

PORTUGAL

(January 2002 to December 2002)

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Executive Summary

1. In the year 2002 the DGCC (Directorate General for Trade and Competition) investigated 107 cases relating to possible anti-competitive practices. In 10 of these cases it initiated proceedings for infringement of competition rules, in 1 it received a request for prior control and in 6 initiated proceedings for infringement of procedures provided for by the law.

2. In the same year the DGCC received 70 merger and acquisition notifications, of which 69 were examined and approved.

3. In 2002 the Competition Council delivered 7 decisions on anti-competitive practices and issued opinions on 4 mergers.

4. In the year 2002, 5 judgements were handed down by the courts (3 by the Commercial Court and 2 by the Appeal Court) in competition case appeals.

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

1. Summary of new legal provisions of Competition Law and related legislation

5. During the year, there were no changes made to the Portuguese legislation on competition

2. Other relevant measures, including new guidelines

6. None.

3. Government proposals for new legislation

7. During the year in question, the Portuguese government took the following action on the subject of competition policy:

a) In January 2002, the Minister for the Economy created the Commission for the Revision of Competition Law. Its mission was to draw up proposals for the structure of a national, independent competition authority and, in addition, proposals for amendments to the law in the light of the new model. Consisting of three lawyers under the chairmanship of Dr. Cruz Vilaça, former president of the Community Court of First Instance, the commission was given a nine-month mandate.

b) The present government took power in March 2002. It considered one of the economic policy priorities of its programme to be the reformulation of competition law and the creation of a Competition Authority endowed with the capacity to analyze legal and economic questions arising in connection with mergers and acquisitions, predatory practices, co-ordination practices and abuses of a dominant position.

According to the Government Programme, the Competition Authority should also have exclusive powers in the field of mergers and acquisitions, with the possibility of a final appeal to the government (a declaration of general interest for the economy).

c) In 2002, the law creating the Competition Authority and approving its Statutes was debated and approved in the Assembly of the Republic. It was published in January 2003 as Decree-Law No. 10/2003 of 18 January.

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II. Enforcement of competition laws and policies

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

a) Summary of the activities of the competition authorities and courts

- Directorate-General for Trade and Competition (DGCC)

Cases under investigation	107
Investigations completed	58
Proceedings initiated for infringement of legislation	10
Prior control proceedings initiated	1
Prior control proceedings referred to the Competition Council for a decision	2

- Competition Council (CC)

Decisions in proceedings for anti-competitive practices	7
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- Courts

Commercial Court decisions (First Instance)	3
Appeal Court decisions	2

b) Description of significant cases, including those with international implications

Directorate-General for Trade and Competition (DGCC)

8. Under the terms of the Portuguese competition legislation, as soon as the DGCC becomes aware of possible practices prohibited by Articles 2, 3 and 4, in whatever way this occurs, it must investigate such practices and, as soon as it has serious evidence that they exist, organize and prepare proceedings.

9. Accordingly, the DGCC investigated 107 cases in various business sectors in 2002, for example: medicines, newspaper and magazine distribution, advertising, car insurance, aviation fuel, optical products, the agri-foodstuffs industry, beer, maritime transport, the issue of flight tickets, telecommunications, the postal service and the payment of services by credit card. At the end of the year 49 cases were under investigation.

10. Of the 58 cases concluded, 10 were forwarded for further investigation as anti-competitive practices were apparent (9 cases of agreements between companies and 1 of abuse of a dominant position). The sectors involved are: beverage distribution (including cold drinks), the marketing of cosmetics, automatic road-toll payment systems, travel agencies, distribution systems, programme and content production for pay-television, and infusion systems and machines, including their supplies.

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11. In 2002, the Competition Council sent a prior control request to the DGCC for analysis. It related to an agreement between APAVT – Associação Portuguesa das Agências de Viagens and TAP – Transportadora Aérea Portuguesa to insert a fee in flight tickets issued in Portugal, to be charged by the agencies for the services provided to consumers. This fee will correspond to a fixed amount appearing by default on all tickets.

