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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 2006 through 30 June 2007

This annual report is submitted by the Portuguese Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 October 2007.

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Executive summary

1. Unless otherwise indicated, this report covers the period July 1st, 2006 to June 30th, 2007. As it completed its third full year of activity, the Portuguese Competition Authority (PCA) has concluded two complex merger reviews in telecommunications and banking, while its first abuse of dominance case is reaching a final decision stage.

2. Two relevant sets of measures related to competition law are worth notice in the period under review. The first set covers merger review whereas the second covers anticompetitive conduct. As to merger review, an important legislative development was the approval of a first amendment of the competition law, in the framework of the new regime for takeover bids. As a result, the period for merger review was reduced to 90 working days whereas PCA has also enacted guidelines for a prior evaluation of mergers. PCA has further introduced a simplified merger review process towards expediting the assessment of less complex merger operations. The prior review and the simplified merger review processes are expected to facilitate merger assessment, by anticipating issues and data requirements, or otherwise by introducing a fast track approval process for mergers where competition concerns are unlikely to materialise. Regarding anticompetitive conduct, PCA enacted the administrative procedure for the new leniency legislation (*Regulamento 214/2006, 22 November*). By setting out the mechanisms for the granting of immunity from, or a reduction of, infringement fines, the procedure is expected to contribute to enhance anti-cartel enforcement, which remains a key strategic priority.

3. As to operational activity, the period under review was dominated by two Phase 2 merger control decisions of approval with remedies reached after complex review processes. These operations resulted from unsolicited take-over bids amounting to a combined €15 billion, in the telecommunications and in the banking industries. Should complexity be measurable by the number of relevant markets evaluated; of sector regulators involved at various stages of decision-making; of market studies submitted by the parties; of economic studies commissioned and/or developed in-house; of intervening international consulting and law firms; of the interactions in the process for undertakings' acceptance of conditions for clearance; and of the daily press clips, then these two merger reviews have been highly-complex operations. Although in the end none of the bids was successful, there are lasting consequences of PCA review work and of the remedies agreed thereof. In this regard it is worth underlining three outcomes: (i) increased relevant experience in the assessment of remedies and in the requirements for their implementation; (ii) improved articulation between interested sector regulators and PCA, fostering further convergence of competition policy concerns; and (iii) reshaped merger control processes arising from the procedural experience gained by PCA.

4. Overall, during the period under review 77 merger transactions were directly notified to PCA. During the same period, 81 final merger review decisions were adopted, of which six under a Phase II review process. Of these, four were cleared with commitments. Besides the telecom and the banking sectors, the operations approved with commitments covered the dairies and the air transport sectors. In support of the assessment of these mergers, a substantial amount of economic work was undertaken, *inter-alia*, making use of state-of-the-art quantitative modelling techniques.

5. Regarding anticompetitive practices, ten new investigations were launched during the period under review and eight decisions were taken. Of these, three resulted in infringement decisions leading to combined fines of some €4.1 million levied on nine undertakings in the media, port services, and salt production sectors. Overall, the infringement output is below the one reported for 2005/2006, mostly reflecting staff reallocation to merger work and to judicial appeals, as well as the greater complexity in obtaining proof in some cartel cases. To this extent, the field investigation effort was stepped-up, with four major dawn-raids conducted during the review period. This has contributed to the strengthening of the case

pipeline which, together with the anticipated impact of the leniency program, would lead to major cartel decisions in the year ahead.

6. As a result of past PCA antitrust decisions, the litigation effort experienced a substantial increase during the period under review. Decision appeals were systematically launched before the Lisbon Commerce Court, often with subsequent recourse to the Lisbon Appeal Court or even to the Constitutional Court. Furthermore, case investigation issues have also been appealed to the Lisbon Administrative Court. In general, judicial decisions continued upholding PCA decisions, albeit with some reduction of the level of fines. But they also have raised a number of important, yet mostly procedural, issues which are gradually being incorporated into PCA case instruction practice. With further PCA important anti-trust decisions expected in the year ahead, and the judicial case law from past decisions, the level of litigation will further increase in the year ahead.

7. Advocacy efforts continued at the forefront of PCA activities during the period under review. A draft Recommendation on the Liberalisation of Notary Services has been posted for public discussion, and its final version is in the process of being forwarded to the Government. At the request of the Government, opinions were issued on several legislative proposals for the pharmacy sector following-up on a past PCA Recommendation; and on draft legislation on mortgage lending. At the request of Sector Regulators, various opinions were also issued particularly on draft regulations for the electricity and gas sectors. Moreover, an opinion was issued on the new draft public procurement code. In issuing these opinions, based on competition impact appraisal, PCA capitalised on the considerable experience accumulated through case-handling as well as through in-depth sector studies. With a view to improve the interface with economic agents, an intelligent electronic complain system has been made available in the Web Site, and has been actively used since then.

