ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PORTUGAL

-- From 1st July 2008 to 30st June 2009 --

This report is submitted by Portugal to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 21-22 October 2009.
Executive Summary

1. Unless otherwise indicated, this report covers the period of 1st July, 2008 to 30th June 2009, in the continuity of the previous reports.

2. Having set the strategic goals and operational objectives for the next five years, under the new motto “In the service of competition,” the Board\(^1\) launched a consolidation process of institution-building through an overhaul of the agency and approval of the internal rules and regulations needed for staff and departments to work more efficiently and to enhance the quality and timeliness of its decisions, as well as a prioritisation exercise of the investigation activities of the PCA.

3. In this quest, an in-depth overhaul of the agency was undertaken by the new Board following an internal exercise on the assessment of the efficiency of the existing PCA organisation. Building on the conclusion of this evaluation exercise, the new organisation was put in place, comprising three departments to deal with competition cases. These are the “case departments” - the Mergers Department, the Restrictive Practices Department and the Legal Department. In addition, there are two horizontal units: the Economic Research Bureau, which for the time being also includes the Market Monitoring Bureau, and the International Relations Bureau. The entire organisation is supported by a back-office in charge of human resources, financial management, and internal procurement (the Administrative and Financial Department), as well as an IT unit.

4. Three new units were created under this re-organization: a reinforced Legal Department, the Economic Research Bureau (including for the time being the Market Monitoring Bureau) and the International Relations Bureau. Moreover, two previous departments (Restrictive Practices Department and Regulated Markets Department) were merged into one – the Restrictive Practice Department.

5. Putting the new institutional design into place implied staff reallocation, with the balance between economists and lawyers duly taken into account. The Economic Research Bureau brings together many of the economists with specialized skills and knowledge. A new and very stringent recruiting process was concluded with the appointment of 3 new lawyers and 3 new economists.

6. A prioritisation exercise of the investigation activities of the PCA was also launched. Priority setting is constrained by the legal framework. According to the principle of legality, the PCA is bound to consider all complaints received concerning possible infringement of competition rules. To overcome this limitation and to achieve the strategic goal of enhancing the quality and timeliness of PCA decisions, there has been a major effort to reduce the backlog of investigations and to free up resources for priority investigations.

7. In this regard, a two-step approach was followed. The first step identified the longstanding investigations that remained open but with no results to date. The second step was achieved by deciding to continue the investigation of each open case or to close it (i.e., go or no go decision), based on the amount of evidence that had been or could be gathered. As a result, the PCA no longer keeps “open cases not active” in its books. Given that staff numbers are always limited, it is critically important to pursue at any given time the number of cases that can be dealt with in a timely manner by the available staff.

\(^1\) A new Board of the Competition Authority was appointed in March 2008 for a remit of 5 years. The new board members are Manuel Sebastião, President, Jaime Andrez and João Espírito Santo Noronha, Members.
8. Following this approach, during the time of reference, 24 investigations were closed due to lack of evidence on anticompetitive behaviour. This major effort allowed the PCA to redeploy its resources to more viable investigations and priority cases.

9. Furthermore, the international agenda of the PCA was consolidated according to the vision that there is no substitute for peer review and international best practices. This translates into the commitment of the PCA to work closely with EU DGCOMP, OECD, UNCTAD and ICN. As a result, the period under review there was an intense period for the PCA in all its areas of activity, including the organisation of the three-day ICN Cartel Workshop back-to-back with an international conference on “Cracking cartels: recent international developments.”

10. Finally, following an internal stocktaking exercise of the PCA five-years experience in dealing with and deciding on restrictive practices and control of concentrations cases (number and complexity of cases) as well as of the case-law regarding appeals of PCA decisions, an internal working paper with a proposal for a revised Competition Act with the identification of the amendments deemed necessary to increase the effectiveness of the PCA decisions towards more efficient competition enforcement, was drafted. This working paper was presented for review at the 104th meeting of the OCED Competition Committee (22nd and 23rd October 2008) in a session on “Competition Developments in Portugal”.

11. As for operation activity during the period under review, 53 merger operations were notified, and 58 final merger review decisions were adopted, of which 2 under phase II review process, that were cleared with commitments. One notified merger operation was withdrawal from the administrative proceedings, following the decision by the PCA to initiate an in-depth investigation into the merger.

12. Regarding anticompetitive practices, 12 new investigations were launched during the period under review. Two infringement decisions were taken, resulting in combined fines of around €3.3 million levied on the Association of Lisbon Bakers, for a decision on price fixing, and PT Comunicações, S.A. for an abuse of dominant position regarding a discount policy.

13. Advocacy efforts continued at the forefront of the PCA activities during the period under review. In June the PCA published a preliminary report on fuel markets in Portugal, including an analysis of the different components making up the retail price of liquid road fuels, following a request by the Minister for Economy and Innovation. By December, and as an in-depth follow-up to the June report, the PCA concluded an Interim Report on the Liquid Fuel and Bottled Gas Sectors in Portugal, with its final version being completed and published by March 2009. All three reports are available online in their English versions. The final report also presented a set of recommendations aimed at fostering competition conditions in the liquid fuel and bottle gas markets.

14. Various opinions at the request of Sector regulators were issued, mainly on the telecommunication and energy markets. Also, at the request of government, an opinion on draft legislation on a decree-law regulating gas installations across households was delivered.

