

Unclassified

DAF/COMP/AR(2016)6

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

25-May-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)6
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN PORTUGAL

--2015--

15-17 June 2016

This report is submitted by Portugal to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held 15 – 17 June.

JT03396541

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

English - Or. English

TABLE OF CONTENTS

Executive summary3

1. Enforcement of competition law and policies4

1.1 Action against anticompetitive practices, including agreements and abuses of dominant positions4

1.1.1 Abuse of dominant position.....5

1.1.2 Horizontal Restraints/Cartels.....5

1.1.3 Vertical restraints.....6

1.2 Judicial review of PCA’s decisions6

1.2.1 Abuse of dominant position by Sport TV7

1.2.2 Cartel in the printing sector7

1.3 Mergers and acquisitions - DCC8

1.3.1 Statistics.....8

1.3.2 Summary of significant merger cases.....9

1.3.2.1 Ccent. 9/2015 – EDP Renewables/Ativos ENEOP9

1.3.2.2 Ccent.24/2015 – Via Marítima / PCI.....9

1.3.2.3 Ccent.26/2015 – FixeAds / Custo Justo Assets10

1.3.2.4 CCent. 15/2014 – JCDecaux/Cemusa.....10

2. The role of competition authorities in the formulation and implementation of other policies11

2.1 Opinions and recommendations on competition impact assessment.....11

2.2 Other initiatives on competition impact assessment.....12

2.3 Conferences, Workshops and Seminars12

2.3.1 The IV Lisbon Conference12

2.4 International Cooperation13

2.4.1 European Cooperation13

2.4.2 Bilateral Cooperation.....13

2.4.3 Multilateral Cooperation.....14

3. Resources of competition authorities.....15

3.1 Annual budget15

3.2 Number of employees (in 31.12.2015).....15

3.3 Human resources applied to (in 31.12.2015).....15

4. Summaries of or references to new reports and studies on competition policy issues15

4.1 Sector inquiries and market studies15

4.1.1 Strategic Action Plan for Public Procurement.....15

4.1.2 Sector inquiry regarding the competitive conditions in Portuguese ports15

4.1.3 Other Ongoing Market Monitoring Activities17

**2015 OECD ANNUAL REPORT ON COMPETITION POLICY
PORTUGUESE COMPETITION AUTHORITY¹**

EXECUTIVE SUMMARY

1. The Portuguese Competition Authority (PCA) developed an intense activity in 2015 promoting effective competition in the markets for the benefit of consumers.
2. In the antitrust area, there was a significant increase in the number of decisions and the total fines imposed amounted to 20.5 million euros. The PCA applied two of its largest fines ever since 2003, in the energy and pharmaceutical sectors. In line with the priority of fighting cartels, in particular bid-rigging in public procurement, the PCA issued a prohibition decision, using the settlement procedure, on a bid-rigging cartel in the construction sector. In addition, the PCA carried out dawn raids in two cases of anti-competitive practices, targeting 14 different locations.
3. In the field of merger control, in 2015, there was an increase of almost 40% in the number of notifications, which indicates an increase of dynamism of the Portuguese economy. This dynamism is also revealed by the fact that purely domestic mergers correspond to 59% of the decisions taken during 2015, which also represents a significant increase compared to 28% in 2014. In 2015, the PCA issued two clearance decisions with commitments, and two mergers were withdrawn following competition concerns identified in phase II decision/draft decision.
4. In the area of competition advocacy, the PCA issued a substantial number of opinions on competition impact assessment, in particular in the areas of energy, telecommunications and environment, and pursued market studies on Maritime Ports and Natural Gas.
5. Finally, the PCA pursued its efforts to promote a competition culture in Portugal with the publication of the "Guidelines on Fighting Collusion in Public Procurement" in December 2015, and with the organization of the IV Lisbon Conference on Law and Economics of Competition, in October 2015, which gathered a range of renowned experts and attracted over 300 participants.

¹ This Report covers the activities of the Portuguese Competition Authority from 1 January 2015 to 31 December 2015.

1. Enforcement of competition law and policies

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

6. In 2015, the enforcement activity of the PCA had as a priority the fight against cartels and the detection and punishment of vertical restraints. Action against abuses of dominance was also a main concern.

7. Three fining decisions were adopted by the PCA, sanctioning (i) vertical restraints in the bottled Liquefied Petroleum Gas (LPG) market, (ii) a bid-rigging cartel in construction sector and (iii) an abuse of dominance in the pharmacies' commercial data sector.

8. The PCA also issued three commitment decisions. In these cases, the PCA raised concerns regarding vertical restraints in the motor vehicles sector and regarding football media rights.

9. During the course of 2015, the PCA opened proceedings in ten cases and filed proceedings in five cases for lack of sufficient evidence. At the end of 2015, the PCA had sixteen ongoing investigations including agreements, abuses of dominant position and decisions of association of undertakings.