8. Decisions, studies and other contents generated by PCA have continued to be regularly posted in the Web Site. The Site registered a monthly average of 24,700 visits, more than twice the corresponding 2005 value. The monthly electronic newsletter, *e-concorrença*, has currently some 1,500 subscribers spread over 30 countries. Media coverage of PCA activity also increased considerably in 2006, with some 6,800 news published in the printed media; 420 mentions in prime TV time; and 308 mentions in radio stations.

9. PCA continued its active participation in various international competition *fora*. In addition to its regular participation in the activities of the ECN, ECA, ICN, the OECD Competition Committee, PCA, as a member of the revolving Presidency of ECA, has organised its Annual Meeting and is actively following-up on the conclusions thereof. In the framework of the Portuguese Presidency of the EU, PCA is hosting the XV European Competition Day. This event will take place back-to-back with the Second Lisbon Conference on Competition Law and Economics, to be held November 15-16, 2007. PCA has also been an active participant in the 7th and 8th Sessions of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy. Bilaterally, PCA is cooperating actively with interested countries in the development of an Ibero-American Competition Network (*Rede Ibero-Americana da Concorrência, RIAC*). It further co-anchors the Lusophone Competition Network, while participating in technical assistance activities under a MoU entered into with UNCTAD.

10. The Research Team continued attracting the contributions of renowned academics in industrial organisation. They have also participated in various Seminars held at PCA headquarters and opened to outside participation. Up to end-2006, 12 Working-papers have been prepared; 11 refereed papers have been published in international research journals; and *Mergers and Acquisitions: the Industrial Organization Perspective* has been published in book form by Kluwer Law International.

1. Changes to Competition Law and policies, proposed or adopted

1.1 Summary of relevant measures relating to the Competition Law –

1.1.1 Amendment to Law 18/2003, of 11 June (Portuguese Competition Law): Decree-Law 219/2006 of 2 November

11. Decree-Law 219/2006, of 2 November introduced the first amendment to the Portuguese Competition Law. It transposed Directive 2004/25/EC of 21 April 2004, on takeover bids into the Portuguese legal order of an amended the Portuguese Competition Law on the merger control regime (hereinafter “Law n.º 18/2003, of 11 June”).

12. These amendments consisted of the following: i) any notification to the Portuguese Competition Authority (PCA) of a takeover bid must take place within the delay of seven working days from the publication of the preliminary announcement; ii) mergers may be subject to prior evaluation by the PCA, according to a pre-notification procedure to be established; iii) the PCA must conclude its decision-making procedure within 90 days from notification (instead of the former 30 plus 90 working days).

13. With a view to comply with these provisions, and based on the experience already acquired by its different departments and, on the other one, the European’s Commission’s experience in enforcing the EC Merger Regulation and the Commission’s Guidelines issued in this area, the PCA adopted a set of guidelines aiming to inform the undertakings of the procedure set out for the applications of prior evaluation of mergers¹.

14. Prior evaluation is an optional procedure for undertakings, offering them the opportunity, if needed, to hold discussions with the PCA’s officials on the legal and procedural aspects of the operation envisaged, in an informal and absolutely confidential manner, and, when possible, seeking to identify the most problematic competition aspects of the projected merger.

15. It does not imply that any formal decision is taken by the PCA on its merit from the point of view of merger control, but may lead to a shorter phase I in case the merger is notified and will tend to prevent gaps and inaccuracies in the information supplied on the notification form, limiting the need for additional information requests.

16. When a prior evaluation application has been received, it is the PCA’s responsibility to decide, within a reasonable period of time, on the appropriate type of contact it will have with the requesting undertakings, taking into account the complexity of the operation in question, and in accordance with the information that has been gathered.

17. In most cases the PCA will arrange preliminary meetings with the requesting undertakings, for them to outline the merger operation and to provide for a discussion of the main features of the operation.

18. Following the assessment of a prior evaluation request, the PCA will take a position limited by the information provided by the undertakings involved. This position does not prevent the PCA from adopting a final decision of a different nature at the end of the future merger control proceeding initiated by the formal notification of a merger operation.

19. In 2007, the PCA has also proposed a simplified decision procedure that seeks to expedite the analysis of less complex mergers. This new procedure consists of a simplified form of decision-making,

¹ The Guidelines are available at the PCA website, at the following URL: www.autoridadedaconcorrenca.pt.

which will be limited to the key elements of the analysis that are strictly necessary to a final decision by the PCA².

20. Among the cases that may lead to a simplified decision, are the following i) if there is no significant change in the competitive structure of the market; ii) the establishment of a joint company, qualified as a merger, whose economic activity in the national market is deemed to be negligible or non-existent or without significant horizontal and/or vertical effects; iii) a transaction which does not qualify as a merger or does not meet the criteria of prior mandatory notification.

21. The simplified procedure will not be applied where there are third interested parties or where there is otherwise a need of holding a public hearing of interested parties.

1.1.2 Leniency legislation: Regulation No. 214/2006

22. Following the approval of Law No. 39/2006³, which introduced the Leniency regime in Portugal, and after a period of public consultation, the PCA set out the administrative procedure for the granting of immunity from or a special reduction in a fine imposed to an infringement of both the Portuguese Competition Law and articles 81 and 82 of the EC Treaty.

