

# CRAVATH, SWAINE & MOORE LLP

WORLDWIDE PLAZA  
825 EIGHTH AVENUE  
NEW YORK, NY 10019-7475

TELEPHONE: (212) 474-1000  
FACSIMILE: (212) 474-3700

CITYPOINT  
ONE ROPEMAKER STREET  
LONDON EC2Y 9HR  
TELEPHONE: 44-20-7453-1000  
FACSIMILE: 44-20-7860-1150

WRITER'S DIRECT DIAL NUMBER

THOMAS R. BROME  
ROBERT D. JOFFE  
ALLEN FINKELSON  
RONALD S. ROLFE  
PAUL C. SAUNDERS  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
MAX R. SHULMAN  
STUART W. GOLD  
JOHN E. BEERBOWER  
EVAN R. CHESLER  
PATRICIA GEOGHEGAN  
D. COLLIER KIRKHAM  
MICHAEL L. SCHLER  
KRIS F. HEINZELMAN  
B. ROBBINS KIESSLING  
ROGER D. TURNER  
PHILIP A. GELSTON  
RORY O. MILLSON  
FRANCIS P. BARRON  
RICHARD W. CLARY  
WILLIAM P. ROGERS, JR.  
JAMES D. COOPER  
STEPHEN L. GORDON  
DANIEL L. MOSLEY

GREGORY M. SHAW  
PETER S. WILSON  
JAMES C. VARDELL, III  
ROBERT H. BARON  
KEVIN J. GREHAN  
STEPHEN S. MADSEN  
C. ALLEN PARKER  
MARC S. ROSENBERG  
WILLIAM B. BRANNAN  
SUSAN WEBSTER  
TIMOTHY G. MASSAD  
DAVID MERCADO  
ROWAN D. WILSON  
JOHN T. GAFFNEY  
PETER T. BARBUR  
SANDRA C. GOLDSTEIN  
PAUL MICHALSKI  
THOMAS G. RAFFERTY  
MICHAEL S. GOLDMAN  
RICHARD HALL  
ELIZABETH L. GRAYER  
JULIE A. NORTH  
ANDREW W. NEEDHAM  
STEPHEN L. BURNS  
KATHERINE B. FORREST

KEITH R. HUMMEL  
DANIEL SLIFKIN  
JEFFREY A. SMITH  
ROBERT I. TOWNSEND, III  
WILLIAM J. WHELAN, III  
SCOTT A. BARSHAY  
PHILIP J. BOECKMAN  
ROGER G. BROOKS  
WILLIAM V. FOGG  
FAIZA J. SAEED  
RICHARD J. STARK  
THOMAS E. DUNN  
JULIE SPELLMAN SWEET  
RONALD CAMI  
MARK I. GREENE  
SARKIS JEBEJIAN  
JAMES C. WOOLERY  
DAVID R. MARRIOTT  
MICHAEL A. PASKIN  
ANDREW J. PITTS  
MICHAEL T. REYNOLDS  
ANTONY L. RYAN  
GEORGE E. ZOBITZ  
GEORGE A. STEPHANAKIS  
DARIN P. MCATEE

GARY A. BORNSTEIN  
TIMOTHY G. CAMERON  
KARIN A. DEMASI  
LIZABETHANN R. EISEN  
DAVID S. FINKELSTEIN  
DAVID GREENWALD  
RACHEL G. SKAISTIS  
PAUL H. ZUMBRO  
JOEL F. HEROLD  
ERIC W. HILFERS  
GEORGE F. SCHOEN  
ERIK R. TAVZEL

SPECIAL COUNSEL  
SAMUEL C. BUTLER  
GEORGE J. GILLESPIE, III  
THOMAS D. BARR

OF COUNSEL  
ROBERT ROSENMAN  
CHRISTINE BESHAR

December 5, 2006

## Cash Offer by E.ON Zwölfte Verwaltungs GmbH for Ordinary Shares and ADSs of Endesa, S.A.

Dear Mr. Breheny and Ms. Chalk:

We<sup>1</sup> are writing on behalf of our client, E.ON Aktiengesellschaft (“E.ON”), a German stock corporation, and E.ON Zwölfte Verwaltungs GmbH (“E.ON 12” or the “Offeror”), a wholly owned subsidiary of E.ON. On February 21, 2006 (the “Announcement Date”), the Offeror announced its intention to make a cash tender offer to acquire all the outstanding ordinary shares, nominal value €1.20 per share (the “Shares”), of Endesa, S.A., a Spanish public limited company (“Endesa”), including Shares represented by American Depositary Shares (the “ADSs” and together with the Shares, the “Endesa Securities”). The Offeror proposes to make its offer to acquire all of the outstanding Endesa Securities pursuant to a dual offer structure, consisting of:

- a U.S. offer open to all holders of Shares who are resident in the United States and to all holders of ADSs, wherever located (the “U.S. Offer”); and
- a Spanish offer open to all holders of Shares, whether resident in Spain or outside Spain, if, pursuant to local laws and regulations applicable to such holders, they are permitted to participate in the Spanish offer (the “Spanish Offer” and together with the U.S. Offer, the “Offers”).

Pursuant to the Spanish Royal Decree 1197/1991, of 26 July, on Public Tender Offers for Securities (the “Decree on Tender Offers”), the Offeror filed an

<sup>1</sup> We are admitted to practice only in the State of New York. To the extent this letter summarizes propositions of Spanish law, we have relied on advice from Perez-Llorca, Spanish counsel to E.ON. Please refer to the letter from Perez-Llorca, dated December 5, 2006, attached hereto.

Explanatory Prospectus with the *Comisión Nacional del Mercado de Valores* (“CNMV”) on the Announcement Date to request authorization from the CNMV to commence a single offer to acquire all the outstanding Endesa Securities. In order to better satisfy certain U.S. and Spanish legal and regulatory requirements, the Offeror has amended the structure of its proposed offer to acquire the Shares to implement a dual offer structure. On March 29, 2006, the Offeror filed a revised Explanatory Prospectus with the CNMV relating solely to the Spanish Offer. In accordance with Sections 14(d) and 14(e) and applicable regulations promulgated pursuant thereto under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), and subject to any relief granted pursuant to this letter, the Offeror will be filing with the Securities and Exchange Commission (the “Commission”) a tender offer statement on Schedule TO (the “Schedule TO”) with respect to the U.S. Offer.

As a result of Spanish legal issues associated with the injunction obtained by Endesa against the offer by Gas Natural SDG, S.A. (“Gas Natural”) for Endesa, as further discussed below the Spanish Offer was immediately suspended following its approval by the CNMV and the Offeror will not commence the U.S. Offer until the Spanish Offer is open for acceptances.

