

**PORTUGAL**

(1997)

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## I. Changes to competition law and policy, proposed or adopted

### 1. Summary of new legal provisions of competition law or related legislation

1. During 1997, Portugal has adopted the Decree Law n° 218/97, of 3 August, and subsequent legislation -Portaria n° 739/97, 26 September-, changing the rules concerning the authorisation procedures for trade activity. This new legislation introduce the concept of "Trade unit with relevant dimension" (UCDR), focused not only on the dimension, but also on the selling and buying power of the undertaking.

2. Under this new legal regime, the UCDR subject to prior authorisation or communication, must be registered at the Directorate General for Trade and Competition (DGCC), through the fulfilment of a specific form.

3. During 1997, the DGCC has prepared a new legal proposal concerning some unfair trade practices, such as price discrimination and tied selling, refusal to sell or to deal and predatory pricing, which were not considered as anticompetitive practices under the Decree Law n° 370/93 on individual practices. The new proposal assigns the DGCC the task of investigation and decision of these anticompetitive practices.

## II. Enforcement of competition law and policy

### 1. Action against anti-competitive practices, including agreements and abuse of dominant position

#### 1.1. Activity of the Directorate-General for Trade and Competition

#### Summary of statistics

	1996	1997	Observations
Cases under investigation	98	90	all were raised by complaints
Investigations concluded	51	63	
Opening of formal infringement procedures	13	4	
Prior evaluation of restrictive practices	2	3	cases received from Competition Council

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### *Comments*

#### *1.2. Preliminary proceedings*

4. In 1997, 90 cases were investigated by the DGCC, 27 of which stood under investigation at the end of the year, all of them raised by complaints.

5. From the 63 investigations concluded, four gave origin to formal procedures for infringements of competition law. The other cases were filed due to several reasons, such as compliance with the competition rules, withdraw of the complaint, dispute settlement, or grouping several complaints in the same case, given consideration to the identity of the anticompetitive restriction carried out by the same company.

The main sectors subject to investigation carried out by DGCC were the following:

- manufactured tobacco products;
- feed industry infra-structure (poultry);
- alcohol ethyl production;
- alcoholic beverages - national beer sector;
- transportation (airport fees);
- audio-visual services:
  - intellectual property rights' collection
  - films distribution
- banking (APB fee);
- telecommunications services;
- travel agencies;
- ports services;
- consumable hemodialysis;
- apparatus;
- textile and footwear;
- cosmetics;
- gold;
- ink and varnishes;
- agriculture equipment;
- cars

#### *1.3. Formal procedures*

6. At the end of 1997, 4 cases (one coming from 1996) were subject to formal investigation, one of them have being filed due to the lack of elements gathered during the investigation confirming the company's anticompetitive practice under the Portuguese Competition Act.

7. These procedures took place in the following markets: beer distribution, credit and debit cards and cars commercialisation.

8. At request of the Competition Council, the DGCC carried out several complementary investigation actions, related to a formal procedure in the **medical gas market**.

#### 1.4. *Notifications received*

9. Under Decree 1097/93, undertakings may apply to the Competition Council to evaluate an agreement or a concerted practice according to the criteria laid down in Article 5 of DL 371/93, the DGCC being committed the task of organising the procedures and gathering the information necessary for the assessment of the impact on competition of the practices concerned, before submitting its final report to the Competition Council.

10. On 1997, the DGCC analysed the following **prior assessment notifications**, submitted by the Competition Council:

- at request of **Dan Cake** that operates on the biscuit and cookies market, the DGCC made a prior assessment of a recommended price system to be mentioned on the product package and advertised through a marketing campaign. Afterwards, **Dan Cake** decided not to implement the referred system, and asked the Competition Council to withdraw its request.
- the DGCC investigated one case concerning an exclusive distribution agreement on the supply of newspapers and magazines to hypermarkets, presented by the following undertakings: Deltapress - Sociedade Distribuidora de Publicações, Lda; Electroliber Lda; Marco Iberica Distribuicion de Ediciones, SA.;Vasp - Sociedade de Transportes e Distribuições, Lda. The distribution agreement consisted on the creation of a new undertaking - Sodipubl - Sociedade Distribuidora de Publicações, S.A.- which its exclusive goal was to ensure the distribution of magazines and newspapers to hypermarkets;
- the DGCC investigated a horizontal agreement presented by **APAN - Associação Portuguesa dos Agentes de Navegação**- and by **Agenor - Associação dos Agentes de Navegação do Norte de Portugal**. The agreement involved fixed payments delays from those associations to their customers.