15. Several working papers were also published covering the telecommunications industry and topics such as sustaining collusion in growing markets and Duopoly competition with common shareholders and a series of open seminars with a guest speaker on competition policy were hosted by the PCA.

1. Changes to competition laws and policies, proposed or adopted

16. During this time period, the PCA approved a new merger notification form (Regulation No. 120/2009 of 17 March 2009), which was implemented in March 2009, clarifying and reorganizing the scope of the information required, following public consultation, which took place between 15 May and 30 June 2008. Of particular note among the amendments to the earlier notification form, which had been in
effect since 2003, are the inclusion of a list of concept definitions and the adjustment of the optional nature of the information to the complexity of mergers.

17. The main aim of the described improvements is to expedite the merger control procedure, avoiding, when possible, the need for additional information requests which would suspend legal deadlines. Furthermore, the new merger notification form allows for electronic submission of the notification, thus facilitating its submission, improving the dynamics of the procedure, and diminishing paper use.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 General overview

18. The PCA’s enforcement activity during the period under review was mainly concentrated in the telecommunications, energy, food retail services, pharmaceutical products and banking sectors. There were infringement decisions in two cases, one related to an abuse of dominant position in telecommunications, more precisely in the wholesale markets for leased lines, and a cartel agreement in the market for bakeries related to a price fixing system implemented by the Association of Lisbon Bakers (Associação dos Industriais de Panificação de Lisboa).

19. In the first case a fine of € 2,1 million was imposed and in the cartel case the decision was to apply a fine of 1,17 million. Both cases were subject to appeal by the defendants.

20. During the same period, twelve new investigations were opened in different sectors for practices likely to appreciably prevent, distort or restrict competition in the whole or a part of the national market, in accordance with the text of the Portuguese Competition Law and in twenty four other cases decisions were reached to take no further action due to lack of evidence on anticompetitive behavior.

21. Finally, during this period, the Competition Authority brought five cases against undertakings for failure to notify mergers or acquisitions: as a result, the Competition Authority decided to take no further action in one of them, and admonished the undertakings concerned in the remaining four cases.

2.1.2 Summary of the Cases

Decisions by associations of undertakings – The Association of Lisbon Bakers

22. The PCA decided on proceedings brought against a decision by an association of undertakings, The Association of Lisbon Bakers (AIPL), found to be in infringement of art. 4 of the Competition Act (Law 18/2003).

23. The investigation proved that between 2002 and 2005 the AIPL had put in place a system for exchange of information relating to the retail price of bread between its associated undertakings, which was found to “directly or indirectly fix purchase or selling prices or any other trading conditions”. A fine of € 1.17 million was imposed.
Abuse of a Dominant Position - PT Comunicações, S.A

24. An infringement of art. 6 of Law 18/2003, for an abuse of a dominant position, was decided in the wholesale markets for leased lines against PT Communications (PT Comunicações, S.A.) regarding a discount policy implemented by this undertaking from the 1st March 2003 until the 7th of March 2004.

25. During the period of the infringement, PT Communications was the sole supplier of the wholesale services of terminating and analogue trunk segments of leased lines, and its market share concerning the wholesale service of digital trunk segments of leased lines share has always been higher than 86%. As a consequence PT Communications was able to impose conditions in the wholesale markets to the suppliers in the retail market for telecommunication services conditions that compete directly with undertakings from the PT economic group, abusing its dominant position. As a result, a €2,1 million fine was imposed.

2.1.3 Other cases

26. During the period under review, the Competition Authority brought five cases against undertakings for failure to notify mergers or acquisitions. In one of these, there was a decision to take no further action. In the remaining cases, the undertakings concerned were admonished.

2.1.4 Appeals

27. During the period under review, the Court of Appeal decided on a case regarding a condemnation decision of a Partnership Agreement (SIC/PTMULTIMÉDIA/CATVP) covering the production, marketing and distribution of television channels, produced in Portuguese and in Portugal and transmitted by cable television. The court of first instance ruled that the process should return to the PCA to amend some procedural irregularities and ruled that the legal preference clause and the exclusivity clause was no longer mandatory. The Decision was appealed by the PCA and by the companies/undertakings condemned (SIC/PTMULTIMÉDIA). In 2008 the court of appeal confirmed the decision of the court of first instance.

28. During the same period, the Court of Appeal delivered a decision on the appeal of a PCA decision on price fixing in shipping agency services (AGEPOR). The Court of First Instance upheld the PCA’s decision; albeit with a reduction in the amount of the fine to €130,000 (PCA had condemned the companies to the payment of a fine of €195,000). The Court of Appeal confirmed the decision of the Court of First Instance. In 2009, the Constitutional Court, pursuant to the appeal presented by the undertakings, declared that it could not decide the appeal. In light of the above, the decision of the Court of First Instance was not reversed.
2.2 Mergers and acquisitions

2.2.1 Statistics

Statistics regarding merger control from 1st July 2008 to 30th June 2009

**Table I: Merger Case decisions adopted since July 2008**

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notified merger operations</td>
<td>53</td>
</tr>
<tr>
<td>Total decisions</td>
<td>58</td>
</tr>
<tr>
<td>Pending</td>
<td>7</td>
</tr>
</tbody>
</table>

**Phase I**

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-notifiable transactions</td>
<td>4</td>
</tr>
<tr>
<td>Clearance</td>
<td>46</td>
</tr>
<tr>
<td>Clearance with commitments</td>
<td>2</td>
</tr>
<tr>
<td>Withdrawn cases</td>
<td>1</td>
</tr>
<tr>
<td>To Initiate an in-depth investigation</td>
<td>2</td>
</tr>
</tbody>
</table>

