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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PORTUGAL

-- 2012 --

This report is submitted by Portugal to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 30-31 October 2013.

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1. Unless otherwise indicated, this report covers the period of 1st July 2012 to 30th June 2013, in the continuity of previous reports.

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

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

2. The new legal regime for competition, Law 19/2012, of 8 May, entered into force on 7 July 2013. It repealed Law No. 18/2003, of 11 June, and Law No. 39/2005, of 25 August.

3. 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 searches in private residences, the possibility to accept commitments, to close investigations by way of a settlement procedure and to impose structural measures.

4. 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.

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", as well as the elimination of the previously existing notification deadline of 7 working days after the conclusion of a contract and several procedural changes.

6. 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.

1.2 Other relevant measures, including new guidelines

7. Following the entry into force of the new Portuguese Competition Law, the PCA published various regulations, guidelines and documents with the objective of increasing legal certainty, predictability and transparency. All guidelines were approved after extensive public consultation.

1.2.1 Portuguese Leniency Programme (Regulation 1/2003)

8. The new Regulation and Guidelines aim at ensuring that the Portuguese leniency program is both predictable and attracts applicants. After assessing the comments received during the public consultation period, the PCA has approved a new Regulation on procedural rules for leniency applications and explanatory guidelines.

9. The newly approved Regulation contains rules on the submission of requests for immunity or reduction of fine, by written or oral form. Moreover, the Regulation deals with the submission of summary

applications, which may now be presented by written or oral form, as well as in Portuguese or English, in accordance with the template annex to the ECN Model leniency programme. The new Regulation also foresees clear rules on the marker system for leniency applications, as well as the treatment of incomplete or rejected applications.

1.2.2 Guidelines on Prioritization

10. The PCA also approved Guidelines on the prioritization of investigations. Under article 7, the PCA now has the ability to open only proceedings where there is a reasonable public interest to bring charges, taking into consideration the competition policy priorities; the elements (of fact and law) in the file; the seriousness of the alleged infringement; the likelihood of proving it; and the extent of investigations required. Furthermore, article 7 also allows the PCA assign different degrees of priority to its on-going investigations.

11. The Competition Authority has issued guidance on the scope of each of the grounds that may justify the opening (or not) of formal infringement proceedings and on how to prioritize an investigation case files, ensuring transparency and accountability in the PCA decision-making at this stage.

1.2.3 Guidelines on Handling of Antitrust Proceedings

12. The Guidelines on handling of antitrust proceedings take into account nearly ten years of enforcement practice under the former Portuguese Competition Law (Law 18/2003), bringing together the administrative practice and national case law on procedural issues together with changes introduced by the new Competition Law. The guidelines cover all major aspects of an investigation, namely: handling of complaints; rights of parties; access to file; statement of objections; settlements; commitments during the investigation; final decision; business secrets and access to file. The PCA took in consideration comments received during public consultation, as well as the equivalent guidelines of the European Commission and of other National Competition Authorities from the European Competition Network.

1.2.4 Guidelines on the Method of Setting Fines

13. In December 2012, the PCA approved the Guidelines on the method of setting fines, in accordance with Article 69, paragraph 8, of Law No 19/2012. The Guidelines are applicable to procedures both under national law and articles 101 and 102 TFEU, and aim at promoting transparency and objectivity in PCA decisions. They also aim to contribute to legal certainty and to strengthen the deterrence effect of fines.

14. The Guidelines set out that the method for setting the fines will typically involve the following steps: (i) determination of the basic amount of the fine for each party; (ii) increase or reduction of the basic amount of the fine according to aggravating or mitigating circumstances of the case (as an adjustment of the basic amount); and (iii) increase or reduction of the amount of the fine taking the facts of the case into consideration, including the benefits reaped by parties from the infringement, as well as general or specific prevention objectives required by each case (concrete setting of the fine).

15. The basic amount of the fine is a percentage of the turnover related to the infringement, determined according to the gravity of the infringement, multiplied by the number of years of the duration of the infringement.

1.2.5 Simplified Merger Notification Form

16. In February 2013, Regulation No. 60/2013, which establishes the Forms for Pre-Merger Notification, was published in the Portuguese Official Journal. The New Competition Law (Law nr.

19/2012) provides that in the case of mergers which, in a preliminary assessment, do not pose significant impediments to competition, in accordance with criteria laid down by the Competition Authority, the merger notification shall be submitted on a simplified form.

17. In February 2013, the PCA adopted a new Regulation (Regulation nr. 60/2013, 14th February) regarding the Notification Form, including a Simplified Notification Form, which is applied on the basis of the following criteria:

- no horizontal overlap or vertical relationships, and also, no presence in neighbouring markets (conglomerational relationship);
- horizontal overlap, but
 - the parties combined market share is lower than 15%, or
 - the parties combined market share is above 15% but is under 25%, and the acquired market share is not above 2%;
- vertical relationship, but the individual or combined market shares, at any of the vertical levels (upstream or downstream) are not above 25%;
- presence in neighbouring or related markets, but the individual or combined market shares are not above 25%;
- change from joint control to sole control, if the party acquiring control does not have any interest (even if a minority stake without control) in the markets where the joint venture is present, or in a market which is upstream or downstream of those markets, as well as in neighbouring or related markets;
- change from sole control to joint control, if the party acquiring control is not an effective or potential competitor in the market where the acquired party or its parent company is present and does not have any interest (even if a minority stake without control) in the markets where the joint venture is present, or in a market which is upstream or downstream of those markets, as well as in neighbouring or related markets.

1.2.6 Draft Guidelines for the Economic Analysis of Horizontal Mergers

18. Regarding merger control, the PCA launched a public consultation regarding Guidelines on Economic Analysis in Merger Control.

19. In February 2013, the PCA published its Draft Guidelines for the Economic Analysis of Horizontal Mergers for public consultation. This document intends to present the main guidelines of the PCA assessment, in what concerns the impact, on competition, of a horizontal merger, thereby promoting transparency with regards to the PCA's approach to merger control, as well as contributing to the clarification of the merging parties, their experts or consultants and any other interested third parties, in what concerns the principles governing the analysis.

20. The guidelines address the standard principles of relevant market definition and competitive assessment, highlighting a variety of evidence and methodological approaches that may prove useful in both these stages of the analysis. Furthermore, and in order to ensure the broadness of the guidelines, the document also addresses a number of market specificities (e.g., multisided markets, innovation markets,

auctions) which should be accounted for in the analysis, providing a framework for identifying the relevant issues and evidence for the competitive assessment in a variety of markets.

2. Enforcement of competition laws and policies

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

21. The enforcement activity of the Portuguese Competition Authority during the period under analysis was mainly focused on the following sectors: catering services, business forms printing, telecommunications and media, banking, health, environment and aquarium products.

22. Prohibition decisions were adopted in four cases:

- Abuse of dominant position case initiated following a formal complaint made by the pay-tv operator CaboVisão – Televisão por Cabo, S.A. against the sports channel Sport TV Portugal, S.A.;
- Horizontal restraints/cartels case (client-sharing, non-competition agreement and detailed exchange of information) in the catering services market;
- Horizontal restraints/cartels case (concerted market behavior, in particular fixing prices and client-sharing) in the business forms printing market;
- Vertical restraints case, in particular, resale price maintenance (RPM) by a German supplier in the market of aquarium products, aimed at preventing the lowering of prices by online retailers *vis a vis* traditional retailers.