10. A sector inquiry was launched in 2015 in the wholesale and retail distribution markets for IT equipment, game consoles and game cartridges for these consoles.

11. Finally, the PCA issued three decisions for the non-provision of information or the provision of false, inaccurate or incomplete information in response to a request for information, imposing fines to three undertakings totalling 400,000 euros.

12. Fines. The total amount of antitrust fines imposed in 2015 by the PCA was 20.9 million euros.

13. Inspections. The PCA carried out two dawn raids, covering 13 entities and 14 different locations. The dawn raids involved companies active in the sector of office consumables in the areas of Lisbon and Porto, and port services providers in Lisbon, Setúbal, Sines and Aveiro.

Summary of antitrust cases in 2015

	No. of cases
Prohibition decisions	3
Commitment decisions	3
Investigations filed (for lack of sufficient evidence)	5
Investigations launched	10
Ongoing investigations (by 31.21.2015)	16
Non-compliance decisions	3

1.1.1 *Abuse of dominant position*

- **Case No. PRC/2009/13 - Pharmacies' commercial data**

14. In December 2015, the PCA adopted a prohibition decision against ANF (Associação Nacional das Farmácias) and three companies of the ANF Group (Farminveste – S.G.P.S., S.A., Farminveste – Investimentos, Participações e Gestão, S.A., e HMR – Health Market Research, Lda.) for abusing their dominant position by way of margin squeeze in the Portuguese pharmacies' commercial data market and in the markets of pharma market studies based on these data.

15. The PCA's investigation concluded that, between January 2010 and December 2013, the prices charged by the ANF Group in the sale of the pharmacies' commercial data (upstream market) and the prices charged by the ANF Group for pharma market studies based on those data (downstream markets) did not provide an equally efficient competitor active in the downstream market with sufficient margin to cover the remaining production costs.

16. Therefore, the PCA imposed fines totalling 10.34 million euro, for breach of article 11 of the Portuguese Competition Act (Law No. 19/2012, of 8 May) and article 102 of the Treaty on the Functioning of the European Union (TFEU).

1.1.2 *Horizontal Restraints/Cartels*

- **Case No. PRC/2014/2 - Pre-fabricated modules**

17. In July 2015, the PCA fined five companies – Algeco – Construções Pré-Fabricadas, S.A., Elevatrans – Pré-fabricados, S.A., Grupo Vendap S.A., Movex – Produção, Venda e Aluguer de Módulos Pré-Fabricados, S.A. e U.E.M. – Unidade de Estruturas Metálicas S.A. – for colluding in public tenders launched for the supply of pre-fabricated modules for the temporary installation of classrooms during renovation works of public schools in Portugal.

18. In 2009 and 2010, the five companies involved manipulated their tender proposals and aligned their prices, in order to artificially determine the winner of each tender.

19. This was the first time the settlement procedure was used by the PCA in proceedings initiated under the 2012 Competition Act. Leniency was also granted to four of the five companies involved.

20. The PCA concluded that the cartel breached article 9 of the Portuguese Competition Act and article 101 TFEU, and imposed fines in a total of 831.810 euros.

- **Case No. PRC/2012/9 - Banking sector**

21. In 29 May 2015, the PCA issued a statement of objections against 15 banks regarding potential anticompetitive concerted practices.

22. The PCA has concerns that the banks may have exchanged commercially sensitive information about their retail credit products, namely mortgages, consumer and small and medium enterprises credit products. In some cases, the practice may have lasted for 11 years and focused on non-public information, namely intents to change spreads.

23. The issuance of a statement of objections does not prejudice the final outcome of the procedure.

1.1.3 Vertical restraints

- **Case No. PRC/2011/13 - Liquefied petroleum gas**

24. In January 2015, the PCA issued a prohibition decision against three companies (Petróleos de Portugal – Petrogal, S.A., Galp Açores and Galp Madeira), all part of the Galp Energia group, active in the Liquefied Petroleum Gas (LPG) market.

25. The companies prohibited their distributors from selling bottled LPG outside the allocated sales territory even in response to unsolicited orders - i.e., they restricted passive sales outside the allocated territory, thus infringing article 9 of the Portuguese Competition Act and article 101 TFEU.

26. This case was initiated *ex officio* in the framework of a sector inquiry launched by the PCA in the energy sector. The PCA imposed a total fine of 2.29 million euros.

- **Cases No. PRC/2013/5 and PRC/2015/1 – motor vehicles warranties**

27. The PCA closed with commitments investigations into extended motor vehicle warranty contracts of Peugeot Portugal Automóveis, S.A., and Ford Lusitania, S.A.

28. Under those contracts, the extended motor vehicle warranty was conditional on the end user having repair and maintenance work carried out only within the manufacturer’s official repair network.