As previously discussed with members of the staff (the “Staff”) of the Commission, we respectfully request that the Staff grant exemptive relief to the Offeror from the provisions of the following Sections of, and the Rules under, the Exchange Act:

- Rule 14d-10(a)(1), to permit the Offeror to make the Offers utilizing a dual offer structure pursuant to which the Offeror will make (i) the U.S. Offer that will be open to all holders of Shares who are resident in the United States and to all holders of ADSs, wherever located and (ii) the Spanish Offer that will be open to all holders of Shares, whether resident in Spain or outside Spain, if, pursuant to local laws and regulations applicable to such holders, they are permitted to participate in the Spanish Offer (including U.S. holders);
- Rule 14d-4(d)(2), to permit the Offeror, following the expiration of the U.S. Offer, to waive or reduce the minimum tender condition in accordance with the process prescribed by Spanish law and practice in the event that the minimum tender condition has not been satisfied, without extending the acceptance period of, or extending withdrawal rights under, the U.S. Offer;
- Rule 14d-7, to permit the U.S. Offer to expire, and to permit the Offeror to retain shares tendered pursuant to the U.S. Offer following expiration of the U.S. Offer without withdrawal rights under the U.S. Offer, pending satisfaction of the condition to the U.S. Offer that the Spanish Offer has been completed (as further defined below); and

- Section 14(d)(5), to permit the Offeror to terminate withdrawal rights in the U.S. Offer at the expiration of the U.S. Offer and during the period immediately following the expiration of the U.S. Offer until payment occurs after expiration in accordance with Spanish law and practice.

As previously discussed with members of the Staff, we also respectfully request that the Staff confirm that it will not recommend any enforcement action against the Offeror under Rule 14d-10(a)(2) as a result of the Offeror potentially reducing the offer price being paid in the U.S. Offer by the amount of any gross dividend paid by Endesa and under Rule 14e-1(b) as a result of the Offeror potentially reducing the offer price being paid in the U.S. Offer by the amount of any gross dividend paid by Endesa, in each case if such dividend is paid after the expiration of the U.S. Offer but prior to acceptance for payment under the U.S. Offer, without extending the acceptance period of, or withdrawal rights under, the U.S. Offer.

## BACKGROUND

### *Endesa*

Endesa is a limited liability corporation (*sociedad anónima*) organized under the laws of the Kingdom of Spain. Endesa's core business is energy, including the supply of natural gas. Endesa is the largest electricity company in Spain and Portugal in terms of installed capacity and market share in generation and distribution and one of the largest private-sector multinational electricity companies in Latin America. Endesa's electricity business is principally focused on Spain and Portugal, the Southern European region and Latin America. At December 31, 2005, Endesa had approximately 27,204 employees, approximately 53% of whom were located outside Spain and Portugal. In 2005, Endesa's net sales were approximately €17.5 billion, reported in accordance with International Financial Reporting Standards.

Endesa is a "foreign private issuer" as defined in Rule 3b-4 under the Exchange Act. The Shares are publicly traded on the Madrid, Barcelona, Bilbao and Valencia stock exchanges (collectively, the "Spanish Stock Exchanges") and the Santiago Off Shore Stock Exchange in Chile. The ADSs, which are evidenced by American Depositary Receipts, are listed on the New York Stock Exchange (the "NYSE"). Each ADS represents one Share. The Shares and the ADSs are registered pursuant to Section 12(b) of the Exchange Act.

### *E.ON*

E.ON is the second-largest industrial group in Germany, measured on the basis of market capitalization at December 31, 2005. The corporate purpose of E.ON is the supply of energy (primarily electricity and gas). At December 31, 2005, E.ON had

79,947 employees, approximately 43% of whom were employed in Germany. In 2005, E.ON's sales were approximately €56.4 billion, reported in accordance with accounting principles generally accepted in the United States.

E.ON's shares, all of which are ordinary shares, are listed on all seven German stock exchanges (Frankfurt, Berlin-Bremen, Düsseldorf, Hamburg, Hanover, Munich and Stuttgart). The principal trading market for E.ON's shares is the Frankfurt Stock Exchange, together with EXTRA (Exchange Electronic Trading System). In addition, E.ON American Depositary Shares ("E.ON ADSs") are listed on the NYSE under the symbol "EON" and are evidenced by E.ON American Depositary Receipts.

### ***Qualification for Tier II Exemptive Relief***

In separating the Offers into the U.S. Offer and the Spanish Offer and in conducting the U.S. Offer on the terms described in this letter, the Offeror intends to rely on Rule 14d-1(d) under the Exchange Act, which provides exemptive relief from otherwise applicable rules to persons conducting a tender offer under certain conditions ("Tier II Relief"). In order for an offer to qualify for Tier II Relief, (i) the subject company must be a foreign private issuer as defined in Rule 3b-4 under the Exchange Act and not an investment company, (ii) no more than 40% of the securities of the subject company sought in the offer may be held by holders who are resident in the United States and (iii) the offeror must comply, subject to any applicable exemptions, with all applicable U.S. tender offer rules and regulations. Furthermore, pursuant to Rule 14d-1(d)(1)(ii) under the Exchange Act and in accordance with the adopting release for the final rules on Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings (Final Release No. 33-7759) (the "Cross-Border Release"), if an offeror commences a tender offer during an ongoing tender offer for securities of the same class that is the subject of its offer, the second offeror is eligible to use the same Tier II Relief as the prior offeror, so long as all the conditions of the exemption, other than the limitation on U.S. ownership, are satisfied by the second offeror.

On February 28, 2006, Gas Natural filed a Registration Statement under cover of Form F-4 and on March 6, 2006, Gas Natural filed Amendment No. 1 thereto, in which Gas Natural stated that it will commence a U.S. offer and a Spanish offer, which taken together, are for 100% of the issued and outstanding Endesa Securities. On March 6, 2006, Gas Natural filed a Schedule TO commencing its U.S. offer. According to its Form F-4 and Schedule TO, Gas Natural is relying on Tier II Relief in conducting its U.S. offer and has presumed, as permitted by Instruction 3 to Rule 14d-1(d), that less than 40% of the Endesa Securities are held by U.S. holders.

## PROPOSED OFFER STRUCTURE

### *Dual Offer Structure*

As noted above, the Offeror has structured its proposed offer to acquire all of the outstanding Shares, including Shares represented by Endesa ADSs, as two separate offers, the U.S. Offer and the Spanish Offer. The Offeror's primary objective in proposing the dual offer structure is to satisfy various U.S. and Spanish legal and regulatory requirements that would otherwise be in conflict.

The U.S. Offer will be conducted in accordance with the U.S. federal securities laws, including Regulation 14D and Regulation 14E promulgated under the Exchange Act (including Rule 14d-1(d)), except to the extent of any exemptive relief granted pursuant to this letter. The Spanish Offer will be conducted in accordance with the provisions of Spanish Law 24/1988, of 28 July, on the Securities Market, the Decree on Tender Offers, and other applicable legislation.