23. In March 2013, the PCA also undertook inspections in the banking sector, under its new powers set out in the 2012 Portuguese Competition Law. Inspections involved 15 undertakings, and were conducted at 25 sites in the Lisbon area, and were supervised by 25 criminal investigation judges, as imposed by law due to banking secrecy issues. Over 30 case handlers and staff from the PCA were accompanied by 25 public prosecutors and 25 court clerks. The inspection also involved 25 police officers. This was the largest inspection conducted by the PCA yet, and involved an unprecedented level of coordination with judicial and prosecutorial authorities. The inspection took place in a single day, following approximately two months of preparation.

24. During the period in question, fines totaling €20,3 million euros were imposed with regard to the abovementioned cases.

25. In the same period of time, eleven proceedings were closed for lack of sufficient evidence.

26. Eight proceedings were initiated for practices that 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.

2.2 Summary of cases from 1 July 2012 until June 30, 2013

Infringements (number of cases)	4
Investigations closed	11
Investigations launched	15

2.2.1 Abuse of dominant position

2.2.1.1 Case: PRC-2010/02

27. In July 2010, the Portuguese Competition Authority opened proceedings against Sport TV Portugal, S.A. under Article 6 (abuse of dominance) of the Portuguese Competition Law (Law no. 18/2003, 11 June) and Article 102 of the Treaty on the Functioning of the European Union, regarding alleged anticompetitive practices adopted by that firm.

28. This proceeding was opened as a result of a formal complaint made by the pay-tv operator CaboVisão – Televisão por Cabo, S.A. against the sports channel provider Sport TV Portugal, S.A. related to an alleged abuse of dominant position in the premium sports pay-tv market consisting in price discrimination with vertical effects in the downstream audiovisual markets, especially in the pay-tv market.

29. It is relevant to note that, at the time of the investigation there was only one pay-tv premium sports channel in Portugal (Sport TV) which is jointly-owned (50%/50%) by Sportinveste, SGPS, S.A., that has acquired Portuguese Football League and Portuguese Cup broadcasting rights over the last seasons, and by the ZON Multimédia Group, the incumbent pay-tv operator and an important player in triple play and other media and telecommunication markets in Portugal.

30. In Portugal, as in the most EU Member States, premium sports channels, which broadcast the games of the main football leagues, constitute a “must have” media product for any pay-tv operator.

31. The Portuguese Competition Authority has issued a Statement of Objections, in February 2012, charging Sport TV Portugal, S.A. of abusing its dominant position in the premium sports pay-tv market, in violation of Article 6 of Portuguese Competition Law (Law no. 18/2003, 11 June). The nature of the practices in question affects the competitive structure of the pay-tv market in Portugal and the national coverage of the specified anticompetitive practices could also lead to the isolation of the national market and, consequently, the partition of the single market, thus breaching Article 102 of the Treaty on the Functioning of the European Union.

32. On June, 14 2013 the Portuguese Competition Authority adopted the Decision to fine Sport TV Portugal, S.A. for abusing its dominant position in the premium sports pay-tv market, imposing a fine in the amount of €3.730.000,00.

33. Sport TV has lodged an appeal against the decision before the Court of Competition, Supervision and Regulation.

2.2.2 *Horizontal Restraints - Cartels*

2.2.2.1 Case: PRC-2007/02

34. In July 2012, the PCA concluded its investigation into an infringement of article 4 of the Portuguese Competition Act, Law no. 18/2003, 11 June, involving five undertakings (Eurest, Sodexo, Uniself, Trivalor Holding and ICA/Nordigal), operating in the catering services market. The PCA's final decision imposed fines on the undertakings of € 14,720 million, plus fines to individual directors of the undertakings who were aware of the infringements and failed to stop them.

35. This investigation started in 2007 after a former Director of one of the undertakings reported an infringement of the Competition Act, under the Portuguese Leniency Programme (Law 39/2006, the 2006 Leniency Programme, subsequently revoked by the new Portuguese Competition Law, Law 19/2012, of 8 May). Following the investigation, the Competition Authority found that between 1998 and 2007, these undertakings were involved in two separate infringements of article 4: a "large accounts" client-sharing and no-competition agreement that lasted from 2001 to 2004, and a detailed exchange of information concerning the conduct of each undertaking in the market, carried out from 1998 to 2007. The decision of the PCA fully confirmed a previous decision taken by the PCA in December 2009, overturned by the Commercial Court of Lisbon on procedural grounds.

36. This is the first decision of the Portuguese Competition Authority which applies individual fines to directors for infringements of the Portuguese Competition Act, and the first following a leniency application.

37. The decision was appealed and, within the period covered in this report, was pending before the Portuguese Court for Competition, Regulation and Supervision.

2.2.2.2 Case: PRC-2010/08

38. In December 2012, the PCA concluded an investigation of an infringement of article 4 of the Portuguese Competition Act, involving four undertakings (Copidata, Contiforme, Litho Formas and Formato), operating in the business forms printing market. The final decision of the PCA imposed fines on the undertakings of € 1,800 million, plus fines to individual directors and former directors of the undertakings who were directly involved in the infringement.

39. This investigation started in 2010, after one of the undertakings involved in the infringement applied for leniency under the Portuguese Leniency Programme (Law 39/2006, the 2006 Leniency Programme). Following the investigation, the Competition Authority found that, between 2001 and 2010, these undertakings had agreed between themselves on their conduct in the market, fixing prices and sharing clients.

40. The undertaking that applied for leniency was granted full immunity from fines.

2.2.3 *Appeals*

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

41. In December 2010, the PCA imposed a fine of €145.296,37 on Baxter, Lda., and €385.471,24 on Glintt, Lda. In 2011, the Lisbon Commercial Court upheld the decision of the PCA, albeit with a reduction

in the amount of the fines to €100.000,00 on Baxter, Lda., and €300.000,00 on Glintt, Lda., as a result of the exclusion of the effect on trade between Member States.

42. Both appealed to the Lisbon Court of Appeal, which, in July 2012, upheld the decision of the Court of First Instance. The decision became final.

2.2.3.2 Concerted practices and exchange of sensitive information in public procurement for cleaning services: Conforlimpa Tejo and Number One

43. In July 2012, the Lisbon Commercial Court fully upheld a condemnation decision of the PCA in which two cleaning companies (Conforlimpa Tejo and Number One) were found guilty of concerted practices and exchange of sensitive information in public procurement for cleaning services. The PCA imposed a fine of €253.703,18 on Conforlimpa Tejo and a fine of €62.620,90 on Number One.

2.2.3.3 Decision by an association of undertakings - AIPL (Association of Bakery Industry of Lisbon)

44. The Lisbon Commercial Court fully upheld a condemnation decision of the PCA concerning a decision by an association of undertakings - AIPL (Association of Bakery Industry of Lisbon) - regarding the exchange of sensitive information. The PCA imposed a fine of €1.177.429,00 on the AIPL, under Law No. 18/2003, 11 June.

