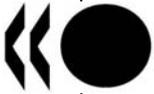


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PORTUGAL

-- 1 July 2004-30 June 2005 --

This report is submitted by the Portuguese Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.

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Executive summary

1. Unless otherwise indicated, this report covers the period July 1, 2004 to June 30, 2005, the first full year of activity of the Portuguese Competition Authority (PCA).

2. During the period under review, the PCA completed the first stage of external recruitment and training of key staff required to carry out its activities. This effort has enabled a considerable increase in resources allocated to anti-trust enforcement, leading to a substantial development of the portfolio of anticompetitive cases. The annual number of decisions on merger control was at about the same level, whereas a number of economic and market studies initiated in 2003/2004 were concluded. The results of these studies are providing an important analytical underpinning for the assessment of merger control as well as for the instruction of anticompetitive cases, particularly abuse of dominance in the regulated markets, a key strategic priority of the Authority. It is anticipated that such front-end analytical investment will lead to decisions on a number of important cases in the year ahead.

3. Regarding anticompetitive practices, 34 new investigations were launched during the period under review and six decisions were taken. Of the cases under active investigation, almost 50% involve regulated markets. Three of the decisions taken involved combined fines of some € 3.5 million, largely dominated by a cartel case in the pharmaceutical industry. The other two fines were applied to Professional Associations as a result of *prix fixing*, an area of increasing concern in PCA anticompetitive enforcement. These three decisions are currently being appealed to the Lisbon Commerce Court.

4. During the period under review, 67 merger transactions were directly notified to the PCA. During that period, 62 final merger review decisions were taken¹, three of which were approved with remedies under a Phase II review process. Of relevance, the fact that, for the first time, a structural remedy was imposed by the PCA in the framework of the approval process of a Phase II review concerning a transaction in the insurance sector. In addition, the decision was taken to move 6 notified transactions to a stage II review process. The PCA has further examined 12 possible referral cases to the EC, under EC Regulation 139/2004.

5. As to its statutory advocacy efforts, and for the first time, judges were specifically targeted through the delivery of several Courses and Seminars. A first Course on European Competition Law, co-financed by the EC and endorsed by the Superior Judicial Council, was attended by 85 judges. A second Course, co-organised with the Office of the Attorney General, also covered European Competition Law and was attended by 82 Public Prosecutors and legal staff from the Office. In addition, PCA staff cooperated in the delivery of a series of Seminars on the same topic, organised countrywide by the main consumer association, and also targeted at the judiciary. A monthly newsletter in Portuguese targeted at a wider, yet specialised public, was also launched and has currently a distribution list of some 1,000 spread across 19 countries. In addition, the PCA has issued several Recommendations to the Government, covering, *inter-alia*, the motor fuels, telecom, and pharmaceuticals markets. Most of these Recommendations are in the process of being adopted into policy. Moreover, the monitoring of recently-liberalised markets, namely motor fuels, was also the object of regular follow-up by the PCA and two newsletters issued. Decisions, studies, and other contents generated by the PCA were regularly inserted in its Web Site, which registered a monthly average of 8,000 visits.

6. PCA followed-up on its regular consultations with Sector Regulators, as required under its operational activities. A Round Table on Competition in the Liberal Professions was also co-organised with the EC for the benefit of staff from Sector Regulators and from concerned Government Departments.

¹ In one Phase II case, the notification was withdrawn by the undertaking.

Furthermore, and benefiting from the Capital Markets Regulator (CMVM) extensive experience in procedural issues, PCA staff participated in knowledge activities with CMVM experts.

7. Staff training remained a key priority during the period under review. A total of 17 seminars were organised by the PCA, with recourse to competition experts of high international reputation in competition policy. Without disregarding industrial organisation issues, the seminar series was further widened to cover competition law. A considerable number of staff also attended international conferences of major standing. With a view to foster an increasing concern of graduate teaching on competition policy, the PCA has also signed Memoranda of Understanding with four Portuguese Universities, with programs in competition law and economics.

8. Through its active participation in the ICN, the ECN, the ECA, the OECD Competition Committee and the Inter-American Competition Forum, PCA continued to foster its network of multilateral international cooperation while contributing regularly to policy formulation and evaluation. Bilaterally, a second Iberian Competition Meeting was co-organised with the Spanish Authorities with a special focus on the relationship with the judiciary. To this extent, and for the first the time, supreme court judges as well as judges of the courts of appeal of both countries participated in the Meeting, where an exchange of views took place on the pros and the cons of the introduction of leniency programs in the framework of anti-cartel enforcement.