#### 1.5. *Decisions of the Competition Council*

##### **Most relevant Cases**

##### ***MULTIÓPTICAS***

11. MULTIÓPTICAS DE GESTÃO, SA. organises its distribution system of optical products by means of two levels of contracts, those celebrated with its “franchisees” whose shops as a whole integrate the Multiópticas system and the contracts celebrated with the so-called “preferential suppliers”. The “preferential suppliers” are free to sell outside the network, but they have to pay to Multiópticas 10 percent of the net value of sales to network and to grant to the retailers integrated in the network the negotiated discounts. Multiópticas compromises to foster the market through marketing and advertising campaigns and to provide technical training to the staff of the suppliers.

12. As regards the relations with retailers, Multiópticas allows them to use its name, brand and logo, gives them territorial exclusivity, allows them to keep the negotiated discounts made by their suppliers and to make purchases to independent suppliers. The retailers take the compromise to identify their shops with Multiópticas logo, to give preference to suppliers who passed contracts with Multiópticas and to

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inform this one on the purchases made to independent suppliers, in which case they have to pay a fee of 15 percent of the value of these purchases as a share of the costs of the franchising.

13. Multiópticas was accused together with other 2 firms of the sector of trade of optical products of issuing a concerted recommendation on the purchases to be made to preferential suppliers that in practice would bar the entry to independent suppliers.

14. The Competition Council in its decision although ruling that some of the clauses of the contracts celebrated with suppliers as well of those celebrated with retailers were not in conformity with Competition Act, made a positive economic balance of the system as a whole since it was recognised that the system provided an improvement in the conditions of supply and demand, in the looking of the shops, the prices of the articles and the conditions of assistance to clients.

15. As the payment of the fee to Multiópticas was received from the suppliers, without possibility of repercussion on the retailers, the contracts celebrated with these ones were not considered as meeting the concept of "franchise".

16. The recommendation referred to above was considered as an act of current management, and in any case with sporadic or without visible effects on the market.

17. The clause stipulating the obligation of a payment to Multiópticas of an amount of 15 percent of the purchases made to independent suppliers was not accepted by the CC, that ordered its removal from the present contracts, as being too limitative of the freedom of choice of the retailers.

## ***OPTIVISÃO***

18. OPTIVISÃO- Óptica, Serviços e Investimentos, SA. develops its activity in the sector of trade of optical products and has implemented its distribution system along the lines of that implemented by MULTIÓPTICAS, so the CC took a decision that is practical identical to the previous one in its terms and grounds.

## ***INSTITUTÓPTICO***

19. INSTITUTÓPTICO-Comércio de Óptica, Ld<sup>a</sup>, develops its activity in the sector of optical products. The file against it was open in connection with the complaint involving MULTIÓPTICAS and OPTIVISÃO.

20. The looking of the shops is quite similar in the three cases but whilst the organisation of the distribution system is the same as regards the relations between INSTITUTÓPTICO and the suppliers it is quite different as regards the relations with the retailers. First of all due to the fact that INSTITUTÓPTICO is an enterprise of which its associated retailers are partners, that have autonomy of management, are free to settle their shops without geographical constraints and are free to buy outside the network of preferential suppliers.

21. Taking these differences into account CC decision was limited to the contracts between INSTITUTO ÓPTICO and preferential treatment in the same terms as in the two previous cases.

***F. S. RIBEIRO***

22. F.S. RIBEIRO, SA. is a Portuguese firm that negotiated with the Italian firm Compagnia Generale Abbigliamento STA (CGA) a contract of exclusive distribution in Portugal of “jean” clothing articles of the make “Uniform”.

23. Alerted by the ad leaflet issued by SUPA, a Portuguese firm, owner of a retail chain of hyper and supermarkets, F.S. RIBEIRO noticed that “Uniform” clothing articles were sold in the chain. These articles being purchased outside the channel of the exclusive representation would be allegedly either counterfeit or at least of uncertain origin.

