

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Cancels & replaces the same document of 13 June 2017

Annual Report on Competition Policy Developments in Portugal

21-23 June 2017

This report is submitted by Portugal to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 21-23 June 2017.

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Executive summary

1. This report covers the activities of the Portuguese Competition Authority from 1 January 2016 to 31 December 2016.
2. In 2016, the Portuguese Competition Authority – *Autoridade da Concorrência* (AdC) had significant results in its enforcement action, and reinforced its position on the institutional scene as an advocate of competition in Portugal. 2016 also saw a change in leadership at the AdC. Margarida Matos Rosa took office as President of the AdC in November of 2016.
3. Regarding competition enforcement, 2016 evidenced increasing action to reinforce the AdC’s investigative and sanctioning powers, which are reflected in the 75 decisions rendered by the AdC in 2016, in the fields of antitrust and merger control.
4. In this period, the AdC issued two sanctioning decisions, four commitment decisions and closed six cases. In the market for envelopes, the AdC used a combination of leniency and settlement procedures to sanction a cartel. It also imposed remedies to address both horizontal and vertical competition concerns in the food retail, mental health services and automobile sectors.
5. Also in 2016, the AdC had a key achievement regarding judicial review with a 100% success rate regarding appeals of AdC decisions in substantive issues regarding anticompetitive practices and an overall rate of 84% when including procedural issues and other types of proceedings. In terms of fines, the Courts applied or confirmed in 2016 the highest amount ever of total of fines: more than 11 million euros.
6. As an advocate for competition, the AdC has continued its strategy to engage various stakeholders promoting awareness of competition rules as well as making recommendations and publishing opinions to make markets more competitive.
7. Furthermore, the AdC launched a project on Competition Impact Assessment, in partnership with the OECD. The project aims to perform an impact assessment of public policies, laws and regulations on competition in two sectors. These two sectors under analysis are the transport sector (maritime and terrestrial) and twelve self-regulated liberal professions, given their relevance to the Portuguese economy, namely its competitiveness and exports, impact in domestic use and the contribution of such sectors to local employability.
8. In addition, the AdC issued a substantial number of opinions, in particular in the areas of energy, telecommunications and environment, and concluded a market study on public passenger transport services by car hire.
9. Regarding outreach initiatives with stakeholders as a complement to the AdC’s enforcement agenda, the AdC carried out several initiatives. As a priority for competition enforcement and advocacy, the AdC launched the campaign on “Fighting Bid-Rigging in Public Procurement” which aims to raise awareness and engage contracting authorities, procurement officials and other entities with responsibilities in public procurement towards the common goal of detecting and fighting collusion in public procurement. In 2016, more than five training sessions were held in Lisbon and Porto and within the premises of contracting authorities, reaching more than 400 people. The AdC also promoted the Portuguese Leniency Program among companies and business associations, in order to raise awareness of this important mechanism in cartel detection.

10. In 2016, the AdC published its Guide on the Promotion of Competition for Business Associations. The guide sets out the do's and don'ts for business associations as regards competition rules, provides information and guidance for companies, promotes transparency and legal certainty, as well as encourages complaints and leniency applications.

11. It should be noted that, in 2016, the AdC also concluded its draft legislative proposal to transpose Directive 2014/104/EU on Antitrust Damages Actions into national law, a crucial step in enabling a legal environment and achieving the appropriate balance between public and private enforcement to ensure an effective competition policy and promote compliance.

12. Finally, as a means of promoting a competition culture in Portugal, the AdC inaugurated the Abel Mateus Competition Library at the premises of the AdC, to encourage academic research in competition, but also to host competition-related seminars and conferences, engaging stakeholders and the general public seeking to create a platform for discussion of competition matters and support the continuous development of a competition culture in Portugal.

1. Enforcement of competition law and policies

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

13. In 2016, the fight against cartels and the detection and sanctioning of vertical restraints continued to be a priority of the AdC's enforcement activity. Action against abuses of dominance was also a relevant concern.

14. The AdC issued 12 decisions regarding anticompetitive practices. Two decisions were issued in a bid-rigging case in the market for envelopes, in a mix of leniency and settlements were used to sanction the cartel, reflecting the AdC's efforts to promote the leniency program as a privileged tool for detecting cartels and of procedural mechanisms which contribute to a swifter competition enforcement.