9. As the PCA approached its second year of activity, and after a period of rapid growth, it was considered important that an external and independent evaluation of its institutional performance be carried out. To this extent, a Pilot Project was prepared with OECD Competition Division for subsequent implementation within the framework of the preparation of the 2005-2008 business plan. In order to enhance quality and advise on any adjustments which may be required in the framework for the discharge of competition enforcement, a Legal Scientific Advisory Board was created. The Board comprises six University Professors of leading Portuguese Law Schools. The contribution of economic analysis to the assessment of key cases has also start benefiting from the contribution of Prof. Luis Cabral, New York University, who became the PCA Lead Economic Advisor.

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

I.1 Summary of relevant measures relating to the Competition Law

10. Under the new recent legal framework for competition, Law 18/2003 of 11 June, a new Regulation on prior control of anticompetitive practices - Regulation n. ° 9/2005 – was adopted by the Portuguese Competition Authority (PCA), replacing the former Ministerial Order 1097/93 of 29 October since the beginning of February 2005.

11. Following up the EC Regulation 1/2003, implementing articles 81 and 82 of the EC Treaty, the new system is not applicable to agreements, decisions of associations and concerted practices that affect trade between EU Member States, concerning only cases caught by the national law. This Regulation includes a form to help undertakings gather the information needed for the PCA's assessment and sets 3 levels of fee due – between 7.500 and 25.000 euros - based on the turnover of the applicants – from 150.000.000 euros to over 300.000.000 euros - , along the lines of the regime established for Merger control

II. Enforcement of competition law and policies

II.1 Anticompetitive practices cases

A. General Overview

12. With regard to anticompetitive practices under Law 18/2003, 17 investigations were launched in the second half of 2004 and 17 more in the first half of 2005.

13. Among the cases pending, 3 are related to concerted practices, 10 concern horizontal agreements, 5 involve decisions of undertakings' associations – 3 cases involving liberal professions - and 6 are related to abuses of dominant position.

14. Nearly half of the new cases under investigation involve regulated markets in the areas of electronic communications, financial services (payment cards) water and waste, transportation (air and maritime), ports and energy (liquid fuel, bulk propane gas and others). Other markets involved are medical gases and diabetes reagents, wood pulp, coffee supply, school milk, online retailers of photographic products, public health care services. 3 cases were opened concerning the decisions of professional associations with regard to veterinarian services, dentist services and medical services.

15. Six proceedings were concluded. 3 investigations resulted in non-infringement decisions and 3 resulted in infringement decisions, one pursuant the former Competition Law, another taken under the current Competition Law, Law 18/2003, June 11th. and article 81 of EC Treaty

B. Summary of the cases decided

(i) Collusive tendering in public procurement – public contract for the supply of diabetes reagents to a public hospital

16. Following a complaint of a public hospital, the PCA launched an investigation and unearthed evidence of concerted practices involving 5 major pharmaceutical companies relating to the tenders for supply contracts of Diabetes reagents, in 2003.

17. In fact, the 5 pharmaceutical companies had submitted offers for diabetes reagents with the exact same price: 20€. The PCA concluded that given the confidentiality of tenders, the same price tendered by the five pharmaceutical companies could only be explained by a collusive behaviour.

18. The total fines were around € 3.300 globally, with individual fines of approximately € 660.000. The decision was appealed. The appeal proceedings before the Commercial Court are ongoing.

(ii) Veterinarian Professional Association

19. The PCA has investigated a complaint concerning price fixing by Veterinarian's Professional Association, concluding that this Professional Association had adopted a Deontological Code in 1996, prescribing that services performed in independent practice by a veterinarian must be charged in accordance to a minimum fee established in a schedule enacted by the National Veterinarian's Union.

20. The minimum fees schedule was meant to apply to all veterinarians' services provided in Portugal by any veterinarian in independence practice (including veterinarian from other Member-State of the European Union) and its last version dates from 2004.

21. The PCA considered that minimum price fixing infringed Law 18/2003 and article 81 of the EC Treaty, and therefore imposed a fine around 76.000 euros.

