

## JOSÉ ANTONIO GARCÍA

Principal

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**Dr. José Antonio García** is a principal of The Brattle Group and heads Brattle’s Madrid office. He is an expert in economic and financial analysis and regularly provides advice on litigation matters as an expert witness. He offers particular experience in the estimation of damages in a variety of industries, including the energy, bank-assurance and telecommunications industries. He has more than fourteen years of experience advising clients on regulation, restructuring policy and competition in the United States, Latin-American and Europe.

Dr. García has provided expert witness testimony in Spanish court proceedings and international commercial and investment treaty arbitrations, including contractual disputes between shareholders, disputes arising out of commercial transactions and claims between investors and sovereign states under the Energy Charter Treaty. His expert witness testimony has addressed the reasonableness of actions undertaken by sovereign states, and the financial impacts of their actions on investors. He has worked in disputes related to actions undertaken by the governments of Spain, the United States, Perú, Argentina, Guatemala and México. He has presented and/or ratified expert testimony at the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid, the International Court of Arbitration of the International Chamber of Commerce (“ICC”), the Inter-American Commercial Arbitration Commission (“IACAC”), the International Centre for Settlement of Investment Disputes (“ICSID”) as well as ad hoc proceedings under the United Nations Commission on International Trade Law (“UNCITRAL”) Arbitration Rules. He teaches regulation of energy markets on the Master in Electricity Markets at the Universidad Pontificia de Comillas-ICAI in Madrid, and energy economics on the Master in Finance at the Instituto de Empresa in Madrid.

Dr. José Antonio García has been recognized in *Who’s Who Legal: Arbitration* by Global Arbitration Review - editions 2015, 2016 and 2017 - as being among the world’s leading commercial arbitration expert witnesses.

### AREAS OF EXPERTISE

- International Arbitration/Litigation
- Antitrust/Competition
- Regulation in Network Industries
- State Aids
- Financial Valuation

## PROFESSIONAL EXPERIENCE

### International Arbitration/Litigation

- *Underground gas storage*: Estimated damages incurred by an investor in the gas storage sector in South Europe arising from an alleged failure by a shareholder to honour the terms of an investment agreement signed by the joint venture parties (ICC Case).
- *Petroleum*: For a state-owned firm in the exploration and exploitation of hydrocarbons presented expert testimony before the IACAC relating to environmental damages in a Latin-American country. The testimony included an estimation of damages related to the delivery of petroleum with quality characteristics below those ones legally defined.
- *Liquefied natural gas*: For a gas firm, ratified expert testimony before the Madrid Court of Arbitration related to the damages arising from the breach of the gas delivery conditions defined under a long-term gas contract in the South of Europe. The testimony evaluated the logistic availability of the liquefied natural gas carrier to deliver according to the conditions defined by the gas contract.
- *Renewables*: For a group of foreign renewable investors in Spain, we prepared and ratified expert testimony relating to their claims against the Kingdom of Spain under the Energy Charter Treaty, arising from the application to the photovoltaic, solar thermal and wind investors of certain changes to the Spanish regulatory framework for renewable installations (ICSID and UNCITRAL Cases).
- *Car parkings*: Estimated damages incurred by an investor in the Spanish car parking industry arising from an alleged failure by an investment fund to honour the terms of an investment agreement signed by the joint venture parties (ICC Case).
- *Telecommunications*: For an international telecom company, helped to prepare expert testimony related to an estimation of damages arising from exclusionary pricing practices of price squeeze in the Spanish broadband market.
- *Pay-TV*: For a Spanish cable company, prepared expert testimony related to an estimation of damages arising from the alleged abuse of dominant position in the pay-TV broadcasting market for Spanish football competitions during the period 2012 to 2014. The report included an assessment of potential price squeeze practices in the same market.
- *TV market*: For an international telecom company estimated damages arising from an abuse of dominant position in the Spanish TV market by an incumbent player during the period 2005 to 2008. The engagement included advising services in the settlement negotiation process.