23. This procedure sets forth the written form for the submission of an application, as well as a “marker system” and the possibility of “summary applications”, when the infringement affects more than three Member States, if the applicant has presented or is about to present an application to the European Commission (Communication on Cooperation, paragraph 14, JO C 101 27.04.2004, p. 43).

24. The PCA’s final position on the leniency application is taken in the decision that terminates the case. The granting of immunity or a reduction of fine depends on the fulfilment of all requirements established in Law No. 39/2006, namely full and continuous cooperation with the PCA.

2. Enforcement of competition law and policies

2.1 Anticompetitive practices cases

2.1.1 General Overview

25. The PCA’s enforcement of Competition law and policy in this period was mostly concentrated in sectors such as the pharmaceutical sector, liberal professions, media, towage services, energy and telecommunications. Strong investigation activities were carried out during this period, with dawn-raids organised in several infringement proceedings.

26. Regarding the enforcement of European Competition Law, the PCA has open three cases and has closed another one for an infringement of article 81 of the EC Treaty.

² The guidelines on the Simplified Decision Procedure are available at the PCA website, at the following URL: www.autoridadedaconcorrenca.pt

³ See Annual Report on Competition Policy Developments in Portugal 2005-2006 (DAF/COMP(2006)21/16,29-Sep-2006).

2.1.2 Summary of the cases decided

Salt Cartel

27. Following a complaint and dawn raids to all the undertakings active in this sector, the PCA concluded an investigation that proved the existence of a sophisticated cartel between four undertakings in the national wholesale of salt to the industry and food trade with the aim to divide up and fix market shares, directly fix prices and share out customers.

28. Evidence established that those four undertakings represent 75% to 90% of the relevant market and that the cartel lasted for more than eight years (from 1997 to the beginning of 2005), causing serious losses to their customers and to the society as a whole.

29. The cartel *modus operandi* relied upon a compensation scheme (with the compensation being paid in money or via orders placed by those which sold above their share to sustain the share of cartel-members who were selling below their share) together with a regular exchange of (monthly) information on sales volumes with the aim of mutually monitoring compliance to the agreement.

30. The PCA estimated the minimal value of the economic damage stemming from the cartel to be around €5.6 million, solely for the period between 1998 and 2004.

31. The PCA concluded that the defendants breached the provisions of Article 4 (1) of Law 18/2003 and Article 81 (1) of the EC Treaty and thus imposed a total combined fine of €910,728. The decision was appealed to the Lisbon Commerce Court that overall confirmed the PCA's decision.

SIC/PT MULTIMEDIA/TV CABO Partnership Agreement

32. The PCA analysed a "*Partnership Agreement*", signed in March 2000 by SIC, PT Multimédia and TV Cabo⁴, covering the production, marketing and distribution of television channels, produced in Portuguese and in Portugal and transmitted by cable television.

33. The "*Partnership Agreement*" gave SIC a *legal preference* in supplying special interest channels produced in Portuguese and in Portugal for the basic TV Cabo package and provided for the assignment to the PT Multimédia Group of the *exclusive marketing* of the unrestricted access channels produced by SIC. The above agreement ran for ten years and was renewable for a further five, expiring in the latter case in 2015.

34. The PCA found that the agreement contained anti-competitive clauses that, on the one hand, hindered the entry of SIC competitors to the TV Cabo "*basic package*" and, on the other, created barriers for undertakings that competed with TV Cabo and wished to distribute, in their networks, the SIC special interest channels included, at present, in the TV Cabo "*basic package*".

⁴ SIC's main economic activity is television. Since October 1992 it has exploited an open, generalist television channel – SIC – plus four special interest pay-TV channels: SIC Notícias - CNL, SIC Radical, SIC Comédia and SIC Mulher. In the year 2000, it acquired shares representing 60% of the registered capital of Lisboa TV, through which it produces SIC Notícias. PT Multimédia was set up by the Portugal Telecom Group in July 1999, combining know-how in the area of the media and internet. On 31 December 2004, PT Multimédia grouped together pay-TV, cable internet and the transfer of channels developed by the companies TV Cabo Portugal and PT Conteúdos, companies controlled from October 2004 by PT Televisão Por Cabo, which, in turn, is controlled by PT Multimédia. On 25 August 2005, PT Multimédia sold 100% of Lusomundo Média's registered capital to Controlinveste.

35. Following the case, the PCA imposed a fine totalling €3,040,000 to the undertakings and ordered them to modify the contracts by eliminating the anticompetitive clauses. The decision was appealed by the undertakings before the Lisbon Commerce Court, the proceedings still pending.

Price fixing in towage services

36. On April 2007, three towage companies at the port of Setúbal were found guilty of initiating a cartel, fixing prices, dividing customers and establishing a monitoring and compensation mechanism.

37. The investigation proved that, in the beginning of 2006, the three towage companies operating in the relevant market met, discussed and agreed on a common set of prices. Furthermore, they agreed on the terms to offers customers who tried to change their service provider in order to ensure that those customers would not find more advantageous conditions. In the (unlikely) event any customers would switch, the mechanism included an obligation where the new service provider would necessarily subcontract the former service provider to service that customer, under pre-set commercial conditions and prices.

