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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PORTUGAL**

-- 2009 --

*This report is submitted by Portugal to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 October 2010.*

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## Executive Summary

1. Unless otherwise indicated, this report covers the period of 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2010, in the continuity of the previous reports.
2. Following the consolidation exercise undertaken by the Board of the PCA during the first half of its mandate, including an institutional reorganisation and the prioritisation of the PCA's activities, on reaching the midpoint of its mandate, the strategic goals and operational objectives of the PCA activity were established by the Board as follow: (i) to defend and promote competition in the Portuguese economy, (ii) to ensure a strong understanding of the economic realities under which the PCA must act, (iii) to guarantee a greater presence in the international competition *fora*, (iv) to create an internal institutional culture of teamwork, and (v) to reduce the backlog of pending cases.
3. These priorities were set based upon the potential impact of proposed PCA activities on the efficient functioning of the economy and the potential benefits for consumers.
4. The PCA has also developed a closer cooperation with domestic institutions, such as the Court of Appeal, the court which deals with appeals to PCA decisions, the Public Prosecutor's Office, and sector regulators, particularly those of the telecommunications, energy and media sectors.
5. Largely due to the successful reduction of the case backlog, with a clear objective to foster the investigations and get to an end proceedings that were pending form more than three years, the PCA has been able to allocate its resources more efficiently in competition enforcement, more readily taking on new cases in priority sectors, paving the way for more active and visible enforcement.
6. Regarding anticompetitive practices, five investigations were launched during the period under review, five sanctioning decisions were adopted, resulting in combined fines of circa €78 million. The PCA also issued its first prohibition decision on a procedure initiated by a leniency application, regarding a bid-rigging case in the market for meals and catering, canteen and restaurant management/operating services. Moreover, it was also the first time that fines were imposed on legal representatives of undertakings under the Portuguese Competition Law. Finally, as result of the effort to end the backlog, twenty investigations were closed due to the lack of evidence of infringement.
7. As for its M&A activity, during the period under review, 55 mergers operations were notified, and 53 final mergers review decision were adopted, of which one under a phase II review process of non-clearance.
8. The advocacy activity of the PCA continues to be paramount. During the period under review, the PCA concluded several economic studies, covering a diverse range of sectors such as telecommunications, banking, postal services, pharmacies and electricity. A Preliminary report on Commercial Relations between suppliers and large retailers was also published. The final report will be finalized in October 2010.
9. The PCA has also finished its work on the proposals for the revision of the Competition Act. The mains proposals regard the clarification of procedures, the creation of new tools deemed necessary to increase the effectiveness of the PCA's enforcement decisions towards more efficient competition enforcement, and in greater harmonisation with European Competition Law.
10. The PCA also organised the III Lisbon Conference on Competition Law and Economics, in January 2010, with over 300 participants. The PCA, in parallel with its enforcement activities, aims to promote a better understanding of current antitrust issues and to contribute to the existing body of

knowledge on competition law and economics, building bridges between academic theory and practical application. In light of these objectives, the PCA hosted in this third edition of the Lisbon Conference outstanding speakers from academia, the judiciary, competition authorities and private practice to discuss recent developments and current challenges in competition.

11. The PCA, based on the knowledge and experience acquired from seven years of investigations and merger proceedings, as well as the growing body of case law on the enforcement of the Competition Act, submitted a proposal to revise and amend the Competition Act to the Portuguese Government.

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

12. The amendments proposed consist mainly in the clarification of procedures, the creation of new tools deemed necessary to increase the effectiveness of the PCA's decisions towards more efficient competition enforcement, and in greater harmonisation with European Competition Law.

13. The revised act also proposes a reorganization of the Competition Act into two main parts dealing with both the substantive and procedural issues relating to, firstly, restrictive practices and, secondly, supervisory activities, including market studies and mergers.

## **2. Enforcement of competition laws and policies**

### ***2.1 General Overview***

14. In terms of its enforcement activity during the period under review, the PCA intervened in the air transport, banking, catering services, energy, pet food retail services, pharmaceutical products, professional and technical activities, telecommunications, water supply and food products wholesale markets.

15. Infringements were identified in five antitrust cases: an abuse of dominant position in telecommunications - more precisely in the markets for wholesale and retail broadband access -, a cartel agreement in the catering services market, anti-competitive practices in the national market for compulsory training relating to the quality control of the activity of Certified Accountants, a price fixing system in the milling sector involving eleven undertakings, and finally an infringement of establishing minimum resale prices in the pet food market.

16. Importantly, the PCA decision on the bid-rigging case in the market for meals and catering, canteen and restaurant management/operating services provided to hospital and schools, was the first prohibition decision on a procedure initiated by a leniency application. It was also the first time that fines were imposed on legal representatives of undertakings under the Portuguese Competition Law.