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- *Bancassurance*: For AVIVA, a British multinational insurance company in Spain, ratified expert testimony before the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid related to an estimation of economic damages as a result of the potential breach of a contract by NCG Banco (and CAIXAGALICIA) of the exclusive bancassurance alliance between CAIXAGALICIA (now part of NCG Banco) and AVIVA for the development, marketing and banking distribution of personal insurance and pension plans through the CAIXAGALICIA network.
- *Bancassurance*: For AVIVA, a British multinational insurance company in Spain, ratified expert testimony before the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid related to an estimation of economic damages as a result of a potential breach of contract by BANCAJA (and BANKIA) of the exclusive bancassurance alliance between BANCAJA and AVIVA for the development, marketing and banking distribution of personal insurance and pension plans through the BANCAJA network.
- *Airport Retail Services*: For a travel retail company prepared and signed an expert report analysing two issues in the context of a commercial litigation before the Spanish Courts. First, calculated damages related to a potential concealment of information at the time the contract was signed between the parties. Second, analysed market evolution after the start of the contract and calculated the necessary adjustment to the contract to account for unexpected changes in the market evolution.
- *Photovoltaic Sector*: For a group of foreign photovoltaic investors in Spain, we prepared expert testimony relating to their claims against the Kingdom of Spain under the Energy Charter Treaty, arising from the application to the photovoltaic investors of certain changes to the Spanish regulatory framework for photovoltaic installations (UNCITRAL Case).
- *Electricity*: Helped prepare expert testimonies and ratifications by Mr Carlos Lapuerta, a principal at The Brattle Group in London, related to an estimation of damages to Spanish and North American investors in a Latin American country created by the decision of the national government to reduce the electricity distribution tariffs (ICSID Case).
- *Waste Management*: Helped prepare expert testimonies and ratifications by Mr Carlos Lapuerta, related to an estimation of damages to Spanish investors in a Central American country created by the decision of municipal authorities to revoke the municipal licence to operate a waste plant in this country. The Spanish companies are also accusing the federal government and the state authorities of various acts and omissions that may encompass a violation of the Bilateral Investment Treaty between this Central American country and Spain (ICSID Case).

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- *Electricity*: For a Spanish utility, prepared and provided expert witness testimony for submission to the *Juzgado Mercantil* at Barcelona relating to the estimation of damages arising from the alleged abuse of dominant position affecting the competitive role of the distribution client database, SIPS, in the Spanish electricity market.
- *Electricity*: Prepared and provided expert witness testimony relating to an antitrust case arising from the alleged abuse of dominant position by a Spanish utility affecting the competitive role of the distribution client database, SIPS, in the Spanish electricity market.

### Antitrust/Competition

- *Food Supply Chain*: For PROMARCA (the National Brands Spanish Manufacturers' Association), evaluated the impact of private labels on the competitiveness of the Spanish food supply chain. The study analysed the impact of market concentration and the expansion of private levels on final prices, quality and innovation. The Brattle study, as well as a summary presentation of the report, can be accessed at <http://promarca-spain.com/noticia.php?id=14>.
- *Oil, Electricity and Natural Gas*: For PEMEX, Mexico's state owned oil company, and Sacyr Vallehermoso, a Spanish construction company, evaluated the impact of increasing its stake in Repsol, one of the world's largest private sector oil firms and the largest energy firm in Latin America, on the competitiveness of the oil and natural gas markets in Mexico, Argentina and the US and electricity and gasoline in Spain.
- *Electricity and Natural Gas*: For a Spanish utility, prepared different reports for submission to the former Spanish Energy Regulator, CNE and the former Spanish Antitrust Authority, *Comisión Nacional de la Competencia*, in relation to the proposed merger between Gas Natural and Unión Fenosa. These reports identified the potential anti-competitive effects of the proposed transaction in both the gas and electricity markets (upstream and downstream). These reports further contained a proposal for remedies to eliminate the anti-competitive effects identified. In relation to the market for technical restrictions, the analysis submitted concluded that the proposed transaction could raise anti-competitive concerns in the so-called "Zona Sur".
- *Mining*: For a South African mining firm, prepared a report that identified the pro-competitive effects and efficiencies generated by a merger with another South African mining firm. Developed economic analysis in order to provide an accurate definition of the geographic and product relevant markets involved in the transaction.