29. The companies involved committed to modify all contracts and documents which included the clause that prevented end users from having repair and maintenance work carried out by independent repairers, if not to lose the right to the manufacturer’s warranty.

- **Case No. PRC-2013/2 – football media rights**

30. In 1 June 2015, the PCA adopted a commitment decision on a football media rights case involving the Controlinveste Media group.

31. The case concerned agreements between football clubs and the Controlinveste Media group, a major media company, that entailed a risk of market foreclosure resulting essentially from the long duration of the exclusivity agreements, the suspension mechanism and the right of first refusal.

32. The media company committed not to conclude new agreements with the football clubs of the premier and second football leagues having: (i) exclusivity obligations exceeding three years; (ii) clauses giving a right of first refusal; and (iii) clauses identical to the existing suspension clauses that extended the duration of the contract beyond three years. As to the contracts in force, which were not in line with the commitments, the company involved undertook to grant to the football clubs of the premier and second football leagues: (i) the right to terminate their contracts without any penalty or compensation, with effect from the end of the 2015/2016 season, provided that it was notified by registered letter until 30 November 2015; (ii) the right to opt-out from the suspension mechanism; and (iii) the right to waive the right of first refusal.

1.2 Judicial review of PCA’s decisions

33. In 2015, the Portuguese Courts confirmed the vast majority of PCA’s decisions.

34. In particular, three antitrust fining decisions of the PCA were upheld by the Lisbon Court of Appeal (2nd instance), confirming the Competition, Regulation and Supervision Court’s (1st instance)

previous decisions, namely: (i) the PCA's decision in an abuse of dominance case in the market of premium sports for pay-tv; (ii) the PCA's decision of 2008 in a price-fixing cartel case covering public procurement for the supply of hospital reagent strips for diabetes; and (iii) the PCA's decision in a cartel case in the printing sector involving price fixing and client allocation in the production, distribution and commercialization of business forms.

35. Moreover, the Competition, Regulation and Supervision Court upheld a PCA's interlocutory decision regarding rights of defence and access to file in the antitrust investigation on the alleged concerted practices in the banking sector.

36. Finally, the Competition, Regulation and Supervision Court upheld several PCA's decisions related to mergers between undertakings regarding:

- The alleged tacit approval of the merger Ccent. 4/2013 - Controlinveste*ZON*PT/Sport TV*PPTV*Sportinveste, which was prohibited by the PCA in July 2014;
- The alleged tacit approval of the merger Ccent. 31/2011- Lactogal/ Renoldy, which was withdrawn by the parties during phase II investigation;
- An appeal by a third party related to a PCA's non-opposition decision with remedies in the merger Ccent. 38/2012 - Arena Atlântida/Pavilhão Atlântico*Atlântico; and
- Preliminary injunctions by two Municipalities related to a PCA's clearance decision in the merger Ccent. 37/2014 - SUMA/EGF, related to urban waste management.

1.2.1 Abuse of dominant position by Sport TV

37. The Lisbon Court of Appeal, by judgment of 11 March 2015, confirmed the sentence of 4 June 2014, adopted by the Competition, Regulation and Supervision Court, which had confirmed the PCA's decision, and also the reduction of the fine initially applied by the PCA in the proceedings.

38. In 14 June 2013, the PCA adopted a prohibition decision against Sport TV Portugal, S.A. (Sport TV) for an abuse of dominant position and imposing a fine of € 3.73 million, for infringing article 6 of Law No. 18/2003 and Article 102 TFEU.

39. The PCA found that Sport TV applied a discriminatory remuneration system in the distribution agreements for Sport TV television channels entered into between this company and the operators of subscription-based television services during a period of more than six years in the domestic market of premium sports pay-tv.

40. The proceedings are now pending before the Constitutional Court, following an appeal by Sport TV of the Lisbon Court of Appeal's decision.

41. This is the first abuse of dominance case decided by the PCA to be upheld both in the 1st and 2nd instance review courts.

1.2.2 Cartel in the printing sector

42. The Lisbon Court of Appeal, by judgment of 19 November 2015, confirmed the sentence of 7 March 2014 of the Competition, Regulation and Supervision Court, which had confirmed the prohibition decision of the PCA, albeit with a reduction of the fines.

43. The PCA had adopted, in 13 December 2012, a fining decision against four undertakings - Contiforme - Soluções Gráficas Integradas, S.A. (Contiforme), Copidata, S.A. (Copidata), Formato - Formulários Múltiplos Comerciais, S.A. (Formato) and Litho Formas Portuguesa - Impressos Contínuos e Múltiplos, S.A. (Litho Formas) -, for their participation in a cartel in the printing sector in the Portuguese market, by fixing prices and allocating customers in the production, distribution and commercialization of business forms, from 2001 to 2010. These fines totalled € 1.8 million. The PCA also fined three members of the management bodies of the undertakings at the time of the facts in a total of € 6000.