**Phase II**

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearance</td>
<td>0</td>
</tr>
<tr>
<td>Clearance with commitments</td>
<td>2</td>
</tr>
<tr>
<td>Non Clearance</td>
<td>0</td>
</tr>
<tr>
<td>Withdrawn cases</td>
<td>1</td>
</tr>
<tr>
<td>Tacit approval</td>
<td>0</td>
</tr>
<tr>
<td>Referral to European Commission</td>
<td>0</td>
</tr>
</tbody>
</table>

**TOTAL FINAL DECISIONS ADOPTED (does not include the Phase I decisions to proceed into Phase II)** 56

**Table II: Breakdown by nature of operation (Final Decisions)**

<table>
<thead>
<tr>
<th>Nature of operation</th>
<th>Cases</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horizontal</td>
<td>29</td>
<td>52,73</td>
</tr>
<tr>
<td>Vertical</td>
<td>3</td>
<td>5,45</td>
</tr>
<tr>
<td>Conglomereral</td>
<td>23</td>
<td>41,85</td>
</tr>
</tbody>
</table>

**TOTAL** (does not include the Phase I decision withdrawn by the notifying party) 55 100%
Table III: Breakdown by geographic scope of operation (Final Decisions)

<table>
<thead>
<tr>
<th>Cases</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi-jurisdictional filings (within EU)</td>
<td>5</td>
</tr>
<tr>
<td>Multi-jurisdictional filings (outside EU)</td>
<td>9</td>
</tr>
<tr>
<td>National with involvement of undertakings from other EU member states</td>
<td>10</td>
</tr>
<tr>
<td>National with involvement of undertakings from countries outside EU</td>
<td>1</td>
</tr>
<tr>
<td>Completely national</td>
<td>30</td>
</tr>
<tr>
<td>TOTAL (does not include the Phase I decision withdrawn by the notifying party)</td>
<td>55</td>
</tr>
</tbody>
</table>

Table IV: Breakdown by type of operation (Final Decisions)

<table>
<thead>
<tr>
<th>Cases</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merger</td>
<td>2</td>
</tr>
<tr>
<td>Acquisition of majority shareholdings</td>
<td>41</td>
</tr>
<tr>
<td>Acquisition of assets</td>
<td>6</td>
</tr>
<tr>
<td>Joint venture / control</td>
<td>5</td>
</tr>
<tr>
<td>Takeover bid</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL (does not include the Phase I decision withdrawn by the notifying party)</td>
<td>55</td>
</tr>
</tbody>
</table>

29. The statistics set out above refer to the period from 1st July 2008 to 30th June 2009.

30. Throughout the 2nd semester of 2008 (July – December), there were 30 notifications and 35 Phase I decisions, of which 2 were inapplicability decisions, 29 were clearance decisions, 2 were clearance decisions subject to remedies and 2 were decisions to initiate second-Phase proceedings (in-depth investigation). In this semester there were also 2 clearance Phase II decisions.

31. On the 1st semester of 2009 (January – June), there were 23 notifications, 20 Phase I decisions, of which 2 were inapplicability decisions and 17 were clearance decisions, and one declaring the lapse of proceeding following the withdrawal by the notifying party, and one Phase II decision concerning the lapse of proceedings, following the withdrawal of the case by the notifying party.

2.2.2 Summary of significant merger cases decided

Sumolis/Compal – Phase II Clearance Decision with Remedies

32. On August 14th, 2008, the PCA adopted a Phase II Clearance Decision subject to Remedies with respect to the merger operation consisting on the acquisition by Sumolis – Companhia Industrial de Frutas e Bebidas of Compal – Companhia Produtora de Conservas Alimentares.

33. Sumolis is active in the production and distribution of carbonated soft drinks, still fruit drinks, juices, nectars, still and carbonated bottled water and beer. Compal, on the other hand, is active in the production and distribution of juices, nectars, still soft drinks, carbonated waters, prepared vegetables and tomato derivatives.
34. Based on the parties’ activities, the analysis undertaken by the PCA focused on eight product markets, namely: (i) prepared vegetables; (ii) tomato derivatives; (iii) chilled juice drinks; (iv) the packaging of food liquids; (v) unflavoured carbonated waters; (vi) flavoured carbonated waters; (vii) still fruit soft drinks; and (viii) juices and nectars. These last four markets further segmented according to the distribution channels: (i) the food retail channel, in which marketing takes place through retail shops for food products, including supermarkets and hypermarkets, and (ii) the HORECA channel, in which marketing takes place through hotels, restaurants and cafés. All relevant markets were considered to be national in scope.

35. The investigation conducted by the PCA identified a set of competition concerns in three markets, specifically the market for still fruit soft drinks in the HORECA channel, the market for juices and nectars in the food channel and the market for juices and nectars in the HORECA channel. These competition concerns related to the impact of the merger in the market structure and, in particular, to the degree of the market share leadership held by Sumolis in the post merger context, combined with the existence of strong barriers to entry and expansion by competitors. These barriers emerge from the weight of the brand awareness, the diversity and scope of the products under offer by the merged entity, the existence of strong economies of scale and scope and the importance attributed to the access to widespread distribution networks, with a significant degree of coverage.