24. As SUPA did not agree with F.S. RIBEIRO on the terms of the supply of articles that it intended to order and in the absence of an answer to its order it lodged a complaint against F.S. RIBEIRO by refusal to sell.

25. The CC closed the file on the grounds that in broad terms the contract between CGA and F. S. RIBEIRO gave some guidelines on the selection of the retailers, the sales through hyper and supermarkets were not the most convenient channel for the preservation of the image of the make and last but not least the CC considered that by “reasons of competition policy” the application of Competition Act could be enlarged in order to cover systems of selective distribution without agreements with selected retailers restricting the competition so avoiding the absurd of ignoring the impact of the systems of selection on the access to market. The clarification in the sense that Competition Act (Decree-Law n° 371/93) prevails over the Decree-Law n° 370/93, on individual restrictive practices, avoids the condemnation of refusals to sell justified on the basis of selection criteria that could have validity at the light of the Competition Act when combined with complementary restrictions at resale level and allows an analysis of the systems in accordance with identical justification criteria related to objectivity and transparency of the principles of the selection.

***AMNÉSIA***

26. AMNÉSIA, Ld<sup>a</sup> is a Portuguese producer and wholesaler of clothing articles that negotiated with the firm Charles Cheignon the exclusive distribution for Portugal of the clothing articles of “Cheignon” make.

27. Advised by Charles Cheignon that “Cheignon” articles on sale in one of SUPA’s hypermarket were counterfeit and that he had sued SUPA criminally, this one asked AMNÉSIA for prices, payment conditions and references of articles for immediate delivery. Informed by AMNÉSIA of the impossibility of satisfying the demand without breaking trade policy of the make and that of the enterprise SUPA lodged a complaint by refusal of sell.

28. After the decision on this case and on the previous one it was clarified that on one hand the selection made on the basis of objective criteria of a qualitative nature is free provided that an environment of effective competition is preserved in spite of the preoccupation of maintaining the logic of the system by means of the tightness of the network and on the other hand resale restrictions aiming at keeping the tightness of the network can be accepted only in the case of coherent and duly observed selection criteria.

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### ***LIGA PORTUGUESA DE FUTEBOL PROFISSIONAL, OLIVEDESPORTOS AND RADIOTELEVISÃO PORTUGUESA (RTP)***

29. The PORTUGUESE LEAGUE OF PROFESSIONAL FOOTBALL negotiated with the firm OLIVEDESPORTOS, on behalf and in representation of affiliated football clubs, the right to take the images of the matches in order to make the summaries thereof. OLIVEDESPORTOS subsequently negotiated with RTP, the State-owned TV broadcaster, the exclusive broadcasting of these summaries.

30. The CC decided that:

- for the purpose of application of competition law football clubs can be deemed as enterprises;
- when a football club organises a match it is the club that is empowered to negotiate the right to exploit the match;
- the negotiation conducted by the LEAGUE, as referred above, is a restrictive practice of competition prohibited under article 2 of Competition Act.

31. The relevant market - restricted to national territory - is that of broadcasting professional football matches by television.

32. The rights of broadcasting of football matches by TV can be sold either for direct or recorded earlier broadcasting in the whole or in part of both summaries and takes of the matches; these broadcastings may be authorised for television broadcasting on earth, by cable and/or by satellite. Broadcasting rights may still be sold for broadcasting by free TV or PAY-TV as well.

33. The file concerned exclusively the summaries of the matches. In its decision of closing the file the CC considered as a positive effect of the system for the clubs providing the possibility of broadcasting summaries football matches of minor importance that otherwise would not be broadcasted and that with the available data it does not make any sense and it is not possible to consider dominant positions in the reference market.

### ***TABAQUEIRA, SA***

34. TABAQUEIRA, SA. is a former State-owned company that was privatised at the end of 1996 in a procedure by which the Portuguese State sold to PHILIP MORRIS its remaining share of 67.5 percent of the capital of the enterprise.

35. In 1995 TABAQUEIRA had a share of 75.8 percent of the Portuguese market of manufactured tobacco products and after the conclusion of the merger procedure, as it was acquired by its main competitor, its dominant position in the market was still reinforced.

36. Distribution system implemented by TABAQUEIRA had already been condemned by CC because of clauses of the contracts negotiated with its distributors foreseeing exclusive purchases and minimum of purchases that at a first moment excluded in practice the sales of competing manufactured tobacco products and afterwards aimed at the concentration of wholesalers' network.