12. During the year, analysis of two prior control requests was completed and the results were sent to the Competition Council for a decision. The cases involved were as follows:

- The agreement signed between APETRO – Associação Portuguesa de Empresas Petrolíferas and its associated companies to produce and consolidate statistical information on the monthly sales of the various petroleum products marketed by those companies;
- *An agreement between three associations: AGEFE – Associação Portuguesa dos Grossistas de Material Eléctrico, Electrónico, Electrodoméstico, Fotográfico e de Relojoaria; ANIMEE – Associação Nacional dos Industriais de Material Eléctrico e Electrónico, and APETCE – Associação para o estudo e Desenvolvimento Tecnológico de Cabos Eléctricos. The agreement relates to a “Code of Best Practice for the Distribution of Electrical Material”, to be voluntarily signed by the companies in the sector.*

Competition Council (CC)

13. Under Portuguese competition law, cases of possible anti-competitive practices are investigated and prepared by the DGCC, while responsibility for passing judgement on them lies with the CC. The following is a summary of some of the cases for which the CC has issued a decision:

BRISA, VVP, BRISER and SBS

14. The case originated with a complaint presented to the Directorate General of Trade and Competition by LUSOPONTE, *Concessionária para a Travessia do Tejo, S.A* claiming that it was the target of abusive behaviour by *Brisa-Auto Estradas de Portugal, S.A.*, along with two companies which the latter controls, BRISER and VIA VERDE PORTUGAL (VVP) and the company SIBS, in infringement of Decree-Law No. 371/93 of 29 October.

15. Although BRISA is a concessionaire of the state, in this case it is subject to competition legislation since the litigation concerns its behaviour beyond the considerations of any concession contract or, in other words, it is acting as a company providing the services of Via Verde, of which it is the sole owner and also a user, to LUSOPONTE and other road infrastructure concessionaires. On 29 September 2000, with the establishment of VVP as a joint venture of which Brisa and Sibs hold the share capital, the management of the Via Verde system became VVP's responsibility, with Brisa just remaining a Via Verde user.

16. *SIBS-Sociedade Interbancária de Serviços S.A.* (referred to as SIBS) is a joint venture controlled by the credit institutions, which are its shareholders. It acts as their sole and exclusive instrument in pursuing a standard implementation and management strategy for the *MULTIBANCO* automatic payment system.

17. The state's concession contracts with Lusoponte and other toll-road infrastructure concessionaires obliges them to allow users to pay, among other payment means, through the Via Verde system, i.e. electronically, which allows customers to pay the road-toll while the vehicle is in motion – payment without the need to stop.

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18. In the Via Verde service contract with Lusoponte, first Brisa and then its successor VVP, with its joint-owner SIBS, demanded that Lusoponte unconditionally accept the Via Verde services as an indivisible package, though this included complementary and accessory services. Some of these were already being provided by Lusoponte itself or by other contracted companies, which meant that the freedom of the complainant to select other companies of its choice was restricted.

19. Accordingly, the Competition Council judged that, from a competition point of view, such behaviour constituted a restrictive practice infringing Article 3 (abuse of a dominant position) of the above-mentioned Decree-Law No. 371/93, as a result of which it decided to impose the following penalties:

- On VVP: a fine of 50 000 000\$00 or 249,398.50 euros;
- On BRISA: a fine of 20 000 000\$00 or 99,759.58 euros;
- On SIBS: a fine of 30 000 000\$00 or 149,639.37 euros.

20. It is to be mentioned that during the preparation of these proceedings the Council had already adopted interim measures against the defendants, based on the reasoning in the investigating body's request. These measures were turned into injunctions requiring the immediate cessation of the restrictive practices in question.

ANTRAM – Associação Nacional dos Transportadores Públicos Rodoviários de Mercadorias

21. Proceedings were initiated by the DGCC after learning through the press that ANTRAM – Associação Nacional dos Transportadores Públicos Rodoviários de Mercadorias had sent its members a circular stating that, following the rise in fuel prices, it was “time for us to review our prices and not let the unfair and senseless competition continue”. According to the information in this circular, the defendant recommended rises of 9% for domestic and 10% for international freight transport in 2001.

