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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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Working Party No. 3 on Co-operation and Enforcement

MANAGING COMPLEX MERGER CASES: HOW AGENCIES DEAL WITH COMPLEX DATA ANALYSIS, SURVEYS AND MARKET STUDIES, AND OBTAIN THE NECESSARY EXPERTISE FOR COMPLEX SUBSTANTIVE ISSUES.

-- Portugal --

16 October 2007

To be held on 16 October 2007 at the International Energy Agency (IEA), 9 rue de la Federation, PARIS 75015, starting at 10 am.

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1. The Portuguese Competition Authority, as most probably many other Competition Authorities, has been challenged, in the past, and continues to be faced with complex merger cases that require sophisticated tools to assess, with comfortable certainty, whether or not the concentration would create or strengthen a dominant position that results in significant barriers to effective competition in the Portuguese market or in a substantial part of it.

2. The legal deadlines imposed for merger analysis become particularly challenging when the PCA faces complex merger cases, for which robust and well founded decisions require gathering and analysing a large amount of data from the parties and the market in general.

3. Among the complex merger cases analysed by the PCA, an important part of those cases involved companies active in regulated markets. In such cases, the PCA reinforces the Merger Department case team with resources from other Departments, in particular from the Department of Regulated Markets, where expertise on specific industries can be found. That was the case, for instance, in the recent complex mergers cases in the Telecommunications Sector (*Sonaecom/PT*), in the Banking Sector (*BCP/BPI)*, in the Energy Sector (Gas natural/Endesa), and in the Air Transport Sector (TAP/PGA).

4. When dealing with complex cases, several economic studies are taken into consideration, not only those submitted by the notifying parties and by third interested parties, but also, when necessary, studies developed in-house or commissioned by the PCA to external consultants, namely international economic consulting firms and renowned academics, with specialised expertise on the subject.

5. Also worth noting is the involvement of sector regulators at various stages of decision-making, when dealing with activities in regulated markets, which follows directly from the legal framework for merger review, which establishes the need to consult the respective sector regulators.

6. An important challenge faced by PCA, in a number of notified mergers, refers to the obtaining, collecting and processing large and complex data sets, which may provide significant information both for relevant market definition and for the competitive assessment of the merger.

7. In the BCP/BPI merger case, for instance, the PCA had to gather a massive and complex dataset in order to assess more accurately the impact, both in terms of unilateral as well as coordinated effects of the merger. Questionnaires were sent to the parties and other market participants, attempting to explain in great detail which precise information is needed. Some of the questionnaires sent were accompanied by excel files in which the answer should be introduced. The preparation of these questionnaires, so as to avoid heterogeneous interpretations and to guarantee the quality of the answers to be used in the subsequent analysis, is one of the most important stages in constructing a solid data set.

8. Information requests were sent, in this particular case, to a total of 10 banks, covering a number of different topics such as market shares, price series, churn rates, switching barriers, among others. Despite of the effort made to conceive a clear and objective questionnaire, there was the need to book meetings with almost all of the banks, so as to clarify doubts in the correct interpretation of the questions, as well as to validate answers that seemed counter intuitive.

9. As part of the carried out investigation, in-house economists developed an econometric analysis, which required the construction of a data base of cross sectional data at the consumer level, aimed at estimating price elasticities of demand and the marginal costs associated with the products under analysis.

10. The development of this analysis required two samples of information on 1000 private costumers and another one for small and medium enterprises, clients of seven of the eight largest banks in Portugal. This data allowed the PCA to obtain estimates to be used in simulation analysis, which allowed for some

insight on the potential unilateral and/or coordinated effects, as a result of the merger, in some relevant markets.

11. Another complex case which required the gathering and handling of large and complex data sets was the Sonaecom/PT case. In this case, the PCA also recurred to a number of market studies and econometric analysis that had been previously developed within the PCA, as well as academic studies developed for the PCA (e.g., by academics at the New York University), specifically concerning the Portuguese Telecommunications market. However, the complexity of the case led to the development of further in-house econometric studies and simulation models, as well as commissioned studies to external consultants, namely RBB Economics and Oxera, which required specific information requests.

12. In the context of the Sonaecom/PT merger procedure, the notifying party submitted studies commissioned to CRAI (Charles River Associates International) and NERA Economic Consulting, and studies developed by its financial advisors. In turn, the target firm, PT, submitted studies developed by economic consulting firms, namely LECG.

13. In order to provide the PCA with information on market definition and on the effects of the merger, a study, commissioned by the notifying party to CRAI, was also submitted in the BCP/BPI case.

14. In both the Sonaecom/PT and the BCP/BPI mergers, the PCA had access, through the notifying parties, to other off-the-shelf market studies that, although not tailored to answer the questions being held, covered important topics such as consumer perceptions and behaviour, as well as mobility issues.

15. Another case worth mentioning is the Via Oeste (Brisa)/AEO/AEA merger, in the motorway sector, where the notifying party submitted a few studies developed by an independent entity, providing consultancy in the transport sector, in which a model aimed at traffic prevision was developed. Among the results presented in these studies were estimations of both market and cross-demand elasticities.

16. These studies were useful to the PCA, both in market definition and competitive assessment, when analysed together with other elements, such as previous traffic prevision by Brisa, and other studies and reports developed prior to the merger procedure.

17. Consumer surveys may also be important when dealing with complex merger cases, particularly so as to obtain clarification concerning product market definition. This was the case in the Barraqueiro/Arriva merger, involving a rail company and a bus provider, where an adequate definition of the relevant product markets implied assessing the existing substitutability between two distinct means of transport, in the area affected by the merger.

18. Initially, the PCA considered it would be relevant to perform a SSNIP test, by means of the survey, focusing on the consumer reaction to a hypothetical 5 to 10% increase in prices. However, following detailed discussions with the notifying party, and given that there was price regulation both in rail and bus services, the notifying party considered the test would not be fully understood by customers, and could have a negative impact on the companies' image.

19. As a consequence, other type of questions were designed to capture the existing substitutability between the two means of transport concerned, namely if the two services could be considered viable alternatives, whether customers had switched, in the past, from one service to the other, and which reasons might have driven the switch (prices, quality, frequency, services offered, etc.).

20. This survey was carried out by an independent entity contracted by the notifying party, and the process involved discussions, concerning the details and form of the survey, between the PCA and the independent survey company, until a final version was approved by the PCA.

21. In order to make the survey effective, the PCA ensured that the survey was very concise, aiming directly at addressing the matter of substitutability between the two services. It was also ensured that the sample of answers was large enough, so as to obtain bias free results from the survey, which could consist in valid information for the merger analysis.

22. Finally, concerning the requirements of specific expertise, not available in-house, involving complex technological issues, it is worth mentioning the specific case of the Sonaecom/PT merger, where matters such as usage and availability of radio-electric spectrum and the evolution of GSM/GPRS and UMTS networks had to be addressed. With respect to these issues, the PCA requested the notifying party to submit studies in the area, which were analysed together with information provided by the sector regulator.