The Offeror has structured the Offers such that the procedural terms of the U.S. Offer will be at least as favorable as the procedural terms of the Spanish Offer and such that the total economic value received by shareholders tendering into the Offers will be the same. Taking those principles into account, the primary differences between the Offers are:

- Subject to relief requested under this letter, holders of Shares or ADSs tendering under the U.S. Offer will have withdrawal rights provided by U.S. law. The Spanish Offer generally will not allow withdrawal of tendered Endesa Shares, subject to certain exceptions described below.
- Pursuant to Spanish legal requirements, the U.S. Offer is conditioned on the completion of the Spanish Offer. The Spanish Offer is not conditioned on the completion of the U.S. Offer.
- If the offer period under the U.S. Offer is extended beyond the expiration of the offer period under the Spanish Offer, holders of Endesa Securities tendering into the U.S. Offer may receive payment after holders of Shares tendering into the Spanish Offer.
- The offer price in the Offers is €25.405 per Endesa Security in cash, without interest. The Offeror has announced its intention to increase the Offer price to €35 per Endesa Security in cash, without interest. Although this announced increase is binding on the Offeror as a matter of Spanish law, this increase will not take effect until it is approved by the CNMV. This increase will take effect for both Offers at the same time. The consideration received under the U.S. Offer will be converted by the U.S. tender agent from euros into U.S. dollars at the exchange rate obtainable

on the spot market in New York at approximately noon (New York time) on the date the consideration is made available by the Offeror to the U.S. tender agent for delivery. Also, as discussed below and subject to relief requested under this letter, the offer price in the US Offer and Spanish Offer will be reduced in the event that Endesa distributes dividend before the date of settlement of the relevant Offer.

- Pursuant to Spanish legal requirements, the Offeror has arranged bank guarantees of its payment obligations under the Spanish Offer. Those guarantees do not cover the Offeror's payment obligations under the U.S. Offer.<sup>2</sup>

In addition to filing the U.S. Offer documents with the Commission, the Offeror will disseminate the U.S. Offer documents upon commencement in accordance with Rule 14d-4(a)(2), (x) by means of a summary advertisement of the U.S. Offer in a newspaper or newspapers and (y) mailing by first class mail or otherwise furnishing with reasonable promptness the U.S. Offer documents to any security holder who requests such documents pursuant to the summary advertisement.

The Offeror will disseminate the Spanish Offer documents outside the United States in accordance with Spanish law and practice. The Spanish Offer documents and the annexes thereto will not be mailed into the United States or otherwise disseminated in the United States by or on behalf of the Offeror, except that, in order to comply with Spanish law, the Offeror is required to send the Spanish Offer documents in the Spanish language to each stock exchange on which Shares are listed, including the NYSE. Free copies of the Spanish Offer documents will be publicly available in the Spanish language at the registered addresses of E.ON, Endesa, the CNMV, the Spanish Stock Exchange authorities and the Spanish offer agent identified in the Spanish Offer.

An English language translation of the Spanish Offer documents will be made available outside the United States, because an English translation is of critical importance to the substantial number of Endesa shareholders located in the United Kingdom and otherwise located outside the United States and Spain. In addition to the need for an English language translation for United Kingdom investors, we note that English is a standard language of communication in financial markets and that Endesa, as one of Spain's largest companies, has a substantial shareholder base outside Spain. We also note that E.ON's pre-commencement communications with institutional and other investors outside Spain have been conducted primarily in the English language. The

---

<sup>2</sup> We submit that this difference is not material. First, E.ON's bank financing is available to fund purchases under the U.S. Offer as well as the Spanish Offer. Second, the U.S. Offer is not subject to any financing condition, and E.ON clearly has the balance sheet strength to make both Offers. Finally, if (as is anticipated) the U.S. Offer in fact has the same expiration date as the Spanish Offer, by virtue of the settlement mechanism between the depository for the U.S. Offer and Santander Investment, S.A., which is acting as settlement agent for the Offeror in the Spanish Offer, the bank guarantees will in fact support the obligations of the Offeror under the U.S. Offer.

English language translation of the Spanish Offer documents will carry a legend which states that the documents relate solely to the Spanish Offer and that the documents may not be sent into the United States. The Spanish Offer documents (excluding annexes) will be publicly available on the websites of E.ON, Endesa and the CNMV in the Spanish language. An English language translation of the Spanish Offer documents (excluding annexes) will also be publicly available on the website of E.ON, but any investors accessing such English language documents through E.ON's website will be required to confirm that they are not residents of the United States or currently located in the United States.

E.ON will not take any steps to encourage U.S. holders of Shares to tender into the Spanish Offer instead of the U.S. Offer. E.ON will include disclosure in the U.S. Offer documents that makes clear that withdrawal rights will not be available to any U.S. holder of Shares who tenders into the Spanish Offer, except for the limited circumstances provided under Spanish law. The U.S. Offer documents will explain that a separate Spanish Offer is being made and will describe which shareholders are eligible to participate in each Offer, the differences between the Offers and any relief granted pursuant to this letter. The U.S. Offer documents will not provide information to U.S. holders as to the procedures for tendering into the Spanish Offer.

### ***Consideration***

The Offeror intends to offer €25.405 in cash, without interest, for Share and each ADS validly tendered under the U.S. Offer and €25.405 in cash, without interest, for each Share validly tendered under the Spanish Offer. The Offeror has announced its intention to increase the Offer price to €35 per Share and ADS in cash, without interest. Although this announced increase is binding on the Offeror as a matter of Spanish law, this increase will not take effect until it is approved by the CNMV. This increase will take effect for both Offers at the same time.

The consideration received under the U.S. Offer will be converted by the U.S. tender agent from euros into U.S. dollars at the exchange rate obtainable on the spot market in New York at approximately noon (New York time) on the date the consideration is made available by the Offeror to the U.S. tender agent for delivery. The charges that the U.S. tender agent will incur in converting the cash consideration into U.S. dollars will be reasonable and customary and will be deducted from the consideration to be paid in the U.S. Offer.

In the event that Endesa distributes any dividend after the date the U.S. Offer commences and before acceptance for payment under the U.S. Offer, the consideration offered per Share and per ADS in the U.S. Offer shall be reduced by an amount equivalent to the gross dividend paid per Share. Likewise, in the event that Endesa distributes any dividend before the completion of the Spanish Offer, the consideration offered per Share in the Spanish Offer shall be reduced by an amount equivalent to the gross dividend paid per Share. In each case, however, due to Spanish

takeover regulations the consideration offered in the U.S. Offer and Spanish Offer may not be reduced below the value of the consideration offered at the time by Gas Natural.