38. The PCA Decision required the immediate cessation of the practice and imposed fines on the three companies totalling 185 thousand Euros.

39. The Decision is currently under appeal at the Lisbon Commerce Court.

2.1.3 Other cases

40. Under Article 43 (3) (b) of Law 18/2003 failure to provide or the provision of false, inaccurate or incomplete information in response to a request by PCA in the exercise of its powers of sanction or supervision is punishable with a fine that may not exceed 1% of the previous year turnover of each undertaking.

41. In this regard, there were three cases relating to failure to provide information requested within an investigative procedure, and a total fine of €10.000.00 was imposed to three undertakings that have voluntarily paid the fine and did not appeal the decisions.

2.1.4 Other initiatives

Appeals

42. During this period, the PCA was highly involved in litigation before the Lisbon Commerce Court, the first instance court that hears all appeals from the PCA's decisions, since several of the PCA's decisions on anticompetitive practices were heard by the Lisbon Commerce Court in the first semester of 2007. The PCA also intervened in further appeals of the Lisbon Commerce Court's rulings to the Lisbon Appeal Court (*Tribunal da Relação de Lisboa*), a second instance court.

43. Documents seized during dawn raids and access to the file in merger control proceedings were two other issues that were addressed by the PCA before the Lisbon Commerce Court and the Administrative Court of Lisbon.

44. The Lisbon Commerce Court decided on two major cases regarding anticompetitive practices prohibited by article 4 of the Portuguese Competition Law and article 81 of the EC Treaty, upholding the PCA's decisions:

- ***Cartel in the salt market*** - The court upheld the decision, albeit with a reduction in the amount of the fines, ordering the four companies condemned to publish a summary of the decision in

the official gazette, *Diário da República*, and in a newspaper with national circulation. The Decision was appealed by two of the companies condemned, the proceedings still pending before the Lisbon Appeal Court.

- ***Liberal professions fee-setting process (Portuguese Medical Doctors Association)*** – The Court upheld PCA decision, albeit with a reduction of the fine to €230.000,00. The Court also ruled that the Portuguese Medical Doctors Association should publish a summary of the decision in a Portuguese newspaper with national circulation. The decision was appealed by the Portuguese Medical Doctors Association, the proceedings still pending before the Lisbon Appeal Court.

45. Two other cases of the PCA, one referring to collusive tendering **in public procurement for the supply of diabetes reagents to public hospitals** and another regarding **vertical restraints in coffee supply to hotels, restaurants and cafés (the HORECA channel)** were returned to the PCA in order to amend some procedural irregularities.

46. The Lisbon Appeal Court decided on three cases, of which the decision shall be final:

- Two cases concerning **Liberal professions fee-setting** of Dentists and Veterinarians, where the Appeal Court upheld the first instance decisions condemning the Associations, reducing the amount of fines imposed to € 50.000 and to € 18.000, respectively. The Appeal Court ruled that minimum and maximum price fixing by these Professional Associations infringed the Portuguese Competition Law and article 81 of the EC Treaty;
- Another case **referring to the price fixing practice in shipping agency services**, where the Appeal Court upheld the first instance decision, confirming the PCA's decision, albeit with a reduction in the amount of the fine imposed by the PCA. This ruling was appealed by the defendant, the Portuguese Shipping Agency Association, to the Constitutional Court and the proceedings are still pending.

Electronic Complaint System

47. Aiming to get closer to consumers and businesses in general, the PCA has implemented an electronic complaint system, tailor-made to their needs, providing a simplified and efficient mechanism to the filing of complaints before the PCA. This system was introduced in May 2007, and 65 electronic complaints were filed since then.

2.2 *Mergers*

2.2.1 *Statistics*

Statistics regarding merger control from 1st July 2006 to 30th June 2007

Table I. Concentrations decisions adopted since July 2006

Notified merger operations	77
Total decisions	81
Pending	10
Phase I	
Non-notifiable transactions	6
Clearance	67
Clearance with commitments	0
Withdrawn cases	1
To Initiate an in-depth investigation	4
Phase II	
Clearance	2
Clearance with commitments	4
Non Clearance	0
Withdrawn cases	1
Tacit approval	0
Referral to European Commission	0
TOTAL FINAL DECISIONS ADOPTED (does not include Phase I decisions to proceed into Phase II)	81

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

	Cases	%
Horizontal	44	54,32
Vertical	7	8,64
Conglomerat	30	37,04
TOTAL	81	100

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

	Cases	%
Multi-jurisdictional filings (within EU)	9	11,11
Multi-jurisdictional filings (outside EU)	13	16,05
National with involvement of undertakings from other EU member states	9	11,11
National with involvement of undertakings from countries outside EU	3	3,7
Completely national	47	58,03
TOTAL	81	100

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

	Cases	%
Merger	2	2,47
Acquisition of majority shareholdings	55	67,9
Takeover bid	5	6,17
Acquisition of assets	12	14,82
Joint venture / control	7	8,64
TOTAL	81	100

48. The statistics set out in the table above refer to the period from 1st July 2006 to 30th June 2007.

49. On the 2nd Semester 2006 (July-December) 35 notifications were received and 30 Phase I decisions taken, 3 of which to initiate an in-depth investigation, and 2 Phase II decisions.

