

PORTUGAL

*(January 2000 to 31 December 2000)***Table of contents**

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Executive Summary

1. During 2000, the Directorate-General for Trade and Competition (DGCC) investigated 99 cases related to prohibited practices, received 3 prior evaluation cases from the Competition Council (CC) and initiated 9 formal infringement proceedings.
2. The CC took one prior evaluation decision and 5 decisions resulting from the legal infringement proceedings.
3. The DGCC examined 65 mergers, 58 of which were approved. The activities of the undertakings involved on the notified mergers were mostly related with manufacturing and distribution (38 merger operations).

I. Changes to competition law and policies, proposed or adopted

1. *Summary of new legal provisions of Competition Law and related legislation*

4. During the calendar year 2000, neither amendments to the Portuguese Competition Act in force nor new legal provisions were adopted in the core legislation on competition.

2. *Other relevant measures, including new guidelines*

5. None

3. *Government proposals for new legislation*

6. None

II. Enforcement of Competition Law and Policies

1. *Action against anti-competitive practices, including agreements and abuses of dominant position*

a) *Summary of activities of Portuguese Competition Authorities and Courts*

Directorate-General for Trade and Competition

Table 1: Activities of DGCC - 2000

Observations

Cases under investigation	99
Investigations concluded	60
Prior evaluation of restrictive practices	3
Opening of formal infringement procedures	9

2 of them were concluded and sent to the Competition Council and 7 remained under analysis in the DGCC

Competition Council

7. During 2000, the CC had the opportunity to decide 5 cases of breaching of the Portuguese Competition Act and to decide one case submitted to its prior evaluation.

Courts

8. In 2000, Portuguese Courts have taken two decisions on competition matters: one on the CENTRALCER case and the other on the UNICER case referred below (alinea b), considering that in both cases the deadline for the application of sanctions was overdue.

b) Description of significant cases, including those with international implications

Directorate-General for Trade and Competition

9. Article 22 of the Portuguese Competition Act foresees that “when the DGCC becomes aware, by any means, of practices which may be prohibited by articles 2, 3 and 4, it shall take steps to identify those practices and, once it has credible evidence, it shall institute and conduct appropriate proceedings”.

10. During 2000, the DGCC investigated 99 cases and by the end of the year, 60 of those preliminary investigations were concluded. Of the remaining 39, 9 gave origin to legal proceedings for infringements of the Competition Law.

11. During 2000 and concerning prior evaluation proceedings, foreseen in article 5(2) of the Portuguese Competition Act, the DGCC received 3 prior evaluation cases, from the CC, to be analysed:

MARARTISOL – Importação e Comércio de Artigos Desportivos, Lda.

12. This process of prior evaluation request concerned exclusive distribution of fishery sport articles.

13. AGEFE – Associação Portuguesa de Grossistas de Material Eléctrico, Electrónico, Electrodoméstico, Fotográfico e Relojoaria, ANIMEE – Associação Nacional dos Industriais de Material Eléctrico e Electrónico e APETCE – Associação para o Estudo e Desenvolvimento Tecnológico de Cabos Eléctricos

14. Those 3 associations pretended to organise a “Code of Best Practices” for the distribution of electrical material, to be followed by all of their members.

INTERBANCO, SA, VOLKSWAGEN Bank GmbH, SIVA, SGPS, AS and João Manuel de Quevedo Pereira Coutinho

15. It was intended an agreement for the instalment of financial services to the authorised dealers of the different brands of the VW Group, to the consumers of those motor vehicles and to third persons related with the motor vehicle distribution in Portugal.

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Competition Council

16. ADN -Associação de Dietéticos Nacionais (National Dieticians Association)

17. ADN recommended to their associates the direct refusal of buying to suppliers and wholesalers of dietetic products from a “black list” (of suppliers to large surfaces and hypermarket) and the enhancement of the refusal of sale by those suppliers to large surfaces and hypermarkets, what was deemed as a decision by an association. That decision aimed at restrict the competition in the internal market of dietetic products, as it envisaged excluding the large surfaces and hypermarkets, hampering simultaneously the access of suppliers and wholesalers to that market.