44. The investigation was launched in October 2010 following a leniency application by one of the cartel participants.

45. This decision has now become *res judicata*.

1.3 Mergers and acquisitions - DCC

1.3.1 Statistics

Merger decisions adopted in 2015

Notified mergers	60
Total decisions	63
Pending	7
Phase I	Cases
Non-notifiable transactions	
Clearance	57
Clearance with commitments	1
Withdrawn cases	2
Non Clearance	
To Initiate an in-depth investigation	2
Referral to European Commission	
Tacit approval	
Phase II	
Clearance	1
Clearance with commitments	1
Non Clearance	
Withdrawn cases	1
Tacit approval	
TOTAL FINAL DECISIONS ADOPTED (does not include the Phase I decision to proceed into Phase II)	63

Breakdown by nature of operation (Final Decisions)

	Cases	%
Horizontal	33	52
Vertical	8	13
Conglomerat	22	35
TOTAL	63	100%

Breakdown by geographic scope of operation (Final Decisions)

	Cases	%
Multi-jurisdictional filings (within EU)	11	17
Multi-jurisdictional filings (outside EU)	5	8
National with involvement of undertakings from other EU member states	7	11
National with involvement of undertakings from countries outside EU	3	5
Completely national	37	59
TOTAL	63	100%

Breakdown by type of operation (Final Decisions)

	Cases	%
Sole control	47	75
Joint control	13	21
Acquisition of assets	2	3
Takeover bid	1	2
TOTAL	63	100%

*1.3.2 Summary of significant merger cases*1.3.2.1 Ccent. 9/2015 – EDP Renewables/Ativos ENEOP

46. In 14 August 2015, the PCA adopted a clearance decision, subject to remedies, in the case concerning the acquisition, by EDP Renewables, of sole control over a number of wind-power parks of ENEOP – Eólicas de Portugal, S.A., representing a total of wind-capacity electricity generation of 613.2 MW.

47. Competition concerns arose, mainly, from the potential impact of the merger in the complementary services market. In fact, a rise of the levels of intermittence and unpredictability of wind-power electricity generation, in particular as a result of EDP Renewables' potential strategic behaviours in the management of both the power capacity and the effective electricity production by its own wind-power parks, would surely result in an increase of the need to recourse to complementary services markets (secondary and tertiary regulation) in order to adjust generation and consumption needs in real-time.

48. As the main beneficiary of the referred increase to recourse to complementary services reserves - due to its overwhelming position in the complementary services market -, the EDP Group would have the incentive to adopt strategic behaviours when managing its own wind-power parks with negative effects on consumers.

49. EDP Renewables offered behavioural remedies that were considered adequate and sufficient to eliminate the competition concerns. If competition concerns still remain following the end of the time period foreseen in the decision for the remedies, a divestment remedy will be applied.

1.3.2.2 Ccent.24/2015 – Via Marítima / PCI

50. In 23 December 2015, the PCA adopted a clearance decision with remedies in the case concerning the acquisition of sole control of Portline Containers Internacional, S.A. ("PCI") by Via Marítima, Lda. ("Via Marítima"), a company of the Group Sousa, one of the main groups operating in maritime transport between mainland Portugal and the Madeira Archipelago.

51. PCI provides container liner-shipping services to West Africa and also in the routes between mainland Portugal and the Archipelagos of Madeira and Azores, these last two based on slot charter agreements.

52. The PCA considered that both unilateral and coordinate effects, with a special focus on the route between the Portuguese mainland and the Madeira Archipelago, could not be excluded as a possible result from the merger.

53. These concerns resulted, among other facts, from the high concentration existing in the market (only two operators would remain) and the existence of barriers to entry, as well as from several other characteristics in the market that make it vulnerable to behaviour coordination, such as symmetries between the remaining cargo shipping companies and offers, the existence of structural and commercial multi market contacts and relations between them, low elasticity of demand, stability and predictability of the level of the demand, frequent and repeated transactions and the existence of some transparency in the market.

54. Via Marítima offered remedies that enhanced the conditions of contestability in the market and that were considered adequate and sufficient to eliminate the competition concerns.

1.3.2.3 Ccent.26/2015 – FixeAds / Custo Justo Assets

55. In 29 October 2015, the PCA closed the proceeding related to the proposed acquisition of part of CustoJusto, Unipessoal, Lda.'s assets by FixeAds – Serviços de Internet, S.A..

56. FixeAds manages several online platforms for classified ads and auctions, including www.olx.pt, www.imovirtual.com, www.standvirtual.com and www.coisas.pt, and CustoJusto manages an online platform for classified ads at www.custojusto.pt.

57. This proceeding was closed upon request of the acquiring party, FixeAds, and the closing decision was taken under the assumption that the proposed concentration would not occur.