22. This was the first PCA's decision relating to a proceeding under article 81 of the EC Treaty, and also the first case regarding a liberal profession. The decision was appealed, the appeal proceedings before the Commercial Court still pending.

(iii) Dentist Professional Association

23. The PCA also launched an investigation concerning the Dentist Professional Association fees' schedule (setting minimum and maximum values), that was publicised in its website, concluding that this Professional Association had adopted a Deontological Code according to which it is a deontological fault to charge fees higher or inferior to those indicated in the schedule approved by that Association.

24. The PCA considered that minimum and maximum price fixing by the Dentist Professional Association infringed Law 18/2003 and article 81 of the EC Treaty, and imposed a fine of € 160.181,00.

25. The decision was appealed before the Commercial Court, the appeal proceedings still pending.

(iv) Parfum et Beauté – Produtos de Cosmética Selectiva, Lda.

26. This case concerned a selective distribution agreement in the market of perfumes and cosmetics, which led to a refusal to deal with any dealer but authorised dealers.

27. The PCA's investigation concluded that Competition law and EC Regulation n.º 2790/99, the vertical restraints block exemption, had not been infringed. In fact, neither the conditions of article 4 of the Regulation were met nor *Parfum et Beauté* had a market share higher than 30%, which allowed the PCA to file the case.

(v) UNICER - Distribuição de bebidas

28. The PCA was able to file a case regarding the distribution system of one of the major national producers and distributors of beer, water and soft drinks in Portugal, after the company withdrew non-competition clauses and undertook other commitments in order to eliminate competition concerns. EC Regulation n.º 2790/99, the vertical restraints block exemption, was closely followed during the investigation.

C. *Prior Control of anticompetitive agreements*

29. One decision was delivered pursuing article 5 (2) of Law 18/2003 and the Ministerial Order 1097/93 of 29 October, involving a Best Practices Code for the distribution of electrical material, while a new application was received in the financial services market, regarding a framework agreement of financial assets' management .

D. *Others*

30. Under the Portuguese Competition Law, failure to supply or the supply of false, inaccurate or incomplete information in response to a PCA's request is punishable with a fine that may not exceed 1% of the previous year's turnover of each undertaking.

31. A fine of € 1.000,00 was imposed in a case relating to failure to supply information proceedings by the Veterinarians' Professional Association. Although the decision was appealed before the Commercial Court, the Court upheld the PCA's decision.

32. The PCA created a Litigation Division to have a focal point when addressing the judiciary: it will follow up appeals lodged against the PCA's decisions and other issues demanding interaction with courts and will also issue opinions under Competition Law as well as draft new proposals relating to the enforcement of Competition Law, namely addressing the implementation of EC Regulation 1/2003 – regarding the enforcement of articles 81 and 82 of the EC Treaty – in the Portuguese legal system. The new Department is also expected to assess and comment European Courts' case law in the Competition area and further developments of competition law and policy within the European Union.

33. During the period covered by this report, the Department intervened in the appeals of anticompetitive practices mentioned and in other administrative appeals, relating to the powers of the PCA as an independent administrative body.

II.2 Mergers

Statistics

Statistics regarding merger control from 1st July 2004 to 30th June 2005

Table I: Concentrations decisions taken since July 2004

Notified merger operations	67
Total decisions	65
Pending	16
Phase I	
Non-notifiable transaction	4
Clearance	51
Clearance with commitments	1
Procedure to In-depth investigation	6
Phase II	
Clearance	0
Clearance with commitments	3
Prohibition	0
Tacit approval	0
Remittance to European Commission	0
TOTAL FINAL DECISIONS ADOPTED (does not include Phase I decisions to proceed into Phase II)	59

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

	Cases	%
HORIZONTAL	46	78
VERTICAL	0	0
CONGLOMERAL	13	22
TOTAL	59	100

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

	Cases	%
Multi-jurisdictional filings (within EU)	4	7
Multi-jurisdictional filings (outside EU)	8	14
National with involvement of undertakings from other EU member states	5	8
National with involvement of undertakings from countries outside EU	3	5
Completely national	39	66
TOTAL	59	100

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

	Cases	%
Merger	1	2
Acquisition of majority shareholdings	45	76
Takeover bid	1	2
Acquisition of assets	6	10
Joint venture / control	6	10
TOTAL	59	100

34. During the second half of 2004, 26 merger transactions were notified and 23 final Phase I decisions were adopted, three of which were Phase II final decisions. Two cases proceeded to Phase II.