18. The CC applied a fine of Esc. 4 000 000\$00 (four million escudos) – 19 952 euro. [It is now pending from the appeal to Trade Court of Law]

CENTRALCER – Central de Cervejas, SA

19. CENTRALCER is a company with a capital stock of 9.5 billion Escudos which produces, imports and sells beer and soft drinks, and sells mineral water, from which beer represents 75% of its turnover, followed by mineral water with 16.6% and soft drinks with 4.1% in 1996. CENTRALCER’s market share for beer is 36%, second after UNICER with a market share of 61% for the same calendar year.

20. The CC considered that CENTRALCER had breached the Competition Act insofar as it prohibited its distributors from selling competing products, additionally it imposed them the obligation of both using vehicles from the model, design and colours, and the distributors personnel wearing the uniform of its approval, so contributing to desencourage the sale of competing products. CENTRALCER recommended its distributors retail sale prices inducing them to take that indication as mandatory and dispensed them a freight subsidy, practices that had as their object and effect restricting the competition.

21. CENTRALCER abused of the position of economic dependence of its exclusive distributors establishing in the contract a reserve regarding food chains with which CENTRALCER had trade links without identifying who were the clients included in the reserve within the area of the concession.

22. The CC coerced the CENTRALCER to adopt the measures to eliminate the illegal clauses from the contract and applied it a fine of Esc. 60 000 000\$00 (sixty million Escudos) – 299 279 Euro.

23. CENTRALCER introduced an appeal before the Trade Court of Law of Lisbon, which considered the deadline for the application of sanctions overdue and ordered the file of the procedure. An appeal against this decision was introduced by the Public Prosecutor. [The appeal is still pending in the Second Instance Court of Lisbon].

UNICER-União Cervejeira, SA

24. UNICER is a company with a capital stock of 19.5 billion Escudos that produces and sells beer, soft drinks, mineral water and wine, from which beer represents 82.4% of its turnover in 1996. UNICER’s market share for beer is 61%, for the same calendar year, being the leader in the market followed by CENTRALCER with a market share of 36%.

25. CC considered that UNICER had breached the Competition Act insofar as it did not comply with the obligation imposed to it by CC in 1985 keeping some clauses in the contract that were deemed illegal,

it induced its distributors to not selling competing products by means of the so called Excellence Programme, in particular through the item “Enfoque na UNICER” (Focus on UNICER), additionally it imposed its distributors the obligation of both using vehicles from the model, design and colours, and the distributors’ personnel wearing the uniform of its approval, so contributing to desencourage the sale of competing products. UNICER established the revenue of its distributors by a discount on sale price and dispensed them a freight subsidy, practices that had as their object and effect restricting the competition.

26. UNICER abused of the position of economic dependence of its exclusive distributors abruptly rescinding the contracts with a large number of them as well as unilaterally modifying the coverage of the exclusive rights conferred upon them by the contracts reserving the right to choose the clients to which it might sell directly with no compensation whatsoever to its distributors nor reduction of their sales objectives.

27. CC coerced UNICER to adopt the measures to eliminate the illegal clauses from the contracts and applied it a fine of Esc 100 000 000\$00 (one hundred million Escudos) – 498 798 Euro.

28. UNICER introduced an appeal before the Trade Court of Law of Lisbon against CC’s decision that considered the deadline for the application of sanctions by CC overdue and ordered the file of the procedure. An appeal against this decision was introduced by the Public Prosecutor to the Second Instance Court. [In 2 001 the decision of Trade Court of Law was confirmed by Second Instance Court].

CÂMARA DOS TÉCNICOS OFICIAIS DE CONTAS (Chamber of Chartered Accountants)

29. The Chamber of Chartered Accountants approved a Deontologic Code to be applied by their associates foreseeing as mandatory the minimal fees to be charged on the services provided by them.

