interventionist decisions from this era of economic autarky, which were in force until the Stabilization Plan of 1959, were the creation of the "Instituto Nacional de Industria" (INI) and the "Red Nacional de Ferrocarriles Españoles" (RENFE).

The Law of September 25, 1941 created the INI as a public law entity established independently of the Government with the aim of developing and financing the creation and

resurgence of the national industry.

The INI does not directly produce, but functions in legal and economic aspects, as a "trust" of producing companies. The latter adopt the legal status of Public Limited Companies and are regulated by commercial law.

The Law of January 24, 1941 which created the "RENFE," however, defined the conditions for redemption of the normal rail lines, which were leased on concession by private companies.

Since 1959, while the Stabilization Plan was still in force, a process of liberalization of the Spanish economy began, demanding from the Public Enterprises the effort of adapting to the competitive demands of systems with a free market economy. The Law of the Autonomous State Entities, of December 26, 1958, defines the so-called "Empresas Nacionales (National Companies)" together with the Autonomous Entities and the administrative services without legal personality as types which are part of the vast concept of Autonomous State Entities.

In 1962 there was a return to interventionism. As a consequence of the publication of the Law for the Regulation of Credit and Banks, of 1962, the Bank of Spain is nationalized and the "Instituto de Médio e Longo Prazo" (Institute for

Medium and Long Term) (today "Instituto de Crédito Oficial" - Institute for Official Credit) was created.

Later, the 1962 Law on the Patrimony of the State came to regulate the companies held by INI and, following this law, the "Direcção-Geral do Património do Estado" (General-Direction for the Patrimony of the State) was created, dependent on the Ministry of Finance, and having patrimonial and financial control over entities belonging to the State. This department functions as a holding company, although it is not formally one, due to lack of legal personality.

Among the companies it administers, the most important are the "Compañía Telefonica Nacional de España," the "Compañía Arrendataria de Monopolios de Tabacos" and the "Banco Exterior de España." The last-named is one of the largest and most profitable companies in the country.

In 1981, the "Instituto Nacional de Hidrocarburos" was created, which operates as a holding company for more than fifty companies in the area of hydrocarburetants.

Companies held by this group are in all the areas of activity of the sector:

- Extraction and Production: "Hispanoil";
- Refining of petroleum and petrochemical industry: "Empetrol" and "Alcudia";

- Distribution and commercialization: "Campsa," "Butano" and "Enagas."

In January 1985, the "Red Electrica de España (REDESA)" was created and charged with the high tension network. Since that time, however, a certain process of privatization has been initiated, with liquidations of the following INI holding investments:

- The "SECOINSA" was sold to the "Compañia Telefonica Nacional de España", on March 13, 1985;
- The "S. K. F. Española" was sold on July 29, 1985;
- The "Viajes Marsans" has been acquired by the "Trapsa" group;
- The sale of "SEAT" to "Volkswagen" was negotiated, the sale having been concluded during 1986.

The present situation of the State Company Sector in Spain is completely expressed in Annex 2, where there is a list of Spanish Public Enterprises and their addresses.

4. Organization of the Control of Public Enterprises

The institutional structure and the methods of control are different in Portugal and Spain, with extreme differences in the Portuguese case depending on the legal form which the State controlled company has in terms of Portuguese legisla-

tion. Thus, the method of description used for Portugal in point 4.1., makes no sense in the Spanish case.

4.1. In Portugal

The organic and functional structure and the context and objectives of the control exercised by the Public Authorities vary greatly in Portugal, depending on whether Public Enterprises are considered "stricto sensu," subject to a general statute; or considered to be public capital companies or companies in which the State participates.

4.1.1. General Framework

For the purposes of defining the general Regulatory framework of the State controlled companies in Portugal, those having the legal status of Public Enterprises must be distinguished from the others.

As concerns Public Enterprises "stricto sensu," Article 3 of Decree-Law Nº 260/76 provides that they are ruled by:

- a common general basis (Decree-Law Nº 260/76);
- their own statutes (approved by decree or by decree-law);

- private law (commercial law and, secondarily, civil law).

Individual and collective labor law is also applicable to Public Enterprises as concerns labor questions (Article 30 of Decree-Law N^o 260/76). Common fiscal law (Article 34 of said document) is also applicable.

Companies with publicly held capital or in which the State participates have no specific legal status to regulate them. Article 48 of Decree-Law N^o 260/76 expressly provides that the General Basis of Public Enterprises do not apply to the previously mentioned companies. Thus, they are subject to the common regime of private law, although their statutes may show the influence of politics or of the State's own interests.

The Regulatory framework in which Public Enterprises move having been defined, an inventory of all existing legal provisions or administrative practices that might directly or indirectly condition the establishment of private companies must be made, always bearing in mind the difficulty of a global diagnosis of possible discrimination, because:

- a) there are obligations which are exclusively reserved to Public Enterprises, due to State interest impera-

tives or to lack of interest or lack of aptitude on the part of private enterprise;

b) management restrictions and obligations, specific to the public sector are numerous; however,

c) objectively non-discriminatory rules or measures which can be translated into true discrimination when seen in the context of a sectorial analysis.

Due to their generic range and economic importance, the complex financial relations existing between the State and Public Enterprises (subsidies to operation, capital donations, loans with privileged financial conditions, no-return or insufficient return on invested capitals, guarantees for financing, etc.) must be noted.

A complete inventory and quantification of all these financial instruments is impossible because most of them are of restricted use and vary from sector to sector, or even from company to company within the same sector. Consultation of published fiscal information concerning amounts proposed for distribution as compensation, as non-refundable subsidies, as donations of statutory capital and for investment and financial improvement as registered in the Budgets of the State is necessary (1985, 1986 and 1987). Published fiscal information should also be consulted for the division cri-

teria among the Public Enterprises and companies in which the State participates, as provided for by the Council of Ministers (Cf. Diário da República, II series: Nº 202, September 03, 1985; Nº 174, July 31, 1986 and Nº 111, May 15, 1987, of which copies are attached. See Annexes 3, 4 and 5).

Finally, as concerns administrative practices, attention must be called to the fact that it is not possible to find a well defined line of orientation as concerns (discriminatory) protection given by the State to Public Enterprises. There are two specific examples of large Public Enterprises: "QUIMIGAL" and "PORTUCEL."

In the first case, State protection is obvious and the Administration, in exercising protection, makes use of many different subterfuges, including non-observance of the provisions of Article 204, Nº 1 of the Act of Accession, where competitors of "QUIMIGAL" are concerned, or the maintenance of several entities, such as the "Comissão Reguladora de Produtos Químicos e Farmacêuticos" (Regulatory Commission for Chemicals and Pharmaceuticals) or "Comissão de Explosivos" (Explosive Commission), whose present real function is to avoid competition instead exercising its true function.

"PORTUCEL", on the contrary, is a very profitable Public Enterprise with great commercial potential. The State has

taken discriminatory actions including those which strongly prejudice "PORTUCEL" in the market. For instance, the State has forced this company to charter ships owned by other Public Enterprises, as a way of protecting the latter, when other more competitive freight rates were offered for the transport of imported raw materials or for the shipping of the products it exports.

The State maintains several other entities, in the same way. They include, the "Instituto dos Produtos Florestais" (Institute for Forestry Products) and the "Comissão Reguladora dos Produtos Químicos e Farmacêuticos" (Regulatory Commission for Chemical and Pharmaceutical Products), which assess taxes contrary to the provisions of Article 193 of the Act of Accession and whose collection affect not only community exporters but also national producers, including such Public Enterprises as "PORTUCEL." In many cases, revenues obtained serve exclusively to maintain the collecting entities which occasionally exercise administrative practices in the market which are directly dictated by the State or through its longa manus of which Public Enterprises are indirectly part.

4.1.2. Control of Public Enterprises "Stricto Senu"

The law (Decree-Law N^o 260/76) provides a system of double economic and financial control, with the Minister responsible for the sector of economic activity in which the Public Enterprise principally or exclusively operates (Minister in charge of Control) and the Minister of Finance sharing responsibility.

The last changes in the legal framework of relations of the State with the Public Enterprises, resulted from Decree-Law N^o 29/84, of January 20. This Decree-Law aimed to give more autonomy to the management of said companies, reducing the number of acts for which permission was necessary.

Actual practice has shown a large scale transfer in the controlling duties to the Ministry of Finance -- which has improved the action of its technical entity, the "Inspeção-Geral das Finanças" -- and the recently created (by Decree-Law N^o 99/87, of March 05) "Gabinete para a Análise do Financiamento do Estado e das Empresas Públicas, GAFEPP," which provides a specialized staff.

4.1.3. Control of Companies with State held capital

Companies with publicly held capital are organized in the legal form of companies, generally public limited companies, whose capital belongs entirely to public entities: State / Treasury, Public Enterprises and other entities of public law.

The legal framework of the relationship between the State and these companies basically regulates how the representatives of the shareholders act in the General Meetings of the Companies:

- In the definition of objectives and general policies;
- Electing members of the management and control boards;
- In the control actions adopted by the company.

Anticipating that the role of the State-shareholder is exercised through the normal ways and means provided by company law, the legal means is shown to be more decentralized and simplified than the regime in force for Public Enterprises. This gives the companies in which the State participates a higher degree of autonomy and management flexibility than the former.

When characterizing the institutional model of powers and competencies in this kind of company, attention must be

called to the case of the "IPE -- Instituto das Participações do Estado, -SA" which is highly representative, both due to its genuine form of company with publicly held capital, and its importance in the context of the State Company Sector.

The State / Treasury holds the majority (approximately eighty per cent) of the corporate capital in IPE, a "holding" which, besides the management of its portfolio of shares, has the aim of promoting both the creation of new companies and new business enterprises.

Legally (Decree-Law Nº 330/82, of August 18), the intervention of the State in the IPE occurs via the person nominated by the Ministry of Finance as representative in the General Meeting.

4.1.4. Control of Companies in which the State participates

There is no legal definition for companies in which the State participates, although Article 48, par. 1 of Decree-Law Nº 260/76 calls them "'companies of mixed economy' as those created according to commercial law in which public and private national and foreign capital are associated."

In summary: these are companies in which capital is divided among public and private entities, the capital component belonging:

- Directly to the State or other public entities, including Public Enterprises (direct participation); or
- To companies in which the above entities participate (indirect participation of first and second degrees).

Having a legal form provided by commercial law, they have the status of public companies limited by shares, or of private limited companies. The legal intervention of the shareholders occurs via the representation in General Meetings, in terms of the powers conferred by proportion of capital held.

Generally, only the ownership of the majority of capital (over fifty per cent) gives the possibility of controlling or dominating the company. It may, however, happen that a public entity holds the majority by itself, but that the group of public entities holds the majority and, through coordinate action, it can exercise the control.

In indirect participation of first and second degree, the power of the State to interfere is conditioned by the power it exercises in the companies in which it holds a majority participation and is, in principle, weakened. We will try to characterize the situation concerning direct participa-

tion with emphasis on the participations held by:

- The State ["Direcção-Geral do Tesouro" (Directorate-General of the Treasury)];
- "IPE -- Investimentos e Participações do Estado"; and
- Public Enterprises.

a) Participation by the State (Directorate-General of the Treasury)

Majority participation concerns companies in which State intervention is basically the same in force for the Public Enterprises.

As concerns other participation, intervention is limited, generally, to the nomination of representatives of the State in General Meetings and in the Administration, which ever the case.

b) Participation by "IPE - Instituto das Participações do Estado" (Institute for Participation by the State)

On December 31, 1986, IPE held shares in 95 companies, including 3 in which it held 100 per cent, 20 in which it held over 90 per cent and 45 in which it held over 50 per cent.

For the exercise of its duties as shareholder, IPE created and maintains its own structure.

c) Participation by Public Enterprises

In general, the most relevant participation by Public Enterprises has a certain integrating or complementary logic in its activity. Thus intervention as shareholders has to be coordinated with company activities.

4.2. In Spain

4.2.1. Institutional Dependence of Public Enterprises

The previously mentioned triple distinction of the Portuguese case is not applicable to Spain. Thus, it seems convenient to group companies according to institutional dependence and legal form adopted for better comprehension of the way control is exercised:

- Companies controlled by the "Instituto Nacional de Industria -- INI";
- Companies controlled by the "Instituto Nacional de Hidrocarburos -- INH";

- Companies controlled by the Ministry of Economy ("Economía y Hacienda") through its Directorate-General of the State Patrimony.

Companies included in these groups adopt the legal form of public company limited by shares, i. e., companies of private law, as provided by Article 6 of the General Law of Budget of January 04, 1977, which provides that State Companies are ruled by private law norms (commercial, civil and labor) except when otherwise provided.

- a) Companies controlled by the "Instituto Nacional de Industria" (National Institute of Industry)

The INI operates in the following sectors: electricity, ironworks, mining, defense, shipbuilding, equipment, aluminium, food, electronics and data processing, fertilizer, air transportation, maritime transportation, engineering and construction, industrial promotion, external commerce and finance. In 1985, there were 64 companies with a majority direct participation by the INI. Through its companies, the INI indirectly has a fifty per cent or greater capital holding in 170 companies.

- b) Companies controlled by the "Instituto Nacional de Hidrocarburos" (National Institute of Hydrocarburants)

The INH has direct and majority participation in five companies: "HISpanoIL," "EMPETROL," "CAMPSA," "BUTANO" and "ENAGAS." Through these companies the INH is a majority participant in 216 companies.

- c) Companies Dependent on the Patrimony of the State.

The group of companies included in this institutional group is particularly heterogeneous as concerns its activities. On one hand, there are industrial units including "INTELHOUSE" and "Minas de Almadén" and, on the other hand, there are services including "Transmediterranea" and "EFE Agency."

It also includes a fiscal monopoly, the "Tabacalera," as well as the "Compañía Telefonica Nacional de España." In the latter, the State is a minority participant but, as the remaining shares are held by many private shareholders, the Ministry of Economy maintains decisive control over the company, through a deputy of the Government who, along with the representatives of the Council, guarantee the accomplishment of State goals.

The Directorate-General of the Patrimony of the State has a direct and majority participation in 26 companies and an indirect and minority participation in 13 more companies.

d) Entities of Public Law

Included are, in the existing eleven:

- "RENFE (Red Nacional de Ferrocarriles Españoles)";
- "FEVE (Ferrocarril de Vila Estrecha)";
- "Puerto Autónomo de Barcelona";
- "Puerto Autónomo de Bilbao";
- "Puerto Autónomo de Huelva";
- "Puerto Autónomo de Valencia";
- "SEPES (Sociedad Estatal de Promoción y Equipamiento del Suelo)";
- "INH (Instituto Nacional de Hidrocarburos)";
- "Patrimonio Nacional."

e) Autonomous Organizations

Integrated into this group are the "INI - Instituto Nacional de Industria," hidrographic confederations, the "Editora Nacional," the "Juntas" of the ports and the whole of companies in which the majority consists of "patronatos de viviendas" which are not specifically Public Enterprises.

f) Commercial Services

This concerns only the Post and Telegraph services.

In conclusion, attention must be called to the fact that Public Enterprises depending on Local Administration exist, for example, municipal urban transportation companies.

4.2.2. Exercise of Control

Spanish Public Enterprises are subject both to internal control within each management group with the aim of improving performance and to external control exercised by the "Intervención General de la Administración del Estado," by the "Tribunal de Contas" (Auditing Office) and by the Ministerial Departments, in specific matters.

The internal control of the INI and the INH consists of an integrated system of management planning and control, which is obligatory for companies in which they are direct and majority participants.