45. The decision was fully upheld by the Lisbon Commercial Court and the AIPL appealed to the Court of Appeal. The Court of Appeal upheld the decision of the Lisbon Commercial Court with a reduction of fine to €850.000 under the provisions set out in Law No. 18/2003, of 11 June.

46. AIPL appealed the decision of the Lisbon Court of Appeal to the Portuguese Constitutional Court.

47. In October 2012, the Court precluded/rejected the appeal of the PCA appeal and sent the file to the Court of Appeal to rule on which Competition law is most favorable to the defendant: Law No. 18/2003 or the new Law No. 19/2012, 8 May (principle of applying the law most favorable to the defendant).

48. Proceedings before the Court are still pending.

2.2.3.4 Decision by an association of undertakings and abuse of dominant position - Professional Bar of Public Chartered Accounts (OTOC)

49. The Court of Justice of the European Union (CJEU), in its judgment of 28 February 2013, in Case C-1/12 (preliminary ruling), has confirmed the decision of the PCA in the professional bar of public chartered accounts — named “Ordem dos Técnicos Oficiais de Contas” (OTOC) — case.

50. This bar had been condemned by the PCA for the rules fixed by OTOC in a regulation on compulsory professional training to be attended by all public chartered accounts. Such rules apply to entities, including OTOC, that provide for such training.

51. According to the PCA, the abovementioned rules benefit OTOC as a professional training entity to the detriment of other professional training entities. The PCA considered that such rules fixed by OTOC and its effective compliance qualified both as an illegal decision taken by an association of undertakings and as an abuse of dominant position by OTOC. The PCA imposed fines of €229.308,20.

52. 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 by this court as null and void.

53. The OTOC filed an appeal of the decision of this court before the Court of Appeal and this court submitted a preliminary ruling regarding the application of EU competition rules to a professional bar such as OTOC to the CJEU.

54. According to the CJEU, a regulation such as the regulation on compulsory professional training adopted by OTOC is covered by Article 101, No. 1, of the Treaty on the Functioning of the European Union (TFEU), which prohibits decisions by associations of undertakings which have as their object or effect restricting competition in the European Union internal market. According to the CJEU, a regulation such as the regulation on compulsory professional training adopted by OTOC constitutes a restriction on competition prohibited by Article 101 TFEU in that it eliminates competition in a substantial part of the relevant market for the benefit of this professional bar and imposes, in another part of the market, discriminatory conditions to the detriment of other professional training entities.

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

55. In April 2013, the Court of Appeal upheld the decision of the Lisbon Commercial Court concerning price recommendation by the Portuguese Association of Parking Companies (ANEPE).

56. The Lisbon Commercial Court upheld the decision of the PCA imposing a fine of €1.971.397,17 on ANEPE, albeit with a reduction of the amount of the fine to €969.000,00.

2.3 *Mergers and acquisitions*

2.3.1 *Statistics*

57. Statistics regarding merger control cover the period from July, 1st 2012 to June, 30th 2013.

Table I: Concentrations decisions adopted since July 2012

Notified concentration operations	50
Total decisions	52
Pending	8
Phase I	
Non-notifiable transactions	4
Clearance	44
Clearance with commitments	
Withdrawn cases	
Non Clearance	
To Initiate an in-depth investigation	2
Referral to European Commission	
Tacit approval	
Phase II	
Clearance	

Clearance with commitments	1
Non Clearance	
Withdrawn cases	1
Tacit approval	
TOTAL FINAL DECISIONS ADOPTED (does not include the Phase I decision to proceed into Phase II)	50

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

	Cases	%	2012	2013
Horizontal	24	48	13	11
Vertical	5	10	1	4
Conglomerat	21	42	11	10
TOTAL	50	100%	25	25

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

	Cases	%	2012	2013
Multi-jurisdictional filings (within EU)	7	14	5	2
Multi-jurisdictional filings (outside EU)	8	16	4	4
National with involvement of undertakings from other EU member states	8	16	3	5
National with involvement of undertakings from countries outside EU	3	6	1	2
Completely national	24	48	12	12
TOTAL	50	100%	25	25

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

	Cases	%	2012	2013
Sole control	34	68	19	15
Joint control	4	8	2	2
Acquisition of assets	9	18	3	6
Merger	1	2	1	0
Other	2	4	0	2
TOTAL	50	100%	25	25

58. During the 2nd semester of 2012 (July – December), there were 27 notifications, 26 Phase I decisions, of which 22 were clearance decisions, 2 were inapplicability decisions concerning non-notifiable transactions and one was a decision to initiate an in-depth investigation. There was one concentration notification which was withdrawn in 2nd phase.

59. During the 1st semester of 2013 (January – June), there were 23 notifications, 25 Phase I decisions, of which 22 were clearance decisions, two were inapplicability decisions, one was a decision to initiate an in-depth investigation and, furthermore, there was one notification regarding a case in Phase I proceedings which was withdrawn. There were also, within this timeframe, one Phase II decision subject to remedies and one notification, concerning a concentration that was being analysed in 2nd phase proceedings, which was withdrawn.

2.3 Summary of significant concentration cases decided

2.3.1 Informa/Coface: - Withdrawn of notification during Phase II proceedings (25.10.2012)

60. On May 28th, 2012, the proposed acquisition of the sole control over Coface Serviços Portugal, S.A. (Coface) by Informa D&B (Serviços de Gestão de Empresas), Soc. Unipessoal, Lda. (Informa) was notified to the PCA.

61. Informa is a wholly owned subsidiary of Informa D&B, S.A., a company registered in Spain and part of the Group CESCE, which is active in the collection of information and data processing as regards marketing information, information on economic and financial situation of companies; as well in the development of risk management and marketing management solutions.

62. Coface is a company part of Group Natixis, a French financial group hold by Natixis, S.A.. It is active in the compilation of information and data processing as regards companies and debt collection.

63. The appraisal of the impact of this concentration focused on the horizontal overlap of the parties in terms of the provision of services in the national territory where both parties were present. The concentration would significantly increase concentration levels in the national market for the collection, processing and supply of information solutions necessary to the adoption of risk management decisions or eventual segments of it.

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

2.3.1.1 Altice Portugal/Cabovisão - Phase I Clearance Decision (15.11.2012)

65. On August 10th, 2012, Altice Portugal, S.A. (“Altice Portugal”) notified the acquisition of sole control of Cabovisão – Televisão por Cabo, S.A. (“Cabovisão”) as a result of the acquisition of 100% of the company’s share capital by Altice Portugal.

66. Following some investigation by the PCA concerning Altice Portugal, 60% owned by Altice and 40% owned by Codilink S.à.r.l. (“Codilink”), Altice requested the PCA to accept a substantial change of the notification according to article 49 (2) of the new Competition Act, notifying, together with Codilink, the acquisition of joint control of Cabovisão.

67. The consideration that, as a result of the operation, Cabovisão would be jointly controlled by both Altice and Codilink, through Altice Portugal, was based on the fact that Codilink was able to influence some of the strategic decisions of Altice Portugal and, indirectly, of Cabovisão, according to the shareholders agreement signed with Altice.