30. The CC considering that the practice as a decision by association breaching the Competition Act coerced the Chamber to eliminate such clause, declared void and without effect, from the Code and applied the Chamber a fine of Esc 20 000 000\$00 (twenty million Escudos) – 99 760 Euro.

31. The Chamber reacted against the decision appealing to the Trade Court of Law. [In 2001 the court reduced the fine to Esc 10 000 000\$00 (ten million Escudos) – 49 880 Euro. The Chamber introduced a new appeal now to the Second Instance Court].

CACVEC (Cooperative company for the supply of merchants of flat glass)

32. CACVEC had submitted its statute to prior evaluation of the CC. As CC considered that one clause (foreseeing the exclusion of any associate purchasing glass to third parties) did not comply with Competition Act having to be suppressed. As much time had elapsed without elimination of the clause, CC opened a new file because of the refusal to comply with the CC’s previous decision.

33. As in the meantime CACVEC had not applied the clause and eliminated it, CC filed the case without any sanction.

34. The case submitted to the prior evaluation of the CC was the following:

- AGEFE, ANIMEE and APTCE (Associations of Producers and Merchants of the sector of Electric and Electronic Material) submitted to the prior evaluation of the CC the so-called “Code of Best Practices for the Distribution of Electrical Material”. In the meantime the Associations asked for the declaration of the provisional validity of the code, what was rejected by the CC on the grounds that both the file with the conclusion of the finding and

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investigation by General Directorate for Trade and Competition had not yet been received and the conduct submitted to its consideration might have as effect to prevent or restrict the competition in the internal market, in particular as regards the parameters of conduct, the commitments by the supplier, respect of trade margins, etc.

2. *Mergers and acquisitions*

a) *Statistics on number, size and type of mergers notified and/or controlled under competition law*

Directorate-General of Trade and Competition

35. The Competition Act foresees the concentrations which lead to the creation or the strengthening of a market share higher than 30% of the national market, or in a substantial part of it, or where the participating undertaking's turnover in Portugal in the preceding financial year was more than 30 billion escudos (149 639 360 Euro), after deduction of tax directly related to the turnover, are subject to prior notification to DGCC.

Table 2 – Number and categories of mergers notified and/or controlled under Competition Law - 2000

Mergers notified or controlled by DGCC 68 were notified in 2000 and 14 were from 1999	82
Mergers procedures examined 58 were approved and 7 were filed because they couldn't be considered as a merger operation under the Competition Act	65
Procedures pending at the end of the year	17

36. The activities of the undertakings involved on the notified mergers and caught by the merger control provisions during the period mentioned above were the following:

Table 3: Forms and sectors of the merger operations examined and approved in 2000

Sector	Total	Take-overs	Acquisitions	Joint-ventures	Others
- Manufacturing or distribution:	38	-	35	3	-
Food and beverage	6	-	6	-	-
Paper products	4	-	4	-	-
Petroleum products	3	-	3	-	-
Chemical products	7	-	7	-	-
Pharmaceuticals	2	-	2	-	-
Ceramic	1	-	1	-	-
Metal products	2	-	2	-	-
Machinery and equipments	5	-	5	-	-
Elect. machinery and apparatus	1	-	1	-	-
Medical instruments	1	-	1	-	-
Motor vehicles	6	-	3	3	-
- Wholesale and retail trade:	8	-	7	1	-
Wholesale services	1	-	1	-	-
Retail services	7	-	6	1	-
- Other services:	7	-	7	-	-
Health	1	-	1	-	-
Rent-a-car	2	-	2	-	-
Real estate	4	-	4	-	-
- Communication services:	8	-	5	3	-
Database services	1	-	1	-	-
Broadcasting	1	-	1	-	-
Telecommunications	6	-	3	3	-
- Financial services:	1	-	1	-	-
- Transportation services:	3	-	1	2	-
TOTAL	65	-	56	9	-

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Competition Council

37. As informed in previous reports, the intervention of CC in cases of mergers and acquisitions is confined to those cases in which it is asked by the Member of the Government in charge of trade sector and CC gives only its opinion, it takes no binding decision.