35. During the first semester of 2005, 41 transactions were filed under the merger control rules with 36 final Phase I decisions and 4 to proceed to Phase II. No Phase II final decisions were adopted.

36. In what regards Art. 4(5) of EC Regulation 139/2004, the Merger Regulation, between July 1st 2004 and June 30th 2005, 12 possible referral cases to the European Commission were examined by the PCA, none of which were opposed by the PCA.

37. It should be noted that several of the cases notified were of particular relevance in the context of the Portuguese economy. The PCA has indeed taken an active role in the complete overhaul of the Portuguese energy sector, which was determined by the Portuguese Government, analysing several merger operations at national level and cooperating closely with the European Commission in one case with a community dimension.

Summary of significant merger cases decided

38. Given the new legal framework, the merger cases included herein aim to give an illustration of the application of the new rules, both from a substantive as well as a procedural viewpoint. Also included are other relevant decisions, given the importance of the sectors involved.

39. These are, for example, the 2 Phase II decisions; 2 Phase I decisions; and 2 important cases currently in Phase II.

i) EDP / CGD / NQF (Portgás)

40. The notified operation concerned the energy sector, in particular the distribution of natural gas. The transaction involved the acquisition, by *EDP – Electricidade de Portugal, S.A. of NQuintas – Projectos e Investimentos, S.A.*, a holding company which jointly controlled *Portgás*, the incumbent company for the distribution of natural gas to small businesses and households in the northern coastal region of Portugal.

41. After a Phase II investigation, a final decision was adopted on September the 20th 2004. It determined that, with the imposition of a number of conditions and obligations, the competition concerns that had been identified during the investigation, in particular the possibility of foreclosure of customers when choosing electricity or natural gas as their energy source for businesses and households, would be resolved.

42. This case has a particular relevance due to the fact that, at the time, the central merger case concerning the restructuring of the energy sector in Portugal was being analysed by the European Commission (*COMP/M.3440 – EDP/ENI/GDP*), thus a close cooperation between the two institutions was decisive.

43. Bearing all this in mind, the Portuguese Competition Authority requested the *Cambridge Economic Policy Associates, Ltd* to provide an economic study on the restructuring of the electricity and gas markets in Portugal. The study prepared by the team headed by Prof. David Newberry, head of the Department of Applied Economics of Cambridge University, can be found at the Portuguese Competition Authority website: www.autoridadedaconcorrencia.pt.

44. Directly linked with the case *COMP/M.3440 – EDP/ENI/GDP* is the merger case 21/2005 – *REN/Rede de Transporte de Gás Natural em Alta Pressão*, a second phase of the former case, through which *REN*, the incumbent company in charge of the transport of high-powered and very high-powered electricity, would acquire, from *EDP* and *ENI*, the assets related to the transport of high-pressured natural gas, thus controlling both transporting networks. Since this transaction did not have a community dimension, *REN* notified the acquisition to the PCA. Currently the case is in Phase II investigation.

ii) Caixa Seguros / NHC (BCP Seguros)

45. On July 27th 2004, *Caixa Seguros SGPS, S.A.* - holding responsible for the insurance area of *Group Caixa Geral de Depósitos* – notified a transaction through which it would acquire the control over a number of companies, integrated in *Group BCP* and active in the insurance market.

46. The operation did not, however, include insurance products sold (retail) through the various banking branches of *Group BCP*. In particular, the impact of the transaction concerned the Non-Life insurance segment, where *bancassurance* is less relevant as a distribution channel.

47. *Caixa Seguros* and *Group BCP* were the two dominant undertakings active in both the Non-Life insurance segment as in most of the relevant markets that were defined, such as, among others, car insurance and labour insurance.

48. As a result of the transaction, *Caixa Seguros* would strengthen its dominant position in the Non-Life insurance sector, as well as in several of other relevant markets defined which lead the Portuguese Authority to open an in-depth investigation on October 14th 2004.

49. The PCA commended a study on *Competition Policy in the Portuguese Insurance Sector* in order to assess the impact of this merger to Professors Christian Gollier and Marc Ivaldi, from IDEI, *Université de Toulouse*, which can be found at the Portuguese Competition Authority website: www.autoridadedaconcorrencia.pt.

50. After a Phase II investigation, a final decision was taken on December the 30th 2004. It determined that, with the imposition of a number of conditions and obligations, the competition concerns that had been identified during the investigation, namely in the car insurance market, would be resolved.

