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

-- 2011 --

*This report is submitted by Portugal to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 24-25 October 2012.*

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## ANNUAL REPORT ON COMPETITION POLICY IN PORTUGAL<sup>1</sup>

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

#### 1.1 *Summary of new legal provisions of competition law and related legislation*

1. During this period, a new competition legal regime (“New Competition Law”) was approved. Law No. 19/2012 was published in the Official Journal of 8 May and entered into force on 7 July. It repealed Law No. 18/2003 of 11 June (competition regime) and Law No. 39/2005 of 25 August (leniency regime).

2. The main objectives of the New Competition Law were to align the Portuguese competition legal regime with that of the European Union and to reinforce the capacity of investigation of the PCA as much as possible. The authority now has reinforced powers of investigation, sanction and supervision, with a comprehensive set of tools. That set now includes the ability to conduct home searches, the possibility to accept commitments, to close investigations by way of a settlement procedure and to impose structural measures.

3. Another important aspect of the New Competition Law is the PCA’s capacity to establish priorities concerning the matters that it is called to investigate, which gives it increased freedom to act. In doing so, the authority should take into account the public interest in the promotion and defence of competition.

4. The new legal regime for leniency, unlike its predecessor, was directly included in the New Competition Law and is more aligned with the ECN Model Leniency Program, namely in that it is applied only to cartels and more undertakings may now benefit from immunity or reduction of fines.

5. Other changes to the competition regime introduced by the New Competition Law include the duty imposed on the PCA to publish its final decisions on its website, the suspension of the statute of limitations while an appeal against a PCA decision is pending, the introduction of investigation deadlines and the possibility for the court to increase the fine imposed by the Competition Authority. In what relates to merger control, the thresholds determining the obligation to notify have been increased and the substantive test for market dominance was replaced by the concept of “significant impediment to effective competition”.

#### 1.2 *Other relevant measures, including new guidelines*

6. Following the entry into force of the new Portuguese Competition Act, the PCA launched a public consultation in July on two draft regulations and four draft guidelines on antitrust and merger issues, which were still underway at the end of period under review.

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<sup>1</sup> Unless otherwise indicated, this report covers the period of 1st July 2011 to 30th June 2012, in the continuity of previous reports.

7. As to the antitrust topics, the relevant draft documents are: (i) Guidelines on priority setting in antitrust procedures; (ii) Regulation on reduction or immunity from fines (leniency) and explanatory note; (iii) Guidelines on case-handling in antitrust proceedings; and (iv) Guidelines on the setting of fines.

8. The Regulations and Guidelines will be applicable to procedures both under national law and Articles 101 and 102 TFEU. Concerning merger control, the draft documents published for consultation were: (i) Regulation on notification forms for merger control and (ii) guidelines on prior appraisal of mergers.

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

### **2.1 General overview**

9. The Portuguese Competition Authority's enforcement activity during the period under analysis was mainly focused on the following sectors: pharmaceuticals, agri-food, post, tobacco, telecommunications and media, bank, environment, insurance and health, bakery (bread).

10. Prohibition decisions were adopted in two cases: the first one concerned an abuse of dominant position by a pharmaceutical company in the framework of public tenders for the supply of pharmaceutical products to hospitals; the second related to vertical restraints (fixing of resale prices and distribution margins) in the Horeca channel by a agri-food company (specialized in dairy products).

11. During the period in question, fines totaling €1.24 million have been imposed with regard to the above mentioned cases.

12. In the same period, ten proceedings were closed for lack of sufficient evidence.

13. Seventeen proceedings were opened for practices which are likely to appreciably prevent, distort or restrict competition in the whole or part of the national market, in accordance with the Portuguese Competition Law.

#### **Summary of cases since 1 July 2011 till June 30, 2012**

Infringements (number of cases)	2
Investigations closed	12
Investigations launched	17

### **2.2 Summary of cases since 1 July 2011 till June 30, 2012**

#### **2.2.1 Abuse of dominant position**

- **Case: PRC-10/2008**

This case referred to an abuse of dominant position by a pharmaceutical company in the context of public tender procedures opened by several public hospitals, in 2006, for the supply of a number of pharmaceutical products.

The investigation carried out by the PCA followed a complaint filed by a pharmaceutical company which had been a competitor of the investigated undertaking in those public tenders.

Due to its market share, the investigated undertaking was considered to have a dominant position in relation to some of the products included in tender bids to hospitals.

On the basis of documentary evidence, which was requested both to the defendant and to the hospitals (which included tender documents – announcements, tender bids, award results), in April 2012, the PCA concluded that, in 2006, the defendant had infringed the Portuguese Competition Act, Law No 18/2003, by offering mixed-bundling rebates in its tender bids, in breach of Article 6 of the abovementioned Law.