Number of cases submitted to the opinion of CC: 1 case

Type of merger: 1 acquisition

b) Summary of significant cases Directorate-General of Trade and Competition

LACTOGAL/VIGOR

38. The merger notified on 02.02.2000, consisted on the acquisition by LACTOGAL – Produtos Alimentares, SA of the totality of the capital of Lacticínios VIGOR, SA.

39. The merger was authorised under the following conditions:

- to maintain the contractual bonds which bind the producers of raw milk to the companies which integrate the Vigor Group;
- to respect the commitments assumed during the process to promote the sector of pasteurised milk;
- to send periodic information concerning the evaluation of the conditions of supplying milk producers and the evolution of the market of pasteurised milk, as well as all the information concerning the policy of price and sales condition of milk and other milky products.

40. This decision had the favourable opinion of the CC, in accordance to article 32º nº 1 of Decree-Law n.º 371/93, of 29 October.

PT MULTIMÉDIA/SABER E LAZER

41. This merger operation, which notification dates from 20-09-1999, consisted on the acquisition, by PT MULTIMÉDIA – SERVIÇOS DE TELECOMUNICAÇÕES E MULTIMÉDIA, SGPS, SA, of 74,9% of the share capital of SABER E LAZER – INFORMÁTICA E COMUNICAÇÃO, SA.

42. It was considered that this merger did not create or strengthen any dominant position by PT MULTIMÉDIA, which may have as effect the prevention, restriction or distortion of competition within the national market of content for Internet, therefore it was approved.

SIC/LISBOA TV

43. The merger notified on 20-06-2000, consisted on the acquisition by SIC – SOCIEDADE INDEPENDENTE DE COMUNICAÇÃO, SA, of 60% of the market share of LISBOA TV – INFORMAÇÃO E MULTIMÉDIA, SA.

44. The merger operation was proposed as a “Partnership Agreement” celebrated, for a deadline of 10 years, by SIC on one hand, and by PT MULTIMÉDIA and CATV – TV CABO PORTUGAL, by the other one.

45. It was considered that this merger had no effect on the prevention, restriction or distortion of competition within the domestic market of TV signature, therefore it was approved.

46. By further examination, the restrictive clauses on competition policy inserted in the “Partnership Agreement” namely exclusivity clauses and right of preference associated with the long duration of the Agreement (10 years) did not reveal as indispensable for the completion of the merger and therefore they have been analysed under article 2º of Decree-Law n.º 371/93, of 29 Outubro.

ROCA/KERAMIC

47. On 10-09-1999 was notified a merger operation, consisting on the acquisition by COMPAÑIA ROCA RADIADORES, SA of the majority share capital of SANITANA – Fábrica de Sanitários da Anadia, SA.

48. It was considered that this merger would not create or strengthen any dominant position on the domestic market of ceramic bath products, therefore it was approved.

PORTUCEL INDUSTRIAL/INAPA

49. The merger notified on 25-02-2000 consisted on the acquisition, by Portucel Industrial – Empresa Produtora de Celulose, SA of 100% of the share capital of Papéis Inapa, AS.

50. It was considered that this merger would not have as effect the prevention, restriction or distortion of competition within the domestic market of the writing and impression paper, therefore it was approved.

BASF/TAKEDA

51. The merger notified on 21-09-2000 consisted on the acquisition, by the BASF Group, of the Japanese Group TAKEDA’s world division of vitamins.

52. It was considered that his merger would not restrict the competition on the domestic market of vitamins, therefore it was approved.

Competition Council

53. Acquisition by LACTOGAL – Produtos Alimentares, SA (turnover in 1998:102 billion Escudos = 507 773 855 euro) of the totality of social capital of Lacticínios VIGOR, SA (turnover in 1998:10,2 billion Escudos = 50 977 385 Euro)

54. In CC’s opinion, dominant position by LACTOGAL, created or reinforced by means of the merger in the market of collection of both crude and pasteurised milk, did neither distort, prevent nor restrict the competition in a significant way that might be a ground for the prohibition of the operation.