17. During the period under review, a total of €78 million were imposed in fines in the above mentioned five cases, which were subject to appeal by the defendants, except in the pet food case, where no appeal of the sanctioning decision was filed by the defendants.

18. Over the same period, five new investigations were opened in different sectors for practices likely to appreciably prevent, distort or restrict competition in the whole or part of the national market, in accordance with the Portuguese Competition Law.

19. In fifteen cases the decision was to take no further action due to lack of evidence on anticompetitive behavior.

## 2.2 *Summary of the Cases*

### 2.2.1 *Abuse of dominant position – Portugal Telecom, PT Comunicações, Zon Multimédia, ZON – TV Cabo Portugal (PRC-05/2003)*

20. On the 28th of August 2009, the PCA decided to impose a fine of €53 062 million on four undertakings formerly owned by the incumbent operator of electronic communications in Portugal (Grupo PT) for abuse of dominant position (Article 6 of the Portuguese Competition Law and Article 102 of the Treaty on the Functioning of the European Union (TFEU)).

21. It was found that the undertakings involved (Portugal Telecom S.G.P.S., S.A.; PT Comunicações, S.A.; ZON – Multimédia, Serviços de Telecomunicações e Multimédia, S.G.P.S, S.A.; and ZON – TV CABO Portugal, S.A.) had abused their dominant position, between May 2002 and June 2003, in the markets for wholesale and retail broadband access, through a margin squeeze and a discriminatory rebate policy designed to benefit only certain retail companies (Grupo PT's subsidiaries) in detriment to others. These practices had constituted significant restrictions of competition in Portugal and prevented European companies from entering relevant Portuguese markets, thus affecting trade at a European level.

22. The investigation was launched following several complaints by alternative operators.

### 2.2.2 *Abuse of dominant position – Professional Association of Certified Accountants (OTOC) (PRC-03/2009)*

23. The PCA fined the Professional Association of Certified Accountants (Ordem dos Técnicos Oficiais de Contas -“OTOC”) € 229,308.20 for anti-competitive practices involving the system of mandatory training for the exercise of the profession of certified accountants.

24. OTOC initially published a regulation creating the training market, and subsequently divided it into two segments, one relating to institutional training, and the other to professional training.

25. The decision was issued after an investigation following an anonymous complaint, later reiterated by the Portuguese Association of Accountants (“APOTEC” – Associação Portuguesa dos Técnicos de Contabilidade).

26. The Competition Authority concluded that both Articles 101 and 102 TFEU and national equivalents were infringed.

27. Under Article 101 TFEU, the OTOC decision, published in a regulation, artificially dividing the market gave OTOC exclusivity in institutional training, and established criteria for the approval of other professional training entities.

28. Under Article 102 TFEU, by competing in a market that it had itself artificially segmented, OTOC competed in a market with favourable conditions, to the detriment of other training entities.

29. A judicial appeal against the Competition Authority's decision is pending before the Lisbon Commercial Court.

### 2.2.3 *Cartel - Milling Industry (PRC-06/2004)*

30. The Authority concluded an investigation in the milling sector involving eleven undertakings.

31. Following news published in the press, the Ministry of Economy requested that the PCA investigated the reasons for the increase, announced at the time, of roughly 30% in the price of the bread. According to the news published, the increase in the price of bread was justified on the grounds of the “rise in the price of wheat” and/or “increased profit margins among manufacturers.”

32. The investigation carried out by the Authority concluded that between December 2000 and September 2004, increases in the price of flour from the undertakings under investigation were uniform in monetary value, were notified on the same date to customers, and came into effect on the same date.

33. The PCA found that 10 milling undertakings had infringed Article (4) 1 of the Portuguese Competition Act by engaging in a concerted practice with the intention of uniformly establishing price lists. It imposed fines totaling €9 million.

34. A judicial appeal against the PCA’s decision is pending before the Lisbon Commercial Court.

#### 2.2.4 *Cartel – Catering Services Sector (PRC-02/2007)*

35. In December 2009, the PCA concluded its investigation into an infringement Article 4 of the Portuguese Competition Act, involving five undertakings (Eurest, Sodexo, Uniself, Trivalor Holding and ICA/Nordigal), in the catering services market.

36. The investigation began in 2007 after a former Director of one of the undertakings reported an infringement of the Portuguese Competition Act, under the Portuguese Leniency Programme (Law No. 39/2006). Following the investigation, the PCA concluded that, between 1998 and 2007, the undertakings were involved in two separate infringements to Article 4 of the Portuguese Competition Act: a “large accounts” client-sharing and non-compete agreement that lasted from 2001 to 2004, and an exchange of detailed information concerning each undertaking’s conduct in the market, carried out from 1998 to 2007.