37. Recalling the compromises accepted by TABAQUEIRA in the merger procedure of selling its positions in the circuit of wholesale distribution, the CC stated that the acquisition of TABAQUEIRA by its major competitor with the possibility of unification of distribution criteria aggravated the problem as those compromises left intact the market power of the supplier of tobacco manufactured products. The CC considered the clause on the minimal of purchases as an abuse of dominant position then imposed TABAQUEIRA the abolition of the clause as being against the article 3 of Competition Act.

38. TABAQUEIRA replaced the clause by another one that is pending of analysis by CC.

***PIONEER-HI-BRED SEMENTES DE PORTUGAL***

39. PIONEER -HI-BRED SEMENTES DE PORTUGAL is a wholesaler of cereals, seeds and oilseeds belonging to the American group PIONNER (world leader as regards certified hybrid maize seeds).

40. The defendant was accused of implementing a selective distribution system of certified hybrid maize seeds implying among other things a discriminatory treatment to distributors.

41. The CC concluded in broad lines that:

- the discriminatory treatment of distributors was inherent to the very nature of the market as the application of the seeds is different regarding the geographical characteristics, aptitude of soils and technical capacities both of distributors and users;
- the list of prices is identical to all distributors, the discounts may differ in accordance with the kind of service they have the capacity to provide;
- some restrictions are indispensable for the improvement of production and distribution with a clear benefit for the consumers;
- the prohibition of the access to network is inherent to the selectivity;
- exclusivity of purchases is not a condition imposed as a rule, it is associated to the possibility of obtaining the maximum discount.

42. CC, taking into account the limited effects of the conduct of PIONEER on competition, closed the file and, in accordance with previous decisions on the matter, recalled that the establishment of agreements and conditions of sale in written form is a decisive element for the transparency of the selective distribution system then recommended the defendant the organisation of its selective distribution system on the basis of written contracts and the exhibition of selection criteria adopted.

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2. Mergers and acquisitions

2.1. Statistics on number, size and type of mergers notified and or/controlled under competition laws

	1997	Observations
Mergers notified	23	
Mergers procedures examined	21(a)	(a) 17 were approved (2 of them consisting on privatisation operations) 3 were filed because they couldn't be considered as merger operations under the Competition Act; 1 was cancelled.
Procedures pending	2(b)	(b) at the end of 1997

Comments

43. The Competition Act establishes that concentrations which lead to the creation or the strengthening of a share higher than 30 percent of the national market, or in a substantial part of it, or where the participating undertakings' s turnover in Portugal in the preceding financial year was more than 30 billion escudos, after deduction of tax directly related to the turnover, are subject to prior notification to DGCC.

44. During the year of 1997, the DGCC examined 23 merger operations having concluded 22; 17 of which were given favourable opinion (2 consisting on privatisation operations) and therefore approved by the Minister of Economy); 3 of which were filed because they didn't fulfil the legal requirements to be considered as a merger operation, and the left one was cancel. One merger operation assessment was not concluded at the end of 1997. The activity of the undertakings involved on the notified mergers and caught by the merger control provisions during the period mentioned above were as follows:

- **Manufacturing or distribution: ..... 11**
  - Food and beverage ..... 1
  - Machinery and equipment ..... 2
  - Optical instruments ..... 1
  - Chemical products ..... 3
  - Fabricated metals ..... 3
  - Hygienic products ..... 1
- **Wholesale and retail trade: ..... 4**
  - Wholesale services (including pharmaceutical products) ..... 1
  - Retail services ..... 3
- **Other services:..... 1**
  - Games of chance ..... 1

– <b>Construction:</b> .....	<b>1</b>
Construction.....	1

45. As far as the form or type of operation and the nationality of the undertakings that took part in these mergers, the next table shows the main features of the merger operations examined:

**Merger operations examined and approved in 1997**

	<b>1997</b>
<b>Form of merger</b>	
Take-overs	2
Acquisition of assets	1
Acquisition of shares	11
Merger by incorporation	1
Remise of legal use	1
Trespass	1
<b>Type of merger</b>	
Vertical	-
Horizontal non-conglomerate	12
Horizontal conglomerate	5
<b>Undertaking “nationality”</b>	
Purely domestic	7
Indirect foreign participation	
Direct foreign participation	5
Purely foreign	5

**2.2. Summary of significant cases**

**WARTSILA DIESEL INTERNACIONAL, LTD. OY**

46. This merger, notified on 23.01.97, consisted of the acquisition by Wartsila Diesel International, Ltd. OY of an equity share representing the whole or part of the capital of New Sulzer Diesel, lda., of New Sulzer Diesel Holding N.V., of Diesel Recherche S.p.A an Italian company, of Grandi Motori Triesti, S.p.A., all of them directly or indirectly owned by Finacatieri Cantieri Navali Italiani S.p.A.