51. This was the first case in which the Portuguese Competition Authority imposed structural remedies – *Caixa Seguros* would have to divest, within a year to a third party, *Seguro Directo Gere*, a company active in the sale of car insurance through a phone channel.

iii) *Credibom/ BCP (consumer credit at the point of sale, excluding auto credit)*

52. On February 9th 2005, *Credibom – Instituição Financeira de Crédito, S.A.* notified a transaction whereby it acquired the sole control of *Group BCP*'s consumer credit at the point of sale business (excluding the auto credit business), up until then operated by its wholly-owned subsidiary *Credibanco – Banco de Crédito Pessoal, S.A.*

53. On April 7th 2005, the Portuguese Authority decided that, although the transaction did constitute a merger for the purposes of article 8.º of Law n.º 18/2003, of 11th June, it, however, was not subject to notification under article 9.º of the same Law.

54. The relevance of this case lies in two aspects: (i) it constituted the first occasion where the market of consumer credit, excluding auto credit was analysed by the Authority and; (ii) given the specifics of the sector and the absence of a precedent, it required a thorough market investigation which concluded that the market-shares were below the 30% threshold for notification set in article 9.º, n.º 1, al. a).

55. On the specifics of the case, the Authority excluded, due to its characteristics, the concession of auto credit from the relevant market. On the other hand it concentrated on three different types of consumer credit at the point of sale: (i) personal credit; (ii) revolving credit (by way of credit cards) and; (iii) “classic” forms of credit.

56. The Authority concluded that, for the purpose of this transaction, revolving credit and “classic” forms of credit were substitutable and were, therefore, in the same product market. On the other hand, the Authority concluded that personal credit does not integrate the same relevant market as the other two types for the following reasons: different characteristics as regards interest rates (price); different caps (minimum and maximum) imposed on the awarded credit; time necessary for the awarding of the credit to be approved; repayment periods.

iv) *Controlinveste / Lusomundo Serviços and Barraqueiro / Arriva (ATMS)*

57. Both of these operations went to Phase II investigation. However, since they represent two important cases in two important sectors – the media sector² and the transport sector (subject to a concession) -, a general reference is made.

58. On March 9th 2005, *Controlinveste, SGPS, S.A.* – holding of a group of undertakings active in the media sector, in particular the sporting segment (newspaper, television, sports broadcasting rights for television and advertising) – notified the acquisition of *Lusomundo Serviços, SGPS, S.A.* – sub-holding group integrated in *Group Portugal Telecom*, active in the media sector, in particular written press and radio, where it controls several of the best-known Portuguese daily newspapers and magazines and a top rate radio station.

59. On June 14th 2005, the Authority decided to open a Phase II investigation on the case due to the fact that the transaction might create or strengthen a dominant position which could affect competition in several relevant markets of the media sector, in particular the market for national daily press of general content.

60. On November 22nd 2004, *Barraqueiro, SGPS, S.A.* – holding company active in the sector of both road and rail transport of passengers – notified a transaction whereby it acquired joint control, with *Arriva Investimentos, SGPS, S.A.* – a holding company active in the sector of road transport of both passengers and goods -, of *Arriva Transportes da Margem Sul, S.A.* (ATMS) – a company active in the regular transport of passengers in the region of the Setúbal Peninsula.

61. On February 22nd 2005, the Authority decided to open a Phase II investigation on the case due to the fact that the transaction might create or strengthen a dominant position which could affect competition in the relevant market of public road and rail transport of passengers, in the axis Setúbal/Lisbon over Bridge *25 de Abril*.

The ECA Network

62. Under the Merger subgroup of ECA - European Competition Authorities network, during 2004 and 2005, the PCA managed the information relating to mergers multiple notifications in 9 cases, all of which had a direct impact in the territory of Portugal, were notified to the Network by the national Authority. The PCA also contributed to draft the *ECA NF-guide to national notification form*, that seeks to inform companies of the nature and size of the information required by different jurisdictions regarding national merger control regimes.

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

III.1 Studies

A) Telecommunications

63. Several studies on the telecommunications sector were commissioned by the PCA in 2004. One of them made a structural evaluation of the telecommunications sector, identifying problems and proposing corrective measures, as well as quantifying the losses in social welfare of the lack of competition in the sector.