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- *Telecommunications*: For a mobile company in Spain, prepared a testimony before the Spanish antitrust authority to evaluate the features that a suitable price squeeze test should meet in the presence of collective dominance. Applied the results to the Spanish mobile telecommunications market and also discussed the alleged collective dominance in the same market.
- *Telecommunications*: For a mobile company in the UK, advised the client in a complaint, through the Competition Commission's investigation of excessive pricing in call termination charges and roaming markets. Developed economic modelling and simulations to analyse the distributional effects of the UK regulator's proposed regulation of call termination charges.
- *Electricity and Natural Gas*: For different electric and gas companies in the US, provided advice regarding the potential anti-competitive effects of horizontal and vertical merger transactions. Developed antitrust analysis, completed Delivered Price Test, the analysis used by Federal Energy Regulatory Commission ("FERC") to assess the competitive effects of proposed mergers and acquisitions in both day-ahead and real-time (balancing) markets, and helped to write expert testimonies submitted before the FERC, the Department of Justice and the Federal Trade Commission of the US.
- *Electricity*: For two Danish electricity companies, prepared a report that identified the pro-competitive effects and synergies associated with the merger between both firms. The report submitted before the Danish Competition Authorities assessed the competitive effects of the proposed transaction in both day-ahead and real-time (balancing) markets.
- *Food Packaging*: For two companies in the liquid food packaging industry, provided economic advice at the planning stage of a merger transaction, with the aim of identifying potential competition problems at the earliest opportunity. Involved an economic assessment of the relevant market, a review of which mergers in a sector were likely to be feasible, an analysis of potential divestments and an appraisal of the possibility of behavioural remedies.
- *Cruise*: For a company involved in the cruise industry, provided economic advice at the planning stage of a merger transaction, with the aim of identifying the potential anti-competitive effects of the transaction.
- *Airlines*: For a US airline company, prepared a report that demonstrates the anti-competitive effect of trans-oceanic alliances between European and American companies. This report was submitted before antitrust regulatory authorities both in the US and Europe.

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- *Civil Aerospace*: In the civil aerospace industry, assessed potential anti-competitive effects of a merger transaction between a client, a major supplier of larger aircraft engines, and a supplier of avionics and other components for commercial aircraft, as well as some small jet engines in a European Commission merger investigation case. Developed economic analysis on the issue of conglomerate effects and mixed-bundling theory.
- *Software*: For a company in the computer industry, advised the client in a major complaint, through the European Commission's investigation of abuse of dominance in the market for 'operating systems for workgroup servers'. Developed economic analysis on the issue of bundling theory and abusive practices in the server and media player markets.

### Regulation in Network Industries

- *Cogeneration Sector*: For a Spanish energy company, prepared an independent assessment of dispatch efficiencies for the proposed Spanish remuneration scheme for cogeneration as defined in Royal Decree-Law 9/2013 and the July 2013 Royal Decree Proposal on Renewable Energy. The report further proposed improvements to the drafted remuneration regime for cogeneration facilities in Spain.
- *Renewable Energy*: For UK Trade & Investment, prepared a report on the implications for the photovoltaic sector of the new tariff regime approved by the Spanish Government in June 2007, when Royal Decree 661/2007 came into effect.
- *Renewable Energy*: For UK Trade & Investment, prepared a report on the status of the renewables sector in Spain. The report described regulatory changes that may affect the commercial viability of different renewable technologies and identified regulatory and commercial risks for potential investors as well as business opportunities.
- *Energy Efficiency and Demand-Side Management*: For a Spanish utility, prepared a three-day seminar on Energy Efficiency and Demand-Side Management regulatory policies. The seminar included the analysis of alternative regulatory models, including incentive regulations, White Certificates and obligation schemes, and their implications for clients.
- *Energy Efficiency*: For an electric utility in the US, examined the reasonableness of the levels of shareholder incentives for the target goals of the energy efficiency programmes that the utility was asked to achieve as part of its integrated resource plan.
- *Wholesale Gas*: For the Ministry of Industry, Energy and Tourism in Spain, prepared a seminar on gas auction design. In order to determine the variable component of the gas tariff of last resort ("TUR"), the Ministry proposed to hold an auction among potential gas suppliers. Dr García, along with Mr Carlos Lapuerta and Dr David Robinson from Brattle,

advised the Ministry on the design of the auction, in particular the definition of suitable products for it, and on ways to promote competition by allowing external LNG suppliers to participate.