5. The Fiscal System Seen from the Point of View of the Policy of Competition

In accordance with both the administrative practice of the Commission of the European Communities and the decisions of the Court of Justice in Luxembourg, the so-called fiscal incentives which most of the time mean momentary tax exemptions or discriminations, constitute subsidies from the State, which are prohibited by Article 92 of the EEC Treaty. It is from this perspective that we will list some cases of distortion of competition, through fiscal policy, in both Portugal and Spain.

5.1. In Portugal

As a rule Public Enterprises in Portugal are subject to direct and indirect taxation under general terms of law, as provided in the law of General Basis (Articles 34 and 35 of Decree-Law Nº 260/76).

This general provision is reaffirmed several times in their statutes. Thus, for example:

- "Agência Noticiosa Portuguesa - ANOP, EP": Decree-Law Nº 502/77, of November 29, Article 27, par. 1: "The ANOP, EP is subject to direct and indirect taxation
....."

- "Central de Cervejas - Centralcer, EP": Decree-Law Nº 531/77, of December 30, Article 41: "The company is subject to direct and indirect taxation, under the terms of fiscal law."
- "Cimentos de Portugal - Cimpor, EP": Decree-Law Nº 13/76, of March 26, Article 8, par. 1: "While a special tax regime is not created for Public Enterprises, the CIMPOR, EP, will be subject to the general tax regime for companies."
- "Companhia das Lezírias, EP": Decree-Law Nº 123/78, of November 15, Article 40: "The CL, EP, will be subject to direct and indirect taxation under the general terms."
- "Dragagens de Portugal - DRAGAPOR, EP": Decree-Law Nº 332/72, of August 10, Article 29: "The company will be subject to direct and indirect taxation under the terms of general law."

Thus, tax policy frequently includes tax benefits and fiscal incentives and stimulæ, and the rule of general subjection. Now, established regimes of fiscal decrease will be traced.

a) Regimes of Objective Tax Exemption

There are Public Enterprises which pursue collective interests, operating in areas in which private enterprise have expressed a lack of interest. The process used to benefit these companies has generally been that of establishing exemptions related to the activity in which they operate. One must, however, distinguish between exemptions provided for in general tax laws and those provided for in special laws.

i) Provided for in general tax laws: companies with a concession for the production, transportation and large scale distribution of electrical energy have always been exempt from "Contribuição Industrial (corporate tax)" as provided in Article 14, par. 16, of the Code. Most of these companies were nationalized by Decree-Law Nº 205-G/75 and, from this group came some Public Enterprises -- EDP, EP (Decree-Law Nº 520/76, of June 30) and the "Empresa de Electricidade dos Açores, EDA, EP" (Regional Regulatory Decree Nº 34/81-A, of July 18 -- formerly "Empresa Insular de Electricidade, SARL").

It seems obvious that, due to the objective nature of the exemption (independent of the quality of the beneficiary), these companies will still be exempt from corporate tax.

In the case of "Empresa de Electricidade da Madeira, EP," the solution, although obtained in another way, is the same.

Decree-Law Nº 12/74, of June 15, did not provide for the fiscal regime of this company. The interpretation of the Fiscal Administration was that it should be subject to the general provisions of Article 34 of Decree-Law Nº 260/76 and thus benefit from exemption to corporate tax, but only as concerns large scale distribution of electrical energy.

Decree-Law Nº 30/79, of February 24, approved new statutes for this company, expressly approving the understanding of

the Fiscal Administration.

ii) Provided for in special laws: There is also another type of situation in which fiscal benefits were the result of special laws and, in some cases, created "ex novo" following the institutionalization of the Public Enterprise.

This situation occurs in some Public Enterprises which have the concession of operating public services. In administrative contracts of concession of public services, the contractor is conferred the right of collecting prices or fees as remuneration for services rendered in the regime of concession. Said prices are predetermined by contract in some cases; they do not obey market laws and cannot be altered unilaterally by the contracting Public Enterprise. See Article 13, (c), Decree-Law Nº 260/76: The control includes the power of authorizing or approving "the prices or fees of companies operating public services or exercising their activity on an exclusive basis."

In the face of this concept of revenue, which does not keep pace with costs, concession contracts or the law have to provide for a financial equilibrium of said contracting companies, which certainly includes tax exemptions.

As concerns the "Caminhos de Ferro Portugueses -- CP, EP" for example, Article 7 of Decree-Law Nº109/77, has remained

in force via Base XXIX of Decree-Law N^o 104/73, of March 13, in which was stipulated that a company would continue to have complete State and local tax exemption throughout the period of the contract of concession, both general and specific, as well as extraordinary."

The same can be said as concerns "CTT/TLP." The "Anglo-Portuguese Telephone Company, Ltd," had the telephone concession in Lisbon and Porto, benefitting from various tax exemptions anticipated in Decree-Law N^o 46 044, of November 14, 1964. When the concession was terminated in 1967, Decree-Law N^o 48007, of October 26 of that year, created the Public Enterprise "TLP," maintaining the previous fiscal benefits (Article 1, par. 1). Beginning in 1970, by force of Decree-Law N^o 49368, of November 10, 1969, the former Administração Geral dos Correios Telégrafos e Telefones was integrated into a new Public Enterprise called "Correios e Telecomunicações de Portugal -- CTT," whose administration then took over management of "TLP." Thus, there are two distinct companies with a common administration.

In the same way, Annex I, Article 57^o, par. 2, (e) of Decree-Law N^o 49369 anticipated the full exemption of CTT from taxes and fees.

At present, CTT/TLP - EP, continues to benefit from these fiscal benefits which have always remained in force.

In addition to these cases, there are still Public Enterprises which received benefits "ex novo."

Thus, for example, the Public Enterprise "Aeroportos e Navegação Aérea - ANA, EP," created by Decree-Law Nº 122/77 of March 1931, is subject to a special fiscal regime through "exemption from payment of all taxes and fees on systems of equipment, tools and spare parts relating to airport services due to the State..." (Article 32º, par. 2, of the Statutes).

Also Law Nº 75/79 ["Lei da Radiotelevisão (Television Law)"] designated fiscal exemptions to the benefit of "Radiotelevisão Portuguesa -- RTP, EP" in Article 48.

Other examples still exist which provide exemptions of a temporary nature, as happened in the case of "CIMPOR - EP" (Decree-Law Nº 217-B/76, Article 8, par. 2 - "For a three-year period, beginning January 1976, CIMPOR will benefit from exemption from corporate tax...").

b) Regimes of Subjective Tax Exemption - the ASEFs

It should be said, at the beginning, that there does not exist in the Portuguese legal system, purely subjective fiscal benefits i.e., there are no companies which receive fiscal benefits due to the simple fact of being Public Enterprises, without other sorts of considerations.

Even when exemptions are attributed to this or the Public Enterprise, it has been the case that the major consideration was the company's activity.

We cannot, perhaps, say the same as concerns the cases discussed below, i.e., the benefits received by Public Enterprises as a result of Agreements of Economic and Financial Recovery (ASEFs).

Although benefit recipients should be chosen on the basis of their economic and financial characteristics, in truth, the existence of the public quality of an enterprise is presupposed when such agreements are signed. Thus, the benefits are primarily subjective.

Thus, Decree-Law Nº 353-C/77, of August 29, permitted the Public Enterprises to sign agreements with the State with a view toward reestablishment or consolidation of their economic and financial equilibrium. In said agreements, the

State is permitted to guarantee some of the benefits anticipated by law [Article 50, par. 1, line (i)].

These benefits were, basically, those anticipated in Law N0 36/77, of June 17, for private companies signing recovery contracts under the terms of Decree-Law N0 124/77. Said benefits were extended to Public Enterprises, initially via Decree-Law N0 75-A/78, whose fixed term was successively extended by Decree-Laws N0s 201/79 (Article 33), 183-A/80 (Article 34), 96-A/81 (Article 29) and 119-A/83.

Article 1 of Decree-Law N0 126/77, of April 02, however, permitted the re-evaluation of fixed assets of private companies, which were subject to economic and financial recovery, were considered for tax purposes. This provision was extended to Public Enterprises by Decree-Law N0 353-B/77, of August 29, and they began, in addition, to receive benefits created by Law N0 39/77 (Exemption from or reduction of the capital gains tax).

Decree-Law 430/78, which followed, authorized companies which had not re-evaluated their assets under the terms of Decree-Law 126/77 to proceed with re-evaluation of not completely amortized fixed assets. Decree-Law N0 219/82, of July 02, later permitted the re-evaluation of completely amortized assets.

In summary, the Public Enterprises which sign ASEFs receive some fiscal benefits as provided for in Law Nº 36/77 as well as benefits inherent in the reevaluation of their assets under the general terms of the law⁷.

5.2. In Spain

When analysing the advantages public business activity receives in the fiscal area as compared to private business activity, we will show, following, the major exemptions or bonuses in the basic Spanish taxes:

- Corporate tax; and
- Value added tax.

a) Corporate Tax

This tax is regulated by Law Nº 61/78, of December 27, and by Royal Decree Nº 2631/82, of October 15.

It assesses all income obtained by companies and other entities as defined in said tax law.

⁷ An additional benefit was created by Law Nº 32/79, of September 07, which exempts from taxes the mergers, take-overs and break-ups of Public Enterprises.

After the 1987 fiscal reform, it is, along with the income tax on physical persons, the basis of direct taxation in Spain.

The law provides for a total exemption of Autonomous entities of a commercial, industrial, financial or similar nature.

Additionally, there are special fiscal regimes which in an objective way affect companies operating in some sectors of activity.

The most significant cases are:

1. Mineral Companies

The special regime consists of the so-called "dotaciones al factor agotamiento" and of the freedom of amortization.

The "dotaciones al factor agotamiento" consist of endowments from a liability account, in relation with the profits gained since January 09, 1977, with the purpose of being considered deductible expenses in Corporate or Income Taxes, subject to the condition that accounted amounts be invested, within the next ten years, in specifically mentioned assets.

2. Sectors of Industrial Reconversion

They have important fiscal benefits, which are found both in corporate tax and most other taxes.

They apply indiscriminately both to companies of reconversion which are to be created and to existing companies which are presently in the process of reconversion.

The regime applies to the following sectors under reconversion: special steels, non-brand name electric appliances, integral ironworks, textiles, manufacture of electrical equipment for automobiles, ship-building, semi-transformed copper products, electronic components, round common steels and light profiles, footwear and related industry, products forged by stamping and the "ITT España" company group.

3. Zones of Urgent Reindustrialization

They consist of areas of the national territory which are classified by the Government, due to having been affected by the industrial reconversion of some sectors.

They have some important fiscal benefits, which are not cumulative with the benefits above-mentioned under point 2., which are given for a period of five years.

4. Energy Conversion

Law N^o 82/80 provides for a series of benefits, both fiscal and financial, for persons and entities developing the energy savings activities which Article 1 of the Law enumerates.

5. Corporations of Regional Industrial Development of a Public Nature

They have important fiscal benefits, not only as concerns corporate tax, but also in other taxes.

6. "RUMASA" Group

All companies affected by the Expropriation Law, while they belong to the State, will benefit from complete exemption from tax on capital gains resulting from its patrimonial regularization.

7. Investigation and Exploration of Hydrocarburetants

Those entities which are exclusively dedicated to investigation and exploration in some cases enjoy special status as concerns the calculation of the taxable basis (both concerning revenues and expenses).

Other special regimes exist for co-operatives and companies and stock-investment funds.

Finally, "CAMPSA," which previously functioned as a State organization dependent on the Ministry of Economy and Finance should be mentioned. It became a Public Enterprise as a result of Law Nº 45/84, of December 17, which concerned the reorganization of the petroleum sector.

Beginning January 01, 1985, they lost certain tax benefits, such as corporate tax exemption. Previously, the State participated in the profits of the company when they exceeded a certain percentage of the corporate capital (which, in fact, could be considered a tax on the company's profits).

b) Value Added Tax

As concerns indirect taxation, the creation of the VAT, on January 01, 1986, brought important changes to the system that had been in force since the 1964 Tax Reform.

In the previous system there had been multiple exemptions for public activities, mainly in the area of the now abolished "Imposto Geral sobre o Tráfico das Empresas (IGTE)."

However, the third Final Provision of Law N^o 30/85, of August 02 (in conjunction with Royal Decree N^o 2028/85, of October 30, regulate this tax) provides that "fiscal benefits established previously to the enforcement of the present Law do not produce effects as concerns the Value Added Tax."

But, the law makes an exemption as concerns public postal services rendered by public entities. This does not include telegraph and telephone services.

III .

ANALYSIS OF THE COMPETITION SYSTEM OF THE PUBLIC ENTERPRISES
BY SECTOR OF ACTIVITY

This chapter analyzes the importance of the State Company Sector in the Portuguese and Spanish economies, considering the principal sectors of activity in the two countries. This study has a double perspective of the evaluation of the relative weight of the Public Enterprises based on multiple economic indicators and of a diagnosis of the typology of competition existing in each of the sectors examined, as a result both of their structure and the behavior of the State-Entrepreneur.

6. Analysis of the System of Competition in Portugal

6.1. Importance of the State Company Sector in the Economic Sectors

The importance of the State Company Sector is dominant in the principal key-sectors of the national economy: industry, energy, transportation, telecommunications, banking, insurance and services with social characteristics.

This perspective underscores the importance of the sub-sector of Public Enterprises, owing to the enormous importance which they assume, because the great majority of them are involved in activities of economic infrastructure and of public service and in basic industries such as chemicals,

ironworks, cement, cellulose, and the refining and commercialization of petroleum.

Consequently, predominantly capital-intensive activities are developed. They generate a relatively reduced number of work places, which, it must be said, did not prevent them from having an important percentage, in terms of work places in commercial activities, in the entirety of non-agricultural enterprises (Cf. Annex 1, List 7).

We will now move to an analysis of the evolution, in the period from 1983 to 1985, of the sub-grouping of the non-financial Public Enterprises, whose principal sectors of activity are shown in the chart following.

C H A R T V I I I

Non-financial Public Enterprises by
Sector of Economic Activity

	1983	1984	1985	Average Rate of Annual Growth 1983/1985
GVA (Billions of Portuguese Escudos)				
Industry	57,8	93,8	107,4	0,36
Energy	114,7	171,7	214,8	0,37
Transportation	46,8	61,3	86,0	0,36
Communications	49,4	61,8	81,2	0,28
Total of Non-financial Public Enterprises	323,2	459,3	555,1	0,31
GPV (Billions of Portuguese Escudos)				
Industry	204,8	296,6	340,4	0,29
Energy	353,9	454,3	486,8	0,17
Transportation	100,2	113,1	128,2	0,13
Communications	52,9	66,3	87,6	0,29
Total of Non-financial Public Enterprises	823,1	107,8	120,0	0,21
GEC (Billions of Portuguese Escudos)				
Industry	20,7	19,7	20,8	0,00
Energy	61,4	62,4	67,7	0,05
Transportation	35,7	20,8	10,3	-0,46
Communications	20,1	24,8	30,1	0,22
Total of Non-financial Public Enterprises	150,7	143,8	142,6	-0,03
EMPLOYMENT (10 ³)				
Industry	46,8	44,6	42,1	-0,05
Energy	29,2	29,7	29,6	0,01
Transportation	65,1	61,3	57,4	-0,06
Communications	43,6	42,9	40,9	-0,03
Total of Non-financial Public Enterprises	205,7	198,2	189,4	-0,04

Source: CIEP

Their weight grew by 31 per cent as concerns GVA, with growth rates of 37 per cent in the Energy and 36 per cent in the Industry and Transportation Sectors.