36. As such, on July 15th, 2008, the PCA concluded that the merger, as notified, would be liable to create or reinforce a dominant position that could lead to a significant impediment to effective competition on the above mentioned relevant markets, and decided to proceed to second-phase proceedings and open an in-depth investigation.

37. During this second phase, Sumolis put forward a set of remedies to ease the competition concerns identified in the three markets, thereby committing to (i) suspend the sale, in Portugal, of the products under the Sumol Néctar brand, the SumolNéclight brand and the Sumol100%Sumo brand, for a period of three years; (ii) divest the Sucol brand for Portugal and Spain and the formulas used in Sucol, Sumol Néctar, SumolNéclight and Sumol100%Sumo; (iii) be available to provide filling services for juices and nectars, in line with market conditions, to any manufacturing brand, in 0.2-litre glass bottles for a period of three years; and (iv) eliminate exclusivity clauses in contracts for the distribution of juices, nectars and still fruit soft drinks, in Portugal.

38. The PCA’s clearance to the operation was made conditional on the observance of the remedies proposed by Sumolis, which were considered likely to promote the entry of a new operator or the expansion of an existing one, with the capacity to represent a viable alternative to the merging entity, thus creating contestability conditions in these markets.

Transdev / Joalto / JV – Phase I Clearance Decision with Remedies

39. On December 11th, 2007, Transdev Participações, SGPS, SA and 11 shareholders who directly or indirectly own the registered capital of the undertaking Joalto - Participações, SGPS, SA., notified the creation of a joint venture, under the name JV Sociedade.

40. Transdev, fully owned by the French company Transdev - Société Européenne pour le Développement des Transports Publics, SA, which in turn is controlled by the Caisses des Dépôts Group, operates in Portugal in the heavy-vehicle road passenger transport sector. The Caisse des Dépôts Group is also active in Portugal in the insurance sector, via CNP Assurances, and the infrastructure engineering sector, via the EGIS Group. The Joalto Group is active in Portugal in the insurance sector, via CNP Assurances, and the infrastructure engineering sector, via the EGIS Group. The Joalto Group is active in the heavy-vehicle road passenger transport sector as well as, however to a very minor extent, in the travel agency services sector. JV Sociedade will be mainly operating in the heavy-vehicle road passenger transport sector.
41. In terms of relevant market delineation for scheduled public road passenger transport on urban routes, the PCA considered that the exact definition of the geographic market could be left open, as the competitive assessment remained unchanged irrespective of the market delineation considered.

42. For the scheduled public road passenger transport on interurban routes, the approach of the PCA was to consider the relevant geographic markets with reference to the point-to-point journeys (flows) operated by at least one of the undertakings involved. The PCA then evaluated, on a flow-by-flow basis, the degree of substitutability between the bus and other transportation modes (e.g., train, taxi) for the same journey, enlarging the relevant market so as to include these alternatives means of transportation, whenever they exerted a sufficient competitive pressure on the bus.

43. Albeit having defined these geographic markets by reference to the point-to-point journeys, the merger assessment undertaken by the PCA also took into account the impact in terms of the wider networks of the undertakings involved, whenever it proved relevant.

44. In the competitive assessment, the PCA analyzed the impact of the merger on each of the relevant markets, evaluating to what extent the elimination of the competition between Transdev and Joalto would create the conditions and provide the incentives to deteriorate the conditions offered to consumers on those relevant markets.

45. Despite the fact that, to some extent, the prices on these activities are regulated, the PCA concluded that, after the merger, there would be incentives to reduce frequencies or to deteriorate the quality offered on seven of the point-to-point routes on scheduled public road passenger transport on interurban routes, where the overlap between the activity of Transdev and Joalto was particularly significant.

46. The PCA’s clearance to the operation, adopted on September 4th, 2008, was made conditional on the observance of the following remedies: (i) the divestiture of Transdev and Joalto franchises on the seven routes where the PCA identified competition concerns; (ii) an obligation not to re-purchase the franchises within 5 (five) years from the date of their transfer.

47. On November 21st, 2008, the PCA cleared a merger by which TV Cabo Portugal was acquiring the exclusive control of Bragatel, Pluricanal Leiria and Pluricanal Santarém, subject to a set of commitments.

48. TV Cabo is owned by ZON (former PT Multimédia), which offers a wide range of products and services nationwide in the area of electronic communications, in particular pay-TV services, broadband Internet services and voice services. In addition to TV Cabo, ZON has controlling stakes in Lusomundo Cinemas SA and Lusomundo Audiovisuais, SA.

49. Bragatel (controlled by Parfitel) is a telecommunications operator in the city of Braga and certain surrounding municipalities, operating as a cable distribution network operator, a fixed radio access operator, an Internet service provider and a data transmission service provider.

50. Pluricanal Leiria and Pluricanal Santarém, also controlled by Parfitel, are telecommunications operators in the centre region of Portugal, carrying out economic activities as cable distribution network operators, Internet service providers and voice over Internet service providers.
51. The analysis undertaken by the PCA focussed on the following relevant markets: (i) the national markets for publicly available telephone services provided at a fixed location; (ii) the national market for the provision of broad-band Internet services; (iii) the wholesale Internet connectivity market, on a broader geographical scale than the national territory and the (iv) the sub-national retail pay-TV market.