### ***Duration of the Offer***

As noted above, it is the Offeror's intention to make and maintain the same offer periods and settlement dates for the U.S. Offer and the Spanish Offer.

Under Spanish law, the maximum acceptance period for the Spanish Offer will be one month from the date on which the Spanish Offer becomes open for acceptance, subject to extension (i) pursuant to Articles 35 and 36 of the Decree on Tender Offers if another competing offer is made for Endesa and (ii) pursuant to Article 19 of the Decree on Tender Offers, by the CNMV in order to allow Endesa's shareholders to adopt the resolutions upon which the Offer is conditioned. The CNMV approved the Spanish Offer and the Spanish Offer document was published pursuant to Spanish law on November 16, 2006. However, because the competing offers by Gas Natural are subject to an injunction, the CNMV immediately suspended the Spanish Offer (i.e., acceptances under the Spanish Offer are not permitted) until that injunction is lifted or Gas Natural withdraws its offers, which Gas Natural has the right to do following the approval by the CNMV of the Spanish Offer. The one month acceptance period under Spanish law will start upon the Spanish Offer becoming capable of acceptance. Under Spanish tender offer rules and pursuant to an announcement made by the CNMV in relation to the term for competing offers, no further competing offers for Endesa are permitted to be made.

Under U.S. law, in the event that the Offeror makes changes to the terms of the U.S. Offer, the Offeror may be required to disseminate additional offering materials and extend the acceptance period for the U.S. Offer. Accordingly, it is possible that the Spanish Offer may be completed prior to the U.S. Offer if the U.S. Offer is required to be extended. If the offer period under the U.S. Offer is extended beyond the expiration of the offer period under the Spanish Offer, holders of Endesa Securities tendering into the U.S. Offer may receive payment after holders of Shares tendering into the Spanish Offer.

### ***Conditions to the Offer***

The Offers are subject to the following conditions (the "Conditions"):

- receipt of valid acceptances of at least an aggregate of 50.01% of the Shares (including Shares represented by ADSs) in the Offers;
- modification of Article 32 of Endesa's Articles of Association, removing all limitations and restrictions regarding the maximum number of votes capable of being exercised with respect to each Share;



- modification of Articles 37 and 38 of Endesa's Articles of Association, removing the requirements regarding classes of Directors and majority composition of the Board of Directors of Endesa; and
- modification of Article 42 of Endesa's Articles of Association, eliminating the qualifications required to be appointed Director or Managing Director (Consejero Delegado) other than the non-concurrence of legal prohibitions.

In addition, pursuant to Spanish legal requirements, the U.S. Offer must be conditioned on the completion of the Spanish Offer. Completion of the Spanish Offer will occur after the expiration of the Spanish Offer and the count of the Endesa Securities tendered into the Offers to determine whether or not the minimum tender condition has been met, as discussed below. Furthermore, under Spanish law, the Spanish Offer may be terminated by the Offeror if so permitted by the CNMV in the event of exceptional circumstances which make the Spanish Offer not possible and that are beyond the control of the Offeror.

### ***Results of the Offer***

In order for the Endesa Securities tendered to the U.S. Offer to be counted for purposes of determining the satisfaction of the aggregate minimum tender condition, following the expiration of the U.S. Offer the U.S. tender agent must cause its custodian bank in Spain to irrevocably tender, with an irrevocable order to transfer, the Endesa Securities tendered into the U.S. Offer to the governing bodies of the Spanish Stock Exchanges.

Under Spanish law, it is not possible to withdraw acceptances from an offer under any circumstances following expiration of an offer. Spanish depositaries are held responsible for the delivery of shares tendered into an offer on behalf of their clients and, thus, could be held liable for any transfer of shares which have been tendered into an offer, unless and until such tendered shares are either accepted for payment and paid for by the bidder or the offer is withdrawn and such tendered shares are returned to the tendering shareholders.

In accordance with Spanish law and practice, the Spanish Stock Exchanges must notify the CNMV of the number of Endesa Securities that have been validly tendered under the Offers within five days from the end of the offering period. Based on the information so provided, within the following three days the CNMV will inform (the "CNMV Notification") the Offeror, Endesa and the Governing Bodies of the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges (the "Relevant Spanish Exchanges") of the successful or unsuccessful outcome of the Spanish Offer. The CNMV Notification will be disclosed by the Offeror in an amendment to the Schedule TO. If the CNMV Notification is that the Spanish Offer was not successful, the

Offeror will promptly return tendered Endesa Securities. If the CNMV Notification is that the Spanish Offer was successful, the Relevant Spanish Exchanges will, no later than the next working day, publish the favorable outcome of the Spanish Offer in the Quotation Bulletin of the Relevant Spanish Exchanges, whereupon the Offeror will become bound to purchase the Shares tendered under the Spanish Offer, which will then settle in accordance with the normal settlement cycle for transactions through the Relevant Spanish Exchanges (T+3). The date upon which the publication appears in the Quotation Bulletin is referred to as the “transaction date” for the Spanish Offer, and the Offeror becoming bound to purchase the Shares tendered under the Spanish Offer is referred to as the “completion” of the Spanish Offer.

### ***Waiver of the Minimum Tender Condition***

For Spanish legal reasons, the Offeror is required to determine whether or not to reduce or waive the minimum tender condition under the Offers no later than the date of the CNMV Notification. In order to minimize the discrepancies between Spanish and U.S. laws and practices, subject to the exemptive relief requested under this letter and as further discussed below, the Offeror intends to structure the U.S. Offer such that the Offeror will announce within at least five U.S. business days prior to the scheduled expiration date of the U.S. Offer that it may reduce or waive the minimum tender condition after the expiration of the U.S. Offer.

### ***Withdrawal Rights under the Offers***

The U.S. Offer will be structured to provide the withdrawal rights required by Section 14(d)(5) of and Rule 14d-7 under the Exchange Act, subject to the relief granted pursuant to this letter.

The Spanish Offer will be structured to provide withdrawal rights to the extent required by applicable Spanish law. Pursuant to Spanish law, holders of Shares who tender into the Spanish Offer will not have withdrawal rights unless: (i) a competing offer is made, (ii) an improvement in the terms of the first offer and/or the competing offer is made or (iii) the Offeror waives any condition of the Offers which requires the passing of a resolution by Endesa’s shareholders. Under the Spanish takeover regime, in the event a competing offer is made by a third party, any acceptances of the first offer made prior to the commencement of the competing offer may be withdrawn until the expiration of the offers. If the first offeror and/or the competing offeror submit improved terms of their respective offers to the CNMV, any acceptances of the first offer and/or the competing offer made prior to the publication of any improved terms of the respective offers may be withdrawn at any time until the expiration of the offers. Under Spanish law, however, any Shares tendered after the publication of the improved terms of the first offer and/or the competing offer cannot be withdrawn.