However, after taking into account all the mitigating circumstances related to the good cooperation of the defendant throughout the procedure, as well as the occasional nature of the infringement, the PCA took the decision to apply a fine of € 900,000.

### 2.2.2 *Vertical Restraints*

- **Case: PRC-04/2010**

In June 2012, the PCA condemned *Lactogal- Produtos Alimentares S.A.* (Lactogal), a Portuguese agri-food company, focused on dairy products and derivatives, for fixing resale prices and distribution margins to its distributors in the Horeca channel in Portugal.

The PCA initiated an *ex officio* investigation and decided to open proceedings against Lactogal in 2010.

The PCA found that Lactogal introduced, at least since 2003, in its distribution contracts in the Horeca channel, the obligation to resell not below a certain price as well as other distribution conditions in breach of Article 4(1) of Law No 18/2003.

Thus, the PCA imposed a total fine of € 341,098.

The decision was appealed and is currently pending before the Portuguese Competition Court (*Tribunal da Concorrência, Regulação e Supervisão*).

## 2.3 *Appeals*

### 2.3.1 *Decision by an association of undertakings and abuse of dominant position (Ordem dos Técnicos Oficiais de Contas)*

14. During the period under review, the Lisbon Court of Appeal, the Court of First Instance, decided, further to the request of a professional bar of public chartered accountants named “*Ordem dos Técnicos Oficiais de Contas*”, (hereinafter “OTOC”), to submit a preliminary ruling to the Court of Justice of the European Union regarding the application of EU competition rules to a professional bar such as OTOC. OTOC had been condemned by the PCA for fixing rules in a regulation on compulsory professional training to be attended by all public chartered accountants. The rules apply to entities, including OTOC, that provide such training. According to the PCA, the aforementioned rules benefit OTOC as a professional training entity and prejudice the other professional training entities. The PCA considered that the rules fixed by OTOC and their effective compliance qualified both as an illegal decision taken by an association of undertakings and as an abuse of a dominant position by OTOC. The PCA imposed fines that totalled the amount of €229,308.20.

15. The Lisbon Commercial Court upheld the decision of the PCA 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 OTOC were declared null and void by this court.

16. OTOC filed an appeal of the decision of the court before the Court of Appeal, the court of second instance.

17. The Court of Justice of the European Union initiated the mentioned preliminary rulings procedure and the Portuguese Government and PCA filed their observations.

### 2.3.2 *Price Fixing – Lutamar, Rebonave and Rebosado*

18. The Constitutional Court upheld the PCA decision condemning three towage companies at the port of Setúbal (*Lutamar, Rebonave and Rebosado*) for a cartel consisting of fixing prices, dividing customers and establishing and monitoring a compensation mechanism. The fines imposed amounted to €185,000. The aforementioned Court considered that the interpretation adopted by the PCA of certain provisions of the Competition Law relating to the criterion of assessment of the amount of fines did not infringe the Constitution.

19. The Lisbon Commercial Court and the Lisbon Court of Appeal had already upheld the PCA's decision.

20. Further to the decision of the Constitutional Court, the Lisbon Commercial Court, pursuant to the PCA decision, drafted a summary of the decision in order to be published by the companies in relevant newspapers.

### 2.3.3 *Bid Rigging and price fixing in the market for sale of test strips for measuring blood glucose: Abbott Laboratórios, Lda. Johnson & Johnson, Lda., and Menarini Diagnósticos, Lda.*

21. The Court of Appeal partially upheld the decision of the Lisbon Commercial Court concerning an action against three major pharmaceutical companies (*Abbott Laboratórios, Johnson & Johnson and Menarini Diagnósticos*), relating to collusive tendering in public procurement for supply contracts of diabetes reagents.

22. The Court of Appeal upheld the conviction of *Abbott Laboratórios, Lda.* and *Menarini Diagnósticos, Lda.*, imposing fines totalling €4,000,000, but changed the legal setting of the case and considered that a single infringement had existed, of a permanent nature, which encompassed all the infringements that occurred in the public tenders in which the companies presented themselves in collusion.

23. 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 has previously paid the fines for all other offences that it had been accused of by PCA. These were presumed to have been encompassed by the single permanent infringement determined by the Court of Appeal.

24. *Abbott Laboratórios, Lda.* and *Menarini Diagnósticos, Lda.* appealed the Court of Appeal's decision to the Constitutional Court (*Tribunal Constitucional*). The Court did not admit *Menarini's* appeal, and ruled in *Abbott's* appeal that there was no infringement of the Portuguese Constitution.

25. *Abbott Laboratórios, Lda.* and *Menarini Diagnósticos, Lda.* presented a petition/motion in the Lisbon Commercial Court requesting a declaration that the statute of limitations had been reached.