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55. So the merger might be authorised depending upon the keeping by LACTOGAL of the commitments regarding both the maintenance of VIGOR's contracts with its suppliers and the sustained strengthening of a competitive market in the sector of the pasteurised milk.

III. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

1. Regulatory Reform

56. Concerning the external relationship between the Regulatory Authorities and the Competition Authority, it still remains its validity the contents of numbers 65 to 69 of the "Annual Report on Competition Policy Developments in Portugal (1 January 1998 to 31 December 1998)".

Price regulation

Posts

57. On the 21-12-2000, was signed, by DGCC, by the Instituto das Telecomunicações de Portugal (ICP) and by the Correios (CTT), the Agreement "Convénio de Preços do Serviço Postal Universal," for the period 2001-2003, celebrated under Law n.º 102/99, of 26 July which proceeded to the transposition into the domestic law, of the Directive 97/67/CE (Lei n.º 102/99, de 26 de Julho) and according to the contract of services concession agreements "Concessão do Serviço Postal Universal", celebrated by the State and the CTT, on 01-09-2000, being also were established the prices for the year 2001.

The Telecommunications Sector

58. According to n.º 1 of article 11 of the Decree-Law n.º 458/99, of 5 de Novembro, the regulation process of price policy concerning the availability of universal service of telecommunications was established by the convention celebrated between the Central Administration, represented by the DGCC, the ICP and the operator(s) of universal services.

The Electrical Sector

59. Since 1999, the electrical tariffs are established by ERSE (Regulatory Entity for the Electrical Sector), under the opinion of DGCC and the Tariff Council of ERSE (which is represented by a member of the Rede Nacional de Transporte (National Transmission Grid), two members of the authorities that own licences for energy distribution, two members of the consumers associations and a member of the Instituto do Consumidor (Consumer Institute).

The liberalisation process

The Telecommunications Sector

60. By the end of 2000 took place the last phase of the privatisation process of Portugal Telecom, where the State sold about 11% of the share capital that it owned in the company, remaining with a *golden share* of 500 share.

61. By decision approved on 02-03-2000 by the Conselho de Administração of ICP, after the opinion of DGCC, the Portugal Telecom, SA was declared the entity with relevant market power in the telecommunications market and therefore submitted to the specific obligations of the “Regulamento de Exploração do Serviço Fixo de Telefone”(Regulation on the exploitation of fixed phone service)

62. During 2000, also occurred the opening of fixed network to the competition market, nevertheless limited by indirect access and exclusively to national and international connections (local and regional connections excluded).

63. During 2000, the ICP proceeded to a public consultation on competition matters in the local access, having been approved, by deliberation of the ICP, a document containing the results and its opinion. The ICP position had in account the proposal of the European Parliament and the Council Regulation, concerning the unbundled access to the local loop, which was in final phase of approval.

64. The ICP proceeded, also, to a public consultation concerning the portability which results have been taken in account in the Despacho n.º 12809/2000, of 6 June, of the Minister of Social Equipment. Thus, under article 31 of Decree-Law n.º 415/98, of 31 Dezembro, it was decided that:

- the portability in the fixed phone network and digital network with integrate service (RDIS) shall be established until 30-06-2001;
- the portability in the mobil phone shall be introduced simultaneously with the input of the (3) third generation service (IMT 2000/UMTS), foreseen for 01-01-2002.

65. Also during 2000, the ICP opened a public contest for the attribution of four licences on IMT2000/UMTS sistem. In December 2000, the winners of the contest had been given to known (TELECEL, TMN, ONYWAY and OPTIMUS). The licences, which were attributed on January 2001, have the validity of 15 years, and are susceptible of renovation.