22. The Competition Council considered that ANTRAM'S behaviour constituted a decision to create an association of undertakings in that it expressed the wishes of the association in question, it was addressed principally to its members and its aim was to influence their behaviour (if not that of all professional road hauliers, given its publication in the press).

23. According to the CC, the purpose of ANTRAM'S behaviour was to induce its members to give a concerted response to the rise in fuel prices by raising the prices to their clients in line with the objectives defined and widely publicized by the defendant. In short, the CC concluded that the defendant's behaviour was aimed at restricting competition in that it interfered with the formation of the supply by encouraging its members to apply a general price rise and by setting common objectives for such increases for domestic and international road freight transport.

24. With regard to the effects of the defendant's behaviour, no causal connection was demonstrated in the investigation between the association's decision and the prices applying after the association took this position. However, on the basis of the facts of the case, the CC concluded that there were market effects, which were in fact admitted by the defendant before it became aware of the proceedings. Thus, the CC considered that the aim and effect of the defendant's behaviour was to distort competition in the relevant market. As such, it was faced with an infringement of the competition legislation (Article 2 of Decree-Law No. 371/93).

25. In consequence, a fine of 50,000 euros was imposed on ANTRAM.

TAP – Transportes Aéreos Portugueses, S.A.

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26. In accordance with the investigation, this case concerned promotional practices engaged in by the defendant *TAP – Transportes Aéreos Portugueses S.A.* in the *domestic routes market*, under the code-sharing agreement between the company and its competitor *Portugália (PGA)*. These practices took the form of the sale of seats, the aim of the code-sharing, at below-cost prices.

27. As the defendant holds a dominant position in the market in question, the behaviour attributed to it constituted, in the DGCC's view, an abuse of this position and represented practices restricting competition under Article 3 of Decree-Law No. 371/93 of 29 October, in that it may distort competition by limiting PGA's ability to compete.

28. The Competition Council judged that, from the data contained in the proceedings, the result was not unreservedly a market share which could be interpreted as a dominant position for TAP, on the basis of the predominance in flights operated in the market in question. Nevertheless this could be the conclusion if TAP's advantageous negotiating position, expressed in the leonine terms of the code-sharing agreement, were taken into account.

29. Considering, however, that the period of limitation had passed, the Council decided to discontinue the proceedings.

UNICRE – Cartão Internacional de Crédito, SA (International Credit Card)

30. The case originated when UNICRE imposed a fee on fuel outlets of 30\$00 (0.15 euros) per filling operation (in addition to the "customer fee" of 100\$00 (0.5 euros) charged to date) and forbade them to pass it on to their customers, under the threat of having their contracts cancelled.

31. On the grounds that this cancellation threat by a company which holds a near-monopoly in the market (the credit card management or *acquiring* market) represents a practice that may infringe Article 3 of Decree-Law No. 371/93 of 29 October, the Directorate General of Trade and Competition opened an administrative offence investigation. It requested the Competition Council to apply preventive measures requiring that the practice be suspended, since it considered the measure seriously harmful to consumer interests and to those of the economic agents.

32. In its decision on the preventive measures, the Competition Council ruled that they were not justifiable since UNICRE had not yet carried out its threat. (In the meantime, the petroleum companies themselves have accepted responsibility for payment of the 30\$ to Unicre). The Council did, however, consider that the ban imposed on the vendor in relation to passing on the fee constituted abusive exploitation by a company in a dominant position, in that it fixed the terms of the transaction and restricted the vendors' freedom, which manifestly contravenes Article 2(1)b) of Decree-Law No. 371/93 of 29 October. The Competition Council also considered that the contractual clause containing this ban should be treated as null and void, whereby the vendors are not obliged to comply with it.

33. In view of the position taken by the Competition Council in its written opinion and, also, of the fact that the ban on charging the consumer any amount above the sales price (the so-called *NDR, No Discrimination Rule*) was a clause in all contracts between the defendant and retailers, the DGCC extended the accusation, as part of its investigations in the main proceedings, to contracts between UNICRE and retailers in general (contracts concerning the acceptance of the credit cards which they administer).