52. The PCA concluded that the merger operation was likely to lead to the creation or strengthening of the notifying party’s dominant position that could result in significant barriers to effective competition in the retail pay-TV markets, based on the following set of reasons:

- the presence of other players, in some of the markets at the sub-national level, was not considered to be sufficient to ensure effective competition in the retail pay-tv market, and to prevent the reinforcement of the merged entity’s dominant position;
- the existence of strong barriers to entry and expansion in the retail pay-tv market, namely barriers of a legal nature, physical barriers, financial barriers and economies of scale and scope.

53. The merger was therefore likely to lead to an increase in prices, and to a reduction in discounts and promotions. Furthermore, the PCA concluded that the merger was also expected to lead to a decline in the incentives to the expansion of the network to new areas and in the incentives to innovate in terms of technology and supply, and that it would also amplify the magnitude of the barriers to entry and expansion. Accordingly, on the 21st of April, 2008, the PCA decided to proceed to an in-depth investigation.

54. Following this decision, the notifying party submitted a set of commitments aimed at providing a solution to the competition concerns identified by the PCA.

55. On September 19th, 2008, the PCA initiated the Consultation Phase with Interested Third Parties (Portugal Telecom, Cabovisão, Vodafone Portugal and Sonae.com). In response to some concerns expressed during the Consultation Phase, the notifying party submitted a revised set of commitments.

56. The set of commitments undertaken by the notifying party envisaged the promotion of entry by a competitor into Cable TV distribution, through the selling-off of a series of network cells (including customers), the release of space in the secondary and tertiary network infrastructures, as well as the supply of nationwide wholesale satellite television.

57. The first and third commitments were aimed not only at creating conditions of contestability with regard to the two main platforms for the provision of pay-Tv services – cable and satellite – but also to ensure, with the necessary degree of certainty, the entry of a new operator (or expansion of an existing competitor) offering services in the relevant geographical markets through at least one of the platforms mentioned.

58. On November 21st, 2008, the PCA cleared the merger subject to the above mentioned remedies.

59. A similar merger, by which CATVP, owned by ZON, was acquiring TVTel, a company active in the electronic communications market, in particular in the provision of triple-play services, offering pay-TV, telephone and broadband Internet, was also cleared on November 21st, 2008, as a Phase I decision, subject to analogous remedies.

Petrogal/Petrol Stations – Withdrawn case

51. The analysis undertaken by the PCA focussed on the following relevant markets: (i) the national markets for publicly available telephone services provided at a fixed location; (ii) the national market for the provision of broad-band Internet services; (iii) the wholesale Internet connectivity market, on a broader geographical scale than the national territory and the (iv) the sub-national retail pay-TV market.

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Petrogal/Petrol Stations – Withdrawn case

60. On January, 14th, 2009, Petrogal - Petróleos de Portugal informed the PCA of its withdrawal from the administrative proceedings initiated on the 22nd of February, 2008, when it notified the acquisition of
the exclusive rights to operate a group of assets composed of eight Petrol Stations, following the decision by the PCA, on August 26th, 2008, to initiate an in-depth investigation to the merger.

61. Petrogal is a member company of Grupo GalpEnergia, whose corporate purpose consists of the refining of crude oil and its derivatives, the transport, distribution and marketing of crude oil and its derivatives and natural gas, as well as the exploration and search activities relating to those two products.

62. The Petrol Stations under acquisition consisted of a group of eight road transport fuel stations previously owned by the undertaking Carrefour Portugal and at present owned by Grupo Sonae.

63. The decision to initiate in-depth proceedings followed the conclusion that the merger could lead to the creation or reinforcement of a dominant position that could result in significant impediments to effective competition in some of the relevant markets identified.

64. During the in-depth investigation, the PCA requested further information both from the notifying party and from third parties to evaluate the potential for price increase as a result of the merger in each of the local markets.

65. However, after being informed of the intention of Petrogal to withdraw of the notified merger, the PCA announced the lapse of proceedings relating to this merger operation, under Article 112.º (1) of the Code of Administrative Procedure, applicable to merger proceedings under article 30.º of the Competition Act.

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

3.1 Studies

3.1.1 The Report on Liquid Fuel and Bottled Gas Sectors in Portugal

66. On June 2nd 2008, the PCA published a short (preliminary) 94-page report on fuel markets in Portugal, including an analysis of the different components making up the retail price of liquid road fuels, following a request by the Minister for Economy and Innovation. By December 16th, and as an in-depth follow-up to the June report, an Interim Report on the Liquid Fuel and Bottled Gas Sectors in Portugal was concluded, with its final version being completed and published on March 31st 2009. All three reports are available online in their English versions.

67. The final report describes the structural characteristics of the sector of liquid fuels for road use and the market for gas as fuel in Portugal, with particular emphasis on issues related to logistics connected with storage and the transport of products as well as the setting and characteristics of service stations for public use, identifying and assessing the main issues in the competitive sphere arising from the way the markets work. The analysis of liquid fuels for road use covers only diesel and 95-octane petrol in mainland Portugal. The reasons for this are that these products are the most relevant in terms of final consumption, and they serve as a reference for the other liquid fuels for road use. The report also provides an in-depth econometric analysis of the phenomenon of asymmetries in the lag and in the range of price adjustments.