26. The Court upheld *Menarini's* request and denied *Abbott's*.

27. The PCA, the Public Prosecutor and *Abbott* appealed the decision of the Lisbon Commercial Court to the Court of Appeal. Proceedings before the Court of Appeal are still pending.

2.3.4 *Abuse of dominant position: Portugal Telecom, PT Comunicações, Zon Multimédia and Zon TV Cabo*

28. The Lisbon Commercial Court declared that the proceeding reached the statute of limitations concerning the PCA decision in which *Portugal Telecom, PT Comunicações, Zon Multimédia* and *Zon TV Cabo* were condemned to the payment of a fine totalling €53,061,867 for an abuse of dominant position (margin squeeze). Therefore, no decision as to the substance of the case was taken by the court, and the decision of the PCA was neither upheld nor reversed.

2.3.5 *Decision by an association of undertakings: Portuguese Association of Parking Companies (ANEPE)*

29. The Lisbon Commercial Court partially upheld a decision of the PCA concerning the price recommendation by the *Portuguese Association of Parking Companies (ANEPE)*. The PCA imposed a fine of €1,971,397.17 on ANEPE. The Lisbon Commercial Court upheld the PCA's decision, albeit with a reduction of the amount of the fine to €969,000.00. The decision of the court was appealed by ANEPE to the Court of Appeal.

2.3.6 *Vertical agreement between undertakings with restraint fixing resale prices, in the automatic dispensing, labelling and packaging of individual doses of oral solids drugs – BAXTER – Médico Farmacêutica, Lda. and GLINTT – Business Solutions, Lda.*

30. In December 2010, the PCA concluded its investigation into an infringement of Article 4 of the Portuguese Competition Act, and Article 101 of the Treaty on the Functioning of the European Union, involving two undertakings (*Baxter Médico Farmacêutica, Lda. and GLINTT – Business Solutions, Lda.*), in the automatic dispensing, labelling and packaging of individual doses of oral solids drugs markets.

31. The final decision imposed fines on the undertakings in the amount of €530,768. Disagreeing undertakings appealed to the Lisbon Commercial Court, which upheld the PCA's decision concerning the existence of an illegal decision taken by the two undertakings and reduced the amount of the fine to €400,000, as a result of the exclusion of the effect on trade between Member States.

32. Both undertakings appealed the Lisbon Commercial Court's decision to the Court of Appeal.

2.3.7 *Abuse of dominant position – PT Comunicações, S.A.*

33. The Lisbon Commercial Court reversed a PCA decision condemning *PT Comunicações, S.A.* for an abuse of dominant position in the market of rented telecommunication circuits. The PCA had imposed a fine of €2,116,268.00. The PCA filed an appeal at the Lisbon Court of Appeal.

## 2.4 Mergers and acquisitions

### 2.4.1 Statistics

**Table 1. Concentrations decisions adopted since July 2011**

Notified merger operations	58
Total decisions	59
Pending	8
<b>Phase I</b>	
Non-notifiable transactions	3
Clearance	51
Clearance with commitments	1
Withdrawn cases	1
Non Clearance	0
To Initiate an in-depth investigation	3
Referral to European Commission	0
Tacit approval	0
<b>Phase II</b>	
Clearance	0
Clearance with commitments	1
Non Clearance	0
Withdrawn cases	2
Tacit approval	0
<b>TOTAL FINAL DECISIONS ADOPTED</b> (does not include the Phase I decision to proceed into Phase II)	<b>59</b>

**Table 2. Breakdown by nature of operation (Final Decisions)**

	Cases	%
Horizontal	37	63
Vertical	3	5
Conglomerat	19	32
<b>TOTAL</b>	<b>59</b>	<b>100</b>

**Table 3. Breakdown by geographic scope of operation (Final Decisions)**

	Cases	%
Multi-jurisdictional filings (within EU)	7	12
Multi-jurisdictional filings (outside EU)	18	31
National with involvement of undertakings from other EU member states	12	20
National with involvement of undertakings from countries outside EU	2	3
Completely national	20	34
<b>TOTAL</b>	<b>59</b>	<b>100</b>



**Table 4. Breakdown by type of operation (Final Decisions)**

	Cases	%
Sole control	46	78
Joint control	6	10
Acquisition of assets	6	10
Merger	1	2
<b>TOTAL</b>	<b>59</b>	<b>100</b>

34. The statistics set out above refer to the period from July, 1st 2011 to June, 30th 2012.

35. Throughout the 2nd semester of 2011 (July – December), there were 24 notifications, 26 Phase I decisions, of which 22 were clearance decisions, one was a clearance decision subject to remedies, one was an inapplicability decision concerning a non-notifiable transaction and two were decisions to initiate an in-depth investigation. There was one merger notification which was withdrawn in 2nd phase.