47. The relevant markets were the diesel engines for ships and the power generation market for diesel engines units. However, at a domestic level, the only relevant market was the latter in which the market share resulting from the merger rose up to 30 percent.

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48. Nevertheless, the merger operation was approved, given consideration the international profile of the main competitors and the specific features of the demand, which included undertakings with a high market power.

### **NESTLÉ S.A./PROPASTO B.V.**

49. The merger notified on 27.01.97, consisted of the acquisition by Nestlé, S.A. and Propasto B.V. of part of the assets of the Dutch undertaking Coberco Dairies which were related to the production of concentrated and evaporated milk, commercialised In Portugal by Ramazzotti Lda., under the trademark B&B.

50. The impact of this merger operation was considered diminished, although the Nestlé market share was increased from 23 percent up to 32 percent, taking into consideration it wouldn't change significantly the market's competition structure and consequently the merger was approved.

### **ARNOVO/GRULA CRL**

51. This merger, notified on 28 January 1997, consisted in the incorporation of Arnovo on Grula. The merger was not expected to affect the structure competition on the relevant market - the wholesale domestic market of food products and mass consumption- and it was approved.

### **PETROASSIST S.A/AUTOGÁS S.A/PETROCEC**

52. This operation didn't fulfil the legal requirements established in the nº 9 of the Decree Law 371/93, to be considered as a merger. The operation consisted in restructuring the group of undertakings PETROTEC, without changing the control between the participating companies.

### **PETROTEC LDA./PETRÓNICA S.A/PETROINFORMA S.A./PETROSISTEMAS S.A.**

53. This operation didn't fulfil the legal requirements established in the nº 9 of the Decree Law 371/93, to be considered as a merger. The operation consisted in restructuring the group of undertakings PETROTEC, without changing the control between the participating companies.

### **SOMAGUE S.A**

54. This merger operation was notified on 28.02.97 and consisted of an acquisition by SOMAGUE SGPS of the whole capital of ASSICONSTRÓI S.A. Following this operation, SOMAGUE obtained a share of 20 percent in the construction and works market.

55. The increased market power of SOMAGUE was considered unlikely to disturb the competition between the large power market's undertakings playing in the construction market, and the merger was therefore approved.

**FEIRA NOVA S.A./PINGO DOCE S.A.**

56. This operation was notified on 04.03.97 and concerned the acquisition by PINGO DOCE S.A. - Distribuição Alimentar - and FEIRA NOVA S.A of six units held by CUNHA & BRANCO - Distribuição Alimentar, S.A. -, operating in the retail sector of food and beverages.

57. As a result of this operation the market share of the undertaking group was only increased nearby 0,15 percent so the merger was therefore approved.

**PARTEK OY AB**

58. The operation consisted of the acquisition of the majority of the capital share of OY Sisu AB by PARTEK. The effects on the relevant markets - technology equipment and machinery markets (cranes, pre-moulding) - were unlikely to harm competition, since its structure didn't change. The merger was hereby approved.

**QUIMIGEST S.A.**

59. This merger operation took place in the context of a public procurement held to carried out the privatisation of QUIMIGAL - Química de Portugal S.A., and consisted of the acquisition of 90 percent of its capital share by QUIMIGEST.

60. The merger was approved taking into account, the non-existence of overlapping market shares between the two undertakings, at the production activity level. Consequently the market's competition structure remained unchanged not having been created or reinforced a dominant position.

**QUMIFÉRTIL S.A.**

61. This notification took place in the context of a public procurement held to carried out the privatisation of QUIMIGAL - Química de Portugal S.A., and consisted of the acquisition of 90 percent of its capital share by QUMIFÉRTIL - SOCIEDADE GESTORA DE PARTICIPAÇÕES SOCIAIS S.A.