58. The request to withdraw the merger proceeding was taken after the PCA issued a draft decision to initiate an in-depth investigation. In this draft decision, the PCA identified potential significant impediments to competition that could occur as a result of the proposed concentration given the high concentration levels in the national market of online platforms for classified ads, the high market shares of the parties and the fact that they are the closest competitors. The PCA also identified high barriers to entry and expansion due to strong network effects.

1.3.2.4 CCent. 15/2014 – JCDecaux/Cemusa

59. In 19 March 2015, the PCA declared the extinction of the merger proceedings concerning the acquisition of sole control of Cemusa - Corporación Europea de Mobiliario Urbano, SA ("Cemusa") by JCDecaux Europe Holding ("JCDecaux").

60. Both JCDecaux and Cemusa are active in the provision of space for outdoor advertising, therefore the merger in question was of horizontal nature.

61. In 7 August 2014, the PCA adopted a decision to open an in-depth investigation, on the grounds that the transaction in question raised serious doubts of possible significant impediments to effective competition. The concerns raised related to the increase of market concentration, competitive closeness between the undertakings participating in the merger and the existence of barriers to entry and to expansion, which could be increased if the merger would be implemented.

62. At that stage of the procedure, additional inquiries were carried out and confirmed the competition problems identified in the adopted decision of 7 August 2014. Additionally, on the basis of qualitative elements and the implementation of the small but significant and non-transitory increase in price (SSNIP) test, the national market for the provision of advertising space on street furniture was taken in consideration by the PCA, contradicting a broader market definition proposed by the Parties.

63. In 10 February 2015, in order to overcome the competition concerns identified by the PCA, JCDecaux submitted remedies packages twice. However, the PCA did not decide on their acceptance.

64. In 18 March 2015, JCDecaux presented an application for withdrawal of the merger proceedings, following which the PCA declared it extinct. The merger had been notified to the PCA in 2 May 2014.

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

65. The PCA has established as one of its priorities for the year 2015 the development of internal capacities for the implementation of a Competition Impact Assessment program to perform *ex-ante* and *ex-post* evaluation of Portuguese public policies, a task entrusted to its Special Unit for Competition Assessment of Public Policies.

66. In 2015, the PCA issued 18 opinions and one recommendation on the competition impact assessment of public policy measures. The recommendation addressed issues of public procurement design which favoured incumbents. The opinions issued focused on different sectors, such as waste management activities, envisaged legislation on tobacco manufacturing and distribution, auditing services, changes to the fixed book price and extension to e-books, energy and chartered accountancy.

2.1 Opinions and recommendations on competition impact assessment

67. **Chartered Accountants.** The PCA issued an *ex officio* opinion addressed to the Portuguese Parliament regarding the bill adopting the Statutes of the Chartered Accountants Association proposing the suppression of some provisions that would have set a quantitative limitation (expressed in client turnover) to the services that could be provided by each chartered accountant. Following the PCA's opinion, these provisions were eliminated in the final draft of the law.

68. **Tobacco.** Regarding the legislation implementing the Tobacco Directive, the PCA proposed the elimination of a provision envisaging a Government decreed minimum price for tobacco products. The PCA's proposal was accepted by the Government.

69. **Books.** In 2015, the Minister of the Economy requested an opinion on a draft law that would extend the current fixed book price regime to reprints and to e-books and audio-books, as well as limit discounts by retailers. The PCA issued an opinion arguing that an extension of the minimum price fixing regime could harm the development of a Portuguese-language e-book market. The PCA also raised doubts as to the contribution of the fixed book price regime to the objective of ensuring a sufficient geographical coverage of bookstores across the country, particularly regarding e-books as these can be accessed in any location with an internet connection. The PCA also advised against the extension of the book price regime to reprints as this would dampen competition in book retailing. The Government only accepted the recommendation on reprints and the book price regime was thus extended to e-books and audio-books.

70. **Waste management.** The PCA issued an *ex ante* opinion on the new legal regime for packaging waste management, proposing a clarification of the current exclusivity of municipalities so as to create new opportunities for competition in the area of large waste producers. At the end of 2015, the PCA also issued an opinion on the ongoing procedure to license a new collective management entity for packaging waste

and the renewal of the license of the existing collective management entity. The opinion is a follow-up of an earlier recommendation issued in 2014, welcoming the introduction of some of the PCA's concerns regarding the promotion of competition in the sector and highlighting some remaining concerns, particularly in the field of information exchange between competing collective management entities in the future.

71. **Public procurement.** In 2015, the PCA issued a recommendation regarding a case where a public purchasing body chose to use a pre-qualification procedure, in conformity with Portuguese law, and then imposed a requirement of curricular experience that favoured the incumbent supplier. The PCA held that this requirement created a barrier to new entrants, thus hindering the efficient functioning of the market. This requirement was not justified by the public interest reasons stated by the purchasing entity, as there were less restrictive means available to adequately protect the relevant public interest. The PCA therefore recommended the elimination of this requirement in future tendering procedures.