² *Controlinveste/Lusomundo Serviços* was eventually approved without conditions in August 2005.

64. This study was commissioned by *Autoridade da Concorrência* to a research team from New York University's Stern School of Business, coordinated by Professor Luís Cabral and including Professors Nicholas Economides and William Greene. The study resulted in two separated papers, one on "Public Policy Issues for the Portuguese Telecommunications and Cable TV Sector," and the other on "Cost and Demand Characteristics of the Portuguese Telecommunications Sector."

65. In particular, this study concluded that Portuguese consumer has today access to the most advanced telecommunication services. But in addition to availability, the value of a service to consumers is measured by how low its price is. In other words, from a consumer's perspective, it's the consumer surplus, not the total surplus, that matters. And the case can be made is that the Portuguese consumer is paying more than he should for telecommunications services - certainly more than his fellow European consumers are paying.

66. Another paper discussed the role of cable television networks and their ownership structure in promoting competition in the local access market, showing that the dual ownership of a local telephone network and a cable network, compared with separate ownership, may influence the incentives to invest in upgrading the cable television network and that separate ownership of the two networks is important to promote competition in local access.

67. The PCA also commissioned a Broadband Benchmark Report to Arthur D. Little, whose main conclusions were that broadband penetration in Portugal is within the average of the lagging group in Europe and it is expected to remain as such until 2010; that Broadband access speed and service innovation are bellow market average; that Portuguese market characteristics display some weakness compared to other European countries that may jeopardise overall pace of development and massive adoption of Broadband. Main inhibitors pointed out by Portuguese Market players are access prices, level of competition, access infrastructure, PC penetration, digital illiteracy and regulation (unbundling the local loop delays). A large number of both regulation and incentive policies have been adopted by growing and mature broadband countries that may be used as reference practices by national agencies and authorities.

68. As result of another study, the PCA made a report³ that evaluated the progress of competition in the telecommunications sector in Portugal by comparing the price levels of several services in Portugal and in other countries from the European Union. In several services was concluded that prices of telecommunications services in Portugal were not only higher than the European Union average, but multiples of the best practices within the EU.

B) *Electricity and Gas*

69. Within the European Competition Authorities (ECA) context, the Portuguese and Spanish Competition Authorities jointly with the European Commission prepared a Report on competition issues in the energy sector.

70. The Report provided an overview of recent practices by the different Competition Authorities and by the European Commission regarding the market definition, competition assessment and remedies in relation to mergers and anticompetitive practices in energy markets. It also attempted to contribute to the establishment of a set of common views on competition policy and on investigation methodologies to be used when analysing competition issues in energy markets, bearing in mind the achievement of the internal energy market.

³ Available at the PCA's website: www.autoridadedaconcorrenca.pt.

71. This Report generally concluded that:

- Many outstanding issues have to be addressed in order to put in place a well functioning internal energy market. Among them are the regulatory and market designs (spot market, market for balancing power and ancillary services, bilateral contracts and forward markets), the levels of interconnection capacity between the European States and the rules governing the use of such capacity;
- Recent competition law enforcement experience also shows that many competition issues have yet to be solved. The existing market structure of both the gas and electricity industries in most EU states, which are characterised by vertically integrated utilities holding dominant positions in various markets, places several constraints on the achievement of the level playing field necessary for competition to develop. These constraints are particularly noticeable at domestic level;
- The proper unbundling of network activities, as well as non-discriminatory third party access (TPA) regimes and pro-competitive market structures, constitute necessary requirements to overcome some of the competition problems identified in this first stage of market opening. These problems have been addressed in a number of merger control and restrictive practices cases. Many of these cases were settled with the imposition of remedies, in what has proven to be one way of achieving lower concentration levels and better TPA rules.

C) *Notaries*

72. In the wake of the Commission's Communication of 20 April 2004, the PCA undertook a detailed study of the restrictions existing in the Notaries' profession.

73. The study was commended to *Centro de Estudos de Direito Público e Regulação* (CEDIPRE), the Centre for Public Law and Regulation Studies of the Faculty of Law of the University of Coimbra (May 2005) and allowed a useful insight into the framework and regulation of this liberal profession in Portugal, highlighting the factors that hinder competition in the sector since these services were privatised in 2004.