50. On the 1st Semester 2007, there were 42 notifications received, 43 Phase I decisions being adopted, 1 of which to initiate an in-depth investigation, and 5 Phase II final decisions: 3 clearance decisions with commitments.

51. Concerning the referrals under Art. 4(5) of EC Regulation 139/2004, from July 1st 2006 to June 30th 2007 the PCA has analysed 8 cases, never opposing to the referral.

52. Throughout this period the PCA has continued to develop its economical analysis, making use of quantitative models to assess the real impact of the concentrations, specially the more complex ones. Moreover, the decisional practice of the PCA during this time has also significantly contributed to the clarification and improvement of the legal framework.

2.2.2 *Summary of significant merger cases decided*

53. The merger cases included herein aim to give an illustration of the application of the national competition rules, both from a substantive as well as a procedural viewpoint.

Sonaecom /PT – Non-opposition Decision with Commitments

54. In 2006, the Portuguese Competition Authority analysed a hostile takeover by Sonaecom over Portugal Telecom (PT). The merger was cleared, on 22 December 2006, subject to several remedies proposed by Sonaecom.

55. Portugal Telecom is the historic operator (incumbent) in the telecommunications sector in Portugal and pursues economic activities in the TMT sector in Portugal and other countries. These activities are structured on the basis of five large fields: i) Fixed telephony and internet business in Portugal (PTC, PT Prime, PT Corporate and PT.COM); ii) Mobile communications business in Portugal (TMN); iii) Multimedia business (PT Multimedia); iv) International business, including VIVO (a joint-venture with Telefónica Móviles for mobile business in Brazil); v) Instrumental Companies.

56. Sonaecom, a sub-holding of Sonae Group for the telecommunications sector, internet and multimedia areas, operates in four main fields: i) fixed communications (Novis); ii) mobile communications (Optimus); iii) Internet (Clix) and multimedia sector (Público); iv) software and information systems industry (WeDo, Enabler, Mainroad and BizDirect).

57. The extensive analysis carried out in Phase I showed that the merger, as notified, could create or strengthen a dominant position in various markets for telecommunications, and media in Portugal, leading to significant barriers to effective competition in those markets. Accordingly, the PCA decided to open an in-depth investigation to the case (Phase II), which required the detailed analysis of 35 relevant markets, from the 43 identified markets.

58. So as to conduct its competitive assessment, the PCA issued over a hundred requests for information to undertakings and associations of undertakings, and analysed over 60 studies and presentations, some of which developed by the PCA, during the course of the proceedings.

59. As part of the merger analysis, the PCA consulted and worked closely with the Portuguese telecommunications regulator (ANACOM), which contributed with its formal opinion on the notified operation.

60. Sonaecom proposed a set of remedies to restore effective competition in the markets, which were comprehensively discussed with the telecom regulator, given the regulatory implications some of the proposed remedies entailed. As a result of a thorough analysis and intensive discussion with Sonaecom and third parties, the PCA considered the final submitted package of remedies to be adequate and sufficient to allow for clearance.

61. Among the remedies imposed, one may highlight the following: (i) horizontal separation of the PSTN and the cable networks, and, in case Sonaecom would divest the cable network, it would also implement a vertical functional or operational separation; (ii) promoting contestability in the mobile communications market, allowing for entry of mobile virtual operators and a new network operator; (iii) divestments in the area of media and content.

62. The PCA's Decision established various mechanisms for monitoring and supervising the compliance with the referred remedies, which included, for the first time, the appointment of monitoring trustees.

63. This case was particularly complex from a substantive point of view and from the procedural point of view as there were 8 third interested parties which intervened in the proceedings.

Lactogal /International Dairies C.V. merger – Non-opposition Decision with commitments

64. On 15 January 2007 the PCA issued a clearing decision to the Lactogal/International Dairies C.V. merger, subject to conditions and obligations.

65. The merger consisted in the acquisition by Lactogal of sole control of International dairies CV and consequent direct control of the company Dean Netherlands BV, which indirectly held the Leche Celta Group, in Spain, and the company Renoldy – Produção e Comercialização de Leite e Produtos Lácteos Lda, in Portugal.

66. The Phase I analysis carried out showed that the merger could create or strengthen a dominant position that could result in significant barriers to effective competition in the relevant markets for the production and marketing of pasteurised and UHT milk and the respective effects on the associated market for the collection of raw milk, in the national territory.