34. Considering the structure of the Portuguese market, abolishing the NDR and leaving retailers free to choose or reject the option to pass on the costs to consumers (and the economic risks inherent in their decision) would increase their bargaining power with UNICRE, from the point of view of obtaining more favourable commissions, with advantages for the consumer in general.

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35. In this respect, the DGCC declared in the Investigation Report that the NDR restricted competition by limiting the retailers' freedom, within the meaning of Article 3 (1)-(4) of Decree-Law No. 371/93 of 29 October and could not benefit from the principle of a positive economic balance.

36. After the Competition Council had analysed Visa and MasterCard's arguments and taken account of the EC Commission's decision on the NDR in the Visa Regulations, it decided that, although the no-discrimination rule restricts the commercial operators' freedom, with effects that possibly restrict competition, the requirements of an economic balance were met, namely:

- it allows improved goods and services distribution and technical and economic development;
- it provides an indisputable benefit for commercial operators in terms of guaranteed payment, the availability of a secure and relatively cheap consumer credit system and even savings on administrative costs;
- it is essential for increased confidence in the system and its sustained growth;
- it does not eliminate competition in any substantial area of the market.

37. Accordingly, with the rule justified, the case was dropped.

- *Courts*

38. Under Portuguese competition legislation, appeals against the Competition Council's decisions on anti-competitive practices and the DGCC's decisions on non-compliance with CC decisions or with the obligation to submit prior notification of concentrations are lodged with the Commercial Court, in the first instance. Appeals against this court's decisions can be lodged with the Appeals Court (2nd instance). The following are summaries of the courts' decisions in 2002:

Chamber of Official Auditors

39. The CC imposed a fine of 100,000 euros on the CTOC (Chamber of Official Auditors) for adopting a binding decision regarding the minimum fees to be charged by official auditors. The arrangement was also considered null and void and as such the court ordered that it be cancelled.

40. Following the defendant's appeal to the Commercial Court, the latter acquitted it of fraudulent practice and found it guilty of negligent practice, for which it imposed a fine of 50,000 euros.

41. Against this decision an appeal was lodged with the Appeals Court, which maintained the verdict of negligence and reduced the penalty to 25,000 euros.

42. When the CTOC failed to comply with the CC's injunction ordering cancellation of the anti-competitive arrangements mentioned above, the DGCC imposed a penalty of 50,000 euros.

43. The defendant lodged an appeal with the Commercial Court, which dismissed the application, though it reduced the fine to 12,500 euros.

44. When the defendant contested this decision in the Appeals Court, the latter ordered the case to be sent back to the Commercial Court where it is awaiting judgment.

NTRAM – Associação Nacional dos Transportadores Públicos Rodoviários de Mercadorias

45. The CC fined ANTRAM the sum of 50,000 euros for adopting a decision to create an association when it issued a circular to bring about a revision of freight transport prices.

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46. The defendant appealed to the Commercial Court, which acquitted it on the grounds that the association's decision did not intend to restrict competition but rather to promote it, given that there were companies in the sector charging prices lower than their costs, under the risk of closing and withdrawing from the market, thus, in their opinion, limiting competition.

TOP ATLÂNTICO TUR – Holding de Distribuição Turística (SGPS), SA

47. The DGCC sentenced the defendant to a fine of 10,000 euros for failing to provide prior notification of the acquisition of 3 agencies/establishments in the company Europeia (travel agents).

48. On appeal to the Commercial Court, the defendant was acquitted on the grounds that it was not proven that with such an acquisition TOP ATLÂNTICO assumed a determining influence over the company Europeia, taking into account the fact that nothing had been ascertained with regard to the value of these agencies/establishments within the structure of Europeia itself.