Although less than ten points, there was also strong growth in the Gross Value of Production, especially in the Industry and Communications sectors.

Additionally, investment reflected the period of recession which affected the Portuguese economy during the period of this study. Behavior was not, however, the same in the sectors under consideration, as Transportation had a large loss (minus 46 per cent), Industry stagnated and Energy and Communications rose by 5 per cent and 22 per cent respectively.

The evolution of the GFFC showed significant changes, reflecting measures adopted by the Government, and also felt the effect of the conclusion of some important investment projects in the areas of cellulose, cement and public works. However, the high investment in the glass industry helped lessen the losses.

There were important drops in industrial (minus five per cent) and transportation (minus six per cent) employment.

On the other hand, energy showed a favorable evolution.

As concerns companies in which the State is a majority participant⁸, although statistical coverage by sectors of activity is less reliable than in Public Enterprises, there is general confirmation of the same trends.

It is important to affirm that companies included in the State Company Sector have a great relevance in inter-sectorial relations, due to the existence of several sectors on both sides which explore activities very dependent on the portfolio of commissions of said companies. Said companies are characterized by a reasonable degree of technological development, as is the case of relations between Public Enterprises and private companies in the ironwork and construction and electrical equipment assembling sectors.

Imports play an important role company activity, as contrasted with exports, whose role is mainly residual, as production, with some exceptions, is focused on the satisfaction of the internal market.

The peculiarity of the Portuguese Public Enterprises of being included in sectors which have traditionally been dominated by private enterprise, some of them of fundamental strategic importance, should be noted.

⁸ Cf. Annex 1, List 4.

The entirety of the companies in which the State is a majority participant includes a large number of productive units and different economic activities.

They are primarily in the light industry and the rendering of services sectors, although there are some notable exceptions, for example, in the areas of cellulose or highway construction in which the State is an important participant, in some cases having a monopoly.

These companies are, generally small and medium sized, with greatly differing technology levels and impact, in terms of multiplicative effects, among the several sectors but which, in their entirety, make the possibilities of State intervention in economic sectors stronger.

In their entirety, companies included in the State Company Sector are still at the top of the scale of the major industrial companies in Portugal, although to a lesser degree than some years ago.

In commercial activities, the public sector has a small weight which is even smaller when compared to its weight in other sectors. There are some entities which for a long time have been especially charged with working as Regulatory instruments of the markets for certain products, and a small number of companies which, due to nationalization, were

integrated into the above-mentioned entities.

In other areas of the tertiary sector, the weight of the State Company Sector is important, for example, in transportation, communications and certain services of a social nature such as health and education.

Its influence is positively dominant in road, rail, air and maritime transportation as well as in communications, because the State Company Sector controls radio, television and telecommunications. It is also important in other sectors, including cereal grains, sugar imports, and fisheries.

As concerns Financial Public Enterprises, one must distinguish Credit and finance institutions from insurance companies, although the State is dominant in all cases.

As shown above, however, there is a certain trend toward the opening of said companies to private capital.

In the financial sector, the State controlled position is still nearly 80 per cent and the relative positions of the biggest companies have been little altered until now, although a trend for major change in the future is being felt.

The State Company Sector in general, and Public Enterprises in particular, have been contending with problems of dif-

fering nature. The most important are: low profitability of the companies, heavy losses, the great need for credit and heavy borrowing, namely external; bad management and bad productive investment policy, incompetent managers, based on criteria more political than technical in nature; too much governmental interference, bad human resources policy (with high average age and not receptive to change), deterioration of financial and productive structures and inadequate adjustment to both the national and the international economic evolution.

Since it is impossible to analyze all of these problems within the scope of this study, problems of a financial nature will be briefly considered.

There are many different situations in this area, but one of the main factors of distortion was heavy external borrowing (See Chart IX).

C H A R T I X

Division of the Portuguese External Debt by
Borrowing Sector and Types of Guarantees

	1 9 8 3			1 9 8 4			1 9 8 5		
	Total	Short Term	Medium and Long Term	Total	Short Term	Medium and Long Term	Total	Short Term	Medium and Long Term
Public Administrative Sector	23,7	0,0	31,0	25,6	0,0	32,1	27,7	0,0	32,9
Bank of Portugal	7,5	8,8	7,1	7,0	6,7	7,1	5,2	0,0	6,1
Other Monetary Institutions	11,3	1,8	14,3	11,2	0,0	14,0	8,5	0,6	10,0
Non-Monetary Financial Institutions	1,1	0,3	1,4	0,9	0,4	1,0	0,8	0,5	0,9
Non-Financial Public Enterprises	51,0	84,9	40,5	51,1	89,5	41,4	53,8	92,7	46,4
Non-Financial Private Sector	5,4	4,2	5,7	4,2	3,4	4,4	4,0	6,2	3,7
TOTAL	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0
of which:									
with State collateral security	9,2	0,0	12,0	8,6	0,4	10,7	0,9	0,0	10,1
with Bank guarantee	4,6	0,3	5,9	3,2	0,2	4,0	2,5	0,8	2,9

Source: Report of the Bank of Portugal, 1985.

These unmeasured financial needs were mainly due to the low auto-financing levels of the companies, which demanded recourse to credit. The credit, from an internal point of view, was restricted in this period: there were high interest rates in force, which have made debt service very expensive since 1982.

Public Enterprises were, however, the companies in the best position to have external credit, not only because they are the largest, but also because they benefitted from implicit collateral security from the State, which facilitated borrowing in international markets.

The joint effect of the devaluation of the Portuguese escudo and of the high interest rates in said markets made debt service too heavy, creating even greater a posteriori difficulties at a financial level. Further, most of the time these companies were unable to reflect cost increases (which derived not only from internal inflation but also from the debt service and other costs) in prices, due to a restrictive price policy, which increased cash difficulties.

In 1983, these companies were responsible for 51 per cent of the total external debt, a percentage which rose to 54 per cent in 1985 (See Chart IX). In addition, in the period between 1981 and 1983, the nominal value of this debt grew by two thirds when expressed in United States Dollars. This

situation has begun to regain equilibrium since 1985.

6.2. Behavior of State Monopolies and Other Public Enterprises in Basic Sectors of the Economy

6.2.1. Adaption of Commercial Monopolies

Adaption of commercial monopolies began during the period prior to accession to the European Communities with the progressive break-up of the "AGA -- Administração-Geral do Açúcar e do Alcool (General Administration for Sugar and Alcohol)" monopoly on imports and distribution of raw sugar.

It was with Decree-Law Nº 508/85, of December 31, that a process of liberalization of imports and commercialization of alcoholic raw materials began. It does not, however, completely satisfy Community authorities.

Three different products must be distinguished in the alcohol sector:

- a) Ethilic alcohol of agricultural origin included in Annex II to the EEC Treaty, as modified by Regulation Nº 7bis of the Council of 1959 (Cf. OJ Nº 7, of January 22, 1961, p. 71);

- b) Ethilic alcohol of non-agricultural origin included in tariff positions ex 22.08 A and B and ex 22.09 A (Nimexe code 22.08-10 and 22.08-30) of the common customs tariff; and

- c) Brandies of a vinic origin used for manufacturing Port wine of tariff position 22.09 CVa aa and b aa (Nimexe code 22.09-81 and 22.09-91) and which, like ethilic alcohol of a non-agricultural origin, must be considered an industrial product, by force of the community regulation mentioned above under a).

As concerns these different products, the Commission of the European Communities has prepared a recommendation, fixing both the adaption calendar and the liberalization rhythm (Cf. OJ N^o L306, of October 28, 1987, p. 32.)

As concerns petroleum products, though the monopoly was the only one to receive adequate treatment in the Act of Accession, the fact is that Portuguese authorities have not given this monopoly the treatment which they are obliged.

An initial adaption of the monopoly of imports of petroleum products, which is exercised by the State through the Public Enterprise "PETROGAL," began both with the publication of Decree-Law N^o 525/85, of December 31, and of Government

Regulation NQ 969/85, of the same date. Under the terms of these two documents, quotas of the dependent market of liquid fuels, which previously benefitted the established companies, were abolished and the quota attributed to "PETROGAL" is being progressively reduced. Additionally, the State tries to guarantee access to the market of companies headquartered in Member-States, in conditions which are apparently objective and non-discriminatory.

However, not only the list of the products which are the object of the above-mentioned Decree-Law NQ 525/85 is different from the list of products referred in Article 208, par. 3, of the Act of Accession, but also there are some doubts concerning the policy of monopoly prices, which was regulated for the last time by Government Regulation NQ 99/87, of February 12.

The Commission is also not satisfied with the management of the adaption of this monopoly by Portuguese authorities. A Commission recommendation is being prepared as a result.

Another state monopoly is also being dismantled -- "EPAC," a Public Enterprise. Until recently, it had the exclusive right of purchasing nationally produced wheat and importing cereal grains, which is expressly mentioned in Articles 319, line b), and 320 of the Act of Accession. The orientation of these two Articles was implemented in Decrees-Law NQ

61/86 and 65/86, both of March 25, which are not being discussed, as they do not concern this study.

6.2.2. Behavior of Public Enterprises in General

The behavior of the Public Enterprises reflects on a large scale the political conditions under which they were created immediately after the nationalization process and the growing State intervention in the economy which was operative in 1975 and the following years.

Public Enterprises were used as instruments of momentaneous economic policy, almost as anticyclical, investing and maintaining work places in periods of crisis and in sectors which internationally were already extraneous, as well as not raising prices in periods of great inflation.

As concerns prices, it is important to explain that Public Enterprises were subject to a tight system of control, with definite influence on their competitive behavior.

This system was either connected with the General Law for the Control of Prices (Decree-Law N^o 329-A/74, of July 10), or derived from a legal basis specific to the sector under analysis.

In fact, because the General Law for the Control of Prices existed prior to the nationalizations, there was some vagueness and equivocation as concerns the limits of Public Enterprises' competence and of their controls concerning the fixing of prices, which came to be regulated, in the case of the Ministry of Industry, Energy and Export, by Government Regulation Nº 4/78. Said document states that Public Enterprises which are subject to the control of this Ministry, are subject to the regimes provided for by Decrees-Law Nº 329-A/74 and 75-A/77, i.e., the General Law for the Control of Prices, establishing a list of exceptions based on fiscal, political or social arguments, which are subject to a specific regime.

Most of the Public Enterprises' functions were then submitted to the administrative regulations of Control of Prices.

However, tracing the evolution of said regulations, one can see a move in the direction of deregulation, with the aim of a progressive lessening of control measures.

In situations subject to a Maximum Price Regime, one can see a progressive move to situations in which the control is exercised a posteriori, with relevance for the Price Regime observed. It means, in practical terms, the possibility of companies managing their own price increases, as well as the

opportunity for their execution.

Recently, mainly since 1984, the behavior of public economic agents has been influenced by a general trend toward deregulation. One can add to this an important element from the introduction, for the first time in Portugal, of a law for the defense of competition inspired by the community model.

On July 01, 1984, the Law for the Defense of Competition was in force (Decree-Law N^o 422/83, of December 03), and a progressive flexibility in the price control regime in different sectors was apparent, including Public Enterprises.

There is an evolution of two kinds of factors which are inversely proportional: as progress is made in the mechanisms of competition, it is also made in deregulation through accelerated nonintervention on the part of the Administration in the price control system.

In conclusion, this deregulation translates into:

- exclusion from the different Price Regime of a priori control (maximum, declared, conventioned, special) a significant number of products and services, at the production / import stage;
- increase in the number of products and services subject to an a posteriori (i.e., observed) Price Regime, both at the production / import and the commercialization stage;

- liberalization of the commercialization margins of most products and services;
- revocation of the subsidiary system provided in Article 24 of Decree-Law N^o 41 204, of July 24, 1957, which means that only products for which there are published documents establishing margins are subject to an administrative control at the commercialization stage.

6.2.3. Mineral Sector (Coal Subsector)

a) Introduction

The behavior of the companies in the sector has been conditioned due to structural arguments, including the following:

- reduced dimension, as compared to the other European companies;
- inclusion in peripheral zones, with the addition of significant stimulæ to regional development;
- geological-structural complexity of the explored mines;
- difficulty of rationalization, probably due to intensive mechanization and creation of new processes for recognizing and evaluating reserves;
- greater or lesser temporary evaluation of national coal as compared to other imported fuels.

As a consequence of these circumstances, existing explorations in several areas of the country have progressively been closed, being restricted in the past years only to mines in the "Bacia Carbonífera Dúrico-Beirã," in the

northern interior. This is, in fact, the most extensive carbon basin and potentially most favorable in the country. However, its structural geological complexity as well as difficulties of recognizing and evaluation have made production somewhat difficult.

b) Control of Activity by the State

The behavior of the companies, public or private, is strongly influenced by State defined plans through the Ministry of Control, primarily since 1983, when an energy policy was initiated with strong State intervention in the areas of coal prospecting and production.

This policy has been developed around the following sectors:

- Centralization in the Public Enterprise "EDM -- Empresa de Desenvolvimento Mineiro, EP," of all planning, recognition and evaluation work in the mines of the Douro coal basin;
- Creation of conditions for coal production to generate positive results;
- Financial recovery and increase in the corporate capital of the "Empresa Carbonífera do Douro, SARL -- ECD, SARL;"
- Fixing of a new price scheme, indexed to the evolution of the external fuel-oil component (Government Regulations N^o 276/84, of May 04, and N^o 241/86, of May 23);
- Addition of a 15 per cent "ad-valorem" to the production of coal, to generate revenues for the Direction of Geology and Mines which manages the entire system.

c) Market Shares

The "ECD, SARL" now has the concession for the only active subterranean antracite mine, with an annual production of some 280,000 tons of "tout-venant" (approximately 210,000 commercial tons), which corresponds to over 95 per cent of total national extracted coal.

The remaining production (less than five per cent) is the concession of another company, the "TERRIMINAS" which only recovers residuals from open pit mines in São Pedro da Cova.

The "ECD" production is mainly for production of electricity in a thermo-electrical central, located some kilometers distant from the mine, with transfer of the product through a system of gondola lifts.

d) Financial Relations between the State and the Public Enterprises

The State has followed a policy of subsidizing the difference between the expected average revenue and average cost of exploration, with the aim of giving possibilities not only to current exploration but also to the renovating processes under way, adapting the exploration of the only coal mine to new and demanding community and world energy market

conditions (due to Portugal's excessive dependence on external energy, 85 per cent of global consumption and 80 per cent on petroleum, a diversification policy of primary energy sources, energetic safety and of independence of petroleum, assumes particular importance).

Based on data available, the financial effort of the last years was the following:

(In millions of Portuguese escudos)

- 1983	20 485
- 1984	101 486
- 1985	169 751

Beginning in mid-1985, there has been a temporary unfavorable frame for products in the primary energy markets, which along with the devaluation of the dollar, has consequences for the drop of the average provisional revenues.

It is expected that during the current year the State will have to subsidize every extracted ton in approximately 3.171 Portuguese escudos.

e) Typology of Competition

The Portuguese coal sector suffers from the distortions of competition which resulted from State intervention which,

however, might be considered parallel to the enforceable in other Member-States. The dimension of the market creates an external technological limitation to the atomization of the market and favors the existence of an unique company.

The remaining factors connected with the structural geological complexity converge in the same direction.

The situation, then, is very close to a natural monopoly.

According to available data, there were no significant imports and exports. In 1981, 12,644 tons of antracite coal, with a value of 103,183 million Portuguese escudos and 335,308 tons of black coal, with a value of 1,737,371 million Portuguese escudos were imported.