37. The final decision imposed fines on the undertakings in the amount of € 14,720 million, plus fines to individual directors of the undertakings who were aware of the infringements.

38. This was the first decision of the PCA applying fines to individual directors for the infringement of the Portuguese Competition Act, and the first following a Leniency Application under the Leniency Programme.

#### 2.2.5 *Vertical Restraints - Pet Food (PRC-09/2008)*

39. An infringement of Article 4 of the Portuguese Competition Act, for establishing minimum resale prices, was decided in the pet food market at the retail level, against a pet food producer regarding a prohibition to grant any discounts from a prescribed price level, as set forth in the undertaking’s General Sales Conditions, from 2006 to 30 October 2008.

40. Considering that period, it was held that retailers, who accepted to be supplied by the pet food producer in accordance with its General Sales Conditions, were contractually obliged to observe (at least minimally) the recommended resale prices. In fact, cases existed where retailers who deviated from what was previously agreed with the pet food producer saw their supplies definitively interrupted.

41. In this case a fine of € 218,529.50 was imposed.

42. It should be noted that the pet food producer did not appeal the decision of the Competition Authority.

### 2.3 *Appeals*

43. During the period under review, the Constitutional Court decided on a case regarding a PCA's sanctioning decision of a practice of price fixing by the Portuguese Medical Doctors' Association. The payment of a fine of € 250,000 was imposed. The Court of First Instance upheld the PCA's decision, albeit with a reduction of the amount of the fine to € 230,000. The Court of Appeal confirmed the decision of the Court of First instance. Pursuant to the appeal presented by the Portuguese Medical Doctors' Association, the Constitutional Court considered that no violation of constitutional norms has occurred, and the decision of the Court of Appeal was not reversed.

44. During the same period, the Lisbon Commercial Court (Court of First Instance) partially upheld a PCA decision concerning an action against five major pharmaceutical companies (Abbot Laboratórios, Bayer Diagnostics Europe, Johnson & Johnson, Menarini Diagnósticos and Roche Farmacêutica Química) relating to collusive tendering in public procurement for supply contracts of diabetes reagents. The PCA imposed on the companies fines that totalled the amount of € 16 million. The decision was appealed by three of the condemned companies (Abbott, Menarini and Johnson & Johnson). The Lisbon Commercial Court upheld the PCA's decision, albeit with a reduction of the amount of the fines (from € 7,000,000 to € 3,000,000 in the case of Abbott, from € 2,812,022 to € 2,000,000 in the case of Menarini and from € 2,997,000 to €70.000 in the case of Johnson & Johnson). The decision of the court was appealed by the three companies to the Court of Appeal.

45. The Lisbon Commercial Court reversed a PCA condemnation decision concerning an abuse of dominant position for denial of access to an essential infra-structure in the market of telecommunications. The PCA had imposed on PT Comunicações, S.A. a fine of € 38.000.000 in that decision. Pursuant to the Lisbon Commercial Court's decision, the PCA appealed to the Appeal Court.

46. Also during the same period, the Court of Appeal upheld the Lisbon Commercial Court's decision concerning a PCA decision in which three towage companies at the port of Setúbal (Lutamar, Rebonave and Rebosado) were found guilty of initiating a cartel, fixing prices, dividing customers and establishing a monitoring and compensation mechanism. The PCA imposed fines on the three companies totalling €185.000. The Lisbon Commercial Court upheld the PCA's decision, albeit with a reduction of the amount of the fines to be paid by Lutamar (from € 48.000 to 12.000) and Rebosado (from € 87.000 to € 22.000). The Court of Appeal confirmed the Lisbon Commercial Court's decision. One of the companies appealed to the Constitutional Court, being the proceedings still pending.

47. The Lisbon Commercial Court also reversed a PCA condemnation decision concerning a decision of association by ANTRAM (Portuguese Association of Public Transportation of Goods). The PCA had imposed an admonition on ANTRAM because of its decision to refuse the rendering of transport of goods and services to and from one of Lisbon's ports with the aim to obtain the alteration of certain contractual clauses. The Lisbon Commercial Court reversed the PCA's decision and the PCA did not appeal.

48. The Lisbon Commercial Court fully upheld the PCA's condemnation decision concerning a decision of association by AIPL (Association of Bakery Industry of Lisbon) regarding the exchange of sensitive information. The PCA imposed a fine of € 1.177.429 on the AIPL. The decision was fully upheld by the Lisbon Commercial Court and the AIPL appealed to the Court of Appeal.

## 2.4 Mergers and acquisitions

### 2.4.1 Statistics

**Table I: Merger Case decisions adopted since July 2009**

Notified merger operations	55
Total decisions	55
Pending	8
<b>Phase I</b>	
Non-notifiable transactions	4
Clearance	47
Clearance with commitments	0
Withdrawn cases	0
Non Clearance (In compliance with the negative binding opinion issued by the Sector Regulator)	1
To Initiate an in-depth investigation	1
Referral to European Commission	1
Tacit approval	0
<b>Phase II</b>	
Clearance	0
Clearance with commitments	0
Non Clearance	1
Withdrawn cases	0
Tacit approval	0
<b>TOTAL FINAL DECISIONS ADOPTED</b> (does not include the Phase I decision to proceed into Phase II and the decision of referral to European Commission)	<b>53</b>

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

	Cases	%
Horizontal	35	66
Vertical	3	5,7
Conglomerat	15	28,3
<b>TOTAL</b>	<b>53</b>	<b>100</b>

**Table III: Breakdown by geographic scope of operation (Final Decisions)**

	Cases	%
Multi-jurisdictional filings (within EU)	7	13,2
Multi-jurisdictional filings (outside EU)	11	20,8
National with involvement of undertakings from other EU member states	4	7,5
National with involvement of undertakings from countries outside EU	2	3,8
Completely national	29	54,7
<b>TOTAL</b>	<b>53</b>	<b>100</b>

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

	Cases	%
Sole control	33	62,3
Joint control	4	7,5
Acquisition of assets	16	30,2
<b>TOTAL</b>	<b>53</b>	<b>100</b>

49. The statistics set out above refer to the period from 1st July 2009 to 30th June 2010.

50. Throughout the 2nd semester of 2009 (July – December), there were 29 notifications and 28 Phase I decisions, of which two were inapplicability decisions, 26 were clearance decisions, and one was a decision to initiate second-Phase proceedings (in-depth investigation), which resulted in a prohibition decision.

51. In the first semester of 2010 (January – June), there were 25 notifications, 25 Phase I decisions, two of which were inapplicability decisions, 21 were clearance decisions, one was referred to the EU Commission under Article 22 of the EC Merger Regulation, and one was blocked.

52. Much like the rest of Europe and the World, Portugal also felt the impact of the financial crisis on merger control, resulting in a drop in M&A activity during the period under analysis.

#### 2.4.2 *Summary of significant cases*

- TAP / SPdH – Phase II Prohibition Decision with measures to re-establish competition (Ccent. 12/2009)

On November 19, 2009, the PCA adopted a Phase II Prohibition Decision subject to measures with respect to the operation whereby TAP Air Portugal (TAP), a publicly owned airline company, would acquire the sole control of the ground handling company SPdH, through the acquisition of 50.1% of its shares.

In the analysis of this case, the notion of control was used to determine the structure of control of TAP, since it was directly controlled by a State Holding – Parública –, which owned another public company, ANA – Aeroportos de Portugal, the airport operator, which, in turn, controlled Portway - another ground handling company, a direct competitor of SPdH in the ground handling sector. The analysis allowed the PCA to conclude that TAP and ANA were under the “same autonomous center for decisions”, which had direct implications in the assessment of the concentration as regards horizontal overlap and vertical effects.

The assessment of this transaction concerned the relevant markets of ground handling services in Lisbon, Porto, Faro, Funchal and Porto Santo airports. The related markets of passenger air transport services and of cargo air transport services in the routes with origin and destination in the referred airports were also considered.

The PCA concluded that the proposed transaction would create or strengthen a dominant position in the ground handling services provided in the airports in which the transaction had a horizontal dimension (Lisbon, Porto, Faro, Funchal, where both SPdH and Portway operate), as a result of which effective competition would be significantly impeded.

In addition, the PCA’s assessment in terms of vertical effects was that the TAP Group would have the ability and the incentive to deteriorate the conditions of the ground handling’s input, foreclosing its competitors - air companies - in the market of passenger air transport services, in the routes with origin/destination in Lisbon, Porto, Funchal and Porto Santo airports, operated by TAP. The reinforcement of TAP’s market power in those routes, and the reduction in the competitive pressure exerted by other air companies, could lead to deterioration of the conditions offered to consumers, in terms of increasing prices or lowering service quality. Vertical concerns were not identified in Faro airport, since the presence of TAP in that airport is limited.

Given the identified horizontal and vertical concerns, the merger was prohibited by the PCA. It is worth mentioning that this merger operation, if it were approved, would not be in line with

Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports, transposed in Portugal by Decree-Law No 275/99, of 23 July.

Since TAP had already acquired SPdH's shares, prior to the notification of the merger case, in application of the second paragraph of Article 37(1) b) of the Portuguese Competition Law, the PCA ordered measures to re-establish competition, requiring TAP to divest those acquired shares. Furthermore, until the divestment occurs, SPdH will have to be managed by an independent trustee, duly approved by the PCA.

- ONGOING / PRISA / MEDIA CAPITAL – Phase I Opposition Decision (Ccent. 41 / 2009)

On March 30, 2010, the PCA adopted a Phase I Opposition Decision with respect to a merger operation whereby Ongoing Media, SGPS, S.A. and Vertix, SGPS, S.A. would acquire joint control over Grupo Media Capital, SGPS, S.A..

Since the parties' activities are related with the communications and media sectors, as Media Capital's main activities consist of, among others, open access television, radio, telecommunications and internet, the PCA, in application of Article 39(1) of the Portuguese Competition Law, requested the sector regulators - ICP ANACOM (telecommunications regulator) and ERC (media regulator) – to issue an opinion regarding the operation. The opinion of the media regulator, if negative, is binding to the PCA, according to Article 4(2) of Law 32/2003, of 22 August.

ICP – ANACOM, in its opinion, considered that the transaction would not reinforce Ongoing market share in the electronic communications market.

ERC, however, taking into consideration that Ongoing also held a minority shareholding in Impresa, also active in the television and media areas, opposed the concentration, as the merger would jeopardize the pluralism and diversity in the area of television, media content production, and TV publicity, also leading to greater uniformity in the content shown on the two competing TV channels, belonging to Media Capital and Impresa, respectively, and would therefore be harmful to the public interest.

Given that ERC's negative opinion on the merger is binding to the PCA, independently of the conclusions on the competitive assessment that could have been drawn by the PCA, the merger could not proceed.

Hence, the PCA adopted an Opposition Decision on the concentration Ongoing / Vertix / Media Capital.

- Procter & Gamble Company/Sara Lee Corporation (referral to the Commission under Article 22 of the EC Merger Regulation) (Ccent. 4/2010)

On January 26, 2010, Procter & Gamble Company notified a concentration whereby Procter & Gamble would acquire sole control of Sara Lee's air care business. This transaction did not have an EU dimension and was therefore notified in Portugal and also in other nine EU Member-States.

Procter & Gamble is a company specialized in the manufacturing, development, distribution and marketing of household care, beauty care, health care and well-being, baby and family products.

The markets concerned by the transaction were the markets for air fresheners, which, as stated by the Parties, could be segmented according to the technology used (aerosols, continuous non-energized, continuous energized, and, among the latter, plug-in or battery powered) and/or according to consumer usage (home fresheners, car fresheners, fabric fresheners and toilet fresheners).

On February 19, 2010, the German Competition Authority (“the Bundeskartellamt”) formally requested the European Commission to examine the transaction, in application of Article 22(3) of Council Regulation No 139/2004. The PCA decided to join the referral request, as it considered that a multiple notification, in so many European Member-States, could jeopardize legal certainty and coherence of decisions.

On March 31, 2001, the European Commission informed the PCA that it had decided to accept the referral requests made by five of the member-states concerned, namely Belgium, Germany, Spain, Portugal and the UK. Accordingly, the PCA terminated the proceedings on the notified national merger case, in accordance with Article 112 of the Portuguese Administrative Procedure Code.

This concentration was cleared by the European Commission on August 17, 2010 (case COMP/M.5828 – Procter & Gamble / Sara Lee Air Care).

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

#### **3.1 Conferences, Workshops and Seminars**

##### *3.1.1 III Lisbon Conference on Competition Law and Economics*

53. The PCA hosted the III Lisbon Conference, which took place on 14-15 January 2010, in Lisbon, Portugal. The III Lisbon Conference gathered two dozen world-renowned experts in competition law and economics to discuss a selection of the most relevant topics in the field, namely: two-sided markets; reconciliation between competition policy, security of energy supply and environmental protection; competition policy in times of crisis, as well as intellectual property and single firm conduct.

54. The III Lisbon Conference served as a platform for the exchange of ideas and experiences on various aspects of the protection and promotion of competition. The quality of the speakers and moderators, along with the topics chosen for debate, made the III Lisbon Conference an excellent international conference, attracting highly qualified participants from a wide range of fields.

#### **3.2 Seminars**

55. During the period under review, the PCA hosted six visitors who presented seminars on different topics in competition law, economics and policy, namely: (i) Maher Dabbah, “On the relationships between competition authorities and sector regulators: an international comparison perspective”; (ii) Jorge Rodrigues, “Asymmetries in price adjustments: The European fuel sector and the Portuguese flour milling and bread sectors”; (iii) Vânia Ramos, “Privilege against self-incrimination in the Portuguese legal order”; (iv) Miguel de La Mano, “The Case COMP/M.4980 - ABF/GBI Business: an analysis of coordinated effects”; (v) João P. Azevedo, “Excessive Pricing in Competition Law and Economics”; and (vi) Pedro Pita Barros, “Europeanization of EU Member-State Competition Policy: The Commission’s Leadership Role”.

#### **3.3 Cooperation**

##### *3.3.1 ECN – the European Competition Network*

56. The PCA actively participated in all formal and informal cooperation mechanisms within the European Competition Network (ECN). In this regard, the PCA attended numerous Oral Hearings and Advisory Committees regarding antitrust and merger issues. Moreover, the PCA provided substantive input to all working groups, as well as to the current review of legal frameworks on vertical agreements, the insurance sector, motor vehicles and horizontal cooperation.

### 3.3.2 *ECA – The European Competition Authorities Network*

57. The PCA participated in the Annual Meeting of ECA that took place in Vienna, Austria.

58. Also during the period under review, the PCA notified 17 merger 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 continued to provide an effective platform for the exchange of information and experience regarding cases assessed by the PCA during the referred period.

### 3.3.3 *Bilateral Cooperation*

59. A Technical Cooperation Agreement was signed on 14 January, 2010, between the PCA and the Brazilian System of Competition Policy (BSCP), aiming to create the framework for cooperation and coordination in combating anti-competitive practices in their respective jurisdictions. The Agreement also allows for the sharing of experience and good practices in competition advocacy and enforcement, and incentivises the collaboration between the agencies in the promotion of an international competition culture.

60. The Portuguese Government signed a Protocol with the Government of Mozambique in order to formalise a Framework for technical cooperation between the PCA and the National Directorate for Commerce of Mozambique. This Protocol, signed on 31 August 2010, in Maputo, Mozambique, aims to promote capacity building initiatives and the creation and consolidation of the signatories' respective national competition systems.

61. The 2nd annual bilateral meeting between the PCA and the Autorité de la Concurrence took place on the 14th of June 2010. The Heads of both agencies discussed large retail distribution and the Common Agricultural Policy and Competition, namely the European Competition Network's work on food and milk.

### 3.3.4 *Multilateral Cooperation*

- ICN – International Competition Network

During 2009-2010, the PCA developed a comprehensive program of participation in the ICN. PCA representatives are active in all ICN working groups, having participated in drafting section of work products for the Advocacy and Agency Effectiveness and Mergers Working Groups, and presented at teleseminars in the Mergers and Unilateral Conduct Working Groups. The PCA also attended various workshops, and the Annual Conference in Istanbul, Turkey, where representatives from the PCA were speakers and moderators.

## **4. Resources of competition authorities**

### **4.1 Resources overall**

#### *4.1.1 Annual budget (in your currency and USD):*

62. On a cash basis, annual budgetary commitments for 2009 amount to €9,2 million, as compared to €8,4 million in the previous year.

#### *4.1.2 Number of employees*

63. By the end of 2009, the PCA employed 98 staff: 28 lawyers and 25 economists. 47% of the staff have an academic background equal or above Masters level. In 2009, 14 held a PhD.

#### 4.2 *Period covered by the above information:*

64. Budgetary information for 2008 and 2009 covers the period of January 1 – December 31. Unless otherwise indicated, human resources information is reported as of December 31, 2009.

### 5. **New reports, studies and recommendations on competition policy issues**

#### 5.1 *Studies*

##### 5.1.1 *The Preliminary Report on Commercial Relations between Food Suppliers and Large Retailers*

65. Following the price volatility of certain food commodities, such as cereals, during the period 2007-2008, and in the context of the Common Agricultural Policy reform process, to be concluded in 2013, together with the growing importance of the large food retailing chains, as well as the increasing amount of shelf space taken by their own brands (also called private labels), the commercial relations between food suppliers and retailing chains have experienced a growing tension, with some food producers and suppliers complaining about “abusive practices” by the latter, stemming from what they perceive as a seriously unbalanced bargaining power between the two parties. After describing the evolution of the food producing and retailing sectors during the last thirty years, in particular the growing importance played by the large retailing groups, this preliminary report gives a detailed account of the recurrent complaints by food suppliers, as well as of the contractual clauses more likely to create tension between the parties, paying special attention to milk products, rice and pasta and the way these sectors work, from production to retailing. The final report will be published in October of 2010.

##### 5.1.2 *The Report on the Liberalization of Postal Services*

66. In anticipation of the full liberalization of the postal sector, scheduled for the 31st of December 2010, the PCA published a study on the competitive conditions of the postal sector in Portugal. The study identifies the most common types of anti-competitive behaviour in the postal sector, as well as describes decisional practice at the EU and national levels. The study also characterizes the sector, identifying the competitive constraints faced entrants, and presents recommendations with the objective of promoting competition and increasing consumer welfare.

67. According to the study, in Portugal, legal constraints to entry and expansion play an important role in the postal sector, relating in particular to the existence of a reserved area, licensing procedures, network access issues, differential tax treatment, requirements of universal service obligations and regulatory uncertainty.

68. The PCA considers the existence of a well defined regulatory framework to be essential in order to instil certainty in service providers. In this context, the PCA recommends firstly that postal services should be provided, wherever possible, by market mechanisms, including public procurement, in regions where this is feasible. Secondly, the selection process of the Universal Services Provider must be transparent and designed to include the largest number possible of candidates able to provide this service. Thirdly, access to elements of the postal infrastructure must be ensured in transparent and non-discriminatory conditions for all entrants, as foreseen in the Third Postal Services Directive and national legislation. Finally, the PCA recommends that a level playing field must be guaranteed through revision of tax rules, ensuring that the application of Value Added Tax (VAT) does not cause market distortion.

##### 5.1.3 *The Report on the March 2009 2.5% increase of mobile retail services tariffs*

69. In the beginning of 2009, the three main Portuguese mobile communications network operators announced a 2.5% price increase, to be applied from March 2009 onwards. This led to an in-depth analysis of the mobile market, which was concluded by the PCA in March 2010.

70. The PCA assessed prices in the market and their evolution, as well as the inherent competition dynamics and its formation process, concluding that it was not possible to exclude the application of the behavioural model leader-follower to the 2.5% price increase. Indeed, the Portuguese mobile communications market is characterized by large switching costs, which favours this type of behaviour: replicating leader's price rises tends to be profitable for competitors, given that maintaining prices will not increase market share.

71. Finally, the PCA considered that the launch of an auction process to award the rights of use for BWA (broadband wireless access) frequencies might contribute to develop a more effective competition in the market, by promoting entry and not restricting the way in which those frequencies are used. Furthermore, the PCA considered that the existence of MVNOs (mobile virtual network operators) can also allow for a more intense competitive environment in the mobile communications market, provided that conditions of access to the network are guaranteed.

#### *5.1.4 The Report on Consumers' Mobility in the Telecoms Sector*

72. On February 2010, the PCA completed the Study on Consumer Mobility in the Electronic Communications Sector. The Report concludes that there is limited mobility among Portuguese customers: only 5 to 12% of customers switch their providers of fixed telephony, mobile telephony or broadband services each year. In the case of bundled offers, including some of the previous services, this percentage is higher. The low mobility level is explained by the presence of large switching costs, which amount to more than €10 for each service and bundle considered, representing around half of the average monthly expenditure. The disclosure of the new telephone number and the search for alternative offers, as well as concerns with respect to the possibility of losing quality of service after switching provider are the most difficult tasks for consumers in the switching process.

73. The PCA has recommended the adoption of a set of measures to foster competition in the electronic communications market, focused on the mobility restricting factors identified, in particular the search costs and the switching costs (which include transaction costs, contractual costs, uncertainty costs, learning costs, psychological costs and compatibility costs).

74. Following the publication of this Report, the Portuguese Government published a Decree-Law, in June 1st, 2010, that forbids the telecoms operators from charging their customers a fee for un-locking equipment after the end of the minimum subscription period. Secondly, it establishes a maximum limit of 24 months for the minimum subscription period. Thirdly, it establishes a maximum charge for the un-locking fee during the minimum subscription period.

#### *5.1.5 The Report on Consumers' Mobility in Retail Banking*

75. On December 2009, the PCA and the Portuguese Central Bank concluded a joint Study on Mobility in the Retail Banking Sector. The Study aimed at characterizing the degree of mobility of retail banking clients and identifying factors that may constitute barriers to switching within the banking sector. In this regard, an analysis of the relationship between banks and their clients, including individual consumers and small and medium enterprises (SME), was carried out.

76. The Study concludes that, as in other EU countries, there are barriers to mobility in the retail banking sector in Portugal. Despite the limitations of the deposits churn rate as a proxy for customer mobility in Retail Banking, this indicator suggests that the level of mobility of bank clients in Portugal is below the EU average, regarding both individual consumers and SMEs. Concerning mortgages, although this product exhibits a particularly low level of switching, the Study revealed it has doubled since 2007 due to recent legislative amendments. Furthermore, the Study identified factors that may constitute barriers to switching, such as contractual and bureaucratic costs, the relationship of trust between clients and account

managers, bundling and cross-selling, and asymmetry of information. Since this Study was initiated, a variety of measures was undertaken with the purpose of promoting mobility in Retail Banking in Portugal.

## **5.2 Other Reports**

77. During this period, the PCA concluded a report on the regime applied to pharmacies belonging to the so-called Private Institution for Social Solidarity (IPSS) following a communication by the National Association of Pharmacies; a report on alleged dumping practices in the luggage handling activity in national airports, following a complaint by a workers association; the annual report on the telecoms sector covering the year of 2009; a final report on milling and bread making sectors; a report on the wholesale electricity prices in the Portuguese market during 2008 and the first semester of 2009, following a similar report covering the second semester of 2007; a report on alleged State aids in the case of a regional newspaper, in the case of broad band and mobile communications and, finally, in the case involving the production of solar panels.

## **5.3 Ongoing Studies and Market Monitoring**

78. 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 2010. 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 analyze 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 September 2009, the PCA initiated the 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.

79. As mentioned, the PCA has continued its analysis of the commercial relations between food suppliers and large retailing groups, expecting to publish the final report by the end of July 2010.

## **5.4 Recommendations**

### **5.4.1 Recommendation 1/2009 to the Regional Government of Madeira on financial aid to the regional press**

80. The PCA has advised the Regional Government of Madeira to adopt operational principles that aim to avoid improper distortion of competition in future aid to regional press and to notify to the European Commission future funding.

81. The PCA also advise the Regional Government of Madeira follow a set of principles designed to avoid undue distortions in competition and, possible in trade between Member States. The regional Government should define the objectives to be attained with future aid, on the basis of an in-depth diagnosis of the market failures that justify it, ensure that it is proportional to the market failure that it intends to address; and guarantee that funding is attributed on the basis of objective, non-discriminatory objectives and in observance of the specific laws for the sector.

## **5.5 New Studies**

82. Until the end of June 2011, the PCA will finish a report on market power in the mobile telephony sector; a report on the possible impact on price levels of the installation along the highways of fuel prices information boards, some distance before reaching each petrol station; a report on the Portuguese cork industry; an ex-post evaluation of previous mergers in the insurance sector; and will continue its more

theoretically oriented analysis of duopoly competition with competitor partial ownership, and also with owners common to both firms.

### **5.6 Working papers**

83. During the period under review the PCA also produced and published three economics working papers, in English, namely: (i) Asymmetries in the adjustment of motor diesel and gasoline pump prices in Europe; (ii) Bundled Discounts by Independent Producers of Vertically Differentiated Goods; and (iii) Quality upgrades and Bypass under Mandatory Access. The first two papers relate to the work on fuel markets the PCA conducted during the second half of 2008 and the first quarter of 2009.

84. The first paper analyses to what extent refined fuel prices (gasoline and diesel) take longer to decrease and at a slower rate when crude oil prices fall than they do to increase when crude oil prices rise, as often mentioned. It analyzes to what extent this asymmetry phenomenon can be identified across all EU15 Member States, plus the EU15 average, and allows for a comparative analysis between IO95 gasoline and motor diesel. The paper follows previous approaches by disentangling the two major channels of pump price formation in Europe, namely the international channel from Brent to Platts (ex-refinery) prices and the domestic channels from Platts to average pump prices before tax. It considers weekly data over the period 2004-2008 and follows a previously proposed co-integration based econometric approach. Results strongly suggest the existence of asymmetries in the international channel for diesel, where there is also evidence of overshooting, but not for gasoline. On the domestic channels, the evidence in favour of asymmetries depends on the Member State and type of fuel under consideration.

85. The second paper studies the competitive effects of bundled discounts in a setting where the component goods are vertically differentiated and sold by otherwise unrelated firms. When firms decide simultaneously about their participation in a discounting scheme, in equilibrium both pairs of firms offer bundled discounts and, relative to the no-bundling benchmark: (a) all headline prices rise; (b) all bundle prices, net of the discount, rise; and (c) all firms earn higher profits. Furthermore, the equilibrium corresponds to the worst scenario in terms of consumer and social welfare, when compared to bundled discounts only offered by a single pair of firms or to the no-bundling benchmark.

86. The third paper analyzes the interaction between the incumbent's incentive to upgrade its network and the entrant's to build a bypass network when the regulator sets a two-part access tariff to the incumbent's network. It concludes that the entrant's investment in a bypass network is delayed with the incumbent's investment, which has a positive effect on the incumbent's incentive to upgrade quality. It also shows that the access tariff has an ambiguous impact on the investments of both firms. Finally, it finds that a regulator cannot achieve a first-best solution either when he sets a constant tariff ex-ante or ex-post. Thus, the paper proposes an access tariff structure increasing in time and increasing (decreasing) in quality if the business-stealing effect of the quality upgrades investment is strong (weak), leading to a first-best and avoiding any dynamic consistency problem.