2. *Mergers and acquisitions*

a) *Statistics on number, size and type of mergers notified and/or controlled under competition law*

49. Portuguese competition legislation stipulates that mergers and acquisitions are subject to prior notification at the DGCC if they create or increase a market share of more than 30% of the domestic market, or of a substantial part of it, or when in the preceding financial year the joint turnover in Portugal of the companies involved in the merger or acquisition exceeds EUR 150 million, net of taxes directly related with the turnover.

50. The Competition Council only issues an opinion on mergers and acquisitions which the Minister for the Economy judges may negatively affect competition. The opinion is not binding.

Number and categories of mergers notified and/or controlled under Competition Law – 2002

Mergers notified or controlled by the DGCC	87
70 were notified in 2002 and 17 were from 2001	
70 were notified in 2002 and 17 were from 2001	
Merger cases examined	74
were approved (2 with conditions attached), 4 withdrew and 3 were not subject to the legislation	
Cases pending at the end of the year	13
Mergers submitted to the CC for an opinion	4
Cases opened for failure to notify a merger or acquisition	3

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51. Table 1 shows the business activities of companies involved in mergers and acquisitions that were notified and subject to control during the period mentioned above.

b) *Summary of significant cases controlled by the DGCC*

VASP / DELTAPRESS

52. The merger and acquisition operation consisted of an exchange of equity between the companies *Hoge - Sociedade Gestora de Participações Sociais, Lda*, *Lusomundo - Serviços, SGPS, S.A.* and *Presselivre - Imprensa Livre, S.A.*, with regard to the share capital of *VASP - Sociedade Transportes e Distribuições, Limitada*, which will be held in equal parts by the three companies mentioned. On the other hand, *VASP* will acquire the total share capital of *Deltapress – Sociedade Distribuidora de Publicações, S.A.*.

Business activity of the companies involved:

- *HOGE - Sociedade Gestora de Participações Sociais* – provider of services in management consultancy, surveys, accounting and company management;

- *LUSOMUNDO - Serviços, SGPS* – management of shareholdings in other companies as an indirect form of exercising economic activity;

- *PRESSELIVRE – Imprensa Livre* – publications (periodicals and others) and radio broadcasting activities;

- *VASP* – marketing and distribution of all types of newspapers and publications;

- *DELTAPRESS* – distribution of daily and non-daily publications and other products, goods and merchandise.

53. When the Competition Council was asked to give an opinion, it judged that the economic balance principle was not satisfied. For the same reasons, it considered that there was not sufficient evidence of a significant boost to the international competitiveness of the companies involved. On these grounds, it was of the opinion that the operation should only be approved if certain commitments were accepted, most of which were contained in the authorization order.

54. By joint order of the Minister of the Presidency of the Council of Ministers and the Minister for the Economy it was decided that non-opposition to the concentration should be **conditional** on acceptance by the notifying parties of the following **commitments**:

- a) They shall not revoke Clause 8.6 of the shareholding contract and shareholders' agreement, under which they are obliged to offer any interested customer the same conditions provided for publications belonging to shareholders. The commitment includes any price revisions, increases or reductions.
- b) They shall notify the DGCC within 48 hours when any proposal to distribute a publication is received;
- c) They shall allow the DGCC to monitor the whole contract process with the interested party in order to guarantee the principal of equal treatment with the shareholders' publications that are also distributed by the company;

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- d) Independently of the preceding paragraph, they shall forward to the DGCC all correspondence with the interested party, along with a copy of the contracts signed;
- e) They shall ensure that the Sole Auditor at VASP sends the DGCC a quarterly appraisal and report on the company's practices in carrying out sales contracts with clients, in comparison with the sale of shareholders' publications and, also, the company's practices relating to its sales promotion policy in sales outlets;

and in the specific area of sales information gathering, processing and distribution:

- f) They shall ensure that information relating to independent publishers is handled with their explicit consent and that sales contracts are not conditional on participation in these systems;
- g) They shall commit themselves to providing publishers whose publications they carry with equal access to the information thus obtained in relation to shareholding publishers;
- h) They shall guarantee the confidentiality of commercially sensitive information in the relations between distribution and publishing, whether it be among the shareholding publishers, between these and the independent publishers or among the latter.