62. Nevertheless, the Privatisation Board, despite the favourable opinion passed over this acquisition proposal in benefit of Quimigest S.A. from DGCC given merely in the context of a merger operation.

63. The foreseen operation was limited to the acquisition of the market shares already held by Quimigal, having only produced a changing in the ownership of the capital share. Since both undertakings involved developed their activity in different markets and the market's competition structure didn't suffer any changing the merger was hereby approved.

**PROCTER & GAMBLE COMP.**

64. This merger operation was notified on 26.05.97 and consisted of an acquisition by PROCTER & GAMBLE COMPANY (P&G) of the capital share of TAMBRANDS INC.

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65. The two undertakings developed their activity in different relevant markets, which were feminine hygienic care products for external use concerning P&G, and feminine hygienic care products for internal use in the case of TAMBRANDS INC. Although P&G has strengthened its share up to 30 percent, in the market of hygienic products for internal use (share already held by TAMBRANDS throughout the distribution company ARBORA in which P&G held already 50 percent of the capital share) the investigation concluded for the approval of the merger, since there was any changing in the competition structure of the relevant market nor the creation or reinforcement of a dominant position.

### **AMTROL INVESTIMENTOS INC.**

66. This merger was notified on 22.07.97 and consisted of the acquisition by Amtrol Investment Inc. of the whole capital of the undertaking PETRÓLEO MECÂNICA ALFA S.A., through a Portuguese company - AMTROL HOLDING PORTUGAL, SGPS, UNIPessoal LDA.

67. The relevant market considered was the market of the production and commercialisation of metallic containers of steel for the storage and transportation of technical gas, refrigerating gas and liquefied oil gas. This market usually doesn't allow abusive practices given the difficulty for producers of having independent behaviours. In fact, the market where the merger would produce effects, it's an open market, highly influenced and dominated by its customers and suppliers and with a high level of maturity concerning the technology used.

68. Notwithstanding the important market share obtained by ALFA as a consequence of the operation (47 percent), the investigation concluded for the approval of the merger, having considered it was unlikely to create a dominant influence capable to distort significantly this specific market.

### **LIDO SOL II**

69. This merger was notified on 22 July 1997 and consisted of the acquisition by LIDO SOL II - Distribuição de Produtos Alimentares, S.A. - throughout the trespass of three supermarkets, owned by another undertaking called NOVAESPERANÇA, Comércio, Importação e Exportação, LDA., localised in Madeira Island.

70. The market share held by LIDO in the relevant market, which was the retail trade on super and hyper markets in Madeira Island, was increased from 28,9 percent up to 33,3 percent, as a consequence of the merger, reinforcing the power of the group Jerónimo Martins, which held the control of the undertaking.

71. However the merger was approved, taking into account the existence in the relevant market of another powerful group - SONAE - operating in a franchising system, through ESTEVÃO NEVES S.A., an undertaking operating under the name MODELO, and therefore the need to ensure a balance between these two undertakings groups.

### **SOQUIFA/FARMACEL/FARMODUARTE**

72. The operation consisted in the incorporation of FARMACEL and FARMODUARTE by SOQUIFA.

73. The incorporation foresaw was not considered a merger in the sense of article 9º, nº 1 of the Decree Law 371/93, taking into account the fact SOQUIFA already held the totality of the capital of the other two undertakings, which cannot be considered as independent entities.

#### **EXIDE GMBH**

74. The merger operation consisted of the acquisition by EXIDE GMBH of the share capital from DETA ACCUMULATORENVERK GMBH, whose effects in Portugal were only perceptible in the market of production and commercialisation of batteries/accumulators, where an overlapping of the activities developed by both undertakings took place, considering that the capital of SOCIEDADE PORTUGUESA DO ACUMULADOR TUDOR, S.A. was wholly held by EXIDE.

75. After the acquisition, EXIDE group increased its market share from 44,9 percent up to 48,5 percent. Notwithstanding the strengthening of the market share, the DGCC gave a favourable opinion to the operation, having in consideration the specific features of the market, highly dependent on imports, despite its spreaded structure for small companies.

#### **ESTORIL SOL S.A.**

76. The merger was notified on 29 August 1997 and consisted of an acquisition by ESTORIL SOL S.A. of 49 percent of the capital share of SOPETE, limited to its activity in the market of games of chance.