For purposes of the discussion above, the Spanish Offer will be considered to be a competing offer for Endesa on account of the existing offer for Endesa by Gas Natural. Under the Spanish takeover regime, once E.ON 12 commences the Offers, any acceptances of the Gas Natural offers made prior to the commencement of E.ON 12's Offers may be withdrawn until the expiration of the Spanish Offer and Gas Natural's Spanish offer. However, as noted above, under Spanish tender offer rules and pursuant to an announcement made by the CNMV in relation to the term for competing offers, no further competing offers for Endesa are permitted to be made.

## **DISCUSSION OF ISSUES AND REQUESTED RELIEF**

There are points of conflict between U.S. tender offer rules and Spanish laws and practice governing tender offers. The Offeror believes the best method for reconciling these conflicts is a dual offer structure with the terms and conditions described in this letter, subject to the relief requested pursuant to this letter.

### ***Dual Offer Structure – Rule 14d-10(a)(1)***

Rule 14d-10(a)(1) under the Exchange Act provides that no person shall make a tender offer unless the offer is open to all securityholders of the class of securities subject to the tender offer. As indicated above, the Spanish takeover regime requires that a tender offer for a particular class of securities must be made to all holders (including U.S. holders) and must comply with certain disclosure, dissemination, timing and other conditions that differ in some respects from U.S. rules and regulations.

Rule 14d-1(d)(2) provides exemptive relief from Rule 14d-10(a)(1) and allows a bidder that qualifies for Tier II Relief to separate its offer into two offers: one offer made only to U.S. holders and another offer made only to non-U.S. holders. However, literal application of Rule 14d-1(d)(2) would not exempt the dual offer structure described in this letter. In the Offers, for Spanish legal reasons the Spanish Offer is made to all holders of Shares (not to all non-U.S. holders) and the U.S. Offer is made to U.S. holders of Shares and to all holders of ADSs, wherever located (not to all U.S. holders). We note that the Offeror has only deviated from the offer structure described in Rules 14d-1(d)(2) and 14d-10(a)(1) to the extent necessary to comply with Spanish and U.S. legal requirements.

We hereby respectfully request on behalf of the Offeror relief from Rule 14d-10(a)(1) of the Exchange Act to permit the Offeror to make the Offers utilizing a dual offer structure pursuant to which the Offeror will make (i) the U.S. Offer that will be open to all holders of Shares who are resident in the United States and to all holders of ADSs, wherever located and (ii) the Spanish Offer that will be open to all holders of Shares, whether resident in Spain or outside Spain, if, pursuant to local laws and regulations applicable to such holders, they are permitted to participate in the Spanish Offer (including U.S. holders).

The Staff has permitted other similar dual offer structures in circumstances where the exemption under Rule 14d-1(d)(2) was not available. We note the Staff's grant of an exemption from Rule 14d-10(a)(1) to permit Gas Natural to make its U.S. offer available to all holders of ADSs, wherever located, and all holders of Shares who are U.S. holders and to make its Spanish offer available to all holders of Shares (including U.S. holders). *See* Gas Natural SDG, S.A.'s Exchange Offer for Endesa, S.A. (March 6, 2006).<sup>3</sup>

***Reduction or Waiver of the Minimum Tender Condition – Rule 14d-4(d)(2)***

As described above, acceptances of the U.S. Offer and the Spanish Offer will be counted on an aggregate basis to determine whether the minimum tender condition has been met. For Spanish legal reasons, the Offeror is required to determine whether or not to reduce or waive the minimum tender condition no later than the date of the CNMV Notification. This notification will be made no later than eight days after the expiration date of the Spanish Offer.

Rule 14d-4(d)(2) under the Exchange Act provides that, following a material change to a registered securities offer, such offer must remain open for five U.S. business days from the date that the material changes to the tender offer materials are disseminated to securityholders (and, as a result, securityholders would continue to have withdrawal rights during such five business day period under Rule 14d-7). Although Rule 14d-4(d)(2) applies only to registered securities offers by its terms, we understand that the Staff has taken the position that the provisions of Rule 14d-4(d)(2) represent general requirements applicable to all tender offers subject to Section 14(d) of the Exchange Act. We also understand that the Staff has taken the position that the waiver of a minimum tender condition to an offer constitutes a “material change” to a tender offer.

Accordingly, absent the relief requested under Rule 14d-4(d)(2) the Offeror would not be permitted to waive or reduce the minimum tender condition in

---

<sup>3</sup> *See also* In the Matter of Banco Bilbao Vizcaya Argentaria, S.A. for Series B Shares and American Depositary Shares of Grupo Financiero BBVA Bancomer, S.A. de C. V (February 2, 2004); In the Matter of Tender Offer by Fintech Mobile Inc. for Grupo Iusacell, S.A. de C.V (July 23, 2003) (Mexico); In the Matter of Tender Offer by Movil Access, S.A. de C. V for Grupo Iusacell, S.A. de C.V. (June 24, 2003) (Mexico); In the Matter of The Pepsi Bottling Group, Inc., Bottling Group LLC and PBG Grupo Embotellador Hispano-Mexicano S.L.'s Tender Offers for Shares, CPOs and GDSs of Pepsi-Gemex, S.A. de C. V. (October 14, 2002) (Mexico); In the Matter of Southern Cross' Partial Offer for Shares and ADSs of Telex-Chile S.A. (March 5, 2002) (Chile); In the Matter of The AES Corporation Tender Offer for Shares and ADSs of Compania Anonima Nacional Telefonos de Venezuela (CANTV) (October 22, 2001) (Venezuela); In the Matter of Ivax Corp.'s Second Step Tender Offer for All Shares and ADSs of Laboratorio Chile S.A. (August 3, 2001) (Chile); In the Matter of Ivax Corp.'s Tender Offer for Shares and ADSs of Laboratorio Chile S.A. (June 5, 2001) (Chile); and In the Matter of Exchange Offers by Telefonica S.A. for Telecomunicacoes de Sao Paulo S.A., Tele Sudeste Celular Participacoes S.A. (June 5, 2000) (Brazil and Peru).

accordance with Spanish law after expiration of the U.S. Offer, because it would not be able to “reopen” the U.S. Offer in order to comply with the five-day extension requirement under Rule 14d-4(d)(2) and provide withdrawal rights under Rule 14d-7.

As described above, acceptances of the U.S. Offer and the Spanish Offer will be counted on an aggregate basis to determine whether the minimum tender condition has been met. As a result, requiring the U.S. Offer to be extended past the expiration date of the Spanish Offer, or permitting withdrawals under the U.S. Offer during the period while the results of both Offers are being counted, would conflict with the counting procedures envisaged under Spanish law and would enable withdrawals from the U.S. Offer during the counting procedures to frustrate the success of the Offers by affecting whether or not the aggregate minimum tender condition is met.