UNICER / Vidago, Melgaço & Pedras Salgadas, S.A.

55. The concentration consisted of the acquisition by UNICER - Bebidas de Portugal S.A. of the shares representing the registered capital of Vidago, Melgaço & Pedras Salgadas S.A and VMPS - Engarraamento e Distribuição de Bebidas S.A.

Business activity of the companies involved:

- UNICER – production and marketing of beers and other drinks;
- VIDAGO, MELGAÇO & PEDRAS SALGADAS, S.A – marketing of bottled waters;
- VMPS – *Engarraamento e distribuição de Bebidas* , S.A. – water distribution and bottling.

56. The Under Secretary of State for Industry, Trade and Services decided to authorize the concentration on the grounds that the dominant position resulting from the operation would not prevent, distort or restrict competition in the carbonated waters market, as Unicer guaranteed:

- a) to maintain the independence of the distribution networks of the Unicer and VMPS groups and, also, the present range of products which they market;
- b) to eliminate any exclusivity clauses for purchasing that exist in the contracts signed with VMPS distributors;
- c) to retain the conditions on which, de facto, product marketing in the VMPS distribution network is carried out at present, i.e. no direct or indirect no-competition obligations preventing the marketing of similar or competing goods will be imposed.

57. In accordance with these provisions, the DGCC was charged with monitoring and assessing the functioning of the market to confirm compliance with these commitments. This takes the form of the obligation that every half-year, i.e. by 31 January and 31 July, the company should provide the Directorate General with the following information on the VMPS distribution network:

- i) The quantity and value of net sales to each distributor in the VMPS network, by type of product and brand;
- ii) The price lists and sales conditions in operation;

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- iii) Prior communication to the Directorate General of Trade and Competition of all the changes to be made to the contracts in force between VMPS and its distribution network.

The commitments assumed are subject to re-evaluation within two years.

Porto Editora / Lisboa Editora

58. The concentration consisted of the acquisition by Porto Editora Lda of shares representing 80% of the registered capital of Lisboa Editora SA.

Business activity of the companies involved:

- *PORTO EDITORA, LDA* – the company’s main activity is the publication of schoolbooks, though activities also cover the publication of non-school books, multimedia products and video games, and retail book sales (from its own lists or those of other publishers) and multimedia products and video games; it is also active in the publishing and retail sales market for teaching material.
- *LISBOA EDITORA, S.A* – publishing and sale of literary, scientific and artistic works, though the company operates almost exclusively in the schoolbook market.

59. Following an opinion issued by the Competition Council, according to which the acquisition does not allow the notifying body to strengthen a dominant position capable of preventing, distorting or restricting competition in the relevant domestic market for schoolbook publishing, it was decided to authorize the operation.

DELOITTE & TOUCHE PORTUGAL / ANDERSEN PORTUGAL

60. The operation notified consisted of the association of Andersen Portugal with the international network Deloitte Touche Tohmatsu. In the first phase, Andersen Portugal is to adopt the latter network’s management model, on the basis of an agreement signed by the two parties, and at a later stage Andersen Portugal and Deloitte & Touche Portugal will merge.

Business activity of the companies involved:

- *DELOITTE & TOUCHE PORTUGAL* – a limited company and member of the worldwide organization Deloitte Touche Tohmatsu, which provides professional business advisory services;
- *ANDERSEN PORTUGAL* – a public limited company, which provides services covering auditing, accounting and outsourcing, tax consultancy and processing, corporate finance consultancy and consultancy in the field of management (human capital and risk consultancy).

61. The concentration did not result in the creation or strengthening of a dominant position capable of preventing, distorting or restricting competition in the relevant domestic markets for auditing and accounting services to major companies, auditing and accounting services to small and medium-sized enterprises or services related to tax consultancy and processing, corporate finance consultancy or management consultancy. Accordingly, it was authorized.

NMC / NEFROMAR

62. The concentration consisted of the acquisition by *NMC - Centro Médico Nacional Lda* of the total registered capital of the company *Nefromar - Centro Nefrológico da Madeira SA* via the transfer of the entirety of the shares in the latter company.