36. On the 1st semester of 2012 (January – June), there were 34 notifications, 33 Phase I decisions, of which 29 were clearance decisions, two were inapplicability decisions, one was a decision to initiate an in-depth investigation and, furthermore, there was a notification regarding a case in phase I proceedings which was withdrawn. There were also, within this timeframe, four Phase II decisions, namely two clearance decisions, one clearance decision subject to remedies and a notification concerning a merger that was being analysed in 2nd phase proceedings which was withdrawn.

37. The main amendments following the entry into force of the New Competition Act, Law no. 19/2012, on merger control were (i) the alignment of the substantive test with the Significant Impediment of Effective Competition (“SIEC”) test of the EC Merger Regulation, ii) a new *de minimis* market share notification threshold and modification of the turnover thresholds, (iii) the elimination of the previously existing notification deadline of 7 working days after the conclusion of a contract and iv) changes in a variety of procedural aspects.

38. On July 28th, 2011, the PCA approved the Guidelines on the Adoption of Remedies in Merger Control Proceedings. These guidelines aim at providing a framework of reference regarding the selection, design, execution and monitoring of remedies in merger control, thereby contributing to the transparency, efficiency and celerity of these proceedings. The adopted Guidelines benefit from the PCA’s accumulated experience and the contributions received from the various stakeholders in the context of the public consultation held.

#### 2.4.2 *Summary of significant cases*

- **TRPN (Grupo HJT)/Internorte - Phase I Clearance Decision with Remedies (13.09.2011)**

On September 13th, 2011, the PCA issued a clearance decision subject to remedies concerning a merger by which TRPN was acquiring sole control of Internorte. As a result of this merger, TRPN was also acquiring, indirectly, sole control or joint control over a number of subsidiaries.

TRPN was, at the date of the merger, fully owned by the French company Transdev, which in turn is controlled by the Caisses des Dépôts Group. In Portugal, Transdev is active in the heavy-vehicle road passenger transport sector and also, although to a very minor extent, in the travel agency services sector.

Some of the acquired firms were also active in the heavy-vehicle road passenger transport sector and some others provided travel agency services.

In terms of relevant market delineation, for scheduled public road passenger transport on urban routes, the PCA considered that the exact definition of the geographic market could be left open, as the competitive assessment remained unchanged irrespective of the market delineation considered.

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

Albeit having defined these geographic markets by reference to the point-to-point journeys, the merger assessment undertaken by the PCA also took into account the impact in terms of the wider networks of the undertakings involved, whenever it proved relevant. This allowed for an evaluation of the merger's impact in terms of potential competition, v.g., by means of reinforcing network effects.

In terms of the provision of occasional and international road transportation as well as travel agency services, given that the merger would not give rise to competition concerns irrespective of the limits of the relevant market considered, the PCA did not further proceed to evaluate the exact limits of the relevant markets concerning those activities.

In terms of scheduled public road passenger transport on urban routes, the analysis focused on the potential of the merger to eliminate competition in the public tenders for the concession of these routes. However, the analysis of the participation of the parties in previous tenders allowed for the conclusion that the merger did not involve close competitors and, as such, posed no competition concerns regarding those services.

In terms of the scheduled public road passenger transport on interurban routes, the PCA concluded that, post-merger, there would be incentives to reduce frequencies or to deteriorate the quality offered on one particular point-to-point route, where pre-merger the parties exerted a significant competitive constraint over one another.

The PCA cleared the merger conditional upon the divestiture of one of the parties' operations in the inter-urban route where competition concerns were identified, also taking into account the potential of that divestiture to reduce barriers to entry in terms of the provision of those services in the area concerned.

- **Powervia (Fundo Explorer II) / Laso\*AutoLaso\*Probilog\*Laso AB – Phase II Clearance Decision with remedies (12.01.2012)**

On January 12th, 2012, the PCA issued a clearance decision subject to remedies concerning a merger by which Powervia proposed to acquire sole control of Laso, Auto Laso, Probilog and Laso Ab.

Powervia is the holding of the "Fundo Explorer II", a venture capital fund created to manage the two group companies - Transportes Gonçalo and FHM – active in the provision of road transport

services of goods. Three of the acquired firms, Laso, Probilog and Laso, also provide this type of services. Auto-Laso, in turn, is active in the supply of maintenance and repair services.

Based on the parties' activities, the analysis undertaken by the PCA focused mainly on the market for the provision of special/exceptional road transport services of goods, which was considered to be national in scope.