6.2.4. Industrial Sector

6.2.4.1. Petroleum Sub-Sector

a) Introduction

By Decree-Law Nº 205-A/75, of April 16, the State nationalized the following companies:

- "SACOR -- Sociedade Anónima Concessionária da Refinação de Petróleos, SARL" (proprietor of the two then

existing petroleum refineries, Cabo Ruivo and Matosinhos);-

- "PETROSUL -- Sociedade Portuguesa de Refinação de Petróleos, SARL" (which was going to install the Sines refinery and in which the State already held 33.3 per cent);
- "SONAP -- Sociedade Nacional de Petróleos, SARL;" and
- "CIDLA -- Combustíveis Industriais e Domésticos, SARL."

Approximately one year later, by Decree-Law Nº 217-A/76, of May 26, the State created the Public Enterprise "PETROGAL -- Petróleos de Portugal, EP," which included the above mentioned four nationalized companies, with the following objectives:

- Research and exploration of crude and natural gas;
- Refining crude and its derivatives;
- Transportation, distribution and commercialization of crude, its derivatives and natural gas.

b) Control of Activity by the State

Through PETROGAL, the State controls the entire petroleum refining sector and approximately sixty per cent of the petroleum products distribution sector.

A monopoly of refining exists which can be interpreted as a State monopoly of distribution / import of refined products, i. e.:

- gasoline,
- lighting petroleum,
- gasoil and
- fuel oil.

c) Market Shares

It is possible to trace the participation of different companies in the distribution of petroleum products through governmental resolutions which have proceeded to substantiate the liberalization of the sector in the sequence assumed in the framing of the act of accession, particularly in Article 208. The following Chart shows the expected distribution for 1987.

C H A R T X

Parts of the Market of Distribution of Petroleum Products

Companies	Gasoline		Lighting Petroleum		Gasoil		Fuel-oil	
	Metric Tons	%	Metric Tons	%	Metric Tons	%	Metric Tons	%
PETROGAL	571 400	57,1	14 800	49,3	1 264 450	66,6	1 096 610	78,3
MOBIL	164 710	16,5	8 000	26,7	182 810	9,6	10 090	0,7
SHELL	135 480	13,6	5 000	16,7	323 570	17,0	212 940	15,2
BP	81 910	8,2	2 000	6,7	67 440	3,6	10 090	0,7
ESSO	24 000	2,4	-	-	24 270	1,3	10 090	0,7
LEACOCK	2 500	0,3	200	0,7	6 000	0,3	-	-
BENSAUDE	-	-	-	-	1 200	0,1	40 000	2,9
CEPSA	-	-	-	-	6 000	0,3	10 090	0,7
ENPETRO	20 000	2,0	-	-	24 260	1,3	10 090	0,7
TOTAL	1000 000	100%	30 000	100%	1900 000	100%	1400 000	100%

Source: Diário da República, II Series, August 04, 1987

d) Typology of Competition

As previously noted, both a monopoly of production and a commercial monopoly exist, they are in the process of being adapted to the terms of Article 208 of the Act of Accession.

In fact, in accord with the legislation in force at the time of the accession, with the exception of the market for re-export of goods (aerial and maritime navigation), the import and distribution of refined products with consumption in Portugal are subject to a regime of previous authorizations granted by the State.

This regime applies to the four products mentioned under b) above.

In the terms of the list annexed to Decree-Law NQ 519/85, of December 31, the regime can also be applied to eight more products not anticipated in Article 208 of the Act of Accession.

The existence of monopoly has in some way affected intercommunity exchanges, perhaps because there are indications that even in the liberalized sector, some companies prefer signing processing contracts to use the untaxed warehouses of PETROGAL.

e) Financial Relations between the State and the Public Enterprises

Petrogal has to contend with an accumulation of debts which have not been regularized by the Public Sector, either administrative or commercial.

The most relevant are the debts of the "Fundo de Abastecimento (Supply Fund)," the "Fundo de Garantia de Riscos Cambiais (Fund for Guarantee of Exchange Risks)" and the State Company Sector.

f) Price Regime

The prices of petroleum products are subject to a complete intervention by the State at various stages of commercialization.

6.2.4.2. Petrochemical Sub-Sector

a) Introduction

The following Public Enterprises are accented:

- "PETROGAL - Petroleos de Portugal, EP"
... refineries and petroleum products used in the perfume industry
- "Companhia Nacional de Petroquimica (CNP)"

- ... ultra-refined petroleum products / steam-cracker
- "PGP - Petroquímica e Gás de Portugal"
... ammonia and phtalic anhydride
- "QUIMIGAL - Química de Portugal, EP"
... ammonia, acids, fertilizers, aniline, polioils

b) Control of Activity by the State

The development of the Portuguese petrochemical sector has been intimately associated with the Sines complex, which means that it was conceived, executed and controlled almost in its entirety by the State.

In fact, the entire internal logic of the Portuguese "Plano Petroquímico (Petrochemical Plan)" derives from the articulation of the four above-mentioned Public Enterprises and their associates, in the framing of strategic orientation defined by the State.

We are concerned with one of the few sectors in which a Condicionamento Industrial (Government Control of Industry) still survives, which in general terms was done away with by the 1974 revolution.

The crisis situation exists today, especially as concerns CNP, to a great degree because the state has not had the capacity to execute the plan in its entirety, because the originally planned program of investment was interrupted.

In effect, the complex of ultra-refined petroleum products was conceived in terms of a series of coordinated productions and quantitatively logical, in which the exports were programmed for second or third generation products or for plastics (solid), which are more easily placed in the market than (usually liquid) or the large intermediates (gases).

The CNP was oriented to attempt "joint-ventures" designed to assure the sales of quantities required to be exported. This was, in part, successful, vis-à-vis association with the CDF Chimie in EPSI.

On the whole, however, the project was a failure. Envisioned projects were not realized, and thus broke the intended chain of production. The operating tax was well below the "break-even point" and the entire earnings of the project remained in question.

c) Market Shares

It is difficult to precisely quantify the concerned Market Shares, because a diversified group of products is involved, many having strong interconnections (See the previous chart).

In summary, it is possible to make an estimate, which also shows the weakness of the production destined for the external market (See Chart X).

CHART XI

Market Shares of Petrochemical Products

	Existing Capacity (Tons/year)	Internal Market Ca pacity satisfied by local production (%)	Percentage of produc tion destined for export (%)
<u>PETROGAL</u>			
a) Benzene	50 000	99	50
b) Toluene	130 000	95	84
c) O-xylene	40 000	95	94
d) P-xylene	90 000	99	95
<u>QUIMIGAL</u>			
e) Aniline	50 000	98	11
f) Polioils and phthalates	10 000	60	5
g) Unsaturated Polyesters	5 000	40	-
<u>CNP</u>			
h) Ethylene	300 000	50	20
i) Propylene	150 000	50	20
j) Butane	44 000	-	100
<u>EPSI (CNP)</u>			
k) LDPE	120 000	80	30
l) HDPE	60 000	40	20
m) PP	50 000	30	30

Source: Estimates based on Company Records

We can, provisionally, draw the following conclusions:

- i) - The production of BTX was originally planned for the export and complete satisfaction of the internal market (a.a.d.);
- ii) - The production of anyline is almost totally exhausted in production of isocyanides (ISOPOR);
- iii) - The production of specialties is insufficient for the internal market, resulting in significant imports (f.e.g.);
- iv) - The production of ultra-refined petroleum products (h. and i) is much below capacity;
- v) - As concerns the production of poli-ultra-refined petroleum products, :
 - . LDP is sufficient for internal market demand;
 - while
 - . HDP and PP are not sufficient for internal market demand.

d) Financial Relations between the State and the Public Enterprises

The State, which conceived and built the national petrochemical plan, based on the complete nationalization of capital, verified that it did not have the available capital to maintain the rhythm of investment that the program demanded.

Thus, in addition to delay the beginning of enterprises which were not yet initiated, the State was not able to maintain its capital endowments at the required level and gave orientations for companies -- mainly to CNP -- to obtain external financing.

Interest charges and the high amounts involved pushed these projects -- mainly the CNP -- into an enormous debt spiral.

The decapitalization of companies and the expansion of long term programs with short term financing come to be disastrous.

e) Price Regime

These products, because they are basic raw materials, are today subject to the two least strict Price Regime provided by law:

- free or controlled (i.e. a posteriori control).

f) Access to the Factors of Production and to the Financial Markets

In addition to the above-mentioned capital factor, there are no particulars deriving from the nature of the Public Enterprises.

g) Typology of Competition

Until the accession, and because of the administrative protection exercised through the BRIs (Bulletins for the Regis-

try of Imports) -- import licenses, production was assured in a regime of de facto monopoly, which still exists in portions of the internal market supplied by local production.

The only authorised imports were of some specific products ("especificações") not produced in sufficient quantity locally.

Since the accession, these restrictions are coming to an end, but the legal barrier of accession of new companies to the production of said goods is still in force.

6.2.4.3. Fertilizer Sub-Sector

a) Introduction

As previously, we are dealing with a segment of the chemical industry, in which there are two companies (See the previous Diagram):

- one public: "QUIMIGAL"
- one private: "SAPEC"

b) Control of Activity by the State

This is a sector with strong State control in various aspects and attention should be called to Decree-Law Nº 97/78, of May 19, and to the Portuguese Norm, NP-1048.

This document approved the Regulation of Exercise of Activities of the Fabrication, Preparation, Mixing, Importing and Sale of Fertilizers and Agricultural Correctives, the terms of which were subject to previous licences issued by the Ministry of Industry and Technology.

In awarding the concession of this licence, the administrative authorities demand that the fertilizers conform to the specifications of NP-1048.

Those fertilizers not satisfying the specifications contained in NP-1048, can not be marketed.

There is here a Measure of Effect Equivalent to Quantitative Restrictions that affects trade between the Member-States.

c) Market Shares

The following market percentages can be ascertained, although with some imprecision, due to the non-existence of statistics and correlations between the various types of

fertilizers:

- "QUIMIGAL" 70 %
- "SAPEC" 30 %

The imports have been irrelevant, mainly under the auspices of the above-mentioned enterprises, as concerns fertilizers subject to State control.

d) Financial Relations between the State and the Public Enterprises

For many years, the State has financed the difference between the price of sale to the agricultural sector, which is administratively fixed, and the real technical-economic costs of the two companies.

There is a special commission for estimating the accountancy of the two companies which annually determines the amount of the subsidy to be paid.

Until this time, the private company has not had complaints, which could signify that it has been treated equally, vis-à-vis the Public Enterprise.

e) Price Regime

Fertilizers are subject to a more interventionist Price Regime than the legislature had anticipated - Maximum Price Regime.

Under the terms of Article 1, par. 2, of Decree-Law Nº 329-A/74, of June 10, this regime implies a price fixed at a level that can not be exceeded in different periods of economic activity which might be considered convenient.

f) Typology of Competition

A duopoly with strong barriers to both to the entry of new internal competitors or imports exists.

In fact, beyond the barrier referred to above under b), administrative control of external commerce via the BRIs still exists. Only those fertilizers included in the "especificações," meaning non-locally produced, are imported, and only in strictly necessary quantities.

Within this framework, there has been no significant competitive rivalry between "QUIMIGAL" and "SAPEC." There has mainly been reciprocal acceptance of their positions.

In spite of the accession to the European Communities and the end of the BRIs, the above-mentioned legal barrier still exists.

6.2.4.4. Cement Sub-Sector

a) Introduction

The State still completely dominates this strategic sector.

In fact, by Decree-Law N^o 221-A/75, of May 09, the State nationalized the seven then existing cement companies as well as nationally-held shares of a Danish company, in which it became the majority share-holder.

Presently, there are three companies:

- one public: "CIMPOR -- Cimentos de Portugal, EP;"
- another, in which the State is a majority participant (59%): "SECIL -- Companhia Geral de Cal e Cimento, SA;"
- a third, with capital is completely held by "CIMPOR": "ECI -- Entrepoto Comercial das Ilhas."

It should be noted that State-held companies in this sector have high performances, at the same level of other European and private companies, although the prices of the final products are among the lowest of the European competitors.

b) Control of Activity by the State

In addition to completely dominating the cement sector, the State also became a majority participant in complementary companies in the construction materials sector:

- "BATICEL - Materiais Aglutinados, SA"	100.00%
- "BEPOR - Betões Portugueses, SA"	100.00%
- "Betão Liz, SA"	100.00%
- "Est. Scial do Norte, Limitada"	65.00%
- "Estrela do Mondego, Limitada"	100.00%
- "Fábrica de Cal Hidráulica do Mondego"	100.00%
- "Fábrica Jerónimo Pereira Campos, SA"	71.00%
- "JOMATEL - Empresa de Materiais de Construção, SA"	51.00%
- "MARBLARTE - Man. Mármore Decorativos, SA" .	84.40%
- "NORBETÃO - Materiais de Construção, SA"	88.20%
- "PRECIPOR - Materiais de Construção de Portugal, SA"	99.00%
- "Secil Betão, SA"	54.00%
- "SELCAL - Sociedade de Cal de Souselas, Limitada"	96.67%
- "SULBETÃO - Preparados de Betão"	99.00%
- "UNIBETÃO - Ind. Betão Preparado"	99.97%

The State gained control approximately 52 per cent of concrete production, thus consolidating its control of the cement industry.

With a similar objective, the State held approximately 20 per cent in the fire resistant material industry, via participation in "ABRIGADA -- Companhia Nacional de Refractários, SA."

Another fact facilitating State control is the high company concentration.

Although some factories exist (one, "SOUSELAS", is the largest on the Iberian Peninsula,) throughout most of national territory, there are only two independent companies, both of which are controlled by the State.

c) Market Shares

The market percentages, which have been maintained for the last ten years, are approximately three quarters of the market for "CIMPOR" and approximately one quarter for "SECIL."

Attention must also be called to an almost perfect correlation between internal production and consumption, the external market being, for the most part, marginal.

The present internal market is approximately seven million tons, while ten years ago it was approximately 2.7 million tons.

Cement is sold in bulk or in bags. Bulk sales amount for approximately 25 per cent of the total.

Cement sold in bulk is primarily sold to end users, while bag cement goes through a long chain of distributors numbering over one thousand.

d) Financial Relations between the State and the Public Enterprises

"CIMPOR" has been generating income for the State (from 1978 to 1983 it contributed for the the Treasury with 9,900,000,000 Portuguese escudos.)

Thus, the development of the company has been financed by both its own funds and external credits which were obtained following State directives.

Investments made since its creation, in March 1976, in current prices of the successive financial years, amount to 16,000,000,000 Portuguese escudos.

e) Price Regime

For many years cement prices were subject to a strong State intervention as concerns prices, with a priori control.

Until recently they were subject to "regime de preços declarados (declared Price Regime)," meaning that companies had to submit their prices prior to announcing them, based

on a certain cost structure. The Administration had the right to oppose them.

In recent months, there has been a consistent trend toward making the system more flexible, approved by Regulatory Dispatch N^o 73/87, published on August 18, 1987, under whose terms prices would pass to a declared Price Regime, in which prices are established by agreement of the Administration and the companies.