15. Three of the four commitment decisions issued by the AdC were related to vertical restraints, two of which related to motor vehicles warranties, following the monitoring of the motor vehicles sector, and the third in the food retail sector, regarding the price definition within franchising relations. Considering horizontal anticompetitive practices, the AdC accepted commitments in the market of the provision of services by psychologists.

16. During the course of 2016, the AdC issues two statements of objections. Moreover, the AdC opened 9 proceedings for anticompetitive practices, 4 of which were opened *ex-officio*. At the end the year, the AdC had fourteen ongoing investigations into restrictive agreements, abuses of dominant position and decisions of associations of undertakings.

17. **Fines.** The total amount of antitrust fines imposed in 2016 by the AdC was € 600,000 euros.

18. **Inspections.** The AdC carried out two dawn raids, covering 9 entities and 13 different locations. The dawn raids involved companies active in the sector of specialized credit in regards to potential exchanges of commercial information in Lisbon.

Table 1. Summary of antitrust cases in 2016

	No. of cases
Sanctioning decisions	2
Commitment decisions	4
Investigations filed	6
Investigations launched	9
Ongoing investigations (by 31.12.2016)	14

1.1.1. Horizontal Restraints/Cartels

Case No. PRC/2011/10 – Envelopes

19. The AdC dismantled a five-member cartel of paper envelopes producers and distributors, and imposed fines in two separate decisions, one under the settlement procedure and the other under the normal procedure (“hybrid case”).

20. The investigation undertaken by the AdC revealed that, between 2007-2010, five companies concerted their behavior in the Portuguese market of paper envelopes, allocating clients among them and fixing prices, restricting and distorting competition to a considerable extent in response to tenders launched by customers.

21. In particular, the undertakings coordinated their responses to clients’ tenders, aligning offered prices in order to artificially determine the winner of each tender.

22. Under the settlement procedure, the company Antalis was fined by the AdC, in May 2016, with the amount of € 440,000 for participating in the cartel. In a separate decision of November 2016, the four remaining companies were fined. A fine of € 160,000 on the company Firmo Papéis e Papelarias, S.A. was imposed. The companies Copidata, S.A. and Tompla – Indústria Internacional do Envelope, Lda. (within the same economic group) received full immunity in exchange for revealing the existence of the cartel and providing sufficient information that enabled the AdC to prove the cartel infringement. The undertaking Papelaria Fernandes was also sanctioned, but the absence of business turnover prevented the setting of a fine.

23. In the cartel of paper envelopes case, the use of the leniency program proved to be essential, on the one hand, for the finding, establishment and sanctioning of the anticompetitive practices under review, and on the other hand, for the simplification and efficiency of the proceedings.

24. The decision adopted by the AdC closes the investigation opened on 12 September 2011.

25. On 26 February 2015, the AdC undertook a dawn raid to several premises of all undertakings involved.

Case No. PRC/2015/6 – Provision of services by psychologists

26. On 19 February 2015, the Portuguese Competition Authority (AdC) opened proceedings against Ordem dos Psicólogos Portugueses (OPP) - the Portuguese Psychologists Association - for alleged infringements of the competition rules.

27. The investigation revealed that clauses 3.5 and 3.7 of the Deontological Code adopted by OPP, prevented psychologists from acquiring clients from other professionals and treating clients who are already being treated by another psychologist for the same purpose.

28. The AdC concluded that these clauses were likely to affect the functioning of the market, in particular, by restricting clients' freedom of choice and the psychologists' freedom to provide their services.

29. On 29 August 2016, OPP offered a set of commitments to meet the competition concerns expressed by the AdC. According to these commitments, OPP will, inter alia, amend clauses 3.5 and 3.7 of the Code, withdrawing the above mentioned prohibitions.

30. OPP also offered to publish a new version of the Deontological Code on its website, highlighting the amendment of clauses 3.5 and 3.7 of the Code, as well as, mailing a Circular Letter to its members, informing on the above mentioned amendment and its implementation.