2.2 *Other initiatives on competition impact assessment*

72. In 2015 the PCA conducted an institutional roadshow of its Special Unit for Competition Assessment of Public Policies and its activities in this field. In this context, meetings were held with the Portuguese Court of Auditors, where the possible cooperation in the field of competition advocacy was discussed in the context of public procurement, and the Ministries of Finance, Agriculture and Sea, Regional Development, Internal Affairs and Environment, Territory and Energy.

73. An institutional presentation of the competition impact assessment programme was also made by the President of the PCA to the Portuguese Parliament's Economy, Innovation and Public Works Committee, in 9 December 2015.

74. In 2015, the PCA participated in a hearing of the Portuguese Parliament's Budget and Finance Committee on the draft bill setting the new legal regime of electronic procurement platforms, where it presented several proposals, including a provision on access to procurement data by the PCA to monitor collusion in public procurement that was met positively by the legislative body.

75. The PCA also submitted preliminary comments on an early draft of the legislation that will implement the 2014 EU Directives on public procurement. The President of the PCA participated in a hearing of the working group appointed by the Government to draft the new legislation.

2.3 *Conferences, Workshops and Seminars*

2.3.1 *The IV Lisbon Conference*

76. In 22-23 October 2015, the PCA organized the IV Lisbon Conference on Competition Law and Economics, a forum to discuss ideas and share experiences with some of the most internationally renowned experts in Competition Law and Economics.

77. The Lisbon Conference was attended by more than 300 participants from more than 28 jurisdictions.

78. The speakers and moderators were: Rosa Abrantes-Metz, Managing Director of Global Economics Group and Adjunct Professor at NYU Stern School of Business, New York; Joaquim Nunes de Almeida, Director, DG GROW, European Commission; David Anderson, Partner, Berwin Leighton Paisner LLP, Brussels; Luís Pais Antunes, President of the Association of Portuguese Competition Lawyers; Gilvandro Vasconcelos Coelho de Araújo, Commissioner, Administrative Council for Economic Defence, Brazil; Nuno Rocha de Carvalho, Member of the Board of the Portuguese Competition Authority;

John Davies, Head, Competition Division, OECD; António Gomes, President of the Portuguese Competition Authority; Frédéric Jenny, Chairman of the OECD's Competition Law and Policy Committee and Professor of Economics at the ESSEC Business School, Paris; Nelson Osman Jeque, Adviser, Ministry of Industry and Trade, Mozambique; Eduardo Prieto Kessler, Competition Director, National Commission for Markets and Competition, Spain; Kinavuidi Kiako, Director, Institute of Prices and Competition, Ministry of Finance, Angola; John Kirkpatrick, Senior Director, Research, Intelligence and Advocacy, Competition and Markets Authority, UK; William Kovacic, Global Competition Professor of Law and Policy at George Washington University Law School, Washington, D.C., and Non-Executive Director of the Board, Competition and Markets Authority (CMA), UK; Helena Abreu Lopes, Judge, Court of Auditors, Portugal; Guillaume Lorient, Director, DG COMP, European Commission; Mark MacGann, Head of Public Policy EMEA, Uber, Amsterdam; Guilherme d'Oliveira Martins, President of the Court of Auditors, Portugal; Maria João Melícias, Member of the Board of the Portuguese Competition Authority; Amílcar Aristides Monteiro, Director General for Industry and Trade, Ministry of Tourism, Investments and Business Development, Cabo Verde; Teresa Moreira, Director-General for Consumer, Portugal; Jorge Padilla, Senior Managing Director and Head of Compass Lexecon Europe, Madrid; Lucas Peepkorn, Principal Expert in Antitrust Policy, DG COMP, European Commission; Andrea Gomes da Silva, Senior Legal Director, Markets, Mergers and Sector Regulation, Competition and Markets Authority, UK; Giancarlo Spagnolo, Professor of Economics, SITE –Stockholm School of Economics & University of 'Tor Vergata' – DEF and Research Fellow, C.E.P.R., London & E.N.C.O.R.E, Amsterdam; Theodor Thanner, Director General, Austrian Competition Authority, Austria; Hal Varian, Chief Economist, Google, and Emeritus Professor at the University of California, Berkeley, California; Stanley Wong, Chief Executive Officer, Competition Commission, Hong Kong.

79. The conference provided for lively discussions on leniency, restrictions by object and by effect, innovative technologies and disruptive business models, public procurement and building of a common competition language in Portuguese speaking countries.

2.4 International Cooperation

2.4.1 European Cooperation

80. **ECN – European Competition Network.** The PCA actively participated in all formal and informal cooperation mechanisms within the European Competition Network. In this regard, the PCA attended Oral Hearings and Advisory Committee meetings regarding antitrust and merger issues. Moreover, the PCA is co-chair of the ECN Working Group on Cooperation Issues and Due Process and provided substantive input to all ECN working groups, including cartels, fines, food, energy and telecommunications. In June 2015, the PCA hosted a meeting of the ECN Merger Working Group in Lisbon.