Prices in force are among the lowest in Europe, being higher only than Italian and Greek prices, as can be seen on the following chart:

C H A R T X I I

Prices as of December 31, 1985 (P/H per Ton)

	Factory		Warehouses	
	Bags	Bulk	Bags	Bulk
Portugal	7.870	7 350		
Spain	8 698	7 708		
France	8 264	7 156		
Italy	6 570	6 005		
Greece	5 482	5 138		
Luxembourg	8 374	7 824		
Denmark	9 145	7 256		
United Kingdom			11 177	10 353
Ireland	11 058	10 022	12 051	
Federal Rep. of Germany			9 982	9 051
Netherlands			8 853	7 893
Belgium			8 584	7 684

Source: "CIMPOR", in Espresso, April 1986.

f) Access to Factors of Production and to the Financial Market

In addition to the above-mentioned capital factor, there are no particulars deriving from the nature of the Public Enterprises.

g) Regime of Public Works

All public works under the auspices of the State use nationally produced cement.

This does not mean, however, that there exist legal restrictions. This circumstance derives from the structure of supply and the entry barriers which already existed.

The regime of public works is regulated by Decree-Law N^o 235/86, of August 18, which aims at introducing in Portuguese legislation all competition rules regulated by Directives N^{os} 71/304/EEC and 71/305/EEC.

h) Typology of Competition

A duopoly exists, with two companies effectively dividing the existing market, with no significant competition between them.

The location of the factories and the distribution warehouses as well as the cost of transport, define a natural market at each point of sale, which translates into the non-existence of commercial rivalry in supply.

Spanish cement has only sporadically been imported, but the quantities involved are insufficient to change this climate of convergence.

With the accession, however, it can be anticipated that this situation will gradually change, mainly in the frontier areas.

6.2.4.5. Cellulose and Paper Sub-Sector

a) Introduction

With the nationalizations in 1975 (Decree-Law Nº 221-B/75, of May 09) the State took possession of all national companies producing cellulose pulp and all the shares of "CELBI - Celulose Beirã Industrial" belonging to Portuguese citizens.

There is a Public Enterprise "PORTUCEL - Empresa de Celulose e de Papel de Portugal" which was created by Decree-Law Nº

554-A/76, of July 14, and which includes the following companies:

- "CPC - Companhia Portuguesa de Celulose, SARL";
- "Celulose do Guadiana, SARL";
- "CELTEJO - Celulose do Tejo, SARL";
- "CELNORTE - Celuloses do Norte, SARL";
- "SOCEL - Sociedade Industrial de Celulose, SARL."

The other companies in the sector are:

- "SOPORCEL - Sociedade Portuguesa de Celulose, SARL,"
whose capital holdings are:
 - "Wiggins Teape Group Ltd" 42.8%
 - "Sociedade Financeira Portuguesa" 42.7%
 - Some Portuguese Banks 14.5%

- "CELBI - Celulose Beira Industrial, SARL":
 - The Swiss group, "Stora Kopparberg" 71%
 - The State 29%

- "COMPANHIA DE CELULOSE DO CAIMA, SARL";
 - "Eucaliptus Pulp Mills" (United Kingdom) 93.1%

The situation in the paper industry is diverse.

The State is the majority participant in the segments of corrugated paper, via the central factories in Cacia and Albarraque, close to "PORTUCEL." "UNOR" is the major private company in this segment.

The State has a significant participation in three companies in the paper sub-sector:

- "COMPANHIA DO PAPEL DO PRADO, SARL" 22.3%
- "SOCIEDADE PORTUGUESA NOVEMBAL, SARL" 22.5%
- "INAPA - Industria Nacional de Papéis, SARL" ... 22.3%

Ninety-four paper companies exist.

In the following chart, various elements of the two sub-sectors -- cellulose and paper -- are compared, which permits evaluation of their structure and behavior.

C H A R T X I I I

Information on the Cellulose and Paper Industries

	Cellulose Pulp	Paper and Cardboard
Number of companies	4	94
Number of central factories	8	
Persons employed at the end of Dec. 1984	8 100	7 300
1984 Production	1 107 mil ton.	654 mil ton.
1984 Exports	651 mil ton.	205 mil ton.
1984 Imports	28 mil ton.	78 mil ton.
Internal Consumption	848 mil ton.	527 mil ton.

Source: Associação das Empresas Produtoras de Pastas de Papel and Associação Portuguesa de Fabricantes de Papel e cartão.

b) Control of Activity by the State

The State has controlled the industry which exploits one of the principal natural resources of the country, through the policy followed by "PORTUCEL," through its domination of forestry, through integration of the different central factories with the competing companies, through the export strategy.

c) Market Shares

The following graph provides an estimate of the internal market position of the various cellulose companies, differentiating among the various types of pulps produced:

C H A R T X I V

Market Shares of the Cellulose Companies

	PORTUCEL	SOPORCEL	CELBI	CAIMA
Pine	100%	--	--	--
Eucalyptus :				
Crude in Sulfate	100%	--	--	--
Bleached in Sulfate	65%	16%	19%	--
Crude in Sulfide	--	--	--	100%
Bleached in Sulfide	--	--	--	100%

This sector has a global productive capacity of 1.3 millions of tons, the rate of utilization at a level of 85 to 90%.

d) Price Regime

Under the terms of Government Regulation N^o134-B/80, of May 26, cellulose pulp prices are subject to a special regime anticipated in Article 17 of Decree-Law N^o 329-A/74, of July 10, which established a structure of costs previously approved by the Administration.

The State, then, exercises a tight a priori control.

Recently, the system is in the process of becoming more flexible.

In August 1984, with Government Regulation N^o 614/84, the prices of pulp for the internal market stopped being in direct relation to costs, moving to prices established with basis on export prices expressed in United States Dollars, with quarterly revisions.

In October, 1985, with the Regulatory Dispatch N^o 100/85, the prices of pulp moved to a more flexible Price Regime, that is, a "regime of surveyed prices," in the stages of production, imports and commercialization, in which control is effected a posteriori.

e) Access to the Factors of Production and to the
Financial Market

The cellulose industry in the country naturally has easy access to the essential factor of production, which is a raw material.

As concerns "PORTUCEL," there is no particular deriving from the nature as a Public Enterprise.

f) Typology of Competition

One is faced with an oligopoly in which the highest competitive forces in European and world industry are present.

In the capital of "CELBI," the acquisition of "Billerud" shares by "Stora Kopparberg" (both Swedish) is in keeping with the strategy of what is thought to be the largest European company, and the seventh largest worldwide, as far as securing supplies of raw materials under preferential conditions.

In the capital of "SOPORCEL," the entry of "Wiggins Teape" (owned by "BAT Industries"), prejudices both the intentions of "Billerud," and the property of "PORTUCEL," translating,

in the final analysis, a strategic option for a community paper group with financial, technological and commercial capacity to integrate the new factory to a larger market.

Thus, we see that the Public Enterprise, "PORTUCEL," is confronted with a competitive degree that can be ascertained, having in mind current models at the community and world markets.

6.2.4.6. Ironworks Sub-Sector

a) Introduction

The Public Enterprise "SIDERURGIA NACIONAL, EP" was created by Decree-Law N^o 853/76, of December 18, following the nationalization of the "SIDERURGIA NACIONAL, SARL" by Decree-Law N^o 205-F/75, of April 16.

The intervention of the State in the ironworks sector has been the object of frequent contact with the community authorities, as concerns the restructuring of the sector.

b) Control of Activity by the State and Financial Relations

1. The State, through the Resolution of the Council of Ministers Nº 51/85, of October 28, approved a physical configuration of the "Plano de Reestruturação da Siderurgia Nacional (PRSN)," as well as its financial influence.

The objectives of not enlarging the productive capacity, but conferring on them competitive conditions and maintaining the possibilities of exploring the iron ore of Moncorvo in the future must be noted.

In this framework, the physical configuration of the PRSN derives from the following parameters:

- i) improvement of the present operating conditions of the present furnaces and of the treatment and transference of the cast-iron to the "aciaria";
- ii) readaption of labor conditions in the "aciaria" raising the useful unit cargoes of the convertor and installation of a new continuous melting unit replacing the presently existing one;
- iii) renovation of the existing continuous trains in Seixal and in Maia;
- iv) improvement of the quality of plane products from Seixal;
- v) partial renovation of the foundry coke unit.

An additional investment which, in terms of GFFC at 1985 prices, can be estimated at approximately 15,000,000,000

Portuguese escudos, corresponds to this plan.

The financial involvement of the State in this plan will be expressed in the following terms:

- a) annual capital endowments amounting to 33 per cent of the investment in the PRSN;
- b) payment, on the date due, of the debt service directly connected with the obligations assumed by the "Siderurgia Nacional" under the terms of the "Plano de Expansão dos Produtos Longos do Seixal (PEPLS);"
- c) annual subsidization of the payment of all charges indirectly motivated by all compromises assumed in the sphere of PEPLS;
- d) payment of an annual compensatory subsidy, until the date all results anticipated by PRSN in the operation of the company are obtained.

All revenues resulting from the possible sale of equipment acquired under PELPS and now available as well as all subsidies given by the CECA to the "Siderurgia Nacional" must be deducted from these amounts.

Under these terms, the "Siderurgia Nacional" showed the following financial fluctuations during 1986:

- Subsidies 4 X 106 thousands of PTE
- Investments 86 1.4 X 106 thousands of PTE
- Financial recovery 6.62 X 106 thousands of PTE

2. As a result of the examination taken both by representatives of the Portuguese Administration and the EEC, under the terms of Protocol Nº 20, annexed to the Act of Accession, the Council of Ministers ratified, by Resolution made on July 10, 1987, the maximum "plafonds" of intervention in the "Siderurgia Nacional, EP." The EEC was notified on December 31, 1986:

- i) maximum amount of 13,000,000,000 Portuguese escudos for investment in the PRSN, at prices of December 31, 1986;
- ii) maximum of 21,000,000,000 Portuguese escudos in compensatory subsidies for operation deficits between January 01, 1986 and December 31, 1986;
- iii) maximum of liabilities directly or indirectly connected with PEPLS to be covered by the State: 49,000,000,000 Portuguese escudos, at prices of December 31, 1986.

By Dispatch of the Ministry of Industry and Commerce of July 02, 1987, and in accordance with the above-mentioned Resolution of the Council of Ministers, however, the following changes in the physical configuration of the Plan for the Restructuring of the "Siderurgia Nacional" were approved:

- ending "bilete" production by ingot-blooming;
- ending production of heavy profiles;
- ending production of steel in electrical furnaces in the Seixal factory, in 1991.

6.2.4.7. Beer Sub-Sector

a) Introduction

The beer sector includes two Public Enterprises, which were created by Decree-Law Nº 531/77, of December 30, resulting from the consolidation of several beer companies which had been nationalized by Decree-Law Nº 474/75, of August 30:

- "Central de Cervejas, EP - CENTRALCER," the consolidation of the nationalized companies "Sociedade Central de Cervejas" and "Cergal - Cervejas de Portugal."
- "União Cervejeira, EP - UNICER," resulting from the merger of the "CUFP - Companhia União Fabril Portuguesa," the "COPEJA - Companhia Portuguesa de Cervejas" and the "IMPERIAL - União Cervejeira de Portugal."

b) Control of Activity by the State

Through the above-mentioned nationalization, the State not only took total control of the beer sector in mainland Portugal, but also obtained a significant position in the soft drink sector, as well as obtained majority holdings in one wine company and two water companies.

Said Decree-Law also nationalized beer factory shares not belonging to foreign entities in the Azores and Madeira.

"CENTRALCER" received the public sector participations in the following distributing companies by transfer:

- "ARCOREL - Agentes Reunidos de Comércio e Representações, Limitada;"
- "CERVINHAL - Distribuidora de Cervejas e Vinhos de Viseu, Limitada;"
- "CERVISUL - Sociedade Distribuidora de Cervejas do Sul, Limitada;"
- "CERLIZ - União das Distribuidoras de Cervejas do Centro, Limitada;"
- "Sociedade Distribuidora de Bebidas de Portalegre, Limitada;"
- "Sociedade Distribuidora de Cervejas do Alto Alentejo, Limitada;"
- "Sociedade Distribuidora de Cervejas do Vouga, Limitada;"
- "UNACEL - União de Agentes Comerciais, Limitada;"
- "Refrigerantes Associados de Portalegre, Limitada;"

as well as

- "URFIL - Sociedade de Construções, Limitada;"
- "Quinta do Grajal, SARL."

c) Market Shares

The market is divided between the Public Enterprises, with a proportion of approximately 60 per cent for "CENTRALCER" and 40 per cent for "UNICER."

Taking into account the location of the factories, a natural market exists which is geographically delimited by transportation costs.

"UNICER" has mainly the southern and northern markets, and "CENTRALCER," the center market including Coimbra.

In approximate terms, the following market quotas may be accepted:

C H A R T X V

Market Shares of Beer Companies

Capacity	CENTRAL CER		UNICER	
	Trade Mark	Percentage of the Market	Trade Mark	Percentage of the Market
0.33 l	Sagres Cergal	45%	Superbock Cristal Marina Clock Munique	55%
0.33 l	Carlsberg	75%	Tuborg	25%
0.20 l	Sagres Cergal	75%	Cristal Clock	25%
1 l	Sagres	60%	Superbock	40%
Barrel		65%		35%

Source: Estimates based on Company Records.

d) Financial Relations between the State and the Public Enterprises

The State functions here more as a recipient of taxes assessed on beer than as an investor.

In fact, the State has been receiving abnormally high tax payments since 1981 and has not raised statutory capital.

e) Price Regime

Since the publication of the "Lei Quadro de Preços (Price-Framing Law)" -- Decree Nº 329-A/79, of June 10 --, beer has been subject to several Price Regime.

At present, at the production / import level, it is subject to the declared Price Regime provided by Decree-Law Nº 75-Q/77, of February 28, meaning that the State has, during a certain period, the right to oppose all prices declared by the company.

A system of a priori control has been generally opposed in the sector. Companies want an a posteriori system of control, through a so-called "regime de preços vigiados (surveyed Price Regime)," which the State has refused.

The application of the Price Regime is complicated by the fiscal regime. Beer was subject to a high rate of "imposto de transacções (sales tax)" as compared with other Member-States (more than 50 per cent of the amount of sales). There is presently a special tax on consumption of beer (Decree-Law Nº 343/85, of August 22, which is applicable to both production (ex-brewery) and import (from the time of clearing customs). This specific tax was calculated in a manner which tax collected as a result of "Imposto de Transacções" was not significantly modified.

f) Typology of Competition

This is a case of long time public monopoly exercised by two companies under a system of complete protection vis-à-vis external competition, through high entry barriers (expressed above all in a sixty per cent tax on importation and in the administrative control through the BRIs).

However, it is still early to evaluate the extension and reach of this joint protection.

In the internal plan, one must note that the Public Enterprises under consideration had distribution contracts with quasi-absolute territorial control, refusal of sale and State-imposed uniform prices, which were illegal in face of internal law of competition and which were the object of

sanctions by the competent administrative authorities.

6.2.5. Transports Sector

a) Introduction

In 1975, a railroad and an urban transport company and ninety-three road freight and passenger companies were nationalized, some of which were also involved in inter-urban transportation:

- "CP - Companhia dos Caminhos de Ferro Portugueses, SARL" (Decree-Law Nº 205-B/75, of April 16);
- "Metropolitano de Lisboa, SARL" (Decree-Law Nº 280-A/75, of April 16);
- and ninety-three other companies (Decrees-Law Nº 280-C/75, of June 05, and Nº 469-C/75, of August 28.)

Also in 1975, by Decree-Law Nº 346/75, of July 03, the State became majority participant in another urban and suburban transport company, the "Companhia dos Carris de Ferro de Lisboa, SARL."

