



Market power versus regulatory power in the Spanish electricity system, 1973–1996[☆]

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ABSTRACT

This study not only establishes that the institutional changes (the change of political regime) and economic changes (the energy crisis) that occurred during the 70s and 80s had an important effect on business strategies within the Spanish electricity sector, but, above all, it shows how the resulting regulatory model was not the product of any clearly defined plan on the part of the Spanish authorities (as the majority of authors seem to implicitly or explicitly maintain), but rather it arose from the dialectical interaction between companies which resisted losing the power of the market, and institutions which, in order to define any medium term energy policy in the future European domestic electricity market, required an increase in their regulatory power.

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"Two conclusions seem clearly to emerge. First, that competition has a vital role to play in the public utility industries. And, second, the proper balance between competition and monopoly, financial integration and intercompany coordination, voluntary and compulsory, will vary from one regulatory situation to the next and from one moment to the next—and must be the subject of constant regulatory attention and concern".¹

[☆] The first version of the present work can be found in Garrués [1 and 2].

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¹ Kahn [3, p. 325].

1. Introduction

The behaviour of the Spanish electricity sector, under the institutional framework of the European Union, shows ever greater similarities with that developed in other neighbouring countries. However, when the logical conflicts between States and/or companies over the shape of the future European energy market have occurred, the pragmatic approach of experts has seldom taken into account the conditions and historical inertias which had influenced the different development of these systems. This omission has resulted in a partial understanding of the real situation and, consequently, in the bad design and

implementation of the policies created to shape a more stable and efficient future.

In addition to establishing that the institutional changes (the change of political regime) and the economic changes (the energy crisis) that took place in the 70s and 80s had an important effect on the Spanish electricity sector, the present study principally demonstrates how the resulting regulatory model, far from being the outcome of a clearly defined plan by the authorities, as most authors appear to maintain, was the product of the dialectical interaction between companies which resisted losing market power and an Administration which, in order to define a medium term energy policy, needed to increase its regulatory power. The regulatory model that began with the new Spanish democracy, although more efficient than that set up by the electricity cartel during the Franco regime, was still less than perfect because it sought solutions that were short term and in principle agreed by consensus with the electricity companies. It is true that the state quickly took control of electricity policy, but the way this policy was carried out was always heavily conditioned by the habits of the past. In addition, the gradual improvement of the regulatory system was always accompanied by the renewed negotiating power of the most important companies, resulting from the successive waves of concentration within the sector, particularly as the Spanish electricity system has had to adapt to the demands of a new, more liberalised European electricity model.

Given that in the rest of the large European countries (United Kingdom, France and Italy) the current process of liberalisation of the electricity market has been deeply influenced in its origins and development because it was taking place in sectors which had been nationalised for more than half a century and were in need of significant processes of privatisation and/or restructuring,² it seems obvious that the origin of a large number of the defects and virtues which affect the present process of liberalisation and restructuring in Spain can also be found within a framework that considers not just the short term analysis.³

The aim of this article is to present the strategies adopted by Spain's two most important private electricity companies (Iberduero and Hidrola) during a period that was especially relevant in the development of the Spanish electricity sector; the years prior to the process of liberalisation which started with the Law 54/1997. With good reason, the sector had to adapt itself to the new conditions resulting from, on the one hand the energy and economic crises, and on the other, the conditions arising from the political changes, which required increasing intervention by the State Administration. This intervention resulted in the change from a system of company self-regulation, which had existed since 1944 through UNESA – the management pressure group in the electricity sector,⁴ to one of strict regulation in accordance with the energy policies of the different governments.

As the production and financial decisions of the companies when facing the energy and economic crises of the 70s⁵ were tightly controlled by the growing state intervention,⁶ the electricity companies devoted their main efforts towards conditioning, modulating, and qualifying the new regulatory system.⁷ Given the oligopolistic nature of the sector these strategies were channelled through its management institution (UNESA). The special characteristics of each company, the specific economic conditions of the period and the strengthening of intervention

make it possible to recognise, within their common front, particular actions which are of great interest when trying to understand, on the one hand, the business dynamic of a key sector in the economy, and on the other hand, the form of the particular 'traditional' model of regulation applied in Spain, upon which was later slowly established the current process of liberalisation.⁸

The structure of this article, beyond the present introduction, consists of four parts. The second part deals with how the new democratic state regained control over electricity policy and the crisis in the self-regulatory model of the Franco period. The third part describes the accelerated transition towards a new regulatory regime, and asks whether the restructuring was by agreement or whether it was enforced. This will be done by explaining the changes generated by: (i) the new system of operation (Explotación Unificada del Sistema Eléctrico Nacional Unified Operation of the National Electricity System) and transmission (Red Eléctrica de España—Spanish Electricity Network); (ii) the nuclear moratorium placed on Valdecaballeros and Lemóniz; (iii) the exchange of assets between companies, following the example of Hidrola and Iberduero; (iv) the establishment of a new tariff system (MLE); and the role of the Red Eléctrica as the tool for regulation. The fourth part outlines the first responses of the electricity companies in anticipation of the European market – the creation of Iberdrola and the behaviour of Endesa. The final part, as a conclusion, presents the main interpretations that I have made of the regulatory model established from a critical point of view, while remaining open to future debate.

2. The democratic state regains control of electricity policy: the crisis of the self-regulatory model

After the Spanish Civil War (1936–1939) the most important decisions on regulation of the system displayed a high degree of assent between the regulator and the companies. The administration directly accepted many of the approaches and demands of the electricity pressure group, UNESA (1944).⁹ The most representative example from the period in question was the participation of UNESA in the revision of the National Electricity Plan – Plan Eléctrico Nacional (PEN) (1974–1985), which, given the world energy panorama, strengthened the role of domestic resources and, above all, the development of nuclear energy.

As had become normal, in order to ensure the development of their electricity policy, the government achieved the commitment to invest from the companies in exchange for specific compensation and incentives (official credit, financial exemptions, etc.). This conduct became the norm throughout the PEN by means of the so-named Regimen de Acción Concertada (Decree 175/1975 of 13th February), which the Minister of Industry (Pérez Bricio) highlighted as an example of collaboration between the administration and the electricity companies, which "*in no sense is the State taking over*".¹⁰

However, after the end of 1977, different media started to voice the opinion that the sector should undergo a structural and institutional modification in accord with the new times. The establishment of a democratic regime, although imperfect, would bring into question the abusive role played by the electricity companies. The

⁸ The concept of 'traditional' regulation refers to the extensive type of intervention carried out by the State in the electricity companies, vertically integrated and organised under regional monopolies in Spain, which historically were established in many countries during most of the 20th century – related to the planning, operation and remuneration, until the establishment of 'new' regulation for the market (regulation for competition) connected with the processes of privatisation and liberalisation initiated in the last decades of the Twentieth century. Ariño and López de Castro [13].

⁹ The opinions of Arocena et al. [6, p. 389–90] on the pressure groups and the regulation are very interesting. For another perspective, Antolín [14] gives us a long-term and more contextualized version of this subject.

¹⁰ In the words of José María de Oriol y Urquijo (Chairman of Hidrola). From the Records of the Hidroeléctrica Española Board of Directors (RHBD), 2-1-1976, p. 16.

² Newbery [4] and Gilbert and Kahn [5].

³ Arocena et al. [6].

⁴ Gómez Mendoza et al. [7].

⁵ Garrués [8,9].

⁶ Segura [10] and Rivero [11].

⁷ Rodríguez Romero [12, p. 500], for example, admits that the bigger and more efficient businesses reinforced their strategies against the incentives plan set out in the MLE.

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