- *Gas Transmission*: For a gas transmission company in the US, wrote (jointly with a co-author) a White Paper that evaluated two main transmission pricing methods commonly used in the natural gas industry: incremental pricing versus rolled-in pricing. The White Paper (1) presented an overview of the academic economic literature on the pricing of natural gas pipeline expansions and the main policy changes affecting the authorisation and pricing of pipeline projects since 1960; (2) reviewed the main economic arguments in favour of and against the use of rolled-in pricing methodology versus incremental pricing; (3) provided an economic evaluation of both pricing policies; and (4) discussed an efficient implementation of transmission pricing methods in the natural gas industry.

### State Aids

- *Electricity*: For a Spanish utility, analysed the European Commission's formal investigation into potential State Aids to distribution companies in Spain in the form of low regulated industrial tariffs for electricity. The analysis demonstrated that the European Commission's concerns were based on a misunderstanding of the tariff methodology employed in Spain to compensate the distribution companies and demonstrated that the existence of artificially low regulated tariffs for industrial customers did not allow Spanish distribution companies to earn any "guaranteed profit" or to enjoy an economic benefit from the sale of electricity to regulated customers.
- For HM Treasury in the UK, developed a methodology to identify sensitive sectors where the distortion of competition induced by state aids is likely to be particularly serious. Provided a framework in which an economic analysis of state aid can be performed, traced out the effect that various types of aid can have on competition and presented some background information on EU state aid policy. Outlined an approach identifying sectors suffering from structural problems in terms of the market failures which arise in the exit decisions of firms in declining industries. Analysed the factors that determine the magnitude of the distortions of competition induced by state aid in the context of a formal model.

### Financial Valuation and Due Diligence

- *Natural Gas*: For a group of international investment funds interested on the acquisition of regulated assets in the Spanish gas industry we elaborated a commercial and regulatory due diligence.
- *Renewable Investments*: For a group of international investment fund interested on the acquisition of renewable assets in Spain, Mexico and Italy elaborated a regulatory due diligence.
- *Natural Gas*: For a major European electricity company wanting to expand into gas markets in different countries in Europe in order to sell gas and electricity as a bundled product, evaluated acquisition targets. Assessed potential targets' capabilities and their value versus stock price. Reviewed the experience of acquirers in recent M&A transactions. Advised client not to overbid in the auction open to acquire transmission and distribution gas assets and try to enter the gas market as a trader. Identified key uncertainties and regulatory risks.

### TESTIMONY, DECLARATIONS, AND AFFIDAVITS

- In March 2017, on behalf of international investors, ratified expert report estimating the financial impact of a change in the regulatory regime for concentrated solar power investors in Spain (ICSID Case).
- In February 2017, on behalf of international investors, ratified expert report estimating the financial impact of a change in the regulatory regime for concentrated solar power investors in Spain (ICSID Case).
- In October 2016, on behalf of international investors, ratified expert report estimating the financial impact of a change in the regulatory regime for concentrated solar power investors in Spain (ICSID Case).
- In October 2016, on behalf of a Peruvian state-owned company, ratified expert report evaluating the economic rationale of the petroleum contract for the exploration and exploitation of petroleum field in the Republic of Perú (IACAC Case).
- In September 2016, on behalf of international investors, ratified expert report estimating the financial impact of a change in the regulatory regime for concentrated solar power investors in Spain (ICSID Case).
- In July 2016, ratified expert testimony ratified expert testimony related to the damages incurred by an investor in the gas storage sector in South Europe arising from an alleged



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failure by a shareholder to honour the terms of an investment agreement signed by the joint venture parties (ICC Case).