68. The main conclusions drawn in these reports are as follows: The way the liquid fuel markets work in Portugal is similar to most other countries in the European Union or the OECD. Prices are based

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2 Full text of the Studies referred herein can be found at the PCA webpage: www.concorrencia.pt
on the international reference prices (Platts NWE), plus related spreads on transport costs, freight, insurance and damage. Retail prices of liquid fuels, as in other European countries, depend fundamentally on three components: taxes (both VAT and a specific fuel tax), which account for 46% for diesel for road use and 59% for petrol in 2008; domestic or international ex-refinery prices (between 32% for petrol and 44% for diesel for road use in 2008); and on the logistics (storage and transport) and retail operations (around 10% for both fuels in 2008). The nominal differentiation between domestic retail prices is normally no more than 2 cents – with the exception of supermarket forecourts, where the difference tends to be bigger, up to 9 cents a litre – and is very much conditioned by a number of structural factors. As for the phenomenon of asymmetries in the lag and in the range of price adjustments, the report has found that for the period between 2004 and 2008, domestic average pre-tax prices tended to adjust completely to changes in international reference prices (Platts NWE) with a 4- to 5-week lag for diesel and a 5- to 6-week lag for 95-octane petrol. Over the same period, the average pre-tax prices in the UE15 tended to adjust completely to changes in international reference prices (Platts) with a 2- to 3-week lag for diesel and a 3-week lag for 95-octane petrol.

69. The report also concludes that there is parallel behaviour visible, involving both the major oil companies and independent operators in Portugal. This parallel behaviour, however, does not by itself indicate concerted horizontal price fixing, since with homogeneous products and transparent markets, all the operators tend to have a very good knowledge about relevant prices in real time. On the other hand, domestic retail prices before tax have never been far from the EU27 average, nor are they ever extreme either above or below this average. Nevertheless, there are certain market characteristics – structural, regulatory and behavioural – that call for the promotion of competition. They lead to several recommendations that the PCA puts forward in this Report. The conclusions of this Report are also applicable to bottled gas wherever relevant.

3.1.2 The Report on Wholesale Electricity Prices in the Portuguese Market During the Second Semester of 2007

70. In May 2009, the PCA published a Report on the wholesale electricity prices in the Portuguese market during the second semester of 2007. This semester coincided with the first six months of the MIBEL day-ahead market, whose creation constituted an important step towards the full liberalization of a unified Iberian electricity market. This report analyzed the electricity wholesale price differences between Portugal and Spain in this Iberian day-ahead market. High levels of market concentration in Portugal and differences in the two countries generation mix were responsible, together with other factors, for the identified price differences. The analysis carried out in this report is currently being extended to encompass the whole year of 2008 and the first semester of 2009.

3.1.3 The Study on the Portuguese Mobile Communications Sector

71. In March 2009 an internal study on the Portuguese Mobile Communications Sector was completed. This study describes the structure of this sector in Portugal and evaluates the price level evolution. Having observed a parallel decrease in prices, the analysis is then extended to explain the process of price determination based on technological costs evolution, competition intensity and scale and scope economies.

3.1.4 The Report on the Competitive Conditions in the Fixed Telephony

72. In July 2009, the PCA issued its third report concerning the competitive conditions in the fixed telephony, broadband access and mobile telecommunications markets. The report compares a set of data

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3 MIBEL stands for the Iberian Electricity Market.
that includes penetration rates, market shares and prices in the wholesale and retail markets, in Portugal and in other four selected EU Member-States. The report shows that, in 2008, the fixed and mobile phone markets presented a high concentration level and that prices were near the EU average. With respect to broadband access, the concentration level has decreased substantially after the incumbent’s spin-off in November 2007, although prices continued to be above the EU average.

3.1.5 A Simulation Study of the Credit Card Industry

73. In May 2009, an economics study commissioned by the PCA, titled *A Simulation Study of the Credit Card Industry* was completed. This study presents an economic model that can be used to analyse and compare the level of consumer surplus, as a proxy for consumer welfare, and the level of total surplus, that will be achieved under four alternative scenarios characterized by different assumptions made over the industrial structure on the acquirers and issuers sides, and assuming either the integration or the separation of these two different groups of agents in the credit card industry as a two-sided market. With some qualifications, the current situation in Portugal can be portrayed as a scenario with a monopolist acquirer and an oligopoly of issuers, where the acquirer and issuers are integrated.

3.2 On going Studies and Market Monitoring

74. During this period, the PCA continued publishing its quarterly Newsletters on Fuel Markets, with the one published this last June covering the 1st quarter of 2009. The PCA has been producing a quarterly Newsletter on the Motor Fuel and Bottled Gas Sectors in Portugal since 2004. During the reference period, four Newsletters were published. These publications analyse consumption, production and imports patterns. They also include price trends in the crude markets, international refining markets, local wholesale markets and local retail markets for gasoline and diesel. Comparisons with the European Union are developed. Starting this coming September, the PCA will initiate an online publication of a statistical monthly bulletin summarizing data on the evolution of crude and fuel prices in international markets, domestic retail fuel prices before and after taxes, as well as total demand and supply volumes and imports.

3.3 New Studies

75. Last February the PCA initiated a study on the consumers’ mobility in the Portuguese telecommunications markets. It aims to characterize mobility and to identify the most important switching and search costs, as well to evaluate the importance of regulatory measures adopted in the past to improve consumer switching, namely number portability and price comparison tools. Depending on the results of this study, the PCA may put forward some recommendations regarding these issues in order to promote more effective competition.