During the 1st phase of the proceedings, the PCA conducted a market investigation involving the various players providing road transport services of goods, in order to gather evidence on market definition and on the impact of the proposed merger. Based on the evidence gathered, the PCA concluded on the need to further pursue the investigation, thus initiating a 2nd phase in the proceedings.

The competition concerns identified by the PCA in phase II related to the high market shares of the parties, which were each other's closest competitor, and the fact that the merger was eliminating an important supply alternative for customers with a substantial impact in their bargaining power. In fact, post-merger, the parties would account for 80% to 90% of the market and there would be no other significant alternative to the new entity for the supply of the relevant services. These concerns were augmented by the high barriers to entry and expansion in the market.

Given the results of the market investigation, the PCA concluded that the merger, as notified, would be liable to create or reinforce a dominant position that could lead to significant impediments to effective competition in the relevant market identified.

The commitments undertaken by the parties allowed the PCA to issue a clearance decision subject to (i) a condition of sale of the Funds' two companies active in the relevant market where competition concerns were identified ("up-front buyer" solution for the divestiture of overlapping shares); (ii) a condition of no implementation of the merger before the conclusion of a sale agreement with a suitable purchaser approved by the PCA; (iii) a condition to maintain the economic viability, competitiveness and autonomy of the companies to divest prior to sale and (iv) a condition not to repurchase the divested firms within a period of five years after the date of entry into force of the sale agreement.

Given the up-front buyer solution undertaken by the notifying party, the risks concerning the emergence of a potential buyer were fully transferred to the notifying party. In the end, Powervia was not able to satisfy the condition of sale within the time limit established. The PCA declared the extinction of the remedies monitoring procedure and the parties were not authorised to implement the merger.

- **BIC/ BPN – Phase I Clearance Decision (24.01.2012)**

On January 24th, 2012, the PCA issued a clearance decision concerning the merger by which bank BIC proposed to acquire sole control of bank BPN. The transaction was scheduled within the context of the reprivatization of BPN as approved by the Portuguese Government.

BIC operates mainly as a correspondent bank of Angolan banks for the management of financial flows between Angola and Portugal, as a business bank, focused on providing assistance to Portuguese businessmen in their exporting activities of goods and services to Angola and Angolan entrepreneurs in their internationalization, as well as providing private banking services.

Furthermore, BIC is also active in retail banking and the provision of banking services to SMEs (small and medium enterprises).

BPN is a bank operating in various business areas of the financial sector in Portugal, namely in retail and SME banking services.

Based on the parties' activities, the analysis undertaken by the PCA focused on the markets for i) current accounts, ii) savings accounts, iii) mortgage loans, iv) consumer loans, v) other loans to individuals, vi) corporate loans, vii) issuing of debit cards; viii) issuing of credit cards ix) support service for merchants acceptance of debit and credit cards acquiring, x) registration services and domestic security deposits (xi) interbank money lending (xii) currency exchange and (xiii) insurance mediation, which were considered to be national in scope, with the exception of the interbank money market and the currency market, which are EEA and worldwide in scope, respectively. The PCA's previous decision in the banking sector (v.g. decision of 16/03/2007 concerning the BCP/BPI merger) adopted market delimitations which further disaggregated some of these markets. However, given that the competitive assessment did not differ according to one or other approach, for simplicity the PCA accepted, for the purposes of these proceedings, the more aggregated market delineation put forward by the notifying party.

The implementation of the merger was subject to two prior cumulative conditions, namely the PCA's clearance decision and a favorable decision by the European Commission regarding state aid in the context of the nationalization process, the execution of the framework agreement and the sale and purchase agreement underlying the overall transaction.

The required conditions were evaluated under simultaneous, albeit autonomous, proceedings before the PCA, on one hand, and the EC, on the other hand, in order to assess, as regards the PCA's jurisdiction, the merger's compatibility with the Portuguese Competition Act, within the scope provided by art 12.º of the Act and, as regards the EC's jurisdiction, of the compatibility of the restructuring plan and sale process with the internal market, under the terms provided by article 108.º/2 of the TFEU.

Based on the market investigation conducted, the PCA concluded that the proposed merger should be cleared based on the evidence that it was not likely to create or reinforce a dominant position that could result in significant barriers to effective competition in the relevant markets identified in the banking and insurance sectors, given the small aggregated presence of the parties in the relevant markets concerned.

- **Two cases of withdrawn notifications during 2nd phase proceedings**

- **Fresenius Medical Care/ International Dialysis Centers**

On January 13th, 2011 the Acquisition by Fresenius Medical Care of sole control over International Dialysis Centers (IDC).

Fresenius Medical Care provides a variety of health care services in Portugal, namely, hemodialysis, nursing and patient transportation services, supply of dialysis equipment and related goods as well as the supply of water treatment systems for hemodialysis units and related support services. Fresenius' subsidiary NephroCare manages a number of hemodialysis centers in various regions in Portugal.

IDC is active, in Portugal, in the provision of hemodialysis and other health care services such as imaging and clinical tests. IDC manages hemodialysis units in the center and north of Portugal.

The appraisal of this merger's impact focused on the horizontal overlap of the parties in terms of the provision of hemodialysis services in the geographic areas where both parties were present. The merger would significantly increase concentration levels in some of those areas. Furthermore, the horizontal effects would likely be strengthened by the economies of scale associated with the new entity's dimension at a national level. These competition concerns could be reinforced by vertical effects, as Fresenius also supplied medical equipment and a variety of goods and services used for hemodialysis.

The PCA's analysis aimed at evaluating whether, as a result of the merger, the new entity would have incentives to decrease the quality in the provision of the relevant services or close some of the hemodialysis units, obliging the patients to travel further to accede these services.

The parties decided to withdraw the notification of this merger during the 2nd phase proceedings.

– **Lactogal/Renoldy**

On August 5th, 2011, Lactogal notified a merger by which it was acquiring sole control over Renoldy.

Lactogal is active in the dairy sector in Portugal and Spain, as a producer of pasteurized milk, milk UHT, flavoured milk, cheese, butter, yogurts and cream which it sells under its own brands. Lactogal also sells milk UHT to retailers for their private labels.

The acquired firm, Renoldy, produces milk which it sells exclusively under retailer brands (retailer's private labels).

The main horizontal issues concerned the elimination of competition between Lactogal and Renoldy in the wholesale supply of milk UHT to retailers for their private labels.

The competitive assessment of the merger focused on the extent of competition between private labels and branded milk. On one hand, it was essential to determine the extent to which private labels and supplier brands compete with each other from the perspective of the end consumer. On the other hand, the assessment of the merger required understanding the extent to which the competition between private labels and supplier brands downstream (at the final consumer level) is taken into account in the negotiation upstream between milk suppliers (private label and/or branded milk) and retailers.

In terms of vertical effects, the competitive assessment focused on the impact of the merger in the related market of the production of raw milk. In fact, the acquisition of Renoldy by Lactogal, which was already the main milk producer in Portugal, could reinforce Lactogal's buyer power in the raw milk market. Furthermore, the main cooperatives for the collection of raw milk are shareholders of Lactogal.

The parties decided to withdraw the notification of this merger during the 2nd phase proceedings.

### **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**

39. During this period the PCA hosted three speakers who presented seminars on different topics in competition law, economics and policy as follows: Prof. Christopher Laincz, LeBow College of Business, Drexel University, Philadelphia/USA (“Optimal R&D Subsidies with Heterogeneous Firms in a Dynamic Setting”); Prof. Luís B. Cabral, Leonard N. Stern School of Business, New York University/USA (“Good Turnover and Bad Turnover: Entry Barriers, Survival Barriers, and Welfare – a revised version”); and Dr. Carlos Ragazzo, Member of the Board, the *Conselho Administrativo de Defesa Econômica* (CADE) Brazil (“*A Reforma do Sistema Brasileiro de Defesa da Concorrência e a Nova Lei Brasileira da Concorrência*”).

#### **3.2 Cooperation**

##### *3.2.1 ECN – European Competition Network*

40. 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 on a number of issues including cartels, food, energy and telecommunications. The PCA has also been appointed co-chair of the ECN Working Group on Cooperation Issues and Due Process.

##### *3.2.2 The ECA Network*

41. The PCA participated in the Annual Meetings of ECA that took place in 5-6 July 2011 in Warsaw, Poland, and in 20-21 June 2012 in Tallinn, Estonia.

42. From July 1st, 2011 to June 30th, 2012, the PCA notified 21 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*

43. In January of 2011, the PCA hosted a delegation from CADE (Brazil), led by Carlos Ragazzo, Member of the Board of CADE, for a bilateral meeting in the framework of the legislative and institutional reform of the Brazilian System of Defence of Competition.

44. A Memorandum of Understanding on Co-operation in the Field of Competition Law and Policy between the Portuguese Competition Authority and the Federal Antimonopoly Service of the Russian Federation was signed on April 18<sup>th</sup> of 2012, which aims at promoting and strengthening the co-operation between the Parties in the field of competition law and policy, through exchanges of information and best practices, as well as capacity-building activities.

45. The PCA hosted, in June of 2012, a delegation from MOFCOM of the People’s Republic of China, in a bilateral meeting aimed at promoting the exchange of experience and good practices in the field of merger control.

### 3.2.4 *The PCA International Training Programme*

46. In September of 2011, the PCA hosted four officials from the Turkish Competition Authority for the second edition of the PCA International Training Programme (PIF\_AdC). The programme allows professionals from foreign competition authorities to complete a one or two week training programme at the PCA. During the program participants take part in PCA activities as well as in training sessions.

### 3.2.5 *Multilateral Cooperation*

- **ICN – International Cooperation Network**

During the period under review, the PCA was active in all ICN working groups: Advocacy, Agency Effectiveness, Cartels, Mergers and Unilateral Conduct. The PCA attended the Annual Conference in Rio de Janeiro (Brazil), where representatives from the PCA were speakers and moderators. The PCA also participated as speaker in the Cartel Workshop, held in Bruges in October of 2011 and in the ICN “Roundtable Discussion on Effective Enforcement and the Quality of Decision-Making” in March of 2012.

Having been nominated Co-Chair of the Advocacy Working Group at the Hague Annual Conference in 2011, the PCA was active as coordinator of the Project on *Raising Awareness of the Benefits of Competition*, which seeks to provide ICN members with knowledge, strategies and arguments for explaining the benefits of competition to support their competition advocacy efforts with government and non-government stakeholders, as well as on evaluation of competition interventions.

In the period under review, the PCA led a stocktaking exercise which aimed to learn how competition agencies explain the benefits of competition, and how they evaluate the impact and benefit of their competition interventions, by way of a comprehensive questionnaire and a teleseminar series.

- **OECD**

The PCA actively participated in the three meetings of the Competition Committee that took place in the period under review, contributing wherever possible with its experience and know-how. The PCA also took part in the Global Forum on Competition which took place in February 2012.

In addition to its activity in the Competition Committee, the PCA also participated, as an observer, in the annual meeting of the OECD Latin American Competition Forum, which took place in Bogotá in September of 2011.

The PCA also took an active role, as in previous years, in the Regional Centre for Competition in Hungary, taking part in the annual meeting in April of 2011.

- **UNCTAD**

The PCA participated in the 11<sup>th</sup> Intergovernmental Group of Experts on Competition Policy, held in Geneva in July of 2011, where topics such as foundations of an effective competition agency, the importance of coherence between competition policies and government policies, enforcement cooperation, technical capacity building and the Model Law were discussed. The PCA shared its own experience speaking on the panel regarding the coherence between competition policies and other government policies.

- **Ibero-American Competition Forum**

A founding member of the Ibero-American Competition Forum, the PCA was present at the annual meeting of the Forum in Bogotá where high level discussions took place on issues of regional interest.

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

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

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

47. On a cash basis, annual budgetary commitments for 2011 amount to €7,5 million, as compared to €8,6 million the previous year.

###### **4.1.2 Number of employees (person-years):**

48. On 31<sup>st</sup> December 2011, the PCA employed 83 staff: 20 economists and 23 lawyers. 50% of the staff have an academic background equivalent to or above a Masters Degree. In 2011, 14 held a PhD.

##### **4.2 Human resources (person-years) applied to:**

- Enforcement against anticompetitive practices: 17
- Merger review and enforcement: 14
- Advocacy efforts: 12

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

49. Budgetary information for 2010 and 2011 covers the period of January 1<sup>st</sup> to December 31<sup>st</sup>. Unless otherwise indicated, human resources information is reported as of December 31, 2011.

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

##### **5.1 Technical Reports and Economic Studies**

###### **5.1.1 An Economic Analysis of the Cork Industry**

50. Following several concerns expressed by different operators in the cork industry and a Resolution of the Portuguese Parliament 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. 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. Due to a serious shortage of statistical data and several delays on the part of different stakeholders in providing answers to the Authority's queries, the analysis took longer than expected. It was concluded in June 2012 and is now awaiting comments and suggestions by some public entities with legal responsibilities in the sector, before being made public.

###### **5.1.2 An Economic Analysis of the Biofuel Industry**

51. The addition of biofuels to liquid fuels for motor vehicles (gasoline and diesel) in Europe comes as a consequence of the Kyoto Protocol, which aims at reducing CO2 levels stemming from the consumption of gasoline and diesel, as well as of other fossil fuels. To achieve this objective, the European



Parliament and the European Council published Directive No. 2003/30/ECF, of May 8th. This Directive was transposed to the Portuguese legal order in March 2006 by Decree-Law No. 62/2006.

52. Several Member States use biofuels in a mixture with gasoline and diesel, namely bioethanol in gasoline and biodiesel in diesel. In Portugal, only biodiesel is used in mixture with diesel, with the use of bioethanol in gasoline expected to start in 2014. Since the international prices for biofuels are higher than those for gasoline and diesel, the use of biofuels in mixture with the latter fossil fuels implies a rise in these latter's domestic prices, from the ex-refinery level to downstream retail prices (before and after taxes).