In light of increasingly aggressive and sophisticated trading strategies by hedge funds in Europe and the United States, any benefits of requiring the Offeror to extend the U.S. Offer and provide withdrawal rights under these circumstances are outweighed by the significant risk that the Offeror could become contractually required to purchase Endesa Shares in the Spanish Offer even though the aggregate minimum tender condition may no longer be satisfied at the time of expiration of the U.S. Offer. Moreover, requiring different expiration dates for the Offers would conflict with the principles underlying Staff’s positions in granting relief necessary to permit multiple offer structures—namely, that the procedural and economic terms should be as equivalent as practically possible.

In addition, we note that in determining whether to make the critical decision to reduce the minimum tender condition at the time the offering period (or any extensions thereof) expires, the Offeror and its advisors need to have full information about the number of Endesa Securities tendered to that point and any information that they can obtain as to the ownership of the Endesa Securities that have not been tendered into the Offers, including the number of securities believed to have been tendered into the competing offer of Gas Natural. Because of the tendency in Spanish tender offers for the bulk of the shares to be tendered at the end or close to the end of the offering period, and due to the centralized counting and reporting procedure, this information will not be available until after the end of the offering period. On account of Spanish law and customary Spanish practice as described above, the Offeror will not be in a position to make an informed decision whether to reduce or waive the minimum tender condition prior to the expiration of the offering period.

Under an interpretation of the Commission regarding changes to minimum tender conditions that is set forth in the Cross-Border Release, the Commission will not object if bidders meeting the requirements for Tier II Relief reduce or waive the minimum tender condition without extending withdrawal rights during the remainder of the offer (unless an extension is required by Rule 14e-1), if certain conditions are met. We understand that the Staff has taken the position that this interpretation, however, allows the termination of withdrawal rights only once all conditions to the offer are

satisfied. See Manual of Publicly Available Telephone Interpretations, Third Supplement, II. Cross Border Release, A. Tier II Question (SEC Division of Corporation Finance, July 2001). Thus, the relief provided by the Commission's interpretation regarding changes to minimum tender conditions would not technically apply in the case of the Offers, because the minimum tender condition under the Offers will not be reduced or waived until after termination of withdrawal rights upon expiration of the U.S. Offer.

The Offeror nevertheless intends to comply with the conditions described in the Cross-Border Release noted the preceding paragraph. At least five U.S. business days prior to the scheduled expiration date of the U.S. Offer, the Offeror will announce that it may reduce or waive the minimum tender condition. The Offeror will disseminate this announcement through a press release and by placing an advertisement in a newspaper of national circulation in the United States, which press release and advertisement will state the exact percentage to which the minimum tender condition may be reduced or waived and state that a reduction or waiver is possible and advise shareholders to withdraw their tenders immediately if their willingness to tender into the U.S. Offer would be affected by a waiver or reduction of the minimum tender condition. The Offeror will file this announcement with the Commission via the EDGAR filing system on the date that the announcement is made. The Offeror will declare its actual intentions once it is required to do so under Spanish tender offer regulations. During the five-day period after the Offeror makes the announcement described in this paragraph, the U.S. Offer will be open for acceptances and holders of Shares and ADSs who have tendered their securities in the U.S. Offer will be entitled to withdraw their Endesa Securities. The U.S. Offer documents will also describe the procedure for reducing or waiving the minimum tender condition. Additionally, the U.S. Offer documents will include a discussion on the implications of the waiver of the minimum tender condition, specifically, the implications of the Offeror being a significant minority shareholder rather than a controlling shareholder, if the minimum tender condition is reduced.

We hereby respectfully request on behalf of the Offeror relief from Rule 14d-4(d)(2) under the Exchange Act to permit the Offeror, following the expiration of the U.S. Offer, to waive or reduce the minimum tender condition in accordance with the process prescribed by Spanish law and practice in the event that the minimum tender condition has not been satisfied, without extending the acceptance period of, or extending withdrawal rights under, the U.S. Offer.

With respect to the relief sought from Rule 14d-4(d)(2), we note the Staff's grant of an exemption from Rule 14d-4(d)(2) to permit Gas Natural to waive or reduce the minimum tender condition after the expiration of its U.S. offer, without extending the initial offer period and withdrawal rights after such waiver or reduction, in accordance with Spanish law and regulation, subject to Gas Natural providing the

procedural and disclosure protections outlined in its request letter. *See* Gas Natural SDG, S.A.'s Offer for Endesa, S.A. (March 6, 2006).<sup>4</sup>

### ***U.S. Offer Conditioned on Completion of Spanish Offer – Rule 14d-7***

We understand that the Staff has taken the position that, in order to terminate withdrawal rights in an offer, certain conditions must be satisfied or waived and the bidder must declare the offer wholly unconditional. *See e.g.*, Manual of Publicly Available Telephone Interpretations, Third Supplement, II. Cross-Border Release, A. Tier II Question (SEC Division of Corporation Finance, July 2001). We understand that the Staff bases its position on Rule 14d-7 under the Exchange Act, which provides that any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer, request or invitation remains open. We also understand that the Staff has taken the position that an offer that remains subject to certain post-expiration conditions might be deemed to “remain open” and therefore, securityholders would be entitled to withdrawal rights until the condition is satisfied.

As described above, acceptances of the U.S. Offer and the Spanish Offer will be counted on an aggregate basis to determine whether the minimum tender condition has been met, and subject to the relief granted pursuant to this letter, the Offeror will determine whether to reduce or waive the minimum tender condition after the expiration of the U.S. Offer. Also, as described above, the U.S. Offer is conditioned on the completion of the Spanish Offer.