81. **ECA – European Competition Authorities.** The PCA participated in the Annual Meeting of ECA that took place in Bergen, Norway, in June 2015. In 2015, the PCA notified three merger cases to the ECA Network. All these cases referred to multijurisdictional transactions within the EEA. The ECA Network proved to be an excellent platform for the exchange of information and experience regarding particular merger cases analysed by the PCA during the referred period.

2.4.2 Bilateral Cooperation

82. **Spain - VII Iberian Competition Forum.** In 12-13 October 2015, the PCA hosted the VII Iberian Competition Forum, a bilateral meeting with the Spanish Comisión Nacional de Mercados y Competencia (CNMC) with the objective of strengthening of cooperation between the two agencies and reinforcing mutual knowledge on their respective markets.

83. During the VII Iberian Competition Forum, the PCA and the CNMC discussed issues, such as public procurement, sanctioning procedures, sharing economy, exchange of information between authorities and mergers assessment, and committed to closer cooperation on priority issues, such as the fight against cartels and competition assessment of public policies.

84. Brazil. In 2015, the PCA continued to deepen its institutional relations of cooperation with the Brazilian Administrative Council for Economic Defence (CADE). In November 2015, the PCA participated in the OECD/CADE Competition Summit “Public Procurement & Fighting Bid Rigging”, in Brasília.

85. Colombia. In April 2015, the PCA participated in the "Semana de la Promocion de la Competencia" promoted by the Superintendence of Industry and Commerce of Colombia. Inspired by the PCA's campaign "Fair Play – With Competition, everybody wins", the Superintendence of Industry and Commerce of Colombia held sessions addressed to business to promote competition and compliance in five Colombian cities, in which Mr. Nuno Rocha de Carvalho, Member of PCA's Board participated as a speaker.

2.4.3 *Multilateral Cooperation*

86. ICN - International Cooperation Network. In 2015, the PCA continued to actively participate in the projects and teleseminars of all ICN working groups: Advocacy, Agency Effectiveness, Cartels, Mergers and Unilateral Conduct.

87. The PCA attended the ICN Annual Conference in Sydney in April 2015, in which the PCA's President spoke in the Merger Plenary Session on “International Cooperation and Remedies in Merger Review”. The PCA also participated in the ICN Merger Workshop, held in Brussels, in September 2015, including as speaker in the Plenary session on the hypothetical case study.

88. ICN/World Bank Group. In 2015, the PCA was awarded an Honorable Mention in the ICN-WBG Competition Advocacy contest for its campaign “Fair Play – With competition, everybody wins”.

89. OECD – Organisation for Economic Co-operation and Development. The PCA participated in the meetings of the Competition Committee of 2015, namely by submitting written contributions and actively participating in the discussions on “*Public and Private Antitrust Enforcement in Competition*”, “*Oligopoly markets*” and “*Ex-post assessment of competition agencies' enforcement decisions*”. The PCA also took part in the Global Forum on Competition of October 2015, and Workshop on "Capacity Building on Ex-post Evaluation", of April 2015.

90. In addition, the PCA participated in the annual meeting of the OECD-BID Latin American Competition Forum, which took place in Jamaica, in September of 2015, submitting written contributions on “*Structural issues in the groceries sector: mergers and regulatory issues*” and “*Competition issues in the groceries sector: focus on conduct*”.

91. The President of the PCA also participated in “Advocacy Leaders Seminar”, organized by the OECD-Korea Policy Centre, in Singapura, in June 2015.

92. UNCTAD. The PCA participated in the 7th United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, held in Geneva in July of 2015.

93. Ibero-American Competition Forum. The PCA co-organized with the Spanish CNMC, and the support of the Jamaican Fair Trading Commission, the 2015 Ibero-American Competition Forum, which

followed the OECD-BID Latin American Competition Forum. The topics of the Forum were “*Sanctioning competition law and protection of fundamental rights*” and “*Providing guidance to business: challenges and experiences*”.

3. Resources of competition authorities

3.1 Annual budget

94. The PCA’s 2015 Annual budget was € 9.179.201.

3.2 Number of employees (in 31.12.2015)

Specialisation	No. of Staff
Economists	25
Lawyers	29
Other professionals and support staff	25
Total	82

.. Includes management; does not include Board

*** includes 3 Board members

3.3 Human resources applied to (in 31.12.2015)

Area of activity	No. of Staff
Enforcement against anticompetitive practices	19
Merger review and enforcement	11
Legal service	7
Advocacy efforts	15

.. Includes management; does not include support staff

4. Summaries of or references to new reports and studies on competition policy issues

4.1 Sector inquiries and market studies

4.1.1 Strategic Action Plan for Public Procurement

95. The PCA has devised a Strategic Action Plan for Public Procurement with the aim to enhance competition in public procurement, built around three interrelated cornerstones – fighting bid rigging, promoting efficiency and aligning incentives.