- In May 2016, ratified expert testimony at the Madrid Court of Arbitration related to the damages arising from the breach of the gas delivery conditions defined under a long-term gas contract in the South of Europe.
- In March 2016, ratified expert testimony in the matter of arbitration under the arbitration rules of the UNCITRAL and in the matter of a dispute arising under the Energy Charter Treaty between a group of 14 photovoltaic foreign investor claimants against the Kingdom of Spain.
- In February 2016, on behalf of on behalf of international investors, ratified expert report estimating the financial impact of a change in the regulatory regime for concentrated solar power investors in Spain (ICSID Case).
- In October 2014, for an investor in the Spanish car parking industry before the ICC International Court of Arbitration, assessed the economic harm arising from an alleged failure by an investment fund to honour the terms of an investment agreement signed by the joint venture parties. Expert Testimony was ratified in December 2014.
- In January 2014, prepared and ratified Expert Testimony at the *Corte de Arbitraje de la Cámara de Comercio de Madrid* in relation to the estimation of damages arising from the potential breach of a contract by NCG BANCO (and CAIXAGALICIA) concerning an exclusive bancassurance alliance between CAIXAGALICIA and AVIVA for the development, marketing and banking distribution of personal insurance and pension plans through the CAIXAGALICIA network.
- In September 2012, prepared Expert Testimony in the matter of an arbitration under the arbitration rules of the UNCITRAL and in the matter of a dispute arising under the Energy Charter Treaty between a group of 14 photovoltaic foreign investor claimants against the Kingdom of Spain.
- In July 2012, ratified Expert Testimony at the *Corte de Arbitraje de la Cámara de Comercio de Madrid* in relation to the estimation of damages arising from the potential breach of a contract by BANCAJA (and BANKIA) concerning an exclusive bancassurance alliance between BANCAJA and AVIVA for the development, marketing and banking distribution of personal insurance and pension plans through the BANCAJA network.
- In January 2011, ratified Expert Testimony at the *Audiencia Nacional de Madrid* in relation to an antitrust case arising from the alleged abuse of dominant position by a

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Spanish utility concerning the competitive role of the distribution client database, SIPS, in the Spanish electricity market.

- In October 2010, ratified Expert Testimony at the *Juzgado Mercantil de Barcelona*, in relation to the estimation of damages arising from the alleged abuse of dominant position by a Spanish utility affecting the competitive role of the distribution client database, SIPS, in the Spanish electricity market.

### PUBLICATIONS

- “Estimación de Daños Derivados de la Existencia de un Cártel: Análisis de las Sentencias Acor y Ebro Foods”, with Dr Juan Delgado (2014), *Spain Arbitration Review*, Vol. 20, pp. 53-66;
- “Cambio Climático y Deslocalización”, with Dr Pedro Marín (21 March 2013), published in the Spanish economic newspaper *Cinco Días*;
- “Hechos y Retos de la Energía en España: Algunos Elementos Clave de una Estrategia Energética”, with Dr Pedro Marín (February 2013), *Papeles de Economía Española*, “El Sector Energético Español”, Vol. 134, pp. 44-50;
- “Cambios Legales en la Cadena Alimentaria”, with Dr Juan Delgado (19 December 2012), published in the Spanish economic newspaper *El Economista*;
- “¿Amenaza de Seguridad de Suministro Eléctrico?” (16 November 2012), published in the Spanish economic newspaper *Expansión*;
- “¿Un líbor en el Mercado de Gas en Europa?” (20 July 2012), published in the Spanish economic newspaper *Cinco Días*;
- “Análisis de la Competencia en el Mercado Minorista de Distribución (de Productos Básicos de Gran Consumo) en España” (6 April 2012), paper prepared for PROMARCA;
- “Research Into Gas Flexibility Services: Method Decision Flexibility Services”, prepared for the NMa Energiekamer (NMa), with Mr Dan Harris and Mrs Ilinca Popescu (2 August 2011);
- “Aplicaciones del Análisis Económico de la Competencia: Análisis de Casos” (11 March 2011), conference at the XIV Curso de Derecho de la Competencia Europeo y Español IEB;
- “El Potencial de los Vehículos Eléctricos” (14 January 2010), published in the Spanish economic newspaper *Cinco Días*;
- “Vehículos Eléctricos y la Presidencia de la UE” (11 November 2009), published in the Spanish economic newspaper *Cinco Días*;
- “New Spanish Regime for Solar Photovoltaic Sector”, with Dr David Robinson (May 2009), prepared for UK Trade & Investment;
- “Renewable Power in Spain”, with Dr David Robinson (April 2008), prepared for UK Trade & Investment;