Accordingly, absent the relief requested under Rule 14d-7, the Offeror would not be permitted to allow the U.S. Offer to expire on the same date as the Spanish Offer, because the required condition that the Spanish Offer be completed would remain open past the expiration date of the U.S. Offer. As a result, requiring the U.S. Offer to be extended past the expiration date of the Spanish Offer, or permitting withdrawals under the U.S. Offer during the period while the results of both Offers are being counted, would conflict with the counting procedures envisaged under Spanish law and would enable withdrawals from the U.S. Offer during the counting procedures to frustrate the success of the Offers by affecting whether or not the aggregate minimum tender condition is met. Moreover, as noted above, under Spanish law, it is not possible to withdraw acceptances from an offer under any circumstances following expiration of an offer, including Shares tendered into the U.S. Offer that will be irrevocably tendered to the governing bodies of the Spanish Stock Exchanges by the U.S. tender agent. Thus, providing withdrawal rights in the U.S. Offer under Rule 14d-7 would, as of the expiration of the Spanish Offer, constitute a direct conflict with the inability to withdraw tendered Shares after the expiration of the Spanish Offer pursuant to Spanish law and practice. Further, requiring

---

<sup>4</sup> *See also* SERENA Software, Inc. Offer for Shares and ADSs of Merant plc (April 13, 2004); Amerada Hess Corporation Offer for Shares and ADSs of LASMO plc (December 13, 2000); and The Royal Bank of Scotland Group plc Offer for Shares and ADSs of National Westminster Bank PLC (December 27, 1999).

different expiration dates for the Offers would also conflict with the principles underlying the Staff's positions in granting relief necessary to permit multiple offer structures—namely, that the procedural and economic terms should be as equivalent as practically possible. We also point out that, subject to the CNMV and the Relevant Spanish Exchanges complying with their Spanish legal obligations, the only “conditions” to completion of the Spanish Offer are also express conditions to the Offeror's obligations under the U.S. Offer and, except to the extent of the Staff's relief pursuant to this letter with respect to the minimum tender condition, will be satisfied or waived prior to expiration of the U.S. Offer.

We hereby respectfully request on behalf of the Offeror relief from Rule 14d-7 of the Exchange Act to permit the U.S. Offer to expire, and to permit the Offeror to retain shares tendered pursuant to the U.S. Offer following expiration of the U.S. Offer without extending withdrawal rights under the U.S. Offer, pending satisfaction of the condition to the U.S. Offer that the Spanish Offer has been completed.

With respect to the relief sought from Rule 14d-7, we note the relief granted by the Staff to Nordic Telephone Company, in order to permit the condition related to the acquisition of certain employee shares pursuant to the compulsory acquisition to survive the expiration of the Offer. *See* Nordic Telephone Company Tender Offer for Shares and ADSs of TDC A/S (January 3, 2006). We also note that the requested relief is consistent with the other requests for relief from Rule 14d-7 under and Section 14(d)(5) of the Exchange Act discussed above.

#### ***Withdrawal Rights – Section 14(d)(5)***

Section 14(d)(5) of the Exchange Act provides, among other things, that securities tendered in a tender offer may be withdrawn at any time after 60 days from the date of the original tender offer if the securities have not been accepted for payment by the bidder. It is possible that the 60th day from commencement of the Offers may occur on or after the expiration date of the Offers but prior to the date payment occurs after expiration of the Offers.

As described above, acceptances of the U.S. Offer and the Spanish Offer will be counted on an aggregate basis to determine whether the minimum tender condition has been met. As a result, permitting withdrawals under the U.S. Offer during the period while the results of both Offers are being counted would conflict with the counting procedures envisaged under Spanish law and would enable withdrawals from the U.S. Offer during the counting procedures to frustrate the success of the Offers by affecting whether or not the aggregate minimum tender condition is met. Moreover, as noted above, under Spanish law, it is not possible to withdraw acceptances from an offer under any circumstances following expiration of an offer, including Shares tendered into the U.S. Offer which will be irrevocably tendered by the U.S. tender agent to the governing bodies of the Spanish Stock Exchanges. Thus, the withdrawal rights provided by Section 14(d)(5) would, as of the expiration of the Offers, constitute a direct conflict



with the inability to withdraw tendered Shares after the expiration of the Offers pursuant to Spanish law and practice.

We hereby respectfully request on behalf of the Offeror relief from Section 14(d)(5) of the Exchange Act to permit the Offeror to terminate withdrawal rights in the U.S. Offer at the expiration of the U.S. Offer and during the period immediately following the expiration of the U.S. Offer until payment occurs after expiration in accordance with Spanish law and practice.

With respect to the relief sought from Section 14(d)(5), we note the Staff's grant of an exemption from Section 14(d)(5) to permit Gas Natural to terminate withdrawal rights in its U.S. offer at the expiration of its U.S. offer. *See* Gas Natural SDG, S.A.'s Exchange Offer for Endesa, S.A. (March 6, 2006).<sup>5</sup> We also believe that this relief is consistent with the Commission's guidance set forth in the Cross Border Release and the principle underlying Rule 14d-1(d)(2)(iv), which provides certain Tier II Relief to allow payment to be made in accordance with the requirements of home jurisdiction law or practice.

***Reduction of Offer Price if a Dividend is Paid by Endesa – Rules 14e-1(b) and 14d-10(a)(2)***

As described above, the consideration under the U.S. Offer will be reduced by an amount equivalent to any gross dividend paid by Endesa per Share prior to acceptance for payment under the U.S. Offer. This adjustment mechanism is designed to ensure that shareholders tendering into the U.S. Offer will receive the same total economic value, whether or not a dividend is paid by Endesa as shareholders tendering into the Spanish Offer. Bidders establish such price adjustment mechanisms in Spanish offers, and the CNMV permits such mechanisms, because under applicable Spanish law the bidder would not otherwise be permitted to reduce the offer price in response to a dividend paid by the target — such as the special dividend paid by Endesa in excess of €2 per Share following the commencement of Gas Natural's unsolicited offer for Endesa.

Endesa has announced a €0.50 per share dividend to be paid on January 2, 2007, to Endesa Shareholders of record on that date. Although as a technical matter, Spanish corporations may pay dividends on a later date than the record date, most Spanish public companies pay regular dividends on the relevant record date (about an extraordinary transaction such as a capital increase) and Endesa follows that practice for its regular dividends. As a matter of Spanish dividend and transaction settlement practices, the Offeror will become entitled to any Endesa dividend that has a record date

---

<sup>5</sup> *See also* In the Matter of BCP Crystal Acquisition GmbH & Co, et al for Celanese AG (February 3, 2004); In the Matter of Alcan Inc. for Common Shares, ADSs, Bonus Allocation Rights and OCEANES of Pechiney (October 6, 2003); and In the Matter of Serono S.A. Offer for All Outstanding Ordinary Shares, ADSs, OCEANES and Warrants of Genset (September 12, 2002).

after the transaction date and payable in respect of Shares (including Shares underlying ADSs) purchased in the Spanish Offer.

Rule 14e-1(b) under the Exchange Act provides that, following an increase or decrease in the consideration offered under a tender offer, the offer must remain open for ten U.S. business days from the date that notice of the increase or decrease is first published or sent or given to securityholders (and, as a result, securityholders would continue to have withdrawal rights during that ten U.S. business day period). The Commission has taken the position that if the consideration offered in a tender offer is reduced as a result of a dividend or other distribution made by the target company, then the reduction constitutes a reduction in the consideration offered for purposes of Rule 14e-1(b). See Commission Guidance on Mini-Tender Offers and Limited Partnership Tender Offers (Release No. 34-43069).