77. Taking into account that SOPETE held in its geographical relevant market (the towns of Espinho and Póvoa do Varzim) a market share of 39,4 percent, while its main competitor held 60,6 percent, the DGCC gave a favourable opinion to this merger having considered the operation was unlikely to contribute to the creation or reinforcement of a dominant position.

#### **AMERICAN TOOL COMPANIES INC.**

78. The operation consisted of an acquisition by an American undertaking - AMERICAN TOOL COMPANIES, INC, - of the capital share of the Portuguese undertaking ABREU -MANUFACTURAS METÁLICAS, S.A.

79. The relevant market relates to buck saw manufacturing and presented a very reduced dimension. After the merger operation the market share of the notifying company rose to 30 percent, but the operation only produced a changing in the ownership, having maintained the same competition structure in the relevant market. The merger was therefore approved.

#### **DIA PORTUGAL SUPERMERCADOS S.A.**

80. This merger operation consisted of the acquisition by DIA PORTUGAL SUPERMERCADOS S.A. of the whole capital of the undertaking COMPANHIA PORTUGUESA DE LOJAS DE DESCONTO S.A..

81. Both undertakings involved in the merger operated in the retail trade of consumption goods and the relevant market was limited to cleaning and personal care products, commercialised at a local level.

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82. Having acquired also the trademark MINIPREÇO, the notifying company increased its market share up to 51 percent, concerning its selling area and turnover, and up to 82,1 percent related to the number of stores.

83. Resulting from the operation a potential reinforcement of a dominant position likely to prevent, distort or restrict the competition, the Portuguese Under Secretary of Trade and Competition asked the Competition Council its advice, which consider it was not possible to conclude for a creation or reinforcement of a dominant position likely to restrict the competition, paying attention to the enlargement of the relevant market to other types of selling activity, such as the small retail trade for food products and the small and medium supermarkets situated inside the city limits.

84. Given consideration to the fact that the merger consisted in a modification of trade units with relevant dimension, subject to prior authorisation under the articles 1st and 3 of the Decree Law 218/97, it took place a global balance of the operation, as provided by article 9 of the above mentioned legislation.

85. The balance showed the operation had produced a negative result concerning the diversification of the offer, counterbalanced by the fact that the joint market share DIA/MINIPREÇO had reached a low expression in the geographical relevant markets. Consequently, the maintenance of both trademarks was considered as having had a small impact concerning the diversification of the offer in the different local markets.

86. Taking into account these considerations, the operation was approved under the provision of article 10 of the above mentioned Decree Law.

### **SAPEC PORTUGAL, SGPS/QUMIGAL, QUÍMICA DE PORTUGAL S.A/ QUMIGAL ADUBOS S.A./SAPEC AGRO S.A.**

87. The foresaw concentration consisted of an acquisition by SAPEC group of 49 percent of the capital share of QUIMIGAL ADUBOS S.A. and the acquisition by the latter of the Fertilisers and Seeds Division of SAPEC AGRO. Following the merger, SAPEC and QUIMIGAL got the jointly control of QUIMIGAL ADUBOS.

88. This merger was foresaw on the proposal presented by QUNIMIGESTE - SOCIEDADE QUÍMICA DE PRESTAÇÃO DE SERVIÇOS S.A.- in the context of a public tendering leading to the privatisation of QUIMIGAL - QUÍMICA DE PORTUGAL S.A..

89. Despite the foreseeable increase of the market share up to 85 percent as a consequence of the operation, it was considered the merger wouldn't restrict the competition at the domestic market, taking into account the important weight of the remaining competition, even if potential.

### **CROWN, CORK AND SEAL COMPANY INC.**

90. The merger consisted of an acquisition by CROWN, CORK AND SEAL COMPANY INC. of the whole capital of the Portuguese undertaking ORMIS - EMBALAGENS DE PORTUGAL S.A..

91. CROWN, CORK AND SEAL COMPANY INC. increased its market shares both in the market of cans for food products in which it rose from 32,1 percent to 76,7 percent and in the market of capsules where the share rose from 42,4 percent to 65,7 percent.

92. Since there still a significant potential of competition and taking into account the specific features of this market, it was considered this merger did not create a competition restriction and therefore it was approved.