Business activity of the companies involved:

- NMC – hospital consultancy and management services, medical services and patient transport services;
- NEFROMAR - *Centro Nefrológico da Madeira, SA.* – medical and paramedical services.

63. After the Directorate General for Trade and Competition had completed its investigations in connection with the operation, the case was sent to the Competition Council for an opinion. The Council concluded that the concentration did not result in the creation or strengthening of a dominant position capable of preventing, distorting or restricting competition in the relevant market for haemodialysis services in the Autonomous Region of Madeira. Accordingly, it was authorized.

TOTAL FINA ELF / PETROGAL

64. The concentration consisted of the acquisition by *TOTAL FINA ELF PORTUGAL – COMPANHIA DE PETRÓLEOS SA* of part of the assets of *PETRÓLEOS DE PORTUGAL - PETROGAL SA* (acquisition of assets, rights, property and interests corresponding to 111 fuel stations).

Business activity of the companies involved:

- *TOTAL FINA ELF PORTUGAL* – commercial, industrial and financial activities connected with energy, in particular hydrocarbons, in all forms. It may have a holding in or create any kind of enterprise, acquire and exercise any corporate rights, manage enterprises or promote participation in them, or sign lease contracts relating to the corporate purpose, including movable asset or property transactions, for both commercial or industrial purposes;
- *PETROGAL* – crude oil refining and its derivatives; transport, distribution and marketing of crude oil, its derivatives and natural gas; crude oil and natural gas exploration and extraction; any other industrial, commercial, research or service activities connected with those mentioned above. The enterprise may have holdings in companies of any kind and with any purpose, associations, complementary company groups or European groups of economic interest.

65. As the concentration did not result in the creation or strengthening of a dominant position capable of preventing, distorting or restricting competition in the relevant market for “the sale of products and the provision of services in service stations”, it was authorized.

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

1. Regulatory Reform

66. With regard to the external relationship between the regulatory authorities and the Competition Authority, the contents of Nos. 65 - 69 of the Annual Report on Competition Policy Developments in Portugal (1 January 1998 to 31 December 1998) still remains valid.

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Price regulation

Postal services

67. In 2002 the DGCC issued the following opinions:

- An opinion on the proposed standard postage rate for a set of 10 stamps in automatic machines;
- An opinion on the proposed rates for 2003 drafted in accordance with the Universal Postal Service Price Agreement signed by *CTT- Correios de Portugal*, *ICP – Autoridade Nacional de Comunicações* and the *DGCC*;
- Addenda to the Universal Postal Service Price Agreement on the prices for 2003 of non-reserved postal services included in the universal service.

Telecommunications

68. 20. On 30 December 2002, with regard to the fixed telephone service, for which Portugal Telecom SA (PT) holds considerable market power and is the universal telecommunications service provider, the Universal Service Price Agreement was signed by the ICP – Autoridade Nacional de Comunicações, the DGCC and Portugal Telecom, in accordance with Article 11 of Decree-Law No. 458/99 of 5 November.

Electricity sector

69. In 2002, the DGCC issued the following opinions in connection with the electricity sector:

- The proposal presented by ERSE – Entidade Reguladora do Sector Energético for altering the electrical energy sales tariffs for the final customers;
- The ERSE proposal on adapting to the Autonomous Regions of Madeira and the Azores the Regulations on Tariffs, the Regulations on Commercial Relations and the Regulations on Access to Networks and Interconnections;
- An opinion on the ERSE proposals for the 2003 tariffs and prices for electrical energy and other *services*;

2. Trade and Distribution Policies

70. During the year 2002 the legislation remained unchanged in relation to prior authorization for setting up and/or altering UCDRs (Large Commercial Units) – Decree-Law No. 218/97 of 20 August. Permits were given to set up/alter 124 units engaged in food and mixed retailing, specialized retailing and the wholesale business, though most of these permits involved requests to set up specialized retailing.