3.4 Working papers

76. During the period under review the PCA also produced and published three economics working papers, in English, on the fuel sector, namely: (i) *Vertical Integration and the Right of First Refusal*, (ii) *Vertical Integration, Matching Contracts and Collusion*, and (iii) *An Estimate of Cost Pass-Through in the Portuguese Retail Gasoline Market*. The first paper analyses the impact of the so-called “right of first refusal” contractual clause on consumer and social welfare. The second paper analyses the economic impact of partial vertical integration – where a vertically integrated national firm refines gasoline and sells it in the retail market together with independent firms which only operate at the retail level – and the matching contracts currently in place in the Iberian refining and retailing gasoline industry. Finally, the third paper analyses the level of pass through of a given decrease in the cost of independent retailers on gasoline retail prices.
77. During this period the PCA also published two working papers on the telecommunications industry, namely: (i) Can Two-Part Tariffs Promote Efficient Investment on Next Generation Networks? (ii) Incentives to Invest and to Give Access to Non-Regulated Next Generation Networks. The first working paper analyses whether two-part access tariffs solve the dynamic consistency problem faced by the regulation of next generation networks (NGN). This consistency problem arises from the trade-off between static and dynamic efficiency faced by a regulatory policy that aims at promoting investment in those networks while also promoting access to it. In other words, before the network is deployed, it is socially optimal to set high access tariffs to promote investment. However, once the network is deployed, it is socially optimal to set the access tariffs to promote competition in the retail market. This dynamic consistency problem affects investment negatively. The second paper analyses the incentives a telecommunications incumbent might have to invest and give access to a downstream entrant to a NGN, assuming that access to the old network is regulated, but access to the NGN is not.

78. Yet another working paper published by the PCA and titled Sustaining Collusion in Growing Markets, analyses the impact of demand growth on the likelihood of collusion between business firms. As market growth may trigger future entry, it is shown that even in situations where perfect collusion can be sustained after entry, coping with a potential entrant in a market which is growing over time may completely undermine any pre-entry collusive plans of the incumbent firms. This is because, before entry, a deviation and the following punishment phase may become more attractive thanks to their additional effect in terms of delaying entry. An additional working paper published by the PCA and titled Duopoly Competition with Common Shareholders, develops a methodology for evaluating competition and welfare when shareholders hold (partial) positions in more than one competitor.

3.5 Recommendations and Opinions

3.5.1 Recommendations regarding Liquid Fuel and Bottled Gas Sectors in Portugal

79. The final report on the Liquid Fuel and Bottled Gas has enabled the PCA to put forward some recommendations, or to reinforce previous ones, regarding the adoption of some measures of a structural, regulatory and behavioral nature, so as to increase the level of competition in the different relevant markets. The first type of measures, structural in nature, aim at making it easier for existing market operators and potential entrants to have access to ports, import depots, unloading, transport and storage facilities, the Sines-Aveiras fuel pipeline, and other facilities.

80. The proposed regulatory measures aim to make it easier for smaller operators to comply with the obligation of setting up strategic fuel reserves; to ease the licensing process required to set up new service stations, in particular by shopping parks; to increase the diversity of service station operators along the motorways and reducing the length of concessions for this type of service stations; and to change the regime governing the settlement of VAT in the propane and butane gas markets so as to be in accordance with a market with liberalized prices. Moreover, the different associations representing the fuel sector ought not to pass on in any way, e.g., in the media, any intention to change retail process or any other variations. As for the proposed behavioral measures, they involve actions from the government, the General Directorate for Energy and Geology (DGE) and oil companies operating in Portugal, and aim at providing the final consumer with real time information on fuel prices at different service stations, and under the different brands. Finally, the oil companies operating in Portugal should review the commercial policies they use for reference and/or recommended prices, so that in the definition of prices for sales to customers and/or wholesalers, these policies, together with the calculation of discounts, bonuses, wholesale margins and so on, do not lead to fixed or minimum pump prices.
3.5.2 Recommendations regarding the decree-law regulating gas installations across households

81. The PCA produced a report with recommendations on a proposal put forward by the Government for a decree-law regulating household gas installation. These recommendations had to do mainly with the setting of minimum prices to be charged by gas installation supervisors, even though transitory in nature, and the creation of an entity (called, Organismo de Supervisão do Gás), with the aim of supervising the different stages leading to the installation of gas pipes and gas fuelled household equipments. On one hand, the setting of minimum prices constitutes a violation of competition law. On the other hand, by being set up as an association of different agents, from gas installations inspectors to gas distributors, from manufacturers of gas fuelled equipments to building contractors, that entity could become an ideal forum for the exchange of information between the different business firms, many in competition with each other, eventually leading to distortions in competition.

3.5.3 Opinion on market definition in the telecommunications sector

82. In August 2008, the Authority issued comments on the definition of the product and geographic markets, Significant Market Power (SMP) assessment and the imposition, maintenance, amendment or suppression of regulatory obligations with respect to the markets for wholesale (physical) network infrastructure access at a fixed location and wholesale broadband access. The comments were issued after being consulted by the National Regulatory Authority (NRA), according to article 61 of the Portuguese Electronic Communications Law (Law 5/2004 of 10th of February). Overall, the PCA agreed with the analysis carried out by the NRA.

83. In September 2008 the PCA cooperated with the Portuguese Energy General Directorate in the answer to the Questionnaire of the International Energy Agency under the "2008 SLT/CERT Portugal Annual Review of Energy Policies". On the course of this in-depth review, the PCA, in November 2008, made a presentation to the peer review team of the International Energy Agency on the standing competition issues in the Portuguese energy markets.