67. The PCA's decision not to oppose the notified operation included the following remedies:

- divestment of the undertaking Renoldy to an entity independent of the business group Lactogal and of the business groups of its shareholders;
- as long as the divestiture has not been effected, Lactogal shall ensure the absolute separation of the activities of Renoldy in relation to the undertakings of its group and the business group of its shareholders, both guaranteeing that Renoldy will be managed as a distinct activity and safeguarding the respective tangible and intangible assets that are important for its competitiveness and its sustainable development;
- in the time, shortly preceding the divestiture of Renoldy, the PCA shall be informed by Lactogal of the identity and financial capacity of the acquiring party and this party's interest in maintaining the economic viability of the business activity disposed of.

BCP/BPI merger – Non-opposition Decision with commitments

68. On 16th March 2007 the PCA cleared a merger in the banking industry, consisting on the takeover of BPI by Millennium BCP, with the imposition of remedies.

69. This was the first merger case in the banking sector analysed by the PCA, given that the previous legal regime exempted the banking sector from the prior mandatory notification of mergers.

70. The Phase I analysis carried out demonstrated that the operation could lead to the creation or strengthening of a dominant position that could result in significant barriers to effective competition in 13 relevant markets in the banking sector and in three relevant markets in the insurance sector (life business).

71. During the course of the proceedings, the PCA consulted over 20 undertakings and institutions, so as to gather invaluable information to conduct market definition and investigation.

72. As part of its competitive assessment on the notified operation, the PCA developed econometric studies aiming, in particular, at estimating price elasticities of demand, which allowed for the simulation of unilateral and coordinated effects of the merger.

73. In the Phase II investigation, the PCA concluded that the merger would give rise to the creation of a dominant position that would result in significant barriers to effective competition in the following relevant markets: i) credit to small business; ii) SME short-term financing and cash management

instruments; iii) other medium- and long term SME financing solutions; iv) trader support services for debit card acceptance and the acquiring of credit cards.

74. The PCA's non-opposition to the operation was made conditional on observance of the following remedies proposed by Millennium BCP: i) the divestiture of BCP and BPI's shareholdings in UNICRE (a Portuguese Credit Card Company responsible for the management of the network of credit cards, acting both as issuer and merchant acquirer); ii) the development of an acquiring operation; iii) the sale of 60 BPI branches to an entity outside BCP; iv) the sale of a portfolio of Business Customers (SMEs) in the amount of 450 million euros; v) measures relating to the mobility of Business Customers, in particular the waiving of commissions for the unilateral closure of accounts and the supply of the company's past banking statements.

75. The decision also includes a set of mechanisms to supervise compliance with the obligations and conditions accepted by the notifying party.

TAP/Portugalia merger – Non-opposition Decision with commitments

76. On 5th June 2007 the PCA issued a ruling of non-opposition to the merger of TAP and Portugalia, subject to conditions and obligations aimed at guaranteeing compliance with the remedy commitments proposed by the notifying party.

77. The analysis carried out in the Phase I demonstrated the possibility that the operation, as notified, could lead to the creation or strengthening of a dominant position that could result in significant barriers to effective competition on the routes Lisbon-Oporto, Lisbon-Funchal and Oporto-Funchal. Accordingly, the PCA pursued an in-depth investigation (2nd Phase).

78. The PCA also decided to make further investigations in relation to the airline catering market, though it did not conclude that the merger could create or reinforce a dominant position, in this market, that would result in significant barriers to effective competition.

79. In the Phase II of the procedure, TAP proposed a set of remedies aimed at mitigating the competition concerns identified.

80. The remedies proposed by TAP can be summarised as follows:

- The Merged Entity undertakes to make slot(s) available to allow one or more Prospective New Entrants to operate flights between Lisbon and Oporto that allows for an equivalent offer of flights on that route as presently offered by Portugalia;
- Frequency freeze – the Merged entity shall not add frequencies on the Lisbon-Oporto route from the moment that a new air service provider, not associated with TAP, begins operations on this route;
- Interlining agreement - at the request of a New Air Service Provider, the Merged Entity shall enter into an interline agreement concerning the routes Lisbon-Oporto, Lisbon-Funchal and Oporto-Funchal, i.e., agreements that allow the respective passengers to make journeys combining different flights offered by the new operator and TAP, whether as return flights on these routes or as flights that combine these routes with other TAP routes;
- the Merged Entity shall allow a New Air Service Provider, on request and under certain conditions, to be hosted in its Frequent Flyer Programme on the routes Lisbon-Oporto,

Lisbon-Funchal and Oporto-Funchal, so that the present users of TAP's frequent flyer programme may continue to benefit from this programme, even if they choose flights operated by new operators on those routes;

- Conditions pertaining to fares - the Merged Entity will index, under certain conditions, the fares charged by TAP on the Lisbon-Oporto route to the fares that this company charges on the Lisbon-Madrid route, which is considered an equivalent route from a competition viewpoint;
- Commitment to facilitate intermodal services between TAP flights on the Lisbon-Oporto route and land transport services provided by intermodal partners.

81. The PCA deemed the remedies to be adequate and sufficient to resolve the competition concerns identified, in particular on the Lisbon-Oporto route, on which TAP will become the only operator in the market, with a monopoly.

82. The solutions aimed at eliminating entry barriers on the Lisbon-Oporto route, preventing TAP from acting against consumer interests, in particular concerning prices.