74. The overall conclusion was that the regulation of this profession in Portugal was excessively restrictive, due to barriers to entry, price fixing, advertising prohibitions and business structure restrictions. The study concluded that many of these restrictions were often disproportionate, unjustified and unnecessary to protect and pursue public interest. A recommendation addressed to the Government is under way, with proposals to remove or amend some of the restrictions identified.

D) *Vertical Relations between Large Retailing Groups and their suppliers*

75. Similarly to other European countries, the Portuguese food retailing sector has shown substantial developments over recent years, with the first hypermarket in Portugal dating from 1985 and the hard discount chains appearing in the mid nineties, Lidl being the first. The evolution since 1989 has been marked by several restrictive legal diplomas on the creation of new large shopping areas.

76. The descriptive part of the study concludes on a strong activity concentration at the hands of 4 large retailing groups (LRG), detaining around 90% of the total food sales against 10% disseminated, mostly, between the small traditional businesses. The number of the latter represents, however, about 88% of the total number of food sellers in Portugal. Recently, in 2004, about 75% of the total selling area was

owned by the four largest retailing groups (SONAE, Jerónimo Martins, Les Mousquetaires – ITMI, and Carrefour).

77. This concentration is also visible on the upstream side of the market, with the two main purchasing pools in Portugal (composed by the main LRG and the main grocery chains) representing about 50%, and more than 65% in some product categories such as drug store for instance, of the total sales from suppliers.

78. From an econometric point of view, the fast development of large retailing groups has raised two major issues in the literature. First, it is usually claimed that the increasing upstream concentration of these groups in the supplying market, through vertical integration schemes and purchasing pooling, has led to a substantial rent shift from suppliers to these groups. A second related issue is whether these groups improve consumer welfare passing-through to final consumers the incremental rents they retrieve from suppliers. The literature is both rather inconclusive on these issues and most of the existing studies focus on the downstream side of the problem on the impact large retailing groups have on consumer welfare. This analysis aims to fill in this gap by tackling the latter issues on an upstream supplying market perspective. We do so on the basis of instrumental variables panel-based econometric approach applied to four years of selling and purchasing quarterly data specific to large retailing chains disaggregated at the brand, product, and supplier levels. Results reveal that purchasing pools and vertical agreements increase large retailing groups' buyer power and that little of these gains pass-through to consumers.

New studies

E) Public Procurement

79. This Authority launched a study on markets of "public works" jointly with other public Authorities with powers in this matter, to assess transparency of the adjudication and execution of "public works" and in order to guarantee that the State gets the best available conditions in the market in terms of price and quality of service.

80. The study aims to (a) benefit from the experience of other National Competition Authorities in fighting cartels in this area; (b) to raise public awareness, mainly alerting public institutions to the harmful effect of collusion and to provide them useful indicators to identify collusive behavior between participants in public tenders and (c) to monitor closely some public tenders in the public works sector, for the purpose of identification of potential practices that restricts competition.

F) Pharmacies

81. A study on the structural features of the pharmacies' sector in Portugal was also launched, aiming to assess the level of competition in this area and to propose to the Government measures to improve competition and to ensure more efficient market conditions in a sector extremely relevant for consumer welfare.

Ongoing Studies and Market Monitoring

G) Fuel Markets

82. This Authority is monitoring the market of fuels since the beginning of 2004, in the sequence of the liberalisation of the prices of those products. The ongoing econometric study departs from a fixed effects panel-based log-linear approach applied to weekly price data on both international petrol (brent) and fuel prices and on final pump prices in Portugal, discriminated by brand and location, ranging from January 2004 to June 2005. It has found evidence of very small price differences, independently of location

and local market concentration, among the major oil companies which control more than 90% of both the wholesale and the retailing activities.

H) Cereal milling for the bread industry

83. In order to get deeper insight on the market structure of cereal milling for the bread industry and its dynamics, the econometric study on the downstream relation between the wheat milling sector for the production of flour to the bread industry has been, recently extended to a larger time frame.

I) Wood for paperpulp

84. The ongoing study on the oligopsony power in the Portuguese pulpwood market is now trying to determine whether wood suppliers have been financially squeezed following from the oligopsony market power of their customers, the pulp millers.

III.2 Market monitoring

Newsletter on iron and steel product price increases (October 2004)

85. Following complaints received by the PCA from different associations on the strong rise in iron and steel product prices and on possible concerted practices in the sector, the PCA examined this sector and published a Newsletter on this issue.