3.6 Conferences, Workshops and Seminars

3.6.1 Conference Cracking Cartels – Recent International Developments

84. The Portuguese Competition Authority organized an international conference on anti-cartel enforcement: “Cracking Cartels - Recent International Developments”. The conference took place on 27\textsuperscript{th} October, back to back with the ICN annual cartel workshop. The conference brought together enforcers, practitioners and magistrates all around the world to debate recent developments in fighting cartels, and brought together around 200 participants.

2008 ICN Cartel Workshop

85. The PCA has organized the 2008 Annual Cartel Workshop meeting. “How to crack a cartel in three days?” The workshop took place from 28\textsuperscript{th} to 30\textsuperscript{th} September and covered major questions on the detection, investigation and prosecution of cartels. This was a major international event, attended by a record number of agencies, from over 50 different jurisdictions.

Seminars

86. During the period under review PCA hosted 13 visitors who presented seminars on different topics in competition law, economics and policy. In September 2008, and at the invitation of the Competition Authority, Prof. Massimo Motta conducted a 4-day/24-hour course on the Economics of Competition Policy covering the following topics: introductory elements, cartels and horizontal
agreements, horizontal mergers, abusive practices, and vertical restraints and vertical mergers. This course was attended by around 30 people working at the PCA and 6 people from other institutions, including universities.

Also, under the Visiting Scholar Program, jointly financed by the Portuguese Competition Authority and the Fundação Luso-Americana para o Desenvolvimento (FLAD, the Portuguese-American Foundation), Simon Anderson, Commonwealth Professor of Economics at the University of Virginia, Charlottesville, visited the PCA between May 12th and August 3rd, 2008, and during these three months he developed a range of activities in interaction with the several economists working at the PCA, including: (i) the presentation of a seminar on information congestion, which has implications for competition policy issues insofar as communicating sales opportunities via advertising is critical for business firms. This topic also served to introduce some important themes in Media Economics, such as performance in TV and radio markets; (ii) the organization of an in-house summer workshop in industrial organization during the month of July, which became a presentation and discussion forum for economists working both at the PCA and at different universities in Lisbon; (iii) seminar presentations by two senior academics from the Institut Universitaire de France, both working with Prof. Simon Anderson in several projects on industrial economics, in particular information economics and the economics of advertising.

3.7 Co-operation

3.7.1 ECN – The European Competition Network

Cooperation with the European Competition Network (ECN) members is a priority to the PCA. Several working papers were produced for the various ECN Working groups. Moreover, the PCA also takes part in ECN procedures by attending Oral Hearings and Advisory Committees regarding antitrust and merger issues. The PCA is involved in particular in the on-going assessment of the application of Regulation 1/2003, as well as the current review of specific legal frameworks, namely vertical restraints and horizontal cooperation.

3.7.2 ECA – The European Competition Authorities Network

The PCA participated in the Annual Meeting of ECA that took place in Madrid.

Also during the period under review, the PCA notified 14 cases to the ECA Network. All these cases referred to concentrations subject to notification in various jurisdictions within the EEA, and which also had a direct impact in the national territory. The ECA Network proved to be an excellent platform for the exchange of information and experience regarding particular cases analysed by the PCA during the referred period.

3.7.3 Bilateral Cooperation

The MOU with the Turkish Competition Authority

The PCA has signed a Memorandum of Understanding with the Turkish Competition Authority, Rekabet Kurumu, aiming at fostering the institutional relations between the two agencies and enforcement in cooperation in capacity building and technical assistance. The PCA has received visit of a delegation from the Turkish Authority and had participated in Conferences hosted by the latter.

The bilateral meetings with the Spanish and French Agencies

In May the Iberian Forum of Competition took place, which brings together the PCA and its Spanish counterpart. The meeting took place in Madrid and the proceedings covered topics such as Market
Studies, Advocacy; Competition and Regulation in the telecommunication sectors, and methodology for setting fines.

93. The PCA hosted the first bilateral meeting with the French Competition Agency in June. The Heads of both agencies had the opportunity to discuss topics such as interim measures; two sided markets – the credit cards case and the fuel markets. The meeting was an opportunity to foster the cooperation between the two agencies towards more efficient enforcement and competition advocacy as well.

3.7.4 Multilateral Cooperation

94. The PCA participated in the Annual Meeting of the International Competition Network that took place in Zurich, Switzerland. It also contributed to the working product of the several ICN Working groups, such as the Cartels, Mergers and Competition Policy Implementation Working Groups. During the period under review it also attended the 10th session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy of the UNCTAD and the meetings of the Competition Committee of the OECD, with contributions for both fora.

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual budget

95. On a cash basis, annual budgetary commitments for 2008 amount to €8.4 million, as compared to €7.6 million in the previous year.

4.1.2 Number of employees

96. As end of 2008, 83 staff were employed: 28 lawyers, 30 economists, and 3 from other professional backgrounds. 43% of the staff has an academic background equal or above Masters level. In 2008, 11 had a PhD, 6 of these in the area of industrial organisation.

4.2 Human resources (person-years) applied to:

- Enforcement against anticompetitive practices: 20 staff
- Merger review and enforcement: 15 staff
- Judicial affaires: 8 staff
- Others (Board, advocacy, and economic and legal advice): 17 staff

4.3 Period covered by the above information: