

Unclassified

DAF/COMP/AR(2011)32

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

17-Oct-2011

English - Or. English

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

DAF/COMP/AR(2011)32
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PORTUGAL

-- 2010 --

This report is submitted by Portugal to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2011.

JT03309248

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TABLE OF CONTENTS

1.	Changes to competition laws and policies, proposed or adopted.....	3
2.	Enforcement of competition laws and policies.....	3
2.1	General overview.....	3
2.2	Summary of cases since 1 June 2010 until July 30, 2011.....	4
2.3	Summary of Cases.....	4
2.4	Appeals.....	6
2.5	Mergers and acquisitions.....	8
3.	The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies.....	12
3.1	Seminars and In-house Training Sessions.....	12
3.2	Cooperation.....	12
4.	Resources of competition authorities.....	13
4.1	Resources overall (current numbers and change over previous year):.....	13
4.2	Human resources (person-years) applied to:.....	14
4.3	Period covered by the above information:.....	14
5.	Summaries of or references to new reports and studies on competition policy issues.....	14
5.1	Reports and Studies.....	14
5.2	Other Reports and Studies.....	16
5.3	Ongoing Studies and Market Monitoring.....	16
5.4	New Studies.....	16
5.5	Working Papers.....	16

ANNUAL REPORT ON COMPETITION POLICY IN PORTUGAL

1. Unless otherwise indicated, this report covers the period of 1st July 2010 to 20th June 2011, in the continuity of previous reports.

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

2. During the period of 1st July 2010 to 30th June 2011, no amendments to the Portuguese Competition Act came into force.

3. Nevertheless, on 24th June, Law 46/2011 was published which created a specialized court for competition, regulation and supervision and a specialized court for intellectual property.

4. This Law aims to reduce the number of cases pending in the courts, to promote the specialization of judges in competition and regulatory affairs and, finally, to guarantee the consistency of jurisprudence issued by the courts. This specialized court will, therefore, have jurisdiction over all issues regarding appeal, revision and enforcement of decisions issued by regulatory bodies such as the PCA. However, the amendments introduced by Law no. 46/2011 will only enter into force when the installation of this court is concluded.

5. During this period, the Portuguese Competition Authority has presented to the Government a proposal for the revision of the Portuguese Competition Act, that should be completed until the end of the year.

2. Enforcement of competition laws and policies

2.1 *General overview*

6. The Portuguese Competition Authority's enforcement activity during the period under analysis was mainly focused on associations and professional associations, health equipment, driving instruction, industrial cleaning services, telecommunications and media, energy, bank, pharmaceuticals, tobacco and dairy products.

7. Prohibition decisions were adopted in five cases: the first concerned concerted practices aimed at fixing prices in the driving instruction market; the second related to a decision of the association representing undertakings which provided parking lot services, by which it coordinated prices and conditions; the third dealt with a decision of an association representing translators, interpreters and tourist guides aimed at fixing prices in the market for tourist services; the fourth concerned collusive practices amongst industrial cleaning undertakings in the framework of public tenders; and the fifth related to an obligation of resale price maintenance in the framework of tenders for the supply of hospital equipment.

8. During the period under analysis, fines were imposed totaling €2.83 million with regard to the above mentioned cases.

9. Over the same period, fourteen 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.

2.2 *Summary of cases since 1 June 2010 until July 30, 2011*

Infringements (number of cases)	5
Investigations closed	18
Investigations launched	14

2.3 *Summary of Cases*

2.3.1 *Cartel – Owners of Driving Schools (PRC-06/2008)*

10. In March 2011, the Portuguese Competition Authority condemned seven undertakings, all owners of driving schools, for their participation, between December 2007 and March 2008, in a concerted practice aimed at fixing prices in the market of driving instruction relating to Category B (light) vehicles in the city of Funchal (Madeira Island).

11. The investigation, launched in 2008, was originated by an anonymous complaint denouncing a general price increase of the driving instruction relating to Category B (light) vehicles in the city of Funchal. The investigation carried out by the Portuguese Competition Authority showed that, in January 2008, the following undertakings: *Escola de Condução Francisco Pereira, Lda.*; *Manuel Rodrigues, Lda.*; *Escola de Condução Infante, Lda.*; *Escola de Condução do Estreito, Lda.*; *Alfredo Camacho, Lda.*; *SMTZ – Ensino da Condução Automóvel, Lda.*; and *Fernandes Ramos & Nóbrega, Lda.* simultaneously increased their prices to the same amount after a period of instability and decreasing price trend. Another similar price increase took place in March of the same year. In addition to the absence of a plausible explanation for such increases from an economic point of view, the Portuguese Competition Authority's investigation revealed that, as of October 2007 and just before the occurrence of the price increases, contracts between the above mentioned undertakings took place in order to fix prices and induce their increase.

12. The Portuguese Competition Authority's decision imposed a total fine of € 9.865 on the seven undertakings for the infringement of Article 4 of Law 18/2003 (the Portuguese Competition Act). In setting the fine, the Portuguese Competition Authority took into account, in addition to the criteria listed in Article 44 of Law 18/2003, the fact that the undertakings involved were small enterprises which operated in a market characterized by insularity.

13. This Portuguese Competition Authority's decision is currently pending before the Lisbon Commercial Court (Tribunal do Comércio).

2.3.2 *Horizontal Restraints – Parking Lots (PRC-12/2006)*

14. In December 2010, the Portuguese Competition Authority concluded its investigation into an infringement of article 4 of Law 18/2003 involving ANEPE, the National Association of Parking Lot Undertakings.

15. This ex-officio investigation started in 2006, after public statements were made by the representatives of both the undertakings and the association, on the occasion of the coming into force of a new legal framework on parking pricing and conditions, implying that the new rules would have caused

higher prices for consumers. Following the investigation, the Portuguese Competition Authority concluded that the association had advised its members to adapt to the new rules by setting a fixed “entry fee” in parking lots and by raising prices, which eventually many of them did.

16. The final decision imposed a fine on ANEPE in the amount of € 1.971 397 million.

2.3.3 *Tourism, Translators and Tourist Guides (PRC-04/2007)*

17. In December 2010, the Portuguese Competition Authority concluded its investigation into an infringement of article 4 of Law 18/2003 involving SNATTI, the Portuguese Association of Tourism, Translators and Tourist Guides, representing tourist guides, translators and interpreters.

18. The investigation started in 2007 after a complaint of a Travel Agency Association.

19. Following the investigation, the Portuguese Competition Authority concluded that between 1997 and 2007 SNATTI fixed tariffs for guides, translators and interpreters.

20. The final decision imposed fines on SNATTI in the amount of €1.000.

21. SNATTI did not appeal the Portuguese Competition Authority’s decision.

2.3.4 *Industrial Cleaning Services (PRC-10/2009)*

22. In June 2011, the Portuguese Competition Authority concluded its investigation related to an infringement of article 4 of Law 18/2003, involving two undertakings (*Conforlimpa (Tejo) – Multiservices, S.A. and Number One – Multi Services, Lda.*), both active in the market for the provision of industrial cleaning services.

23. The investigation started in 2009, after a competitor of the two undertakings involved reported the existence of collusive practices within the context of tender processes. Following the investigation, the Portuguese Competition Authority concluded that between 2006 and 2007, and for 16 tender processes, the two undertakings had colluded in the preparation of their respective offers and had exchanged sensitive information concerning the same. As a result of such collusive practices, the undertakings had presented very similar offers with prices, very often identical, thereby distorting competition in each of the tender processes, in violation of article 4 of Law 18/2003.

24. The final decision imposed fines on the undertakings in the total amount of € 316.324.

2.3.5 *Vertical Restraints – Automated equipment for medicine dispensing (PRC-13/2006)*

25. In December 2010, the Portuguese Competition Authority concluded its investigation related to an infringement of article 4 of Law 18/2003, involving two undertakings (Baxter and Glintt), in the market of delivery, assembling and parameterization of automated equipment used for the re-packaging of oral forms solid medicines, as well as their related services, such as supply of consumables, exclusive or not, and training services and maintenance/technical assistance.

26. The investigation started in 2006 after a hospital complained about the similar prices offered by the two undertakings in an international tendering procedure.

27. Following the investigation, the Portuguese Competition Authority concluded that between 2005 and 2009, the two undertakings were involved in an agreement imposing resale prices (RPM). The two

undertakings competed in multiple international tendering procedures with the product under contract (FDS) observing previously stipulated prices.

28. The final decision imposed fines on the two undertakings in the amount of €530.000.

29. The first instance Lisbon Commercial Court confirmed the Portuguese Competition Authority's decision and reduced the amount of the fines to €400.000.

2.4 Appeals

2.4.1 Bid rigging and price fixing in the market for sale of test strips for measuring blood glucose: *Abbot Laboratórios, Lda., Johnson & Johnson, Lda., and Menarini Diagnósticos, Lda.*

30. During the period under review, the Court of Appeal partially upheld the Lisbon Commercial Court decision concerning an action against three major pharmaceutical companies (*Abbot Laboratórios, Johnson & Johnson, and Menarini Diagnósticos*) relating to collusive tendering in public procurement for supply contracts of diabetes regents.

31. The Court of Appeal upheld the conviction of *Abbott Laboratórios, Lda. and Menarini Diagnósticos, Lda.*, imposing fines totaling €4.000.000,00, but changed the legal setting of the case and considered that a single infringement had existed, of a permanent nature, which included all the infringements occurred in the public tenders in which the companies presented themselves in collusion.

32. In consequence of the change of the legal setting mentioned above, the Court of Appeal acquitted *Johnson & Johnson, Lda.*, as the referred company was, in this stage of the case, solely charged with one infringement and had previously paid the fines for all other offenses that it had been accused of by the PCA, and that were now included in the single permanent infringement determined by the Court of Appeal.

33. *Abbott Laboratórios, Lda. and Menarini Diagnósticos, Lda.* appealed the Court of Appeal's decision to the Constitutional Court (*Tribunal Constitucional*). Proceedings before the Constitutional Court are still pending.

2.4.2 Cartel in the cereal (wheat) milling market : *Cerealis – Moagens, S.A. and Cerealis – Produtos Alimentares, Germen – Moagem de Cereais, S.A., Granel – Moagem de Cereais, S.A., Moagem Ceres – A. Figueiredo & Irmão, S.A., Eduardo e Artur Grilo Pereira, Lda. and Pitorro – Moagem de Cereais, S.A., Abranches & filhos, Lda., Carneiro, Campos & Companhia, Lda., Catelas & Teorgas, Lda., Farlis – Fábrica de Farinhas do Lis, Lda.*

34. The PCA concluded that, between December 2000 and September 2004, increases in the flour price between ten milling undertakings were uniform from the viewpoint of the amount, the date on which customers were notified of the new prices and the date on which the rises came into effect.

35. The PCA found that they had infringed the Portuguese Competition Law by engaging in a concerted practice with the intention of uniformly establishing prices. It imposed fines totaling € 8.935.983,58. The decision was appealed to the Lisbon Commerce Court (Court of First Instance).

36. The Lisbon Commercial Court ruled that the process should return to the PCA to amend some procedural irregularities.

37. The PCA appealed the Lisbon Commercial Court decision to the Court of Appeal. The proceedings before the Appeal Court are still pending.

2.4.3 *Professional Bar of Public Chartered Accountants (OTOC — Ordem dos Técnicos Oficiais de Contas)*

38. During the period under review, the Lisbon Commercial Court partially upheld a PCA decision against the Professional Bar of Public Chartered Accountants (“Ordem dos Técnicos Oficiais de Contas”, “OTOC”, relating to the rules fixed by the OTOC in a regulation on compulsory professional training to be attended by all public chartered accountants. Such rules apply to entities, including the OTOC, that provide such training. According to the PCA’s decision, the mentioned rules benefit the OTOC as a professional training entity to the detriment of the other professional training entities. The PCA’s decision considered that such rules fixed by the OTOC and its effective compliance qualified both as an illegal decision taken by an association of undertakings and as an abuse of a dominant position by the OTOC. The PCA imposed fines that totaled the amount of € 229.308,20.

39. The Lisbon Commercial Court upheld the PCA’s decision concerning the existence of an illegal decision taken by an association of undertakings and reduced the amount of the fine to € 90.000,00. The abovementioned rules fixed by the OTOC were declared by the Court as null and void.

40. The OTOC lodged an appeal of the decision of the Court before the Court of Appeal.

2.4.4 *PT Comunicações, S.A.*

41. During the same period, the Court of Appeal upheld a Lisbon Commercial Court decision that found *PT Comunicações S.A.* not guilty for an abuse of a dominant position regarding denial of access to an essential infrastructure in the market of telecommunications.

42. The PCA had imposed on *PT Comunicações, S.A.* a fine of € 38.000.000,00.

43. The PCA filed a claim at the Court of Appeal sustaining that the decision of this court is null notably because the request for a preliminary ruling to the European Court of Justice made by the PCA in its appeal was not accepted by the Court of Appeal.

2.4.5 *Cartel – Catering Services Market (PRC-02/2007): EUREST (Portugal), Lda; SODEXHO PORTUGAL II, S.A.; UNISELF, S.A.; ICA, S.A.; NORDIGAL, S.A.; TRIVALOR HOLDING (GERTAL, S.A.; ITAU, S.A., TRIVALOR, SA)*

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

45. 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.

46. Both the undertakings and the directors appealed the PCA’s Decision to the Commercial Court of Lisbon, which, on December 10th 2010, confirmed an irregularity raised by some defendants, regarding the omission of certain evidentiary inquiries by the PCA and, consequently, declared the PCA’s decision as invalid and determined the executions of inquiries requested by the defendants.

47. The PCA sought to comply with the Court’s decision.

2.5 Mergers and acquisitions

2.5.1 Statistics

Table I: Concentrations decisions adopted since July 2010

Concentrations decisions adopted since July 2010	
Notified merger operations	60
Total decisions	60
Pending	9
Phase I	
Non-notifiable transactions	1
Clearance	53
Clearance with commitments	4
Withdrawn cases	0
Non Clearance	0
To Initiate an in-depth investigation	1
Referral to European Commission	0
Tacit approval	0
Phase II	
Clearance	1
Clearance with commitments	0
Non Clearance	0
Withdrawn cases	0
Tacit approval	0
Total final decisions adopted (does not include the Phase I decision to proceed into Phase II)	59

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

	Cases	%
Horizontal	35	59
Vertical	1	2
Conglomerat	23	39
TOTAL	59	100

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

	Cases	%
Multi-jurisdictional filings (within EU)	9	15
Multi-jurisdictional filings (outside EU)	14	24
National with involvement of undertakings from other EU member states	9	15
National with involvement of undertakings from countries outside EU	7	12
Completely national	20	34
Total	59	100

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

	Cases	%
Sole control	39	66
Joint control	8	14
Acquisition of assets	12	20
Total	59	100

48. The statistics set out above refer to the period from July, 1st 2010 to June, 30th 2011.

49. Throughout the 2nd semester of 2010 (July – December), there were 36 notifications, 34 Phase I decisions, of which 32 were clearance decisions and 2 were clearance decisions subject to remedies.

50. On the 1st semester of 2011 (January – June), there were 24 notifications, 25 Phase I decisions, of which 1 was an inapplicability decision, 21 were clearance decisions, 2 were clearance decisions subject to remedies, one decision to initiate second-Phase proceedings (in-depth investigation) and one Phase II clearance decision.

51. During this time period, the PCA held a public consultation on its draft “Merger Remedies Guidelines”, which were ultimately issued in July 2011. This document is based on the experience of the PCA, as well as on the practice and guidelines of other competition authorities, and covers both the procedural aspects and the substantive analysis of remedies in merger control cases.

2.5.2 *Summary of significant merger cases decided*

- S.C. Johnson/Sara Lee – Phase I Clearance Decision with Remedies (21.12.2010)

On June 23rd, 2010, S.C. Johnson & Son, a holding company of the SCJ Group, active globally in the production of household cleaning, home storage, air care and insect control products, notified a transaction whereby it intended to acquire sole control of Sara Lee’s household insecticides business. The acquired business consisted of all of Sara Lee’s assets related to the production and sale of household insecticides and insect repellents for human use, sold in Portugal under the brand names “Dum-Dum” and “Tabard”, respectively.

This acquisition was subject to notification under the Portuguese, Spanish and Russian competition legal frameworks. On July, 28th 2010, the Spanish Competition Authority made a referral request to the European Commission in application of Article 22(1) of Council Regulation No. 139/2004. The PCA decided not to join the request in light of the fact that it considered itself to be best placed for the competitive assessment of the merger in the relevant markets in Portugal, as well as for the evaluation of any commitments that could be put forward by the notifying party. As a consequence, the PCA carried out its evaluation of the merger impact in Portugal, under its original jurisdiction, even though the referral request was accepted by the European Commission.

Based on the parties’ activities, the analysis undertaken by the PCA focused on the markets for (i) the sale of insecticides for crawling insects (CIK - “Crawling Insect Killers”); (ii) the sale of insecticides for flying insects (FIK – “Flying Insect Killers”); (iii) the sale of anti-moth products; and (iv) the sale of repellents. All relevant markets were considered to be national in scope.

As regards the market for repellents, the PCA considered that the merger did not raise any competitive concerns, given that the parties’ post-merger aggregated market share was just above 20% and that they faced strong competition from other players in the market.

In the other three markets, CIK, FIK and anti-moth, given the parties post-merger high aggregated market shares, the high levels of concentration, and the fact that the brands offered by the merging parties were considered to be close competitors, the PCA concluded that the merger was likely to eliminate an important source of effective competition, that could not be replaced by other players in the market, including retailers of private label products, since these were considered as insufficient to restrain the behaviour of the parties post-merger.

The competitive concerns identified were reinforced by the markets’ characteristics, namely those related to the fact that the household insecticides market is in a mature phase (notwithstanding the rise of private label products in the recent years), the stability of the parties’ market share, the absence of new entrants, with branded products, in the last three years, as well

as the existence of entry barriers (in particular those associated with investment requirements in marketing and brand development, limited access to sources of supply and the need for a comprehensive range of products for any entrant to be able to acquire a relevant market share).

Based on this assessment, the PCA adopted, on December 21st, 2010, a Phase I Non-Opposition Decision subject to the commitments undertaken by the Notifying Party to address the competition problems identified in the relevant national markets for CIK, FIK and anti-moth products.

The commitments undertaken by the Notifying Party consisted in the divestiture of all the assets of Sara Lee in Portugal under the brand name “Dum Dum” (CIK, FIK and anti-moth products), including all licenses, as well as contracts and orders from clients for those products.

The commitments put forward by the Notifying party would eliminate the horizontal overlap between the parties in the relevant markets where concerns had been identified. As such, these commitments were considered to be adequate, sufficient and proportional to overcome the competition concerns identified.

- Secil/Lafarge Betões - Phase II Clearance Decision with Remedies (17.06.2011)

On June, 17th 2011, the PCA issued a clearance decision subject to remedies concerning a merger by which Secil was acquiring exclusive control of Lafarge Betões.

This merger, notified to the PCA on January, 4th 2011, consisted in the acquisition by Secil - a joint venture between the Portuguese Group SEMAPA and the English Group CRH plc, both active in Portugal in the production and sale of building materials (including cement, ready mixed concrete, aggregates and mortar) - of Lafarge Betões, a company also active in the production and sale of ready mixed concrete, aggregates and mortar, at the national level.

The investigation carried out in the first phase of the proceedings did not allow the PCA to rule out the possibility of unilateral effects emerging from the merger in four of the geographic markets defined for the production and commercialization of ready mixed concrete (Castelo Branco, Santarém/Rio Maior, Alentejo and the Algarve).

These competition concerns were mainly related to the fact that Secil already accounted for most of the ready mixed concrete production capacity in those four relevant geographic markets.

The PCA considered that the merger could strengthen Secil’s ability to determine the sale price of ready mixed concrete, independently of other players in the market.

So as to address the competition concerns identified, Secil put forward a set of remedies which were found to be adequate, sufficient and proportionate.

As such, the PCA’s clearance decision was made conditional on the compliance, by Secil, of the following remedies:

- The sale of ready-mixed concrete plants, as well as the land where they are installed, in all of the four local markets in which competition concerns were identified;
- The appointment of a Monitoring Trustee and, if deemed necessary, the appointment of a Divestment Trustee for the plants covered by the set of remedies.

- EDP Produção / Greenvougá-Phase II Clearance Decision with Remedies (13.12.2010)

EDP Produção (of the Group EDP), the largest electricity company in Portugal, active on the level of electricity generation, distribution and supply, notified, on June 15th, 2010, the

acquisition of sole control of the company Greenvouga, previously jointly controlled by the Group EDP and the Group Martifer Renewables.

Greenvouga was originally created with the purpose to develop and explore the hydroelectric component of the infra structures of Ribeiradio and Ermida's hydro-power plants, which were expected to enter into operation in 2014.

The investigation carried out by the PCA identified competition concerns related to the elimination of potential competition from the projected hydro-power plants of Ribeiradio and Ermida.

Martifer, the company with which EDP Produção shared control in the pre-merger scenario, had no further assets in the relevant market and, as such, its incentives were to fully explore Greenvouga's hydro-power plants, maximizing their market participation, namely in the ancillary services markets.

EDP Produção, on the other hand, already accounted for most of the electricity production capacity, in particular in ancillary services, and might have the incentive to strategically manage Ribeiradio and Ermida in the context of its extensive portfolio of assets, in a less competitive way. As such, the PCA concluded that the merger implied a change in the incentives governing the management of the power plants of Greenvouga, reinforcing the ability of EDP to strongly influence the price at which electricity is traded in ancillary services markets, in Portugal. This view was shared by the National Regulator for the Energy Sector – ERSE.

The PCA's clearance of the transaction was made conditional on the observance of two types of commitments, together with their respective obligations, namely:

- EDP Produção committing to equip Ribeiradio hydro power plant for tele-regulation;
- EDP Produção committing to undertake certain service offerings in the ancillary services market;
- EDP Produção submitting, to the PCA, a set of information concerning the management of Ribeiradio, on an annual basis, and according to previously defined criteria.

Given the time frame for the effects of the merger (Ribeiradio and Ermida were only expected to start operating in 2014), the enforceability of these commitments were subject to the verification of certain conditions regarding the (in)dispensability of EDP to meet the demand for ancillary services.

The aforementioned commitments seek to replicate the behaviour of a competitive agent (price-taker) in the hydro power plant of Ribeiradio. They will be applicable and enforceable only if, upon an evaluation made at a given date preceding the entry into operation of the hydro power plant of Ribeiradio, the PCA concludes that, at that time, EDP is still indispensable to meet the demand for the ancillary services market, in Portugal. The (in)dispensability criteria will be assessed according to the Residual Supplier Index ("RSI").

- Bencom/Negócio de Combustíveis BP Açores – Phase I Clearance Decision with Remedies (8/02/2011)

Notified on August 23rd, 2010, this merger consisted in the acquisition, by the undertaking BENCOM - Armazenagem e Comércio de Combustíveis SA ("Bencom"), of sole control of BP's fuel business assets in the Azores islands ("BP Fuel Business Azores").

Bencom is a company active in imports, storage and distribution of fuel oils and its derivatives as well as related activities in Azores.

BP's fuel business Azores included, amongst others, a shareholding in the "Nordela's" Storage premises, one of the two existing premises (the other being "Polnato", owned by the Portuguese state and operated by Bencom) for fuel's storage in S. Miguel (one of the islands of Azores).

The PCA concluded that the transaction implied a merger to monopoly in the market for fuel storage (white products) in S. Miguel, which is a mature market with significant barriers to entry.

In order to address these concerns, the notifying party undertook a set of commitments to release storage capacity, when asked by a third party, in Polnato's storage facilities. These commitments included the assignment of Bencom's contractual position in Polnato or, alternatively, the provision of storage services in that terminal. These commitments are of a structural nature, and effective only when a third party requests the release of the storage capacity that Bencom is entitled to operate on that storage facility.

On February 8, 2011, the PCA cleared the merger, during first phase proceedings, subject to the above mentioned remedies.

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

3.1 Seminars and In-house Training Sessions

52. During this period the AdC hosted eight visitors who presented seminars on different topics in competition law, economics and policy as follows: Prof. William Kovacic, Federal Trade Commission/USA ("Fuel Prices: Deconstructing the Myth"); Prof. Rosa Abrantes-Metz, AFE Consulting/NY & Stern School of Business/NYU ("Screens for Conspiracies and Manipulations and their Multiple Applications"); Prof. David Gerber, Chicago Kent College of Law/USA ("Global Competition: Law, Markets and Globalization"); Dr. Giulio Federico, SP-SP Center/IESE Business School/Barcelona & CRA ("The Spanish energy sector: regulation, competition and environment"); Stephen Hoernig, FE-UNLisboa & CEPR/London ("Welfare analysis of regulating mobile termination rates in the UK (with an application to the Orange/T-Mobile merger)"); Prof. Luís Cabral, SP-SP Research Fellow/IESE Business School/NY & Consultant PCA ("Good Turnover and Bad Turnover: Entry Barriers, Survival Barriers and Social Welfare"); Silke Obst, Acting Head of Unit/DG COMP/European Commission ("The New Block Exemption Regulation for the Insurance Sector"); Prof. Margarida Catalão-Lopes, DEG/IST/UTLisboa ("Entry deterrence under scope economies").

53. In December 2010 the PCA invited two Portuguese academics, Profs. Helder Vasconcelos and Duarte Brito, to present a 9 hours internal seminar on the fundamentals of microeconomics and industrial organization and their application to competition economics, in particular merger and antitrust policies. The seminar was attended by a total of around 25 economists and legal officers working at the PCA.

3.2 Cooperation

3.2.1 ECN – the European Competition Network

54. 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 framework on horizontal cooperation agreements. The PCA was also a contributor to the publication "*ECN Brief*".

3.2.2 *ECA – the European Competition Authorities Network*

55. The PCA participated in the Annual Meeting of the ECA that took place in Warsaw, Poland.

56. From July 1st, 2010 to June 30th, 2011, the PCA notified 25 cases to the ECA Network. All these cases referred to multijurisdictional mergers within the EEA. 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.

3.2.3 *Bilateral Cooperation*

57. The PCA hosted the 5th Iberian Competition Forum in Lisbon on the 3rd and 4th of March 2011, which included both high level meetings on competition law and policy, exchange of experiences and best practices and debates on current topics of mutual interest, as well as meetings on the technical level between case handlers regarding the implementation of competition law in Spain and Portugal.

58. On the 24th of March, the PCA hosted a delegation from the State Administration for Industry and Commerce (SAIC) of the People's Republic of China. Minister Zhou Bohua of the SAIC headed the delegation that travelled to Portugal to discuss issues in competition law and policy, and possibilities for cooperation.

3.2.4 *The PCA International Training Programme*

59. In November of 2010, the PCA launched the pilot session of its International Training Programme. The Portuguese Competition Authority ("PCA") International Training Program (PCA_ITP) allows professionals from foreign competition authorities ("Trainees") to complete a 2 week training program at the PCA. During the training program participants take part in PCA activities as well as participating in training sessions. Two officials from the Brazilian CADE participated in the two-week programme in November 2010, which included both knowledge-sharing and hands-on training.

3.2.5 *Multilateral Cooperation*

- ICN – International Competition Network

During 2010, the PCA was active in all ICN working groups: Advocacy, Agency Effectiveness, Cartels, Mergers and Unilateral Conduct. The PCA also attended the Merger Workshop in Rome, Italy, as well as the Annual Conference in the Hague, where representatives from the PCA were speakers and moderators. In May of 2011, the PCA was nominated as Co-chair of the Advocacy Working Group.

4. **Resources of competition authorities**

4.1 ***Resources overall (current numbers and change over previous year):***

4.1.1 *Annual budget:*

60. On a cash basis, annual budgetary commitments for 2010 amount to €8,6 million, as compared to €9,2 million in the previous year.

4.1.2 Number of employees (person-years):

61. On 31st of December 2010, the PCA employed 95 staff: 23 economists and 28 lawyers. 50% of the staff have an academic background equivalent to or above a Masters Degree. In 2010, 16 held a PhD.

4.2 Human resources (person-years) applied to:

- Enforcement against anticompetitive practices: 20
- Merger review and enforcement: 16
- Judicial Affairs: 9

4.3 Period covered by the above information:

62. Budgetary information for 2009 and 2010 covers the period of January 1 – December 31. Unless otherwise indicated, human resources information is reported as of December 31, 2010

5. Summaries of or references to new reports and studies on competition policy issues

5.1 Reports and Studies

5.1.1 The Final Report on the commercial relations between large retail groups and their food suppliers

63. In October 2010, the PCA published its Final Report on the Commercial Relations between Large Retail Groups (LRGs) and their Food Suppliers, together with an abridged English version. The report analysed the behaviour of the nine LRGs operating in Portugal and their relationships with different food suppliers. It covered a representative sample of “fast moving consumer goods” including dairy products, rice, pastas, flour, breakfast cereals, biscuits, vegetable oils, fruit and vegetables, and soft drinks, coffee and substitutes. The commercial relations between LRGs and their suppliers have been the subject of debate in Portugal for a number of years, as they have been in many countries across Europe. The issue has surfaced again with many factors coming together, namely the growth of LRGs, the perceived imbalance in bargaining power, with suppliers on the downside, the reform of the EU Common Agricultural Policy and the volatility of prices for certain foodstuffs in international markets. This report identified four areas where the perceived imbalance in bargaining power between LRG’s and food suppliers manifests itself more clearly: the unilateral imposition of terms and conditions, discounts and other arrangements, the imposition of penalties and failure to comply with payment terms. The concerns identified by the PCA on the basis of this market study do not come strictly within the scope of prohibited practices as per competition law, a finding that is in line with similar studies undertaken in other countries of the EU. Some issues, however, may fall within the provisions of legislation on (individual) unfair trade practices and therefore warrant continued rigorous scrutiny. In addition, the PCA has put forward several recommendations geared to promoting a culture of competition which will contribute to a more balanced and transparent bargaining power and an effective proactive position taken by the authorities that have jurisdiction in the matter. These recommendations cover a range of topics, including a reinforcement of the collection, treatment and dissemination, when warranted, of statistical data for prices and quantities along the food supply chain, the development of an analysis by an independent consultant financed by the parties involved on the impact on consumer welfare of “look alike” and “copycat” products, and giving priority to the transposition to domestic legislation of the EU directive on payment terms for commercial transactions.

5.1.2 *Economic Study on Triple Play Bundles*

64. In December 2010, the PCA concluded an economic study, within a particular context, involving certain Portuguese telecoms firms, which carried out a SSNIP (Small but Significant and Non-transitory Increase in Price) test to determine whether triple play bundles being offered (including fixed telephony, cable TV and broad band internet access) constitute a relevant market in a competition policy sense. The gathered data set was first used to estimate a cross-nested logit demand model. In turn, the estimates obtained from this model were used to calibrate a model of the industry that was then used to run two versions of the SSNIP test. Both versions of the test indicate that, in the particular context referred above, triple play bundles do constitute a relevant market in a competition policy sense. Various sensitivity analyses were successfully carried out to test the general robustness of the conclusions.

5.1.3 *Report on the impact on fuel prices from the installation of price information boards along the highways*

65. Following a PCA recommendation from 2004 urging the government to implement legislation requiring the different operators selling motor fuels in stations along the highways to install, some distance ahead of those stations, panels displaying information on the different retail prices being charged, for the benefit of consumers through the promotion of competition among the different operators. It is noteworthy that, unlike the case of final consumers, such information was already available to the operators themselves before those panels were installed. After a series of legislative initiatives in 2005, 2006 and 2008, by May 2009 most of the required panels had been installed. The PCA concluded this last July 2011 an ex-post economic analysis on the impact of such panels over retail fuel prices being charged along the highways and, more generally, over the market structure and the behaviour of the different operators. This analysis, which compared the observed values for the relevant variables with a contractual suitably defined, concludes that after around one year, the installation of such panels did not lead to reductions in average retail prices being charged along the highways as might be expected, nor did it lead to a speedier reaction by one operator to price changes by another operator. One can also observe a decrease in price differentiations between operators, which in and of itself does not constitute a problem. The final report concludes by issuing some recommendations regarding e.g., the entry of independent operators and supermarkets in the fuel retail highway markets and the promotion of ‘competition for the market’ when new operating licences for fuel retailers along the highways become available or old ones expire.

5.1.4 *Report on mobile call origination services towards non-geographic numbers and special services*

66. Following a request by the telecoms sector regulator (ICP-ANACOM) the PCA launched in March 2010 an economic study on mobile call origination services towards non-geographic numbers and special services, which was concluded at the end of November 2010. This study had as its objective to analyse the competitive structure of this market, namely by determining the degree of market power of the operators in this wholesale market and in the adjacent retail market for non-geographic numbers and special services. This study also analysed the possible existence of excessive prices in the wholesale market. Three different methodologies were applied, namely the comparison of this service’s prices with production costs, the comparison with the prices of similar services, and the evaluation of firms’ profits. According to all these methodologies, this study concluded for the presence of excessive prices for the wholesale service of mobile call origination services towards non-geographic numbers and special services. This study is under review by the PCA’s Legal Department.

5.1.5 *An economic analysis of the cork industry*

67. Following several concerns expressed by different operators in the industry and a Parliament Resolution from August 2009 recommending an in-depth investigation of this industry along its entire

vertical chain, the PCA launched an economic analysis of the cork industry at the end of October 2010, right after concluding its final report on the commercial relations between large retail groups and their food suppliers and several other economic studies of equal importance. This economic analysis covers the whole vertical chain with a particular emphasis on the upstream markets through which the different raw materials eventually reach the manufacturers of final products. This analysis will be concluded by the end of 2011.

5.2 Other Reports and Studies

68. In April 2011 the market monitoring exercise over milling and bread manufacturing, initiated by the PCA in 2004, was terminated.

69. The PCA also prepared an OECD background note - DAF/COMP/LACF(2011)2 - on triple play bundles in telecoms for circulation and discussion under session III of the Latin American Competition Forum at its forthcoming meeting to be held on 13-14 September in Bogota/Colombia.

5.3 Ongoing Studies and Market Monitoring

70. During this period, the PCA published four more quarterly Newsletters on Motor Fuel and Bottled Gas Sectors in Portugal, a regular publication launched in 2004, with the one published this last June covering the 1st quarter of 2011. These publications analyse the consumption, production and imports patterns and 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. It also published twelve more monthly Liquid Fuel Statistics Bulletins, a regular publication started in September 2009.

71. In July 2010, the PCA published the Annual Report on Telecoms, covering the year 2009. This annual report gives an overview of the telecoms sector in Portugal and presents a more detailed analysis of fixed and mobile telephony and broad band internet access, in particular in what concerns wholesale and retail prices. Whenever suitable, international comparisons are drawn with the different EU15 countries.

72. The PCA maintained its monitoring activities over the energy sector (electricity and natural gas). The PCA has also issued several opinions regarding energy tariffs and prices, access tariffs to energy networks, and the electricity network operating rules in the context of the regular consultation procedures initiated by the energy sector regulator (ERSE).

5.4 New Studies

73. In January 2011 the PCA launched an economic analysis to evaluate the degree of market power in the Portuguese market for mobile telephony and test the types of strategic behaviour being adopted by the different market players. Statistical information has been collected on costs over a long enough time period and on final demand through data on individual consumers invoices.

74. In April 2011 the PCA launched an ex-post economic analysis of a concentration between two firms operating in different markets such as fruit beverages, sparkling and still waters, the packaging of some food items, etc. This concentration was cleared in August 2008 subject to some structural and behavioural remedies.

5.5 Working Papers

75. During this same period, the PCA published the following documents in its Working Paper Series, counting a total of 43 titles: (i) "Small fish become big fish: merger in Stackelberg markets

revisited”; (ii) “Duopoly Competition with Competitor Partial Ownership”; (iii) “Inter-firm Bundling and Vertical Product Differentiation”; and (iv) “Can Vertical Separation Reduce Non-Price Discrimination and Increase Welfare?”.

76. The first paper analyses, under the assumption of convex costs, the price effects of mergers involving two Stackelberg followers that become a (unified) leader, and revisits the "merger paradox". Contrary to what might be expected, prices are more likely to increase with cost convexity than with linear costs. Also, the incentive to free ride may reappear. Taking as a fact that owning a share of a competitor's stock lessens the degree of oligopoly competition, the second paper explores this theme by considering different forms of ownership (voting and non-voting shares) as well as different divestiture options. Among other results, the paper shows that turning voting shares into non-voting shares increases consumer surplus; and selling the voting shares to a large shareholder is better than selling it to small shareholders. Perhaps more surprisingly, the paper provides conditions such that a partial sale of voting shares is worse than turning those shares into non-voting shares. The third paper studies the competitive effects of bundled discounts when each component good is sold by a different single-product firm. In a setting with vertically differentiated goods and firms deciding simultaneously about their participation in a discounting scheme, it is shown that, in equilibrium, all firms offer bundled discounts and, relative to the no-bundling benchmark: (i) all headline prices rise; (ii) all bundle prices, net of the discount, rise; and (iii) 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. The fourth paper investigates if vertical separation reduces non-price discrimination and increases social welfare, by considering an industry consisting of a vertically integrated firm and an independent retailer, which requires access to the vertically integrated firm's wholesaler services. The wholesaler can degrade the quality of input it supplies to either of the retailers. Discrimination occurs if one of the retailers is supplied an input of lower quality than its rival. We show that separation of the vertically integrated firm reduces discrimination against the independent retailer, although it does not guarantee no-discrimination. Furthermore, with separation, the wholesaler may discriminate against the vertically integrated firm's retailer. Vertical separation impacts social welfare through two effects. First, through the double-marginalization effect, which is negative. Second, through the quality degradation effect, which can be positive or negative. Hence, the net welfare impact of vertical separation is negative or potentially ambiguous.