83. The remedies will be supervised and monitored by the PCA, which will be accompanied for the purpose by an independent trustee for a period of 5 years.

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

3.1 Studies

3.1.1 Ongoing Studies and Market Monitoring

Motor fuel and bottled domestic gas

84. The PCA has been monitoring the motor fuel market since January 2004, as a follow-up to pump price liberalisation concluded at that date, and the bottled domestic gas since late 2005. The comparative evolution between international prices of raw materials and final products and national downstream prices is regularly published in a quarterly newsletter which further compares net-of-taxes prices in Portugal, Spain, and in the EU, as well as national pump prices, discriminated by outlet type and geographic location. Ongoing econometric studies have the additional aim of establishing the way changes in prices of raw materials pass-through to prices at different stages of the national activity.

Cereal milling to the bread industry

85. Following announcements of strong increases in the price of bread, with the first occurring in January 2004, the PCA initiated a study and the market monitoring of the cereal (wheat) milling to the bread industry.

86. Whilst previous econometric results of this study revealed: (i) a substantial rent shift from the strongly fragmented bread makers to the concentrated millers, with previous evidence highlighting a collusive behaviour among the latter, and (ii) a 70% pass-through effect from the price of wheat flour to the price of bread, it remains open the issue on what is causing most of the increases in the price of bread.

87. Together with the ongoing market monitoring, the study has, therefore, been recently expanded to a more disaggregated analysis of the bread making process.

Report on the competitive conditions in the fixed telephony, broadband access and mobile telecom markets.

88. In July 2005, the PCA issued a report concerning the competitive conditions in the fixed telephony, broadband access and mobile telecom markets. The report compares a set of data that includes penetration rates, market shares and prices in the wholesale and retail markets, in Portugal and in other four selected EU Member States. Two of the selected EU Member States are those where the telecom sector liberalisation first took place; the other two EU Member States are those where retail prices are the lowest within the European Union.

89. The report shows that even though telecommunications were fully liberalised in Portugal in 2000, most Portuguese telecom markets are still highly concentrated when compared to those of EU Member States and that retail prices are usually above EU average, especially in the fixed telephony and broadband access markets.

90. An updated edition of the PCA telecoms markets report has been drafted by the end of the first semester of 2007 and will be published before the end of 2007.

3.1.2 *New Studies*

91. The PCA launched proceedings concerning 3 studies in the health-care sector, concerning the freedom of choice within the Portuguese health system, the acquisition of pharmaceuticals and other health care products within the National health care system and, finally, health care services related to screening tests provided within the National Health Care System. The preliminary reports have already been sent to the PCA.

3.2 *Recommendations and Opinions*

3.2.1 *Recommendations*

Draft Recommendation regarding Notaries

92. After the analysis of a study commissioned to an independent scientific body (CEDIPRE – University of Coimbra) and an internal workshop with major stakeholders, the PCA issued a Draft Recommendation regarding Notaries Regulation for public consultation, whose final version will be addressed to the Government.

93. The Draft Recommendation included measures, such as:

- Elimination of the principle of *numerus clausus*;
- Elimination of territorial competence;
- Elimination of licensing of notary's offices;
- Termination of prohibition of co-operation between notaries and of the possibility of a notary to run more than one Office;
- Amendments to rules concerning advertising;
- Elimination of rules concerning notaries' fees;

- Elimination/Revision of the Compensation Fund.

94. The PCA considers that the recommended measures should be implemented gradually. The final version of the Recommendation will accommodate the ongoing legal amendments affecting the Notaries profession.

3.2.2 *Opinions*

95. Throughout this period the PCA was engaged in safeguarding competition concerns while issuing opinions and recommendations to the Government on policy issues, new legislation being drafted and public consultations. Several economic sectors were addressed, such as telecommunications, financial services and the pharmaceutical sector, in the following cases:

Opinion on several legislative proposals related to the pharmaceutical sector

The PCA has commented on two diplomas on the pharmaceutical sector, concerning the sale of non prescription drugs and the ownership of pharmacies and the concession of pharmacies within the national health system. This initiative followed the PCA recommendation 1/2006 concerning the pharmaceutical sector in Portugal, that had identified the main competition constraints in this area⁵.

Opinion on the Draft Public Procurement Code

The PCA has actively contributed to the public discussion of this code, sharing its experience as a public administrative body with sanctioning powers, opening supervision procedures and implementing regulatory actions with the view to promote a sound competition in the market to the benefit of consumers.

Comments on the Draft Decree-Law referring to residential mortgage lending activity

During 2006, the PCA commented a proposal for the residential mortgage lending activity. In its recommendation the PCA considered that the termination fee charged by financial institutions to consumers in case of early termination (in the range of 3% to 5%) had the potential to deter competition, reducing the incentive to mortgage transfers between financial institutions. The PCA also considered that other commissions in place had an incremental potential deterrent effect. After the consultation the new legislation (*Decreto-Lei n.º 51/2007, de 7 de Março*) was approved and a cap of 0,5% for variable interest rates was imposed on charges for early termination.

3.3 *Conferences and Workshops*

96. Portugal will hold the Presidency of the EU Council in the second semester of 2007, which provided the PCA with the opportunity of organising the XV European Competition Day, dedicated to a more efficient approach to State Aid. This session is followed 3 other sessions under the II Lisbon Conference on Competition Law and Economics (15/16 November 2007), that will further address judicial control of administrative decisions and private enforcement, merger control in regulated markets with network economies, stock taking on major debates in the EU and USA about abuses of dominant positions

⁵ See, The Annual Report on competition policy developments in Portugal, 1 July 2005, 30 June 2006, submitted by the Portuguese Competition Authority. OECD Directorate for Financial and Enterprise Affairs, Competition Committee.

and attempts at monopolisation and the challenge that globalisation raises to national and the EC competition and industrial policies.

3.4 Co-operation

3.4.1 ECN - European Competition Network –

97. As member of the ECN, the PCA provided again a high-level input to work of the ECN, contributing with several working papers to several ECN's working groups and co-leading some projects whose results will be presented for approval at the Director-Generals' Meeting, namely in the field of cooperation among agencies within sector inquiries.

3.4.2 ECA – European Competition Authorities

98. The PCA hosted the Annual ECA Meeting, in April 2007, after being appointed for the Presidency of ECA for a mandate of three years, during the Nice meeting held in May 2005. From July 2006 to June 2007, PCA's officials participated actively in the ECA working groups on air traffic, financial services and sanctions, with contributions for discussion.

99. In what concerns the ECA's Merger subgroup, during this period, the PCA notified 22 cases to the ECA Network, all referring to mergers subject to multiple filings in several countries of the European Economic Area, which had also a direct impact in the Portuguese market.

3.4.3 Bilateral Cooperation

100. In the second semester of 2006 and the first semester of 2007, the PCA received the visit of delegations of other Competition Authorities, including delegations from Mozambique and Romania, which discussed the experience of enforcing the Portuguese Competition Law and the EC competition rules. The PCA also hosted a visit for the junior officials of the Bundeskartellamt to provide an insight of the Portuguese competition rules and the action of the PCA in fields such as liberal professions, banking, telecommunications and the pharmaceutical sector.

3.4.4 Multilateral

101. The PCA has participated in the 2007 6th. Annual Meeting of the ICN, intervening in two different panels, one regarding the Portuguese Competition Authority's experience with the ICN Merger Recommended Practices and Anti-Cartel Enforcement Manual, and another concerning international co-operation from an European perspective.

102. The PCA also attended the 7th. Session of the Intergovernmental Group of Experts on Competition Law and Policy of the UNCTAD, where, at invitation of UNCTAD, its president chaired the Tunisia Peer Review, and the 8th Session of the IGE/UNCTAD, where it presented submissions on market structure and competition in the energy sector in Portugal, on institutional assessment and on technical assistance.

4. Resources of competition authorities

4.1 Resources overall

4.1.1 Annual Budget

103. On a cash basis, annual budgetary commitments amounted to €7.5 million, a moderate increase over the previous year. However, operating expenditures associated with personal and related services registered an 11% increase, partly offset by a reduction in investment. This increase continued to be accounted for by expenses with additional staff coming on board. As to sources of funds, transfers from sector regulators and fees on merger control continued to more than cover total expenditure. Worth noting that the generated surplus was substantially above the revenues from fines and from the transfers from the central government budget. Overall, and as discussed in the OECD Survey on Portugal (*OECD Publishing, Volume 2006/4 – April 2006*), the Authority financing mechanism allows decision-making to be quite independent of proceeds from fines.

4.1.2 Number of employees

104. As of end-2006, 86 staff was on board, an 11% increase with respect to end-2006. Of these, 64% had an academic background equal or above Masters level, reflecting the continuing emphasis on attracting and retaining high-calibre staff. Six of the Authority economists had Ph.D.s in industrial organisation. The number of employees falling into each category is indicated in the table below.

Board	3
Management	6
Economists and Market Specialists	27
Lawyers	24
Other Professional Staff	6
Support Staff	20
Total	86

4.2 Human resources allocation

105. Of the total management and staff above, 71 were working on competition enforcement. Of these, 30 officials were primarily working on enforcement against anticompetitive conduct; 14 on merger review and enforcement; four on litigation and contacts with the judiciary; and the remaining on Board duties, on economic and legal advice, and on advocacy. The matrix structure of the Authority continued to enable a reallocation of human resources as required to meeting a varying work load, notably in support of major merger reviews and of litigation activity. In line with the Authority Business Plan 2005/2008, a Chief Economist was recently appointed to enhance the clustering of knowledge and to further bring the research program in line with operational priorities. The Business Plan, in turn, is a lasting result of the OECD Pilot Project for the Institutional Assessment of the Portuguese Competition Authority (*DAF/COMP/WD(2005)30, 20-May-2005*).

4.3 Period covered by the above information

106. Budgetary information for 2006 and for 2005 covers the period January 1-December 31. Unless otherwise indicated, human resources information is reported as of December 31, 2006.