Although it does not fulfill the formal and legal prerequisites of a Public Enterprise, the "STCP - Serviço de Transportes Colectivos do Porto" is, in practice, a true Public Enterprise, fully dependent on the Ministry of Control since 1975.

It originated when a 1946 decision of the "Câmara Municipal do Porto" withdrew the concession from the operating company, the "Companhia Carris de Ferro do Porto."

The STCP assures, under an exclusive regime, approximately 66 per cent of transportation in its operational area, which includes the city of Oporto extending north in a radius of 10 Km and south in a radius of 6 Km.

In summary, the Public Enterprises and the main companies in which the State is majority holder in the transports sector are:

Urban Transport:

- "CCFL - Companhia Carris de Ferro de Lisboa, SA;"
- "STCP - Serviços de Transportes Colectivos do Porto;"
- "ML - Metropolitano de Lisboa, EP."

Railroad Transport:

- "CP - Caminhos de Ferro Portugueses, EP."

Road Transport:

- "RN - Rodoviária Nacional, EP."

Maritime and River Transport:

- "TRANSTEJO - Transportes do Tejo, EP;"
- "PORTLINE - Transportes Marítimos Internacionais, SA."

Air Transport:

- "TAP - Air Portugal;"
- "ANA - Aeroportos e Navegação Aérea, EP."

b) Control of Activity by the State

The State has a de facto monopoly in most significant segments of the Transports sector.

In the areas of urban and railroad transportation, the State control can be qualified as total.

In each of these segments we are faced with "monoproduct" companies, operating in "monomarkets," with prices fixed by the Administration, having strong entry and exit barriers, and well defined public service objectives.

Faced with such profound State intervention, the managements of companies are charged with assuring reliable services at the lowest cost possible, so they can respond to the evolution of the demand of a changing community.

c) Market Shares

The State controls approximately fifty per cent of the road passenger and ten per cent of the cargo transport sub-sector.

The "RN - Rodoviária Nacional, EP," includes the ninety-three nationalized companies, with corporate capital of 3,500,000,000 Portuguese escudos.

It owns a fleet of 2,700 passenger buses (47 per cent of the national fleet,) 440 cargo trucks and 33,000 Km of concession (55 per cent of continental Portugal) - based on 1975 data.

"CP," "CARRIS," "STCP," "ML" and "TRANSTEJO" control 100 per cent of their market.

d) Financial Relations between the State and the Public Enterprises

One must note the following particulars:

- i) There are compensatory indemnities because administrative prices are, for several reasons, below cost;
- ii) The autofinancing of companies is, most of the times, negative;

iii) State endowments for financial recovery have been insufficient for the real needs of the companies.

The following chart summarizes financial relations between the State and its companies in the sector, in 1987:

In 1987, the following data is available:

CHART XVI.

State Endowments to Transport Companies in 1987

Unit: 1,000,000 Portuguese escudos

Companies	Subsidies	Compensatory Indemnities	Capital Endowment	
			Investment 1987	Financial Recovery
CCFL	--	7 000	--	--
CP	--	16 316	8 000	4 756
STCP	--	1 000	200	--
ML	--	1 450	2 000	--
Transtejo	--	350	--	--
RN	--	800	--	--
TAP	--	2 000	--	--

Source: Resolution of the Council of Ministers, Diário da República, II Series, nº 111, of May 15, 1987 (cf. Annex 5).

Compensatory indemnities received by "CARRIS" for each carried passenger / Km were the following:

- 1978	2\$12
- 1979	2\$19
- 1980	2\$54
- 1981	4\$11
- 1982	2\$91
- 1983	2\$38
- 1984	2\$91
- 1985	3\$66

6.2.6 Communications Sector

a) Introduction

The State has two Public Enterprises:

- "CTT - Correios e Telecomunicações de Portugal"
- "TLP - Telefones de Lisboa e Porto"

and a majority holding (83 per cent) in

- "CPRM - Companhia Portuguesa Radio Marconi."

b) Control of Activity by the State

The State tightly controls the companies through the monopoly exercised in both Public Enterprises and the

company in which it has a majority holding.

"CTT/TLP" are, de facto, a merger of two Public Enterprises (with the same Board of Directors for both), but legally they are two distinct Enterprises, with different histories.

The origin of CTT was in 1970 as a specific public service - the "Administração-Geral dos Correios, Telégrafos e Telefones," included in the General Budget of the State.

TLP resulted from the redemption in 1967 of the concession of the Lisbon-Porto telephone network from "Anglo-Portuguese Telephone Co.," a private enterprise with foreign capital.

It is clear that the management objective in each case was profoundly different: CTT - Public Service; TLP - Profitability.

Now constituted as a single Public Enterprise, they are the second largest investor in Portugal (30,000,000,000 Portuguese escudos per year), employ 42,000 persons and have a monopoly on basic communications services: post, telephone and telex.

c) Market Shares

The companies totally dominate the internal market in the exercise of their monopoly.

d) Financial Relations between the State and the Public Enterprises

In recent years, the companies have had positive results, not having received subsidies, or capital endowments.

Quite the contrary, they have paid the State:

- 1 per cent of revenues as rent;
- special taxes on revenues from telephone calls (5 per cent);
- 40 per cent on net profits.

6.2.7. "Mass Media" Sector

a) Introduction

The following Public Enterprises are in found in this sector:

- "RDP - Radiodifusão Portuguesa, EP"
(Created by Decree-Law Nº 153/76, of February 23, as a result of nationalizations by Decree-Law Nº 674/75, of December 02, which had created the "Empresa Pública de Radiodifusão," integrating the nationalized companies, the "EN - Emissora Nacional de Radiodifusão," already

State owned);

- "RTP - Radiotelevisão Portuguesa, EP"
(Created by Decree-Law Nº 674-D/75, of December 02, which also nationalized the company "RTP - Rádio Televisão Portuguesa, SARL");
- "EPNC - Empresa Pública dos Jornais Notícias e Capital";
- "EPSP - Empresa Pública dos Jornais Século e Popular"
(created by Decree-Law Nº 639/76, of July 19, which nationalized four periodical publishing companies, that is, daily papers); and
- "IMPRESA NACIONAL - CASA DA MOEDA, EP."

b) Control of Activity by the State

The State presently controls important minority holdings in the mass media domain.

In the television sub-sector, the existing Public Enterprise exercises a monopoly, although there are some actions in progress tending to promote its opening to the private sector.

In addition, the State has a significant position, albeit indirect, in film production companies, studies and laboratories, including:

- "Companhia Animatográfica Restauradores, SA" 88.3%
- "Empresa Cinematográfica de S. Pedro, SA" 50%
- "A Internacional - Sociedade de Cinema, Limitada" 50%
- "Tóbis Portuguesa, SA"30 to 50%

In the radio station sub-sector, the State controls all of the relevant companies with the exception of "Rádio Renascença." De facto, they are integrated into RDP:

- "Clube Radiofónico de Portugal";
- "Rádio Graça";
- "Rádio Peninsular";
- "Rádio Voz de Lisboa,"

as well as shares in the following companies:

- "ALFABETA - Rádio e Publicidade, SA";
- "EAL - Emissoras Associadas de Lisboa, Limitada";
- "J. Ferreira & Companhia, Limitada";
- "Rádio Clube Português, SA";
- "Sociedade Portuguesa de Radiodifusão, Limitada."

In the press sub-sector, the State exercises total control over some newspaper publishing companies, "Diário de Notícias," "Diário Popular" and "Capital," and is a majority or significant participant in other daily newspaper publishing companies:

- "Empresa O Comercio do Porto, SA" 50%
- "Empresa do Jornal do Comércio, SA" 20 to 30%
- "Empresa do Jornal de Notícias, SA" 50%
- "Renascença Gráfica, SA" 33.2%

as well as in other publishing companies:

- "EDEL - Empresa Editorial Electrotécnica, SA" 50%
- "EDIGUIA - Editora de Publicações, SA" 50%
- "Editora Arcádia, SA" 70%
- "FERGRAFICA - Artes Gráficas, Limitada" 100%

- "Gazeta das Aldeias" 72.4%
- "Livraria Moraes Editores, SA" 98.88%
- "RADIOPREL - Soc. de Act. Gráfica e Ed. Limitada" 75%
- "SEFLA - Sociedade Editorial Flama, SA" 50%
- "Sociedade Editora Record, Limitada" 70%

In the news agency sub-sector, there were two, "ANOP" and the "Notícias de Portugal," which were abolished, and now there is one, a Public Interest Cooperative, the above-mentioned "LUSA."

d) Financial Relations between the State and the Public Enterprises

In the last two years, Public Enterprises in this sector have received the following amounts:

CHART XVII

State Endowments to Mass Media

Company	Year	Compensatory Indemnities	Capital Endowments		Subsides
			Investment	Financial Recovery	
RTP	1986	1 314	186	---	---
	1987	1 000	1 200	---	---
RDP	1986	410	50	---	---
	1987	300	300	---	---
ANOP *	1986	--	--	90	---
	1987	--	--	---	---
EPDP	1986	--	--	50	---
	1987	--	--	--	180
CPNC	1986	--	--	300	---
	1987	--	--	1 0	60

(*) - "Agência Noticiosa Portuguesa, EP" abolished.

Source: Resolution of the Council of Ministers, Diário da República, II Series, Nº 174, of July 31, 1986, and nº 111, of May 15, 1987 (C. Listings included in the annex).

As concerns State endowments to the Mass Media sector, the general lines of the last Government's policy on the sector assumes particular relevance, as it will presumably be the same:

- i) To build a clear and objective framework of State endowments which gives equitable treatment to the public and private enterprises included in the sector;
- ii) Financial support to be given by the State should be the object of an opinion given by a equalitarian technical commission;
- iii) Financial endowments anticipated are:
 - diffusion subsidies;
 - technological reconversion subsidies;
 - subsidies on education and cooperation actions;
 - postage paid to CTT;
 - discount on telecommunications and public transportation.

7. In Spain

7.1. Importance of the State Company Sector in the Economic Sectors

The degree of intervention in the Public Sector in different areas of economic operation changes depending on the social and economic objectives fixed by the Government, such as:

- Obtaining revenues and regularization of consumption: the cases of the "Tabacalera" and of the "Campsá" for tobacco products and gasoline;
- Presence in strategic sectors which demand high investments and high risks: the case of "Hispanoil" in which petroleum operations may contribute to reduce dependence on an external supply of petroleum;
- Inter-regional equilibrium as concerns first-need goods: the cases of the "GESA" and of the "UNELCO" which produce energy in insular territories at costs higher than continental prices;
- Maintenance of employment, as in the transportation material sector with "AESÁ" and "ASTANO" and in the extracting sector with "HUNOSA";
- Rendering of public services, as in the cases of "RENFE" and "FEVE" whose operating revenues only cover personnel expenses.

Attention must be called to various sectors, in absolute values, according to different indices:

Sales

- Petroleum and gas over the remaining, followed both by the transportation materials sector and by the communications and transports;

Employment	- Transports, transportation materials and communications;
GFFC	- Energy, communications and transports;
GVA	- Communications, energy and transports;
External Debt	- Transportation materials, communications and energy;
Exports	- Transports, petrochemical industries and transportation materials;
External commerce	- Public Enterprises are important participants in external commerce of merchandise: 19.2 per cent of total imports and 12.5 per cent of exports, particularly in the external commerce of energy products. Purchases to OPEC alone represent 44 per cent of their imports.

As concerns non-energy products, the balance is positive for the State Company Sector, with a coverage index of 167.7 per cent, which represents 113.9 per cent of the Spanish Economy index.

The sectors which contribute most favorably to the commercial balance are: transports, through "IBERIA;" transportation material, through "SEAT" and "AESA;" ironworks, through "ENSIDESA" and "INESPA" and chemical through the petrochemical companies.

The study continues with a sectorial analysis of the Public Enterprises' participation, which will be preceded by Chart XVIII showing

GVA, Employment and GFFC indices in the national economy, along with the specific weight of the Public Enterprises, both in the sectors under analysis and in the national economy.

Included in the annex following this section, is a listing of the Public Enterprises in their respective sectors, showing the evolution of the main indices in the period from 1983 to 1985.

CHART XVIII

Specific weight of the Public Enterprises both in the total of each sector
and in the total of the National Economy - 1985

SECTOR	GVA m.p.		EMPLOYMENT		G F F C	
	%/Sector Total	%/Nat.Econ.Total	%/Total Sector	%/Nat.Eco.Total	%/ Sector Total	%/Nat.Econ.Total
Extractive	51,3	0,3	47,3	0,25	23,2	0,26
Petroleum and Gas	33,5	0,9	88,3	0,1	89,9	6,7
Electricity	20,6	0,7	17,6	0,13	-	-
Base Metal	21,3	0,4	26,6	0,3	42,4	0,47
Transformation Metal	2,1	0,05	3,6	0,1	13,8	0,06
Transportation Materials	18,7	0,6	32,4	0,68	36,1	0,51
Chemical Industries	2,2	0,1	3,0	0,03	4,7	0,05
Cellulose	0,1	0,03	1,5	0,01	-	0,01
Textile, Leather and Footwear	-	0,02	1,6	0,05	4,6	0,03
Food, Drink and Tobacco	-	0,05	3,4	0,11	60,9	-
Other Manufactures	2,5	-	6,9	0,02	-	-
Electronic and Computer Industry	-	0,03	-	0,02	6,1	0,03
Construction	1,5	0,1	0,8	0,04	5,4	0,05
Transports	30,7	1,1	31,1	9,6	-	1,1
Communications	90,0	1,7	52,7	0,6	-	3,64
Commercial	1,4	0,04	1,1	0,1	-	0,1
Mass Media and Others	-	1,5	-	-	-	-

Source: Estimates based both on Report from Public Enterprises and on Reports on the National Accounts.

7.1.1. Mineral Sector⁹

The most important company is the "Hulleras del Noroeste - HUNOSA" which absorbs almost 80 per cent of the public sector employment in this sector, 43 per cent of sales, 50 per cent of the yearly investment and over 55 per cent of the GVA. It is also the company with most losses in the sector.

The "Empresa Nacional del Urânio - ENUSA" is second in sales with 34 per cent and first in external sales and in profits, which were 671 million Spanish pesetas in 1985.

The presence of the State in this sector represents, in terms of Value Added, 2.7 per cent of the total State Company Sector participation and 5.3 per cent in terms of occupied manpower.

In the extracting industries sector, Public Enterprises represent 51.3 per cent of the GVA and 47.3 per cent of employment. The average ratio GVA / employee is 3.1 per cent, which is a high ratio in a sector with an excess of value added. The reason is found in "ENUSA" which, alone, has a 9.2 per cent ratio.

⁹ Cf. Annex 2, List 2.

As concerns investments, the Public Enterprises absorb 23.2 per cent of total investments in the sector.

7.1.2. Industrial Sector

7.1.2.1. Petroleum and Gas Sub-Sector

All companies mentioned are owned by INI (Cf. Annex 2, List 2.)

"HISPANOIL," whose activities are exploration and production, made new gas discoveries in the Valley of the Guadalquivir, turning a first commercial exploration profitable. It has raised its investment in internal exploration by 70 per cent, and gained access to new highly interesting areas in the producing zones of Angola, Gabon and Colombia.

Due to the trend of lessening Spanish petroleum reserves while raising gas reserves, "HISPANOIL" production will

have to adapt to a new situation, in which its role will be of increasing importance. "HISPANOIL" also has reserves in foreign lands, due to developing works in Dubai, the United Kingdom and Guatemala.

During 1985, INI integrated all of its refining activities into only one company ("EMP").