Rule 14d-10(a)(2) under the Exchange Act provides that no person shall make a tender offer unless the consideration paid to any securityholder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.

If Endesa pays a dividend prior to the expiration of the U.S. Offer, no relief would be required under Rule 14e-1(b) in order for the offer price in the U.S. Offer to be reduced by the gross amount of the dividend. The Offeror would reduce the offer price in the U.S. Offer by the gross amount of the dividend and extend the U.S. Offer to the extent required by Rule 14e-1(b).

The Offeror is requesting no-action relief under Rules 14e-1(b) and 14d-10(a)(2) in order to ensure that, if Endesa pays a dividend prior to acceptance for payment under the U.S. Offer, shareholders tendering into the U.S. Offer will receive the same total economic value as shareholders tendering into the Spanish Offer:

- If the Endesa dividend is paid *before* transaction date of the Spanish Offer (which could occur if the U.S. Offer and Spanish Offer have the same expiration dates), then the offer price in the Spanish Offer will be reduced by the gross amount of the dividend. However, absent the relief requested under Rule 14e-1(b) the Offeror would not be permitted to correspondingly reduce the offer price in the U.S. Offer, because it would not be able to “reopen” the U.S. Offer in order to comply with the ten-day extension requirement under Rule 14e-1(b). Accordingly, absent relief, the total economic value received by shareholders tendering into the U.S. Offer (the *full* offer price plus the dividend) would exceed the total economic value received by shareholders tendering into the Spanish Offer (the *reduced* offer price plus the dividend).
- If the Endesa dividend is paid *after* transaction date of the Spanish Offer (which could occur if the expiration date of the U.S. Offer is extended beyond that of the Spanish Offer), then shareholders tendering into the

Spanish Offer will not receive the dividend and the offer price in the Spanish Offer will not be reduced by the gross amount of the dividend. However, shareholders tendering into the U.S. Offer *would* receive the dividend. Absent the relief requested under Rule 14e-1(b) and Rule 14d-10(a)(1), the Offeror would not be permitted to correspondingly reduce the consideration offered in the U.S. Offer, because under Rule 14e-1(b), if the dividend was paid after expiration of the U.S. Offer, the Offeror would not be able to “reopen” the U.S. Offer in order to comply with the ten-day requirement under Rule 14e-1(b) and because under Rule 14d-10(a)(2) the offer price offered under the U.S. Offer would be nominally less than the offer price paid under the Spanish Offer. Accordingly, absent relief, the total economic value received by shareholders tendering into the U.S. Offer (the full offer price *plus* the dividend) would exceed the total economic value received by shareholders tendering into the Spanish Offer (the full offer price).

We note that the total economic value received by shareholders in both Offers would be the same in all circumstances, if the requested relief is granted. In either case described above, it would be inconsistent with Spanish equal treatment requirements for shareholders tendering with the U.S. Offer to receive greater total economic value than shareholders tendering into the Spanish Offer. Such a result would also give rise to arbitrage by hedge funds and other investors that could frustrate the intent of the proposed dual offer structure.

The U.S. Offer document will disclose that the offer price under the U.S. Offer will be reduced by the gross amount of any dividend paid by Endesa prior to acceptance for payment under the U.S. Offer. In addition, if the Offeror does reduce the consideration as described above, the Offeror will disseminate an announcement of the reduction through a press release and by placing an advertisement in a newspaper of national circulation in the United States. The Offeror will file the announcement with the Commission via the EDGAR filing system on the date that the announcement is made. We also note that the exact date for payment and amount of the next Endesa dividend is already fully disclosed.

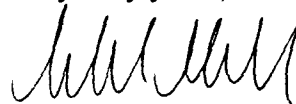
We hereby respectfully request on behalf of the Offeror that the Staff confirm that it will not recommend any enforcement action against the Offeror under Rule 14d-10(a)(2) as a result of the Offeror potentially reducing the offer price being paid in the U.S. Offer by the amount of any gross dividend paid by Endesa and under Rule 14e-1(b) as a result of the Offeror potentially reducing the offer price being paid in the U.S. Offer by the amount of any gross dividend paid by Endesa, in each case if such dividend is paid after the expiration of the U.S. Offer but prior to acceptance for payment under the U.S. Offer, without extending the acceptance period of, or withdrawal rights under, the U.S. Offer.

With respect to the no-action relief sought under Rules 14d-10(a)(2) and 14e-1(b) we note the Staff's grant of relief to Nordic Telephone Company to permit the offer price to potentially decrease as a result of dividend payment or other distributions made by the Company. See Nordic Telephone Company Offer for Shares and ADSs of TDC A/S (January 3, 2006).

\* \* \*

We respectfully request that the Commission issue the requested exemptive relief as soon as practicable. If you require any further information or have any questions, please contact Richard Hall at 212-474-1293 or Mark I. Greene at 212-474-1150.

Very truly yours,



Richard Hall  
Mark I. Greene

BY U.S. MAIL

Brian V. Breheny, Esq.,  
Chief

Office of Mergers and Acquisitions  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-3628

Christina Chalk, Esq.  
Special Counsel

Office of Mergers and Acquisitions  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-3628

BY FEDERAL EXPRESS

Copies to:

Mr. Karl-Heinz Feldmann  
Dr. Frank Fischer  
E.ON Aktiengesellschaft  
E.ON-Platz 1  
D-40479 Düsseldorf  
GERMANY

Mr. Vicente Conde  
Mr. Javier Folguera  
Perez-Llorca  
Alcalá, 61  
28014 Madrid  
SPAIN

## PEREZ-LLORCA

Mr. Brian V. Breheny  
Ms. Christina Chalk  
Office of Mergers and Acquisitions  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549-3628

December 5, 2006

Dear Mr. Breheny and Ms. Chalk,

We are Spanish counsel to E.ON Aktiengesellschaft ("E.ON"), a German stock corporation, and E.ON Zölfe Verwaltungs GmbH ("E.ON 12"), a wholly owned subsidiary of E.ON. We are writing in respect of the letter (the "Application Letter") dated December 5, 2006 from Cravath, Swaine & Moore LLP requesting on behalf of E.ON 12 relief from certain provisions of the United States Securities Exchange Act of 1934, as amended.

We have reviewed the Application Letter and are of the opinion that the statements made therein relating to Spanish takeover bid law and practice are fair and accurate.

The opinion expressed above is limited to the laws of Spain applicable therein, and we express no opinion as to any laws, or matters governed by any laws, other than the laws of Spain applicable therein in effect as of the date hereof.

The opinion expressed above is provided solely for the benefit of the addressee in connection with the transactions contemplated by the Application Letter and may not be used or relied upon by any other person or for any other purpose.

Yours very truly,



Vicente Conde