### **III. The role of competition authorities in the formulation and implementation of other policies**

#### **1. Privatisations**

##### ***1.1. Latest developments***

93. The Portuguese Government approved in March 1996 a privatisation programme for 1996/1997, clarifying the goals pursued and the criteria chosen - assuming a clear preference for public offerings in the Stock Market, as it was already the case before - as well as setting the priorities for each sector.

94. Although the applicants on a public competitive tendering may be subject to compulsory notification of a merger proposal to the DGCC, within the framework of merger control provisions set by the Competition Act, the conclusion of the competitive tendering depending on the opinion of DGCC, there have been few cases of this kind, partly due to the preference for public offerings shown in the last privatisations.

95. In the financial sector the Government intends to limit the public participation to two banking institutions - CAIXA GERAL DE DEPOSITOS and BANCO NACIONAL ULTRAMARINO, an associated bank part of the largest banking group of Portugal.

##### ***1.2. Privatisations occurred in the year 1997***

96. Among the companies sold during the period referred to, some cases should be underlined, such as:

###### *Iron and steel industry*

97. During 1997, took place the second phase of the privatisation of **Siderurgia Nacional- Empresa de Serviços, S.A.** under which 19 percent of the capital share was sold through a public offering, aimed to small applicants, workers and emigrants.

###### *Bank:*

98. The complete privatisation (third phase) of *BFE* - Banco do Fomento Exterior S.A.- was achieved on 1997, having consisted on the sale of the remaining capital share through a public competitive tendering.

###### *Telecommunications:*

99. The third phase of the privatisation of **PORTUGAL TELECOM S.A.**, sold an equity of 26 percent of the capital share through a public offering at the domestic market and two direct sales reserved to a group of financial institutions (national or international) aiming to find a global strategic partner and

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to develop several specific strategic alliances. The Portuguese State has maintained an equity share of nearly 25 percent.

### *Electricity production and distribution:*

100. On 1997 began the privatisation of the majority of companies that form the group **EDP - Electricidade de Portugal, SA**; The first phase sold an equity share of 4,5 percent through a public offering and private allocations on institutional investors. The second phase was implemented through a direct sale, having sold 4,5 percent of the capital share to strategic partners of EDP.

### *Chemical industry:*

101. The wholly capital of Quimigal - Companhia Química de Portugal S.A was sold in two phases, the first one having sold 90 percent of the capital share through a public tendering, and the second one through a public offering, reserved to workers and small applicants concerning the remained capital.

### *Shipping sector (construction and repairs):*

102. The privatisation of Setenave - Estaleiros Navais de Setúbal S.A. was carried out on two phases, the first one through a direct sale of 95 percent of the capital share, and the second one through a public offering of the remaining 5 percent equity share.

### *Construction (highways and roads):*

103. During 1997, the Government began the privatisation of **Brisa - Auto-estradas de Portugal S.A.**, having sold, throughout a public offering of 49 percent of its capital share. An equity share of the capital was directly sold to financial institutions.

### *Steel sector*

104. During 1997, the second phase of the privatisation of **Lusosider** took place, throughout a public offering of 10 percent of the capital share.

## **2. Deregulation**

105. During 1997, the deregulation process in the price policy was pursued. At present time all goods and services are excluded from the former declared price regime. However the DGCC maintains an accurate activity in surveillance price trends.

## **3. Trade and distribution policies - Trade Units with Relevant Dimension**

106. As mentioned above, the Portuguese legislation on this matter was reviewed, introducing a new concept - The Trade Units with Relevant Dimension UCDR (Decree Law 218/97). It was also approved

the secondary legislation concerning the authorisation regime of this trade activity (Portaria 739/97). The new legislation take into consideration not only the area of the store, but also the buying and selling power of the entrepreneurial structure, which means the accumulated sales area.

107. During 1997, the DGCC has received 70 requirements concerning the implementation of UCDR, but none ministerial decision occurred until the end of the year.

108. Under this new legal regime, the UCDR subject to prior authorisation or communication, must be registered at the Directorate General for Trade and Competition (DGCC), through the fulfilment of a specific form having being registered 269 units.

109. In accordance to this new legislation the DGCC has participate in the mandatory municipal inspections prior to the opening of the UCDR, that have been approved by a ministerial decision.