Sales of refined products remained static, as the break in sales in the internal market was compensated for by an increase in exports (40 per cent of the latter was in light and medium distilled products, with the remaining 60 per cent in fuel-oil.)

"EMP" has shrunk its refining capacity to 25 million tons per year (39 per cent of the total national capacity,) by partially closing one refinery. It has also reduced its fleet, both owned and chartered, using 37 per cent of the national fleet in 1985.

Sales of natural gas increased 18 per cent in 1985. The "ENAGAS" investment, 9,043 million Spanish pesetas, went mainly to gasducts in Haro-Burgos and Bermeo-Lemona.

The State has an important and increasing position in the sector, in which it participates in 32.2 per cent of the GVA (some points below 1984) and 51.5 per cent of the employ-

ment (5 points above 1984,) due to its strategic character.

Additionally, State participation in the sector represents, as compared to the total of the State Company Sector, 8.6 per cent of the GVA and 1.4 per cent of the employment.

Public Enterprise investment represented over two thirds of the total investment of the sector, thus its percentage of total national industrial investment was approximately 9 per cent.

7.1.2.2. Electric Energy Sub-Sector

This sector has been subject to a restructuring since 1983, during which a financial recovery program started. In 1984, a system of internal compensations was delineated, and in 1985, an interchange of assets was created. Also during this year norms were published tending to secure at a medium term the financial capacity of the electricity companies as well as meeting the demands of public service (Cf. Annex 2, List 2.)

State participation includes five companies owned by INI, three in the Iberian Peninsula ("ENDESA," "ENHER" and "ENCASUR") and two on Spanish islands ("GESA" and "UNELCO".)

The two first companies had an interchange of assets between them as well as with other private companies in this sector.

The investments of the entirety of Public Enterprises in this sector were a very high, partially due to "ENDESA's" acquisition of 214,333 million Spanish pesetas in material assets which had belonged to private companies.

In addition, the "Red Electrica de España - REDESA" was created with non-monetary contribution from "ENDESA" and "ENHER" of 24,368 million Spanish pesetas.

"REDESA" has been commissioned to undertake a unified exploration of the high voltage network of the national electric system which had previously been nationalized. The "ENDESA" group has public ownership of the company, with a 51 per cent holding.

As a consequence of a 3.7 per cent increase in demand from 1984 to 1985, the electricity production of these companies also increased: "ENDESA" 7.6 per cent, "GESA" 5.9 per cent, "UNELCO" 7.8 per cent and "ENASUR" 9.7 per cent (however, "ENHER" production dropped by 7.3 per cent due to a drop in use of water-generated electricity during 1985.)

"ENDESA" is the company showing the highest profits in the INI group.

The above-mentioned companies have a market quota of 28.9 per cent, generate almost 25 per cent of the value added in the sector (one per cent less than in 1984) and occupy 20 per cent of manpower (also one per cent less than in 1984.)

This is one of the sectors in which the public sector has greatest relevance, both in relative terms, due to its strategic character, and in absolute terms, due to the volume shown by the several indices.

7.1.2.3. Base Metal Industry Sub-Sector

Steel production in Spain increased by 5 per cent from 1984 to 1985; internal demand stabilized as opposed to exports which increased (Cf. Annex 2, List 2.)

Public Enterprises showed a similar evolution.

Thus, "ENSIDESA" increased sales by 2.8 per cent, due to the compensation operated by the increase in exports (27 per cent). During that year, it also developed projects anticipated in the Project for Restructuring, which required an

investment of 236,494 million Spanish pesetas, while reducing the number of employees by 1,297, in accordance with the labor restructuring plan.

The "Altos Hornos del Mediterraneo - AHM" ended the reconversion process by reducing the number of workers by 1,273. Assets and liabilities belonging to the cold-rolling factory were also requested and the "Empresa Siderurgica del Mediterraneo - SIDMED," was created as a branch of "ENSIDESA."

"FOARSA" also achieved the labor goals of the reconversion plan. As opposed to the above-mentioned companies, the drop in internal demand was not compensated by exports, due to the strong international competition to which it is subject.

"Prerreducidos Integrados del Suroeste de España - PRESUR" continued its investment process, both starting the construction of iron ore concentrates and the experimentation process of ironworks improvement.

It should be noted that aluminium, a sector with world supply greater than demand, registered an approximately 11 per cent growth in consumption in Spain compared to the previous year, although at a lesser rate than the year before.

Meanwhile, it closed the Valladolid electrolysis factory and 50 per cent of the Series I in Avilés, reducing the

number of workers by 339.

At the national level, the "INESPAL" group produces 100 per cent of alumina, 100 per cent of the electrolytical aluminium of first fusion and 57 per cent of the transformed products.

On the whole, the sector is subject to an important participation by the Public Sector, particularly at the GFFC level with 42 per cent, which is almost equivalent to one quarter of the national sector in terms of GVA and employment.

7.1.2.4. Transformation Metal Industry Sub-Sector

In this sector, companies producing equipments and metal products are considered. On the whole, the influence of Public Enterprises is small, with the exception of investment which accounts for 13 per cent of the sector (Cf. Annex 2, List 2.)

"Babcock Wilcox Española - BWE" assumed the market leadership in boilers, energy and mechanical constructions, having increased sales volume as compared to the previous year by 25 per cent.

The "Maquinista Terrestre y Maritima - MTM," although experiencing difficulties which forced it to begin labor readjustments, signed important contracts with "ENSIDESA," "FEVE" and "METRO," and now has a more optimistic future.

The "Equipos Nucleares - ENSA," which supplies equipment for nuclear energy plants, had to reduce its activity at a national level due to the National Energy Plan, without hurting its interests in the external market, such as in India and the USA.

The "Empresa Nacional Santa Barbara de Industrias Militares" is, along BWE, the most important Public Enterprise in the sector.

7.1.2.5. Transport Materials Industry Sub-Sector

This sector is characterized by a strong presence of Public Enterprises, mainly because most transportation material belongs to State owned shipyards, absorbing 100 per cent of the big shipyards and 56 per cent of the small and medium ones.

The naval construction crisis brought on by a persistent lack of demand, forcing a Plan of reconversion of the sector, in which over 8,000 work places in Public Enterprises were eliminated.

The "Artilleros Españoles - AESA," the most relevant Public Enterprise as concerns naval construction, reduced its losses by 30 per cent; although the commission portfolio is still insufficient, the new Fleet Plan offers perspectives for the reactivation of internal demand.

As concerns air transport material, the company "Construcciones Aeronauticas - CASA" has been showing a continuous and increasing effort in technological innovation, as witnessed by its participation in such international projects as AIRBUS, EFA, ARIANE, etc. (Cf. Annex 2, List 2.)

The "Sociedad Española de Automoviles Turisticos - SEAT," via which the State was involved in fabrication of tourist vehicles, concluded negotiations with "Volkswagen" during 1985, the latter having acquired a majority participation in SEAT's capital.

As concerns industrial vehicles, the "Empresa Nacional de Auto-camiones - ENASA" holds a quota of 42.9 per cent in a market in which there is strong pressure from importers.

As concerns Public Enterprises, their exports correspond to approximately 50 per cent of the total sales.

7.1.2.6. Chemical Industry Sub-Sector

This group includes the "Empresa Nacional de Fertilizantes," which is owned by INI, and companies producing petroleum derivatives in which INI has holdings; as a whole, they are economically recovered (Cf. Annex 2, List 2.)

This sector represented one per cent of the State's participation in the company sector as concerns GVA, as well as 0.8 per cent of the total employment in Public Enterprises.

The State does not have significant presence in the sector, holding only 2.2 per cent of the GVA, 3 per cent of employment and 5 per cent of the investment. In 1985, foreign investments comprised 36 per cent of all investments in this sector, most of the capital coming from EEC countries with a higher concentration in sub-sectors with higher value added.

The Fertilizer sector is now part of a National Reconversion Plan.

7.1.2.7. Cellulose Sub-Sector

The "Empresa Nacional de Celulosa - ENCE" is the only Public Sector representative in paper pulp production. Thus, the State-Entrepreneur occupies only 2.2 per cent of the GVA and 2.1 per cent of employment in the sector (Cf. Annex 2, List 2).

Paper pulp production has a reduced significance in the State Company Sector, representing only 1.1 per cent of GVA, 1.2 per cent of employment and 0.6 per cent of investment.

7.1.2.8. Textile, Leather and Footwear Industries Sub-Sector

State participation in this sector is owned by four companies in the "Património" group, not being significant in terms of GVA and employment (0.9 and 1.6 per cent respectively), but having some expression in investment (4.6 per cent of the sector).

The reduced value of indices is justified by the atomization of the sector, which is divided among a multitude of small and medium companies, the market quota of the Public Enterprises being small.

The State Participation is large in terms of losses (accounting for 6,837 million Spanish pesetas for the four companies in 1985), of which 2,934 million Spanish pesetas represent losses by "IMEPIEL" (Cf. Annex 2, List 2.)

Because it is a sector in crisis, it has also been subject to labor restructuring measures, Public Enterprises having reduced employment by one thousand workers since 1985.

The specific weight of these Public Enterprises in the State Company Sector is quite small.

7.1.2.9. Food, Drink and Tobacco Industry Sub-Sector

This sector includes, on one hand, the "Empresa Nacional de Industrias de la Alimentación - ENDIASA," a sub-holding company held by INI and which includes the "Carnes y Conservas - CARCESA," the "Grupo Lactaria Española - LESA," the Oleaginosas - OESA" and the "FRIDARAGO" and, on the other hand, the tobacco company "TABACALERA" (Cf. Annex 2, List 2.)

The food products group shows a negative evolution in its results, particularly as concerns "CARCESA" and "FRIDARAGO"

(however, the "LESA" group has been improving, despite strong competition in this market.)

The 1985 drop in sales, of 27 per cent as compared with the previous year, was mainly due to "OESA's" selection policy, "OSEA bring the company with the highest sales rate and the largest exporter in the group. "CARCESA" initiated a process of divestment in its cattle products producing branches "FRIGSA" and "GYPISA," although its additional activity in tomato concentrate compensates for negative weight in the meat products area. "FRIDARAGO" is also having difficulties in its frozen vegetables divison.

In 1985, "TABACALERA" went through a crucial phase of transition from 350 year old historic and traditional monopoly to a new company structure and philosophy.

The joint investments of Public Enterprises in the food, drink and tobacco sector account for 14.8 per cent of the sector at a national level.

7.1.2.10. Other Manufactures

In the sector of other manufactures the only Public Enterprise directly included is the "Grupo de Empresas Alvares - GEA" which is owned by INI and whose activity consists of the production of ceramic, glass articles, etc. (Cf. Annex 2, List 2.)

This is the sector which shows the lowest values in all indices under consideration, both as concerns the State Company Sector and the entirety of sectors of the national economy. Thus, the incidence of "GEA" in the national economy is irrelevant, although it plays an important role in the sector, particularly as concerns employment (6.9 per cent of the sector) and, to a lesser degree, in terms of GVA (2.5 per cent.)

Internal sales increased 16 per cent from 1984 to 1985, while exports were maintained; results are negative with no increasing trend.

7.1.2.11. Electronic and Computer Industry Sub-Sector

According to criteria established in the "Plano Nacional de Electrónica e Informática (PEIN)," a sub-holding company for the electronics and computer industry, "INISEL," was created in 1985, comprising a group of companies including "ENOSA," "PESA," "ERIA," "I. CUATRO," "ISEL," "TELESINCRO" and "ERDISA." Its objective is to rationalize the supply and company specializations. "INISEL" sales increased by 24 per cent with results changing from loss to profit; 1985 profits were 192 million Spanish pesetas when in 1984, there were losses of 146 million Spanish pesetas (Cf. Annex 2, List 2.)

An important part of "INISEL's" industrial electronics activity is in European joint projects (such as "FACA" and the "AIRBUS," which allow it to develop in more technological advanced areas) in military projects (such as the systems for control of access to Madrid and Barcelona.)

This sector is not particularly representative as concerns the dimension of the indices, but due to its nature, it has strategic importance. Some 8.1 per cent of investments in the sector belonged to INI companies, the incidence in the national economy of 0.03 per cent of the GVA, 0.02 per cent of employment and 0.03 per cent of the GFFC.

7.1.2.12. Construction Industry Sub-Sector

This sector includes the INI-owned "Empresa Auxiliar de la Industria - AUXINI," and the "Empresa Nacional de Autopistas - ENAUSA," "TRAGSA," "IMPROASA" and "SGV" (Cf. Annex 2, List 2.)

"AUXINI" profitted from the reactivation of the sector to increase its market quota by 0.5 per cent over 1984. Its commission portfolio increased by 32 per cent, sales by 30 per cent, the number of workers by 663 and results were substantially improved.

"TRAGSA" is the Public Enterprise in the sector with the highest volume in the indices, with the exception of employment which declined by 199.

This sector has a great dimension in the economy, as opposed to the incidence of the Public Sector, which is small: 1.5 per cent of the GVA, 0.8 per cent of employment, but 5.4 per cent of investment.

In macro-values it represents 0.1 per cent of the GVA, 0.04 per cent of employment and 0.05 per cent of the GFFC.

7.1.3. Transports Sector

In this sector "IBERIA," which is the most important company as concerns sales, both in the internal and the external market, with 55 per cent of sales of all Public Enterprises in this sector (Cf. Annex 2, List 2.)

In land transportatio, the most impoartant is "RENFE," one of the Public Enterprises employing the most workers (65,907) and having the most investments (77 per cent of the total for Public Enterprises in the transports sector.)

The presence of the State Company Sector is very important here (30.7 per cent of the GVA and 31.1 per cent of employment). In terms of national economy it represents 1.1 per cent of the GVA, 9.6 per cent of employment and 1.1 per cent of the GFFC.

7.1.4. Communications Sector

The communications sector is dominated by the State Company Sector, although the "Compañia Telefonica," which has privately held majority participation, must be taken into account (Cf. Annex 2, List 2).

The sector has some importance in the macro-economic whole: 1.7 per cent of the GVA, 0.6 per cent of employment and 3.6 per cent of the GFFC.

7.1.5. Commercial Sector

In the entirety of the Public Enterprises, the most important here is "CAMPSA," representing 78 per cent of all sales, 92 per cent of employment, 71 per cent of the GFFC and 92 per cent of the GVA of the commercial sector, as it can be seen in List 2, Annex 2. The sector, which has the most weight in the national sectorial list, does not show great State or State company presence (only 1.4 per cent of the GVA and 1.1 per cent of employment,) which means, in terms of national economy, 0.04 per cent of the GVA, 0.1 per cent both of employment and of the GFFC.

7.2. Behavior of State Monopolies and Other Public Enterprises in Basic Sectors of the Economy

7.2.1. Adaption of Commercial Monopolies

In Spain, the two existing monopolies -- tobacco and petroleum -- are subject to the necessary adaption, for which they have a six year transition period.

The main laws to execute community imperatives are:

- . Royal Decree-Law N^o 7/84, of June 13, concerning imports of petroleum products;
- . Law N^o 45/84, on the regulation of the petroleum sector;
- . Decree-Law N^o 5/85, of December 12, on the adaption of the petroleum monopoly, complemented by Decree N^o 2401/85, of December 27, which approved the Statute for distribution activity of petroleum products imported from the EEC;
- . Bill on special taxation as concerns tobaccos.

The new regulation of the petroleum sector is via:

- Permission for the Government to negotiate the transfer to "CAMPSA" of the entirety of assets and rights which belonged to the State and which belonged to the petroleum monopoly;
- Permission for INI to permit the entry of private refineries in the corporate capital of "CAMPSA," with the condition that public participation remain over 50 per cent.