III.3 Recommendations

86. Within this period of time, the PCA drafted several recommendations, some of which are detailed as follows:

- The Recommendation on the petrol market addressed to the Government, led to a new legal framework now allowing supermarkets to sell petrol, in order to increase competition. Following the Recommendation, the Government is also drafting a new act introducing further competition between petrol stations in motorways, which will have to disclose prices of the nearest station in order to allow consumers to choose.
- The introduction of natural gas in Portugal demanded a new legal framework on the installation security norms as well as on the creation of the inspection bodies. The PCA looked into the provisions regarding inspections and issued a recommendation on the natural gas installation inspections suggesting further clarification of the obligations of different operators in this area and measures to reduce the strong information asymmetries between operators and consumers.
- The PCA contributed to the draft of a new law regarding the sale of medicine not subject to medical prescriptions, products that were previously sold exclusively by pharmacies, in order to improve competition and allow consumers wider access to these products as well as lower prices.
- The PCA also addressed the Government a recommendation on the transparency of prices of mobile communications services, including proposals to facilitate tariff choice by consumers and to promote price competition between mobile communications service providers.

87. In this context, it was recommended that mobile operators should make possible - in its website and agents who commercialise those services - for every consumer to simulate and determine which price plan and its respective cost is better adjusted to the profile of consumption defined by each customer.

III.4 Co-operation

ECN - European Competition Network -

88. Under EC Regulation 1/2003, the new implementing regulation of articles 81 and 82 of the EC Treaty, the PCA opened 10 cases, 2 of which were closed during this period, referring both to Liberal Professions.

89. Within the ECN work, the PCA launched several questionnaires relating to the implementation of the new regulatory framework for electronic communications, the investigation powers related to electronic information when inspecting business premises, the competition policy issues raised by the integration process of the European energy markets into an internal energy market, the collusion in the Construction Industry and telecoms.

Cooperation with Universities

90. The PCA concluded Cooperation protocols with 4 leading Portuguese Universities in the areas of law and economics seeking to support academic research of relevant issues for Competition Law and Economics and to encourage actions that will disseminate a competition culture.

Bilateral Cooperation

91. The PCA organised an internship for a high rank official of Cape Verde, an African Portuguese speaking country, which covered the institutional framework of Competition and the enforcement experience in the areas of mergers, anticompetitive practices and regulated markets.

92. Portugal and Brazil co-organised in 2004 the first Competition Meeting of Portuguese speaking countries in Rio de Janeiro, which will be followed by a second meeting in 2006 in Portugal.

93. The PCA concluded a Memorandum of Understanding (MoU) with the Romanian Council for Competition, and organised a workshop with Romanian officials to share experiences regarding the enforcement of national and European Competition law.

94. The PCA assisted fellow National Competition Authorities from the new EU Member States, sharing information concerning national law and procedural issues under the new implementing EC Regulation of European competition provisions.

IV. Resources of competition authorities

IV.1 Resources overall

a) Annual Budget

95. On a cash basis, annual budgetary commitments amounted to € 5.8 million, as compared to € 2.3 million in the previous year. The main sources of funds were revenues directly collected from Sector Regulators, in an amount of up to 7.5% of charges levied on regulated undertakings. Additional funding

was provided by fees on merger control; by 40% of the value of imposed fines (the balance accruing to the Government budget); and by marginal transfers from the Government budget.

b) Number of employees

96. As of end-2004, 77 staff was on board, 56% of which with an academic background equal or above Masters level. This represents a 50% increase in high-level staff, as a result of recruitment undertaken in mid-2004. The number of employees falling into each category is indicated in the table below.

Board	3
Management	6
Economists and Market Specialists	23
Lawyers	23
Other Professional Staff	3
Support Staff	19
Total	77

IV.2 Human resources allocation

97. Of the total management and staff above, 51 were working on competition enforcement. Of these, 36 officials were working on enforcement against anticompetitive practices; 9 on merger review and enforcement; and 6 on competition advocacy efforts. Compared to December 31, 2003, the striking difference is in the amount of staff allocated to anticompetitive practices which experienced a threefold increase.

IV.3 Period covered by the above information

98. Budgetary information for 2004 covers the period January 1-December 31, whereas for 2003 it covers the period from March 24 (when the Authority started its activities) to December 31. Unless otherwise indicated, human resources information is reported as of December 31, 2004.