96. In the context of this Action Plan, the PCA issued “*Guidelines on Fighting Collusion in Public Procurement*” in December 2015.

97. The “*Guidelines on Fighting Collusion in Public Procurement*” are primarily addressed to public procurement agents, and provides information about the main types of collusion in public procurement. The Guidelines aim to assist public procurement bodies in the detection of bid-rigging in procurement procedures, as well as to promote best practices in tender design to prevent this type of behavior, and promote efficiency in the allocation of public funds.

4.1.2 Sector inquiry regarding the competitive conditions in Portuguese ports

98. In July 2015, the PCA launched a public consultation on the preliminary findings of its sector inquiry regarding the competitive conditions in Portuguese ports. The sector inquiry identified a set of competition issues in the port sector mainly related to i) high concentration levels in the provision of port terminal services; ii) high entry barriers in the provision of port terminal services and auxiliary port

services (e.g., towage, pilotage); ii) the existence of capacity constraints in various port terminals; iii) the softening of competition stemming from the specialization and differentiation (per type of cargo) of the services provided by different ports/port terminals; and iv) the high degree of vertical integration of the main players involved in the logistic chain, which can provide incentives to use market dominance in some links of the logistic chain to leverage market power in other links/markets; combined with v) the absence of significant countervailing buyer power of shippers and port services users.

99. In the Draft Report, the PCA set forth a number of recommendations to minimize the competition constraints identified and promote competition in the sector. The preliminary recommendations relate to i) the sector's governance model, ii) the procedures for awarding port terminal concessions and their ex-post implementation monitoring, iii) the tariff structure applied to these concessions and the iv) the existence of unjustified barriers to entry in markets involving other port services (e.g., towage, pilotage). Furthermore, the sector inquiry highlights that the improvement of the competitive conditions in the market should potentially lead to a higher pass-through of the cost savings along the value chain, to the benefit of shippers, and that the likelihood of the pass-through could be strengthened through enhanced transparency, well specified concession contracts and adequate monitoring of their subsequent implementation.

100. In what concerns the sector's governance model, the Draft Report's preliminary recommendations advocate for the need of a clear separation between the regulatory activity, port management and commercial activities. To this end, the Draft Report argues for the relevance of ensuring a fully functioning sector regulator (AMT – Autoridade da Mobilidade e dos Transportes), endowed with the necessary means to effectively pursue its mission. Furthermore, the Draft Report recommends that the Government (the only shareholder of port authorities) should clearly set the maximization of the efficient use of port infrastructures and services as the main goal for port authorities.

101. The recommendations addressed to port authorities highlight the relevance of the principles laid down in the EU Directive on Concessions regarding competitive procedures for granting port terminal concessions and concession renegotiation. With regard to other port services, the Draft Report advocates for liberalization/free entry as a general rule, with limited exceptions for well justified instances in light of the proportionality principle. The PCA further recommends that port administrations should reduce the amount of the global fees charged for port terminal concessions, in order to reduce the costs emerging from the provision of port services. Specifically, the Draft Report recommends that port authorities reduce the variable component of the two-part fee paid by port terminal operators, which reduces the incentives of port terminal operators to maximize the cargo moved in their terminals and, consequently, to actively compete for cargo moved in other terminals.

102. Finally, the Draft Report sets forth recommendations regarding the information obligations (to be provided to port users, port administrations and to the sector regulator) that should be included in concession contracts to enhance the pass-through of cost savings achieved in the provision of port services to port users/shippers. The Draft Report also recommends that the incentive/disincentive schemes incorporated in concession contracts should be defined and monitored so as to promote the sharing of cost savings and efficiencies with port users/shippers.

103. The PCA is currently analysing the contributions received (over forty) during the public consultation, with a view to issuing the final report.

4.1.3 *Other Ongoing Market Monitoring Activities*

104. **Retail sector.** The PCA continues to monitor potential vertical restraints between large retailers and their suppliers, based on the assessment of contractual relations between companies operating at different stages of the retail distribution chain. In this context, the PCA has been analysing information from a large number of suppliers, distributors and retailers.

105. **Natural gas.** By the end of 2014, natural gas prices in Portugal were the highest in the European Union at all levels of industrial consumption and in almost all levels of domestic consumption. Therefore, the PCA is developing a sector inquiry into natural gas to assess possible competition constraints in the sector. The conclusions of this sector inquiry will be published in 2016.

106. **Electricity and Telecoms.** The PCA maintained its monitoring activities over the energy (electricity and natural gas) and telecom sectors. The PCA has issued several opinions in the context of the regular consultation procedures initiated by the energy sector regulator, ERSE, and the telecom sector regulator, ANACOM.