Integration of fabrication and distribution and commercialization were necessary, due to the disappearance of the economic-commercial aspect of the monopoly.

Decree-Law Nº 5/85 aims mainly the legal-administrative side of the monopoly. Participation of petroleum in primary energy consumption in Spain will be maintained at over 50 per cent in the coming years. Securing the necessary supply will continue to be essential for the Spanish economy. Similarly, attention must be paid to the relative ends of petroleum products.

This legislation, as concerns products imported from the EEC, allows distribution by wholesalers and the dismantling of a good part of the economic-commercial content of the monopoly, which, in addition to limiting its functional sphere of application, guarantees Spanish accomplishment of the applicable provision of the Treaty of Accession.

The most important aspects of the above-mentioned Decree-Law are:

- New definition of the monopoly's objectives;
- Indication of petroleum products produced in Spain, which may only be commercialized in the geographic area of the monopoly by "CAMPESA" and "BUTANO;"
- Freedom of distribution and commercialization of products originating in the EEC (Decree Nº 2401/85

defining the concrete conditions of action demanded from operators, within the limits of the contingents established by the Treaty of Accession);

- Maintenance of "CAMPSA" as the monopoly managing company for petroleum products, "BUTANO" being included as concerns petroleum derived gases;
- Maintenance of the commercial network with the present concession holders: these will not be allowed to sell carburetants or liquid fuels not supplied by "CAMPSA", until a new regulation on sale locations and retail sales of these products is approved;
- Freedom to import petroleum products from EEC member countries, in accordance with the Treaty of Accession. The Government can determine the origin and acquisition of the part to be used in fabrication of products whose distribution will be in the sphere of application of the monopoly;
- Free export of petroleum products in accordance with community legislation.

As concerns the tobacco monopoly, Spain will have a four year period from the date of the accession to make progressively the type of proportional tax on black tobacco cigarettes equal to that on the remaining cigarettes.

Abolishment of the existing difference in taxation as of the date of accession will occur in five equal phases, reporting to January 01 of each year.

The derogation of the presently enforced laws of Spain, as a consequence of the accession, is based on Law N^o 38/85, of November 22, which entered into force on January 01, 1986.

In accordance with community principles, this law changes the previous situation in the following points:

- Abolishment of the "Renta de Tabacos," whose revenues must be absorbed by the special tax on the consumption of tobaccos and the value added tax;
- Maintenance of a fabrication monopoly, as well as one on the imports and distribution of non-community manufactured tobacco, under the management of the "Tabacalera, SA" which will integrate the assets affected into the monopoly by State share-holding;
- Liberalization of the imports and commercialization by wholesalers of manufactured tobaccos proceeding from the Community;
- Maintenance of the retail sale monopoly, which is exercised through the "Expedicúrias de Tabaco y Timbre" which are considered in this law as having a State concession.

The tutelage and control of management of the monopoly belongs to the "Centro Directivo del Ministerio de Economía y Finanzas," which assumes the Government delegation in the "Tabacalera."

The conditions of supply will be homogeneous for all wholesalers and in the full sphere of application of the monopoly and only be done to retail salers holding the concession from the State may be supplied. The Ministry of Economy and Finance provides said concessions.

7.2.2. Mineral Sector (Non-Energy)

This sector is regulated by the "Ley de Fomento de la Minería," of 1977, and by the National Plan for the Supply of Mineral Raw Materials, of 1978, which is subject to an biennial revision.

In 1983 State endowments accounted for 3,394.10 million Spanish pesetas, of which 2,204.00 were designated for infrastructural works under the auspices of the "Instituto Geológico y Minero de España."

In 1984, a trend toward substituting public or private credits for capital endowments began, with the aim of developing more investments.

These measures show the sectorial character of the "Ley de Fomento de la Minería," as well as its highly interventionist tone in the delimitating the objectives of State Planning. Nº 1 of Article 149 of the Constitution determines the exclusive competence of the State for the definition of the bases of the energy and mining regime.

Thus, the Public Enterprises "E. N. ADARO" and "CARBOEX" must support the planning policy.

7.2.3.. Industrial Sector

7.2.3.1. Petroleum Sub-Sector

Company activities in this sector are:

- . Exploration and production of crude;
- . Refining;
- . Distribution and commercialization.

Public intervention covers three activities in different degrees, coverage is total for distribution and commercialization of petroleum products, which "CAMPSA" effects under the name of and on behalf of the monopoly (Cf. Annex 2, List 2.)

In a general, the intervention of the Administration is translated into the following:

- Regulation of companies activities, justified by both the strategic character of the product and the dangers of its manipulation;
- Determination of existing economic fluctuations between companies in the sector, with deciding influence over the companies accounts.

As concerns the exploration and production of crude, the State must define the origin and conditions of acquisition of some part of crude which is unloaded in Spanish refining

terminals. This volume of petroleum, named State quota or commerce quota, accounts for 30 per cent of unloaded crude.

The foreign production of the Public Enterprise "Hispanoil" is included in the quota and thus, the Administration, both fixes the sale price of its production and guarantees the sale of the crude independently of its sale price.

Ninety per cent of petroleum which is unloaded in Spain must be carried by ships sailing under the national flag, with freight conditions also determined by the Administration.

Finally, as concerns refining, public intervention is exercised mainly through the petroleum monopolies, which commercializes the most important petroleum products in the Peninsula and the Balearic Islands.

The Administration fixes both the quantities and sale prices of approximately 60 per cent of refinery production. In 1985, Spain manufactured 44.8 million tons of crude, of which the monopoly acquired 23.2 million tons.

Price of public sale is structured as follows:

- "Ex-refinery" price is officialy fixed, monthly or quarterly, as a function the of crude and its products priced in the international market based on the United States dollar exchange rate;
- "CAMPSA" tariff and retail sales commission;

- Taxes (12 per cent VAT and special tax on carburetants for consumption and the "renta" of petroleum.)

The latter is a fiscal fee fixed in residual form, reflecting the difference between the sales price and the above-mentioned costs, and constitutes a revenue for the monopoly.

The sector is under the process of liberalization as shown in point 7.2.1..

7.2.3.2. Gas Sub-Sector

The Spanish gas industry produces, supplies and distributes gas carburetants for use as both a carburetant and a raw material.

Royal-Decree NQ 1350/76, of June 07, declares supplying, production, warehousing, conduction and distribution activities of natural gas to have preferential interest.

Under the terms of this provision, these activities will be given the benefits of expropriation, customs bonuses and free amortization in the first five years, if certain pre-requisites are respected.

The General Regulation of the Public Service of Carburetant Gases, which was approved by Decree NQ 2913/73, of October 26, establishes in Article 1 that the Ministry of Industry is in charge of regulating the concession regime, supplying conditions, fees, etc..

The price policy is regulated by Protocol of July 23, 1985, which ratified unification of the fee structure, for both the domestic and commercial markets and the industrial market, establishing natural gas prices as a function of the prices of alternative energies, simultaneously serving as an incentive for the consumption of natural gas.

Among the seventeen gas supply companies, the Public Enterprise "E. N. del Gas" occupies the first place with 36 per cent of the market.

The future expansion of gas carburetants will be based on natural gas, which will constitute the main source of demand from 1988. For this anticipated expansion, the existence of natural gas reservoirs is of some importance, such as those in Serrablo and Gaviota, presently connected to the National Network of Gasducts.

7.2.3.3. Electricity Sub-Sector

In 1985, the process of revision of the Spanish electric sector, with the aim of obtaining a greater equilibrium between production and the market, ended.

Total net production of electric energy in Spain went up to 120,578 G.X.H, increasing 6.3 per cent as compared to 1984.

This production resulted both from Public Sector-owned plants in the Penninsula (94.2 per cent) and in the Balearics, Ceuta and Melilla (3.2 per cent).

The Administration determines the level of prices so that global costs of the sector may be covered; however, the existence of an equilibrium between revenues and costs in the entirety of the sector does not mean the equilibrium exists in each and everyone of the companies in the sector.

Thus, as prices do not show the same level of coverage of associated costs, some companies are unbalanced.

Compatibility between a unique system of global costs and a whole of companies with objectively different characteristics via the law of compensations is accomplished.

The two main mechanisms used in Spain for compensations are:

- . The "Oficina de Compensaciones de la Energía Eléctrica - Ofico;"
- . The inter-company system of compensations.

Additionally, "Ofico" compensates certain costs in the coal and natural gas areas and in special extra-penninsular services, analysing:

- . The different costs of investment and exploration of the different types of plants;
- . The composition of the production park of each company;
- . The time during which investment took place.

Total costs are not compensated in the transferences; however, the coverage rate is very high (92 per cent in 1985.)

There are further incentives through which a company with lower unit cost keeps part of the difference between that and the average cost.

Companies with lower production must buy from companies with surplus production in order to secure supply. Connected payments are called power quotas.

In 1985, five electric systems transferred 25,075 million Spanish pesetas to the remaining five, an amount equivalent to 4.8 per cent of the standard production costs.

7.2.3.4. Chemical Sub-Sector

a) Fertilizers

The fertilizer sector assumes a strategic character in the Spanish economy.

Royal Decree Nº 295/85 approved the Reconversion Plan for the Fertilizer Sector, whose regulations continue to provide for the interchange of assets among the groups included in the sector.

The "Empresa Nacional de Fertilizantes" holds a 43 per cent quota in the national market of simple nitrogen fertilizers.

The Price Regime changed in 1985, with the introduction of a system for fixing fertilizer prices, consisting of maximum public sale quotas which change every month of the year.

With different monthly prices, the objective aims at stimulating the purchase of fertilizers in pre-campaign periods, establishing official discounts of general public knowledge.

Commercial concepts retained in the fixing of prices are:

- . Cost of entry and exit for merchandise in the warehouse;

- . Warehousing of the merchandise, average stocking monthly price;
- . Transport to the final destination.

b) Petrochemical Industry

The petrochemical Industry is structured in three groups:

- i) the State group, which includes the "Empresa Nacional del Petroleo" and its four branches ("Alcudia," "Calatrava," "Montoro" and "Popular"), representing some 27 per cent of the Spanish petrochemical industry;
- ii) Private groups, which includes important companies such as "CEPSA," "ERT," "AISCONDEL," etc., holding 26 to 30 per cent of this industry;
- iii) Branches of multinational companies, with holdings of approximately 40 to 50 per cent in this sector.

The first group, held by INH, manufactures 100 per cent of butadien, estyrene, propylene oxide, propylene glicoles, acrilonitrile, acetancyandrine, cyanidric acid, eva and synthetic rubber as well as over 50 per cent of the national production of ethilene, propylene, methyl metacril and high and low density poliethylene.

In January 01, 1986, as a result of the accession, a substantial change occurred in the framework of commercial exchanges with the EEC, due to the application of VAT and the immediate abolition of the "Impuesto de Tráfico de Empresas - ITE" and of the "Compensación de Gravámenes Interiores - ICGI."

The latter represented an additional protectionist measure applied to the CIF value of the imported product, to which the corresponding customs tariff was added and, as opposed to the VAT, it was not refundable to the importer, creating a protection superior to that of the customs tariffs.

Additionally, it negatively assesses the sector the customs tariff a 10 per cent reduction beginning January 01, 1986.

External commerce of petrochemical products Spain-EEC showed a remarkable surplus in 1985. However, in 1986 the trend was opposite, with imports increasing by 58 per cent during the first semester.

Total exports diminished by 7 per cent; but, one must take into account the strong development of internal demand with petrochemical industries less feeling the need to export to maintain the high production level of their factories.

7.2.4. Transports Sector

Two companies in the sector hold concessions for public services: "IBERIA" and its branch "AVIACO" for regular air transport operations and "RENFE" for operation of the Spanish railroads.

a) "IBERIA"

The concession granted to "IBERIA" for the operation of the public service of regular air transport comes from June 07, 1940, having been granted for twenty years in a monopolistic regime for domestic lines; said concession was extended for an indeterminate period by the "Lei de Navegação Aérea."

The public service regime applies only to regular services. The line plan granted to "IBERIA" was approved by a decree of 1944, which established the need for an administrative authorization for the beginning and modes of operating each of the lines. Meanwhile, the concession of new lines is subject to the Law of Air Navigation, which needs permission of the Air Ministry and approval by the Council of Ministers.

In the concession of regular air transport, public authorities withheld a group of prerogatives common to this type

of concession:

- . Definition of fees;
- . Imposition of technical conditions in the rendering of services;
- . Redemption before the expiration of the term without providing an explanation.

As concerns the financial regime, the rule is the equilibrium, being exceptional the anticipated endowment.

Funds which "IBERIA" expects to receive to compensate some fares for the rendering of services to certain users are of a different nature of endowments. This type of reductions, implying a political price, benefit the user and not the company.

"IBERIA" also holds the air mail transport concession, giving it important funds as a compensation which is regulated by a contract of July 23, 1941.

As concerns international services, the concession generally derives from bilateral State agreements, usually negotiated under IATA auspices. The National Air Administration holds the general powers of traffic police but not those which are held by the entity holding the concession, such as fare determination, technical inspection, etc..

b) "RENFE"

"RENFE" originating in the railroad Regulatory Law of January 24, 1941, and the Decree of July 11, 1941, is a public establishment which is in charge of railroad operation.

There is a Regulatory framework settling costs which are not imputable to the management of "RENFE": it was created by Decree Nº 372/82, of February 12, O. M. of June 10, 1974, Agreement of the Council of Ministers of February 21, 1975 and O. M. of January 07, 1980, including:

- Negative results of the deficit producing lines of the secondary network;
- Railroad personnel dues to the "Mutualidad de Transporte y Comunicaciones," which "RENFE" abandoned;
- 50 per cent of the maintenance cost of railroad crossings;
- 50 per cent of the financial charges on external loans, by vouchers of 100 million United States dollars which substituted State contribution by debit to the "Fundo de Acção Conjuntural";
- Difference between the commercial tariff and commercial prices for transportation of minerals.

"RENFE" produces large deficits, has major infrastructural charges. Increase in tariffs is realised through decision of the Ministry of Transports and Communications.

7.2.5. Communications Sector

By the Law of December 31, 1945, the Government was authorised to sign a contract with the "Compañia Telefonica Nacional de España"; the contract, which regulates the basis of concession, had been approved by Decree of October 31, 1946. Thus, the Telephone Company is a public company limited by shares whose activity is regulated by said contract.

The applicable fiscal regime derives from Clause 7 of the contract, which provides that the State participates in revenues, annually receiving a "canon" of 15 per cent of net profits and an amount which cannot be less than 6 per cent of the gross operating revenues. These amounts are considered taxes for all legal purposes. Until now, the company has been exempt from all other taxes. However, telephone billing is now subject to VAT, and, starting this year, it is also subject to local and municipal taxes.

Clause 19 of the contract establishes a regime of tariff authorization, subject to revision at the company's request whenever revenues are not sufficient in two successive financial years to:

- . Cover operating costs;
- . Satisfy the necessary reserves for depreciation of locations and equipment;

- . Accumulating and maintaining the contractual reserve anticipated by clause 7 of the contract, or any other which is provided by law, obtaining a surplus in each financial year not less than the sum of the invested capital with the reserve funds provided in line b) of Clause 24.

The company is also forced, due to traffic needs and by the demands of the concession regime, to maintain permanently an investment plan guaranteeing the rendering of services with the most modern and efficient equipment.

In summation, attention must be called to the fact that approval the Regulatory Law of Telecommunications (LOT) is now pending.

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