71. 2002, as in the two preceding years, there was a substantial rise in applications to set up/alter commercial non-food retailing units. This is also explained in the Ministerial Order of October 2001, issued by the Undersecretary of State for Industry, Trade and Services, which suspended the method used for applications to set up food and mixed retailing establishments as long as the legislation in question was in force.

72. In 2002 the DGCC issued or helped to draft various opinions on legislation relating to *trade and distribution*, in particular:

- the preparation of opinions and participation in meetings related to the draft law transposing the European Parliament and Council Directive 2000/35/EC on “delays in the payment of commercial transactions”.
- participation in the ongoing process of revising Decree-Law No. 218/97 of 20 August, relating to prior authorization for setting up and/or altering UCDRs (Large Commercial Units).

3. *Industrial Policies*

73. At the request of the Minister for the Economy, the DGCC issued opinions on proposed legislation which may have implications for competition.

74. In 2002, the DGCC issued a number of opinions, from a competition standpoint, on draft laws in the industry and services areas, in particular:

- *The draft framework law on Professional Public Associations;*
- *The draft on inverting the burden of proof, with regard to public service;*
- An opinion on the draft Ministerial Order and Regulations on Food Hygiene applicable to the wholesale markets and their operators;
- *An opinion on the legislation and legal regime covering explosive products;*
- An opinion on the request to charge a fee for the introduction of ice into the port of Peniche – competition-law analysis of the issue presented
- An opinion on the draft law relating to the creation of specific additional measures safeguarding competition in the film industry;
- Regulatory legislation for the pharmaceutical sector;
- Regulatory legislation for placing plant-based products on the market and marketing them.
-

75. A total of 112 opinions were issued on *sis*a (property tax) exemption applications for acts of corporate co-operation or the concentration of enterprises.

II **Resources of the Portuguese Competition Authorities**

1. *Resources overall*

a) *Annual budget*

Directorate-General for Trade and Competition

EUR 4 520 471 or USD 4 274 557

Competition Council

EUR 108 520 or USD 102 617

b) *Number of employees*

Directorate-General for Trade and Competition

Economists	44
Lawyers	13

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Other professionals	25
Support staff	83
All staff combined	165

Competition Council

Lawyers	5
Others professionals	2
Support staff	3
All staff combined	10

1. Human resources

Directorate-General for Trade and Competition

- a) Enforcement against anticompetitive practices and merger review: 15*
- b) Advocacy efforts: 4*

Competition Council

24. There is no particular assignment of the human resources in accordance with the different types of practice.

2. Period covered by the above information

28. The year 2002

I. Summary of/references to new reports and studies on competition policy issues

- 2002 DGCC Activities Report (only available in Portuguese),
- 2002 Report on the Competition Council's Activities (only available in Portuguese)

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Table 1: Forms and sectors of the merger operations examined and approved in 2002

Sector	Total	Take-overs	Acquisitions	Joint Ventures	Others
Manufacturing or distribution:					
<i>Food and beverages</i>	3		3		
<i>Paper products</i>					
<i>Petroleum products</i>	1		1		
<i>Chemical products</i>	8		8		
<i>Pharmaceuticals</i>	1		1		
<i>Ceramics</i>					
<i>Metal products</i>	2		2		
<i>Machinery and equipment</i>	11		10		1
<i>Elect. machinery and apparatus</i>	5		5		
<i>Medical instruments</i>	1		1		
<i>Motor vehicles</i>	2		1	1	
Wholesale and retail trade:					
<i>Wholesale services</i>					
<i>Retail services</i>	4		4		
Others services:					
Health	3		3		

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<i>Car-hire</i>	1		1		
<i>Real estate</i>					
Funeral	2		2		
Civil construction	3		3		
Tourism	2		2		
Books	1		1		
Repairs	1		1		
General services in the home	1			1	
Auditing services	1				1
Communications services:					
<i>Database services</i>	7		6	1	
<i>Broadcasting</i>	1		1		
<i>Telecommunications</i>	2		2		
<i>Media</i>	2		2		
Financial services	1		1		
Transport services	2		2		
<i>Electricity production</i>	1		1		
Total	69		64	3	2