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- “International Perspectives on Electricity Market Monitoring and Market-Power Mitigation”, with Dr James Reitzes (2007), *Review of Network Economics*, Vol. 6, Issue 3, pp. 372-399;
- “Who Pays, Who Benefits, and Adequate Investment in Natural Gas Infrastructure”, with Dr William Bill Tye (2007), *The Energy Law Journal*, Vol. 28, No. 1, pp. 1-42;
- “Review of PJM’s Market Power Mitigation Practices in Comparison to Other Organised Electricity Markets”, Report prepared for PJM Interconnection, LLC, with Dr James D. Reitzes, Mr Johannes P. Pfeifenberger, Dr Peter Fox-Penner, Mr Gregory N. Basheda, Mr Samuel A. Newell and Mr Adam C. Schumacher (2007);
- “Las Tarifas Eléctricas y el Déficit Tarifario” (7 December 2006), published in the Spanish economic newspaper *Expansión*;
- “Ante la OPA de EON sobre Endesa: Una Operación con Más Beneficios” (22 February 2006), published in the Spanish economic newspaper *Expansión*;
- “State Aid and Distortion of Competition: A Benchmark Model”, (with Dr Damien Neven), Working Paper 06/2005, Graduate Institute of International Studies, University of Geneva, June 2005; (submitted for publication at the *Journal of Industry, Competition and Trade*);
- “CTC y Reforma Eléctrica” (12 April 2005), published in the Spanish economic newspaper *Cinco Días*;
- “Identification of Sensitive Sectors in which State Aids May Have Significant Distorting Effects”, with Dr Damien Neven (2004), prepared for HM Treasury;
- “Economic Assessment of the Barriers to the Internal Market for Services” (2004), Copenhagen Economics;
- “Spot Market Competition with Stranded Costs in the Spanish Electricity Industry” (2001), CEMFI and UPF, Working Paper;
- “Cournot Competition with Stranded Costs” (2001), CEMFI and UPF, Working Paper;
- “Stranded Costs: An Overview” (2001), CEMFI and UPF, Working Paper; and
- acted as a referee for the Journal of European Economic Association and the *International Journal of Industrial Organisation*.

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## CONSULTANT EXPERIENCE

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| 2004-Present | THE BRATTLE GROUP<br>Principal (2012-Present)<br>Senior Associate (2008-2011)<br>Associate (2004-2008) | Madrid, Spain<br>Madrid, Spain<br>Washington, D.C., US |
| 2003-04      | COPENHAGEN ECONOMICS<br>Associate  | Copenhagen, Denmark                                    |
| 2001-03      | LEXECON LTD<br>Economic Consultant   | London, UK   |
| 1997 & 2000  | NERA<br>Research Assistant (Summer Internship)   | Madrid, Spain  |

## ACADEMIC EXPERIENCE

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| 2016-Present | INSTITUTO DE EMPRESA (“IE”)<br>Visiting Lecturer in the Master in Finance  |  |
| 2010-Present | UNIVERSITY OF COMILLAS & ICAI<br>Lecturer in the Masters’ Programme “Máster del Sector Eléctrico”.               |  |
| 1996-1999    | UNIVERSITAT POMPEU FABRA (UPF)<br>Associate Professor in the Faculty of Economics & Business and Faculty of Law. |  |

## EDUCATION

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|-----------|--|
| 1996-2001 | <u>PhD in Economics</u> , Universitat Pompeu Fabra (UPF), Barcelona, Spain.              |
| 1H 2001   | Visiting Research Grant at Boston University.  |
| 1998-2001 | Centre for Monetary and Financial Studies (CEMFI), Central Bank of Spain, Madrid.        |
| 1996-97   | <u>Master in Economics and Business</u> , UPF, Barcelona, Spain. Graduated with Honours. |
| 1992-96   | <u>Bachelor in Economics</u> , Universidad de Salamanca, Spain.                          |

## LANGUAGES

Bilingual in English and Spanish; reads Portuguese and French.