68. This was the first case where article 49 (2) of the new Competition Act — Law nr. 19/2012, 8 May — was applied. This article establishes that the PCA may authorize substantial changes to the notification that has been submitted, following a well-substantiated request from the notifying party, in which case the time limit for the decision (30 days in Phase I) restarts.

69. Both Altice, present in the communications sector, and Codilink, a company belonging to the APAX Group, active in investments in private equity, were previously not present in the Portuguese market; therefore, no competition concerns were identified and the concentration was cleared by the PCA.

2.3.1.2 London Stock Exchange Group/LCH. Clearnet Group: - Phase I Clearance Decision (7.12.2012)

70. On May 8th, 2012, the London Stock Exchange Group (LSEG) notified a transaction to the PCA that consisted in the acquisition of the sole control of LCH.Clearnet. This notification to the PCA followed the UK's objection, as regards the assessment of the case by the European Commission under Article 4 (5) of the EC Merger Regulation, as initially requested by the parties.

71. LSEG is a UK-based public limited company, and the holding company for London Stock Exchange plc and Borsa Italiana S.p.A., which operate Regulated Markets respectively in the UK and Italy, for the trading of equity, derivative and fixed income securities. LSEG holds a majority interest in Turquoise Global Holdings Ltd., a pan-European equity securities and trading venue. It also provides post-trade services, information services and technology services

72. LCH. Clearnet is an international clearing house, consisting of two legal entities, LCH.Clearnet Ltd. and LCH.Clearnet S.A.. LCH.Clearnet serves both trading venues and a range of over-the-counter (OTC) markets and clears transactions in a wide range of asset classes including equity securities, fixed income products, and financial as well as commodity derivatives.

73. The PCA made a referral to the Commission under Article 22 of the EC Merger Regulation because it considered that the Commission was the best placed Authority to assess the case since (i) the concentration had an effect on trade between Member-States as it concerned markets that are EEA-wide in scope; (ii) the transaction threatened to significantly affect competition within the national territory; (iii) the Commission was the best placed to gather information, since LSEG and LCH.Clearnet are located all over the EEA; and (iv) the Commission was the best placed to enforce possible remedies.

74. Spain and France joined PCA's referral request, but the UK did not join. The Commission refused PCA's referral request on the grounds of Article 22 (3) of the EC Merger Regulation and thus the competence to assess the case remained with the national authorities.

75. The PCA cleared the transaction as it considered that the concentration did not create or reinforce a dominant position capable of significantly impeding effective competition in the following markets: (i) EEA-wide Market for clearing stocks listed in Portugal; (ii) EEA-wide market for clearing stocks traded in Portugal; (iii) EEA-wide market for clearing stocks listed and traded in the EEA; (iv) EEA-wide market for clearing fixed income instruments; (v) EEA-wide market for trading and clearing exchange-traded derivatives; (vi) EEA-wide market for trading in stocks listed in Portugal; (vii) EEA-wide market for trading in pan-european stocks and; (viii) EEA-wide market for trading fixed income instruments.

2.3.1.3 Farinveste*José de Mello II*Alliance Group / Alliance Healthcare - Phase I Clearance Decision (20.03.2013)

76. On March 20th, 2013, the PCA issued a clearance decision concerning a concentration, implemented in 2005, in Portugal, notified on September 18th, 2012 to the PCA, in compliance with the European Commission referral decision of July 12th, 2012¹, pursuant to article 4 (4) of the EC Merger Regulation, by which three groups proposed to acquire joint control of Alliance Healthcare (Portugal).

¹ Case COMP/M.6498 – FSA / JMP / Alliance Santé / Alliance Portugal, available at <http://ec.europa.eu/competition/mergers/cases/>

77. This concentration consisted in the acquisition of 51% of the share capital of Alliance Unichem Pharmaceuticals, S.A. (now known as "Alliance Healthcare", a Portuguese company), 49% of which by a company currently designated Farminveste - Investimentos, Participações e Gestão, S.A. [a company from the Portuguese "ANF - National Pharmacy Association" group ("ANF")], and 2% by José de Mello II Participações, SGPS, S.A. (a company from the Portuguese "José de Mello" group), keeping the Alliance Santé Europe (currently designated "Alliance Group", after the dissolution and liquidation of Alliance Santé on December 19th, 2007, which was transferred to the ownership of the Alliance UniChem Group Limited), the remaining 49% share capital of Alliance Healthcare (Portugal).

78. Indeed, the object of the notification presented to the PCA, as described in paragraph above, is identical to the concentration then notified to this Authority in 2005², which lacked competence to analyse the case since the operation then had a community dimension.

79. Based on the parties' activities, both acquiring parent companies and the joint venture Alliance Healthcare (Portugal), carried out in 2005, but also in 2012, the analysis undertaken by the PCA focused mainly on the markets: (i) for the wholesale distribution of (a) prescription medication and reimbursed non-prescription medication, (b) non-reimbursed non-prescription medication, and (c) other health products; (ii) on the national market for the supply of raw data relating to product sales of pharmaceutical companies to companies active in the provision of market intelligence pharma; (iii) on the national market for the provision of logistics services of pharmaceutical products; and (iv) national markets for the marketing and sale of generic drugs, where Almus [a company created by Alliance Healthcare (Portugal)] is active; in order to gather evidence on the impact of the proposed concentration.

80. One interested party opposed the concentration: the "APIFARMA - Portuguese Association of the Pharmaceutical Industry". The competition concerns identified by the interested party consisted, mainly, in the following:

- i. It considered that the parties to the concentration were also active in the retail distribution of pharmaceutical products, a relevant market not analyzed by the PCA.

81. Nonetheless, the analysis carried out by the PCA to the existing links between the ANF and its associated pharmacies (as a National Pharmacy Association, representative of 97% of the pharmacies, at a national level), showed that they do not constitute a single economic unit. There were no documents or facts provide to the PCA to substantiate the possibility that ANF could exercise a decisive influence on the activity of these associated pharmacies in order to exercise *de facto* control over them;

- ii. It disagreed with the understanding of the PCA to leave open the definition of the relevant product market for the "supply of raw data on sales of pharmaceutical companies active in the provision of market intelligence pharma", and on the conclusions of the competitive assessment made, in both hypothetical scenarios (conglomerational or with horizontal overlap), considered by the PCA.

82. Indeed, the PCA considered that the exercise of delimitation of a relevant market would have in this context, an instrumental character, not providing valuable information for the assessment findings, since both in a conglomerational scenario (where it was considered the lack of substitutability between the data from the wholesalers and the data from pharmacies) or in a horizontal overlap scenario (where it was considered an imperfect substitutability between the data from wholesalers and the data from pharmacies,

² Case Ccent. n.º 80/2005 – Farminústria*JMP II*Alliance Santé / Alliance Unichem, available at http://www.concorrenca.pt/vPT/Controlo_de_concentracoes/Decisooes/Paginas/pesquisa.aspx?pNumb=80&yearNot=2005&pag=1&doc=True&est=

while differentiated products), the operation was not likely to create significant barriers to effective competition in this relevant market;

- iii. It also alleged non-horizontal effects deriving from the operation, between the "market for the supply of raw data on sales of pharmaceutical companies active in the provision of market intelligence pharma" and the "market for the provision of market intelligence pharma".

83. However, the analysis carried out by the PCA showed that Alliance Healthcare (Portugal) would neither have the ability nor the incentives to foreclose the market for the provision of market intelligence pharma, since, amongst other factors, to the extent that such a strategy would be likely to adversely affect the profitability of Alliance Healthcare and jeopardize an interest equally relevant for the Alliance Santé Group (referring to the pan European agreement with IMS AG); also, given that the opportunity cost of ceasing to supply data to the IMS could not be offset by a supposed benefit to it, due to the fact that their competitors would have access to the IMS studies, based on data that do not include the activity of wholesale of Alliance Healthcare group, but include information of other wholesalers; given the existence in the market of another set of wholesale distributors (representative of about 70% of the sales in the market); most importantly, the fact that Alliance Healthcare had never, since 2005 until 2012, refused to provide these data to IMS, and had never supplied these data to its mother ANF.

84. Based on the evidence gathered, both during the investigation carried out by the PCA in the 2005/2006 period (for the purposes of use of the information and documents then collected as facts, from the notifying and third parties, the evidence was attached to the administrative procedure initiated in 2012, in accordance with the principles of legality, efficiency, and the duty of diligence, as laid down in the Portuguese Administrative Procedure Code), but also, in 2012, reporting to the remaining period, from 2007 until 2012, the PCA concluded it was not necessary to further pursue the investigation.

85. On 20th March 2013, the PCA decided to adopt a decision not to oppose the proposed concentration, since it was not likely to create significant impediments to effective competition in the relevant markets identified.

2.3.1.4 Engarrafadores Ibéricos da Coca-Cola / NewCo - Phase I Clearance Decision (21.02.2013)

86. On February 21st, 2013, the PCA issued a clearance decision concerning a concentration consisting of a *de facto merger*, between the majority of the Spanish shareholders of seven Iberian bottlers of products of The Coca-Cola Company ("TCCC") – called Begano, Cobega, Casbega, Asturbega, Norbega, Colebega, and Rendelsur – involving the creation of a new company ("Ibérica de Bebidas No Alcoholicas, S.A." or "Iberian Bottler") and the subsequent transfer to the new company, of all assets held by those shareholders, related to the activities of bottling and marketing in Portugal, Spain and Andorra, of the TCCC products, including the Portuguese company Refrige – Sociedade Industrial de Refrigerantes, S.A. ("Refrige"). From this operation any other business that the shareholders had in any other sectors or in the bottling industry, but in other countries, were excluded.

87. The seven Spanish bottlers, although with common shareholders, were considered to be independent entities, dedicated to the manufacture, bottling, marketing and distribution of non-alcoholic beverages, in particular, of products of TCCC in Portugal, Spain and Andorra.

88. Refrige, incorporated under Portuguese law, was owned, indirectly, by the seven Spanish bottlers prior to the merger, under the so called system of "changing coalitions" as far as the adoption of Refrige's strategic decisions (for TCCC products, in Portugal: Coca-Cola©, Sprite©, Fanta©, Aquarius©, Minute Maid©, Powerade©, Burn©, Nordic Mist©, Menos é Mais©, Aquabona© and Nestea©).

89. It is worth mentioning that the notifying parties previously consulted the Commission for clarification of jurisdiction, having been informed, on last December 10th, 2012, that the proposed transaction was not subject to prior notification to the European authority, in accordance with article 3 of the EC Merger Regulation. The case was, subsequently, notified in Spain and in Portugal.

90. The notification, in Portugal, subsequent to the notification of the merger in Spain, was conducted by the notifying parties, given the change in control (indirect) over Refrige, in the post-merger scenario.

91. Therefore, the concentration constitutes a process of integration of the activities of the seven independent Spanish bottlers, into a single economic and legal unit, with a permanent, single economic management - although the bottlers do not cease to exist as legal entities -, therefore altering the nature of control over Refrige, qualifying as a *de facto* merger.

92. Given that the concentration had a conglomeral nature, and that no competition concerns were identified, the concentration was cleared by the PCA.

2.3.1.5 Arena Atlântida/Pavilhão Atlântico*Atlântico - Phase II Clearance Decision with Remedies (21.03.2013)

93. On March 21st, 2013, the PCA issued a clearance decision subject to remedies concerning a concentration by which Arena Atlântida proposed to acquire sole control of Pavilhão Atlântico and Atlântico - Pavilhão Multiusos de Lisboa, S.A. (“Atlântico”).

94. Arena Atlântida is a vehicle company incorporated on August, 2nd 2012 for the acquisition of Pavilhão Atlântico and Atlântico, jointly controlled by Luís Montez (a live music promotor through its company Música no Coração, S.A.), Ritmos & Blues – Produções Lda. (a live music promotor), and BES PME Capital Growth (a financial entity).

95. Atlântico is owned by Parque Expo 98 S.A. (a state-owned company) and its main activity is to provide rental services for the organization of shows and other events (sporting events, concerts, conferences and congresses) at Pavilhão Atlântico – a multipurpose indoor arena in Lisbon. Atlântico is also present, through its subsidiary Blueticket – Serviços de Bihética, S.A. (“Blueticket”), in the provision of ticketing services.

96. Based on the parties’ activities, the analysis undertaken by the PCA focused (i) on the market for the operation of indoor venues for shows and large events, (ii) the market for the provision of ticketing services and (iii) the market for the promotion of shows and large events. All markets were considered to be national in scope.

97. The concentration, as notified, raised vertical issues as a result of, on the one hand, the fact that Arena Atlântida would have a significant market power in the upstream market, in the determination of the commercial conditions associated with the use of the Pavilhão Atlântico, having regard to the fact that Pavilhão Atlântico represents a unique infrastructure for the stage of large musical events and, on the other hand, the fact that two of the acquiring entities (Luís Montez and Ritmos & Blues) were music promoters. Luís Montez was also active in the provision of ticketing services through a minority stake in a ticketing operator (“Ticketline S.A.”).

98. In this context, the PCA was called to analyse to what extent (i) the companies that operated in the downstream market for the promotion of shows and large events and, in particular, those promoters which represented the main competitors of the acquiring firms, could be subject to a strategy of input foreclosure as a result of the concentration, and, in this context, to what extent the concentration could

result in higher prices for consumers in the downstream market as a result of the implementation by the acquiring firms of market foreclosure strategies.

99. Concerning the strategies for partial or selective foreclosure, the PCA identified five possible routes through which Arena Atlântida could constrain the competitiveness of music promoters wanting to stage an event in Pavilhão Atlântico: (i) by changing the fees and commercial conditions applicable to the hire of Pavilhão Atlântico as a large music events venue place, (ii) by changing the commissions charged for the ticketing services provided by Blueticket, given its exclusivity to issue tickets for events organized at Pavilhão Atlântico, (iii) by reducing the promotional efforts for events promoted by competitors of the acquiring firms, (iv) by increasing the retention time for ticket revenues or by altering the security policies thereby increasing the financing constraints and financial costs associated with the activity of promoting musical events, and (v) by having access to confidential commercial information of competing music promoters for the benefit of the shareholders of Arena Atlântida.

100. The PCA could not, therefore, exclude, in the 1st Phase of the proceedings, that the concentration could result in significant barriers to effective competition as a consequence of the implementation, by the merged firm, of foreclosure strategies.

101. In this context and, bearing in mind that the remedies offered in the first phase of the proceedings had a set of risks that could render them unenforceable and, therefore, inadequate and insufficient to guarantee the maintenance of effective competition in the relevant markets identified, the PCA settled on the need to pursue further with the investigation, thus initiating a 2nd Phase in the proceedings.

102. In the beginning of 2nd Phase, the parties submitted a new set of commitments which allowed the PCA to issue a clearance decision, thus eliminating the need to pursue a further investigation. The clearance decision was subject namely to (i) the divestiture by Luís Montez of his share capital in TicketLine; (ii) the elimination of the exclusivity held by BlueTicket for the issuance of tickets for events in Pavilhão Atlântico; and (iii) the implementation of measures to protect access to sensitive commercial information of competitors.

103. The PCA concluded that the commitments undertaken by the acquiring parties translated into a set of conditions and obligations considered to be sufficient, appropriate and proportionate to the resolution of the competition problems identified, in particular, the role of the Monitoring Trustee, in approving various documents that determine the relationship between Arena Atlântida and its clients, in monitoring the behavioural commitments undertaken, and in implementing a resolution mechanism for commercial disputes was considered to contribute greatly to addressing the risks that could potentially hinder the effective implementation of the commitments.

2.3.1.6 Modelo Continente / Hiper Sá - Phase I Clearance Decision (02.05.2013)

104. On May 2nd, 2013, the PCA issued a clearance decision concerning a concentration by which Modelo Continente Hipermercados (“MCH”) was acquiring sole control of nine retail stores, located in the Madeira Island, previously owned by Grupo Sá.

105. MCH is the sub-holding company of the Sonae Group for the retail distribution market. The Sonae Group is active in a variety of sectors, such as the wood derivatives industry, retail, property, tourism, telecommunications and media. Through this sub-holding company, the group is active in the groceries retail markets in Portugal, via a number of brands, such as Continente, Continente Modelo and Continente Bom Dia.

106. Grupo Sá operates a chain of retail stores under the brand Sá, in the Madeira Island.

107. For the purpose of analyzing the impact of the concentration in the groceries retail market, and while leaving open the precise geographic boundaries of the relevant markets (as it was not relevant for the conclusions of the competitive assessment), the PCA assessed the concentration's competitive impact in three relevant geographic groceries retail markets.

108. The delimitation of these local markets was based on catchment areas delineated using isochrones reflecting a 10-minute drive-time to the store. Furthermore, whenever the overlap between the catchment areas of two contiguous stores was significant, they were considered to be part of the same relevant market.

109. The competitive assessment relied mainly on structural indicators and diversion ratios between the acquirer's and the target stores, within the relevant geographic markets, which allowed concluding that the concentration was likely to give rise to competition concerns. In fact, according to the 2012 data, the concentration was eliminating one of the most important competitors in the market, as well as one of the closest to the acquirer's stores, implying a substantial increase in the degree of concentration in the relevant markets.

110. Nonetheless, Grupo Sá, the selling firm, was in strong financial difficulties and under a special restructuring proceeding³. Given this scenario, the PCA collected compelling evidence concerning the financial difficulties faced by Grupo Sá as well as elements which allowed concluding that, absent the concentration, the target stores would inevitably leave the market in the near future (some of the stores were actually closed during the proceedings), with anticompetitive effects which were at least as important as those arising in the post-concentration scenario.

111. Furthermore, the evidence collected also allowed concluding that there was no other realistic purchaser whose acquisition of the target assets would entail a less anti-competitive scenario when compared with the concentration at stake.

112. In view of all the above, the PCA concluded that the concentration was not, in itself, likely to give rise to competitive concerns with reference to the relevant counterfactual for the concentration assessment.

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

3.1 Conferences, Workshops and Seminars

3.1.1 Conference on the New Portuguese Legal Regime for Competition

113. Following the publication of the new Portuguese Competition Act, Law No. 19/2012 of 8 May 2012, the Portuguese Competition Authority hosted a conference in Lisbon on 13 July 2012.

114. The opening session of the conference included Commissioner Joaquin Almunia as a keynote speaker, and was presided by Álvaro Santos Pereira, Minister for the Economy and Employment of Portugal. The closing session was chaired by Carlos Moedas, the Portuguese Secretary of State to the Prime Minister.

³ This proceeding is a mechanism designed in the Portuguese legal framework for firms that demonstrated financial difficulties, as a last attempt to avoid formal bankruptcy proceedings.

115. The conference served as a platform for discussion and debate on the new Competition Act and the new aspects it brings to the promotion and defence of competition in Portugal. Speakers came from the Portuguese legal community, judiciary, and the Authority itself, as well as from international organisations and other jurisdictions, bringing an international perspective to the conference. The sessions tackled a wide range of areas of competition policy and enforcement, including restrictive practices and merger control, as well as market studies and judicial control.

3.1.2 Research Seminars

116. During this period the PCA hosted three visitors who presented seminars on different topics in competition economics and policy as follows: Maria Ana Vitorino, Assistant Professor of Marketing, Carlson School of Management, University of Minnesota, USA (“Price Competition when Consumers have Limited Foresight: Evidence from Driving School Fees in Portugal”); Maria de Lurdes Tomé, from the Instituto Superior de Economia e Gestão (ISEG)/ Universidade Técnica de Lisboa (“Os determinantes da mobilidade dos consumidores no sector das comunicações móveis de voz em Portugal” i.e., “The determinants of consumer mobility in the mobile communications sector in Portugal”); Rosa Abrantes Metz, Principal, Global Economics Group & Adjunct Associate Professor, Stern School of Business, NYU, USA (“LIBOR, Euribor, TIBOR and Other Financial Benchmarks: Detection, Antitrust and Reform”).

3.2 Cooperation

3.2.1 ECN – European Competition Network

117. 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, fines, food, energy and telecommunications. The PCA is co-chair of the ECN Working Group on Cooperation Issues and Due Process.

3.2.2 The ECA Network

118. The PCA participated in the Annual Meeting of ECA that took place on 30 and 31 May, 2013 in Bucharest, Romania.

119. From July 1st, 2012 to June 30th, 2013, the PCA notified 12 cases to the ECA Network. All these cases referred to multijurisdictional concentrations 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

120. In October of 2012, the PCA hosted a delegation from the Public Procurement Bureau of Macedonia, for a bilateral meeting, where issues of mutual interest in competition law and economics were discussed.

121. In March of 2013, a delegation from the Competition Commission of Singapore, led by Mr. Lam Chuan Leong, Chairman, and Ms. Yena Lim, Chief Executive, was welcomed at the PCA for a bilateral meeting. Among the topics under discussion were strategies for attracting and retaining highly talented staff, information technology at the service of competition and the new regime for competition in Portugal.

3.2.4 *Multilateral Cooperation*

3.2.4.1 ICN – International Cooperation Network

122. 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 Warsaw in April of 2013, where the President of the PCA spoke in a plenary session regarding Advocacy. The PCA also participated with various representatives in the first ICN Advocacy Workshop, held in Paris, in October of 2013, in addition to acting as Co-Chairs of the host working group.

123. 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.

124. In the period under review, the PCA led the drafting of a chapter on Explaining the Benefits of Competition to Government & Legislators. The PCA also participated in various teleseminars held within the various working groups of the ICN.

3.2.4.2 OECD

125. 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 2013.

126. 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 Santo Domingo, in the Dominican Republic, in September of 2012.

127. The PCA also took an active role in the Regional Centre for Competition in Latin America, taking part in the meeting held in Santo Domingo in September of 2012.

3.2.4.3 UNCTAD

128. The PCA participated in the 12th Intergovernmental Group of Experts on Competition Policy, held in Geneva in July of 2012, 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 during the panel discussions.

3.2.4.4 Ibero-American Competition Forum

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

4. **Resources of competition authorities**

4.1 *Annual budget*

130. 4.1.1 Annual budget 2012 - € 6,4 million

- 20 economists;
- 23 lawyers;
- 33 other professionals;
- 10 support staff;
- 86 all staff combined.

4.2 Human resources (person-years) applied to:

- Enforcement against anticompetitive practices: 19
- Merger review and enforcement: 14
- Judicial Affairs: 4
- Advocacy efforts: 4

131. Period covered by the above information:

132. The human resources information is reported as of June 30,2013.

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 ex-post economic analysis on the evolution of road fuel retail prices practiced by service stations following the recommendations issued by the PCA in 2004 and reiterated in the March 2009 Report on the installation of price information panels along the highways.

133. Following recommendations issued by the Portuguese Competition Authority (PCA) in 2004 and reiterated in the March 2009 Report on road fuel and liquid fuel prices (propane and butane), on the need to install electronic panels along the highways in mainland Portugal, with information on prices per litre of road fuels to allow final consumers (drivers) to choose beforehand where to refill their car tanks, the PCA decided undertake an econometric study on the effect of such recommendation on the level, dispersion and other characteristics of the prices of different types of liquid road fuels. One should notice that the last panels were finally installed by the end of May 2009, and only Galp, Repsol, Cepsa and BP operated service stations along the highways (unlike, e.g., in France). The study was published in August 2012.

134. The analysis covers the two main types of road fuel sold Portugal, namely 95-octane petrol and diesel for road use. In geographical terms, the analysis covers all the 128 service stations on the 22 motorways in mainland Portugal, with the exception of motorways where a single oil company was operating as retailer. These service stations were those functioning on 31 August 2010. For the purposes of international comparisons, we collected similar data on fuel prices practiced along the motorways pricing in Spain and France. Spain was chosen because of its geographic closeness, and because the companies with the largest number of retail outlets on motorways in Spain are Galp, Repsol, Cepsa and BP (Spain also has some independent retailers operating along the highways). France was chosen for two reasons: firstly, because it has a retail motorway fuel market structure that is different from Portugal and Spain in terms of operators (hypermarkets and other independent operators are also present); and secondly because

the prices displayed are pre-tax (including those on and off the motorways), tending to be lower than those in the Iberian Peninsula. The period covered by the analysis was from 1 January 2008 to 31 August 2010, i.e., approximately two years, and took in the year before the panels were introduced and the first year after. The international comparison involved collecting a mass of data, and the period was therefore limited to the second quarter of 2010. This period was considered to be sufficiently representative, given that the data was processed on a daily basis.

135. An econometric analysis of the type presented in this report gains added relevance in terms of economic interpretation and robustness of the conclusions if the period covered is sufficiently long, with complete cycles of rises and falls in prices. The relatively short period covered by this report was followed by moves in the consumption of fuel on motorways that are not reflected in this analysis, and this fact means that the results of the econometric analysis should be treated with caution, even if the methodology is solid.

136. One can resume the main conclusions as follows:

- i. In terms of market structure, there is no evidence that the panels have had a significant short-term impact;
- ii. The market for retail sales of fuel on motorways exhibits major barriers to entry and expansion, and these affect market structure and operator behaviour;
- iii. The way concessions were granted to the four oil companies to install service stations along the highways need to undergo a major revision in the future;
- iv. There is also a geographical spread in service stations that has little to do with the quantity of fuel in demand for each section of the motorway; this seems to imply in particular that there is little diversity on motorways where there is high demand. Elsewhere there are no such conditions hindering access, and therefore the connection between supply and demand is clearer, with a greater diversity of operators and of forecourts where there is greater demand;
- v. The behaviour in terms of their reaction time to change in prices, the range of retail prices practiced among operators and price levels, was varied;
- vi. On the motorways analysed and during the period under review, an estimate of the impact on pump prices, measured by the difference between the observed price and the hypothetical counter-factual price, points to an average rise of between 1.1 cents for a litre of 95-octane petrol and 0.8 cents for a litre of diesel;
- vii. The average impact on prices for each type of fuel was not constant over the whole post-introduction period that was analysed. Looking at the whole range of motorways under analysis, the average price seems to have been above what was expected, with an estimated differential of around 1 cent/litre on 41% of the days for diesel and 53% for 95-octane petrol;
- viii. The analysis undertaken also showed that the slight rise in prices recorded in most of the motorway service stations only began some weeks after the panels were installed, in fact, in some case the upward move was interrupted when the international price of oil rose in mid-March 2010; the impact on prices eased, however, in the second quarter of 2010, during a period when there were steep rises in the cost of fuel on the international markets (more marked for diesel than for petrol). This fact illustrates that transparency in fuel prices may be a factor that limits rises in prices, since in the periods of more turbulence in international markets for petrol and diesel, there

were prices set below the counter-factual prices (a situation seen in the case of diesel and on the motorways with higher turnover).

137. As a final methodological note, we point to the fact that an estimate of the impact on prices stemming from the introduction of the price panels on motorways requires a comparison between the prices charged during the initial post-introduction period and the prices that would have been charged had the panels not been introduced. These hypothetical prices are counter-factual, since they imply a scenario for the post-introduction period where everything except the new panels remains the same. The statistical and econometric techniques that are used for an estimate of counter-factual prices are part of what is known in the literature as the “dynamic treatment effect”. These techniques make it possible to infer a causal relationship between a “treatment” (in this case, the introduction of the panels) and the result (in this specific case, the change in the level of retail prices). The techniques have been used in medicine to assess the effectiveness of a specific treatment/medication on the progress of an illness. The relatively low increases in prices (except in one highway) after the installation of panels is important not so much for their numerical value as to their suggestion that a significant change in prices charged on motorways relative to their hypothetical counter-factual levels might only come with some structural changes, e.g., a greater diversity of retail outlets, if we leave aside changes upstream along the vertical chain.

5.1.2 An economic analysis of the biofuel industry and of the auto LPG ex-refinery and retail prices

138. Both these economics studies are in progress and both will be concluded by the end of 2013 or beginning of 2014.

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

139. 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 network, together with 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.

140. 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.

141. This analysis was concluded in December 2012 and aimed 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; (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. The Final Report recommends that a competition assessment of partnerships between firms operating in the telecom sector, including cooperation agreements and joint ventures, ought to pay special attention to the following elements: (i) aim and geographic area where network sharing will take place; (ii) each party’s responsibilities in terms of inputs; (iii) the amount of each party’s financial contribution and return collected from allowing access to the network; (iv) possible compensation mechanisms agreed by the parties; (v) which type of information exchange were agreed between the

parties; (vi) how to characterize the decision making process and limits imposed to each party's autonomy when defining prices, quality levels and variety of services being provided; (vii) third party access conditions; (viii) which mechanisms were agreed upon to solve conflicts between the parties and to terminate the partnership. This list does not presume to be complete, nor should it be applied in a mechanical way with no regard to the specificities that will characterize each partnership. Moreover, one needs to frame these types of partnerships taking into account the relevant markets involved as well as the market power enjoyed by each party and by both together.

5.1.4 Report on the digital terrestrial television in Portugal

142. The process of Digital Terrestrial Television (DTT) deployment in Portugal was initiated by the launch of two public tenders in February 2008. Subsequently, the ICP-ANACOM (National Telecommunications Regulator) awarded PT Comunicações, S.A. (PTC) the rights of use of frequencies corresponding to the free-to-air (FTA) DTT platform at the end of 2008, and corresponding to the Pay DTT platform in the mid-2009. PTC was also granted authorisation to perform as a Pay DTT distribution operator by ERC (National Media Regulator).

143. The model implemented in Portugal also provided for the granting of a licence for the exercise of the television activity as consists of organising a national, generalist programme service, broadcast on a (FTA) and 24-hour basis (5th channel). However, in March 2009, ERC decided to exclude both applications to the tender, because they failed to fulfil the legal and regulatory requisites for admission.

144. The high-definition channel foreseen in the Portuguese DTT model, to be shared by existing broadcasters using Mux A in non-simultaneous mode until the switch-off of analogue television, was never made available due to lack of agreement between RTP, SIC and TVI.

145. The implementation of the Portuguese DTT model, as conceived, would likely have introduced significant changes in the retail FTA and Pay-TV markets, and likewise in the wholesale television broadcasting markets supporting these retail services.

146. The analysis of the FTA television market indicates that TVI is the television operator with greatest market power, while in the Pay-TV market, even though PTC has been the fastest growing operator since 2007, ZON remains the market leader. Meanwhile, FTA television has been losing audience share to Pay-TV since 2002 and particularly after 2009. The introduction of DTT in Portugal does not appear to have triggered any slowdown in this declining trend.

147. As a result of the tender held in February 2008, PTC is the only operator active on the wholesale broadcasting market which allows for the provision of retail FTA television; this somewhat limits the countervailing buyer power of television operators. The market power enjoyed by operators in the wholesale market upstream Pay-TV is equivalent to that enjoyed at retail level, since these networks are mainly used for purposes of internal supply.

148. In the context of the European Union (EU), as of November 2012, Portugal had the lowest number of national channels, with only four channels (RTP 1, RTP 2, SIC and TVI); this is significantly below the EU25 average of about 30 channels per Member State considering both FTA and Pay-TV platforms (the average was around 16 channels considering FTA television channels only). This situation did not change with the launch of ARtv on a FTA basis by the end of 2012.

149. The DTT offer in Portugal is a long way from making the most of the advantages associated with this technology, and has not even implemented the model defined by the Government with a view to inducing voluntary migration to digital, including through provision of a 5th channel, through high-

definition broadcasting and provision of a Pay-TV platform. The DTT platform is essentially limited to a replication of the offer supported by the old terrestrial analogue system.

150. While recognising that it falls to market players to offer services likely to stimulate consumer interest in DTT take-up, it is still important to identify key factors critical to its success; as such, in accordance with article 62 of Law no. 19/2012 of 8 May (the New Portuguese Competition Law), the Competition Authority makes the following recommendations:

- a) develop actions which enable provision of a greater number of FTA channels, both public and private, and at a national and regional level, given that the present offer of channels appears to fall manifestly short of the possibilities of the broadcast network and what would be deemed desirable. In this context, resumption of the 5th channel licensing process is essential;
- b) increase the involvement by the public television operator in this process, especially through the FTA provision of thematic channels produced by RTP, as currently only available on Pay-TV platforms (e.g. RTP Memória and RTP Informação);
- c) assess the potential interest in the setting of pricing conditions, possibly by regulatory means, which would ensure access to the broadcast network, in particular local entities, in order to encourage an increase in the number of FTA channels;
- d) assess the actual quality of service provided by DTT, with a view to finding solutions which overcome the shortcomings identified and improve users' satisfaction levels;
- e) promote the transmission of high definition (HD) channels; (f) foster the emergence of interactive services on the DTT platform; and finally, (g) examine the interest in the existence of a Pay DTT platform or the provision of pay-per-view services.

151. Some of the proposed measures naturally entail changes to the prevailing legal framework and would benefit from the coordination of authorities with competence in this area, with a view to the implementation of a model which accomplishes the actions deemed relevant. Only a FTA offer which is appealing to users can ensure the real success of the DTT platform in Portugal, and provide free and universal access which will make television a driver of social inclusion. Furthermore, a DTT offer on these terms may also act as a source of competitive pressure on Pay-TV, including where this service is provided as a component of bundled offers; such pressure could have positive effects on pricing and quality of services, especially in scenarios of increased market concentration.⁴

5.1.5 Other Reports and Studies

152. 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 the IMF/ECB/EC, the tender for the privatization of the airport operator Aeroportos de Portugal (ANA) was 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 identified some competition concerns.

153. The Economic Studies and Market Monitoring Bureau successfully ended its collaboration with the Merger Department in the development of draft Economics Guidelines for the Assessment of Horizontal Concentrations between Undertakings with the conclusion of these draft Guidelines in February

⁴ A version of this Report in English will be available soon.

2013, followed by a period of public consultation. The final document will be published soon after the incorporation of the different comments and suggestions.

154. The Economic Studies and Marketing Monitoring Bureau initiated an inquiry into the maritime port sector aimed at identifying its main competition constraints.

5.1.6 Other Ongoing Market Monitoring Activities

155. 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 2013. 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.

156. 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).

157. The PCA has remained as a member of 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) created by the Portuguese Government in November 2011. 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. Relevant legislative diplomas have been revised, including the one on restrictive commercial practices. PARCA will be mostly focused on self-regulation efforts and initiatives, including the formulation of a new Code, which will try to be as acceptable as possible to all stakeholders, taking as a starting point the recent Codes subscribed by some EU wide stakeholders, but also the specificities of the Portuguese vertical food chain as well as tackling the issues that arise with the creation of an Ombudsman.

6. Other Activities

158. Publication of several PCA working papers on industrial organization & competition policy by the staff of the Economic Studies and Marketing Monitoring Bureau. Participation of several staff of the Economic Studies and Marketing Monitoring Bureau in national and international academic conferences. The Economic Studies and Marketing Monitoring Bureau hosted three Masters students from different Portuguese Universities for the competition of their mandatory curricular internships.