The Electrical Sector

66. In October 2000 occurred the fourth phase of the privatisation process of Electricidade de Portugal (EDP), which sold about 19,5% of the share capital. The portuguese State no longer holds the majority capital but still keeps an equity share of 31,33% (21,24% directly, 4,75% under the Caixa Geral de Depósitos and 5,34% by the Parpública entreprise).

67. Within the legal alteration of EDP, converted on a private legal person, the company was divided in several societies specialised in the following activities: production, transmission and distribution. In a further phase, there will be a liberalisation of the potential competition activities – production and

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distribution, having been created by EDP new companies adopting the statute of autonomous producers, within the main objective to improve its offer in the energy sector market not liberalised yet.

68. The model adopted for the sector remains. It lays down on the coexistence of a public electrical system service (SEP) and an independent electrical system (SENV), with the existence of an independent regulatory authority, the ERSE, already referred, with the competence to establish the SEP regulation and the commercial relationship between SEP and SENV.

69. Under Decree- Law n° 198/2000, the Rede Eléctrica Nacional (National Electrical Grid), concessionary of the Rede Nacional de Transporte (National Transmission Grid), was separated from the EDP Group, and submitted to the Portuguese State control.

2. Trade and Distribution Policies

70. Under the legal regime created by the Decree-Law n.º218/97, of 20 August and Portaria n.º 739/97, of 26 September, the UCDR (Trade Units with Relevant Dimension) are subject to prior authorisation or communication and must be registered by the DGCC through the fulfilment of a specific form.

71. According to this legislation, during this year, 152 units were registered and 177 175 square metres of sale area were authorised, being adopted 94 ministerial authorisations.

IV. Resources of the Portuguese Competition Authority

1. Resources overall

a) Annual budget

Directorate-General for Trade and Competition
ESC 911 570 000 (454 689 Euro) or US\$ 3 751 316)

Competition Council
ESC 17 500 000 (87 290 Euro) or USD\$ 76 086

b) Number of employees

Directorate-General for Trade and Competition

Economists	56
Lawyers	13
Other professionals	24
Support staff	105
All staff combined	198

Competition Council

Lawyers	4
Other professional	2
Support staff	2
All staff combined	8
(less 1 employee over previous year)	

2. Human resources

Directorate-General for Trade and Competition

a) Enforcement against anticompetitive practices and

b) Merger review :20

c) Advocacy efforts : 5

Competition Council

72. There is no particular assignment of the human resources in accordance with the different types of practices.

3. Period covered by the above information

73. Year 2000

V. Summary of/or references to new reports and studies on competition policy issues

74. During 2000, the DGCC published the following reports, only available in Portuguese language.

- Boletim Legislação (“Legislation Bulletin”) – published three times a year in order to divulge the national and community legislation.
- Cadernos DGCC (“DGCC Books”) – irregular publication which has the aim to publish original reports about Competition Policy issues. During 2000 it was published “ Distribuição Comercial”(Trade Distribution).
- Comércio e Concorrência (“Trade and Competition”) – regular magasin (four times a year), addressed to undertakings.
- Notícias (“News”) – six numbers published during the year 2000.
- Relatório de Actividades 2000 (“Annual Report of Activities 2000”) – contains the organisation, objectives and results of DGCC during the year 2000.

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75. The CC published the annual report, containing the description of the cases decided during the year 2000.

76. On the 8 and 9 June 2000, the DGCC organised, the “Jornadas da Concorrência” (Workshop Competition)) in the scope of the Portuguese Presidency.

77. The first day was dedicated to “Modernização do Direito Comunitário da Concorrência” (Modernisation of the Community Competition Law) and the second day took place, for the first time, the “Dia Europeu da Concorrência” (European Competition Day), in cooperation with the European Commission.

78. On 7 November, in the scope of a protocol established between the DGCC and the Economy School of the Coimbra University, took place the “Seminário sobre Concentração de Empresas” (Seminary on mergers).

79. In 2000, the DGCC had some of the national, community and international information about trade and competition on its Internet site (<http://www.dgcc.pt>). The e-mail is: dgcomconc@mail.telepac.pt.