53. In the context of the on-going fuel markets monitoring undertaken by the PCA since 2004, this economic analysis aims at assessing the impact of the introduction of biofuels (bioethanol and biodiesel) on the domestic prices for diesel and gasoline (ex-refinery and retail prices) and how biofuels are affecting the average retail prices (before tax) throughout the 27 European Union Member States, from the time of their introduction in each Member State until the end of the current year of 2012.

#### *5.1.3 An Analysis of the Impact on Competition from Network Sharing in Telecoms*

54. Network sharing in telecoms, through co-investment and cooperation agreements, has gained an increased relevance in the last few years due to the high levels of investment required to build new generation networks as well as the significant economies of scale they exhibit, in particular for smaller investors with lower financial capabilities. On the other hand, network sharing agreements in telecoms allow the co-investors or the parties to the agreement to share the risk resulting from an uncertain demand for services they offer using the network and make it easier to achieve a wider geographical coverage. These network sharing agreements have become even more appealing at a time when access to capital markets by telecoms operators has become more difficult. Different types of network sharing agreements have already been set up in Portugal, such as the one established by the telecoms operators Optimus and Vodafone for sharing a fibre network.

55. Notwithstanding the potential benefits arising from such investment sharing agreements, there is scope for the adoption of collusive behaviour or third party discrimination in the access to the network, which might be facilitated by the sharing of sensitive information and the homogenization of cost structures between the parties to the agreement.

56. This analysis aims at identifying (i) the different types of fixed or mobile network sharing and cooperation agreements that can be established between different operators; (ii) the main benefits such agreements can bring; and (iii) the potential anti-competitive effects they can produce. This is in line with the concerns reflected in the European Commission Guidelines on Horizontal Agreements.

#### *5.1.4 An Economic Analysis of the Payment Cards*

57. This analysis aims at characterizing the evolution of merchant and interchange fees, transaction values, the number of issued cards and market shares of both issuers and acquirers, for both VISA and MasterCard, in Portugal, updating previous information.

### **5.2. Other Reports and Studies**

58. The PCA will conclude until the end of 2012 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. This analysis was launched in January 2011. Statistical information has been collected on costs over a sufficiently long time period and on final demand through data on individual consumers invoices. Similarly, the PCA will also conclude an ex-post economic analysis of a concentration between two firms selling fruit beverages, sparkling and still waters and the packaging of some food items.

59. Following the announced privatization programme as established by the Government and by the Memorandum of Understanding on Specific Economic Policy Conditionality, signed by Portugal and by the IMF/ECB/EC, the tender for the privatization of the airport operator *Aeroportos de Portugal* (ANA) will be launched in the third quarter of 2012, with a view to completing the transaction in early 2013, a preliminary analysis conducted by the Bureau of Economic Studies has identified some competition concerns that should be addressed by the privatization of ANA.

60. The Bureau of Economic Studies has also been collaborating with the Mergers and Acquisitions Department in the development of economics guidelines for the assessment of concentrations between undertakings.

61. Finally, the PCA has concluded two reports on the implementation of the recommendations put forth in its Final Report on the liquid road fuels and bottled gas sectors in Portugal, published in March 2009, and in its Final Report on the Commercial Relations between Large Retail Groups and their Food Suppliers, published in October 2010.

### **5.3 Ongoing Market Monitoring Activities**

62. 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 in June covering the 1st quarter of 2012. 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. The PCA also published twelve more monthly Liquid Fuel Statistics Bulletins, a regular publication started in September 2009.

63. In September 2011, the PCA published the Annual Report on Telecoms, covering the year 2010. This annual report gives an overview of the telecoms sector in Portugal and presents a more detailed analysis of fixed and mobile telephony and broadband internet access, in particular in what concerns wholesale and retail prices. Whenever suitable, international comparisons are drawn with the different EU15 countries.

64. 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).

65. The PCA has also been part of the so-called PARCA (*Plataforma de Acompanhamento das Relações na Cadeia Agroalimentar*) which is a Working Group formed by the different stakeholders in the food industry, from producers' associations to retailers, together with the PCA and governmental agencies). PARCA was created by the Portuguese Government in November 2011, following the publication, in October 2010, of the PCA's Final Report on the Commercial Relations between Large Retail Groups and their Food Suppliers, the several EC reports on the working of the food chain and the changes in the prices of foodstuffs, together with the work by the High Level Group on the Milk Sector and the work conducted in other Member States on these same issues. This Working Group has been tackling different issues on regulation and self-regulation along the vertical chain, including the creation of a new Code of Good Practices to replace the one signed in 1997 and a revision of different legislation, including the one on restrictive commercial practices.