31. The AdC accepted these commitments as suitable to address the competition concerns, making them binding to the OPP.

*1.1.2. Vertical restraints**Case No. PRC/2014/3 – Food Retail Market*

32. The AdC adopted a decision which renders legally binding the commitments offered by Dia Portugal Supermercados, Sociedade Unipessoal, Lda. to meet the AdC's competition concerns related to the Minipreço network of franchise supermarkets.

33. The AdC's investigation, initiated on 3 April 2014, revealed competition concerns in relation to the existence of information asymmetries which could induce franchisees in believing that Dia Portugal's maximum and recommended prices were, in fact, fixed resale prices.

34. The investigation included the analysis of all Franchise Contracts, a questionnaire addressed to all Franchisees (around 300) and inquiries and inspections in several locations.

35. To address the AdC's competition concerns, DIA Portugal offered a set of commitments, including sending a Letter to the Franchise Network, clarifying that Franchisees are free to adopt prices lower than the maximum and recommended resale prices indicated by Dia Portugal, and including in all future Franchise Contracts, even with existing Franchisees, a clause or reference preemptorily excluding any interpretation contrary to that freedom.

36. Following the public consultation, which allowed any third parties to present their comments, the AdC concluded that the commitments presented by Dia Portugal were adequate to eliminate the potential harmful effects on competition and on consumer welfare.

37. According to the Portuguese Competition Act, the AdC may accept commitments offered by undertakings which are considered to be adequate to eliminate the effects on competition of the investigated conducts.

38. The AdC adopted the commitments decision on 9 June 2016.

Cases No. PRC/2015/2 and PRC/2015/5 – motor vehicles warranties

39. The AdC adopted a decision which renders legally binding the commitments offered by FCA Portugal, S.A., in relation to Fiat brands (Fiat), and by SIVA – Sociedade de Importação de Veículos Automóveis, S.A. in relation to Audi, VW and Škoda brands (SIVA), in order to address the competition concerns related to motor vehicle warranties' restrictions.

40. The AdC's investigation, started on 29 January 2015 and 19 February 2015, revealed the existence, on both undertakings' extended warranty contracts, in relation to Audi, VW and Škoda brands, of a clause which prevented consumers from having repair and maintenance work carried out by independent repairers, if not to lose the right to the manufacturer's warranty.

41. To address the AdC's competition concerns, Fiat altered its contracts and other relevant documents which included the restriction and offered a set of commitments in order to put an end to the investigated behaviors. SIVA also presented commitments to address the same concerns.

42. Following the public consultation, the AdC concluded that the commitments presented were adequate to eliminate the potential harmful effects on competition.

43. Fiat and SIVA commitments, under the AdC's monitoring, are the following:

- The obligation not to insert or to promote the insertion in Fiat's website, contracts, extended warranty contracts, booklets and/or in any official documents, of any clause preventing consumers from having repair and maintenance work carried out by independent repairers, if not to lose the right to the manufacturer's warranty;
- The introduction (in website, contracts, extended warranty contracts, booklets and/or any official documents regarding warranties) of a notice stating that warranties are not conditional on the end user having repair and maintenance work (outside of the extended warranty's scope) carried out only within official repair networks;
- The communication to official dealers and repair networks of the inapplicability of any restrictions on the possibility of clients choosing independent repairers without losing the extended warranty rights; and
- The communication to all clients who subscribed the extension warranty contract of the inapplicability of any restrictions on the possibility of clients choosing independent repairers without losing the extended warranty rights.

1.2. Judicial review of AdC's decisions

44. Looking at judicial review, the AdC has built a solid track-record in proving its cases in court - an essential element for credibility as an enforcer, for the deterrent effect of its decisions and a visible result of the continuous goal to improve the quality of the decisions, both in terms of due process and substantive analysis.

45. Since 2012, our success rate in court has risen from approximately 50% to an impressive 84% (100% if only rulings on substantive antitrust issues are taken into account) in 2016, with two landmark abuse of dominance cases upheld. This improvement results from a strategy to implement sound and transparent investigations as well as internal checks and balances both in terms of legal and economic reasoning.

46. In terms of penalties, the courts applied or confirmed in 2016 a total of fines corresponding to the highest amount ever: more than € 11 million.

47. During 2016, the Competition, Regulation and Supervision Court (Tribunal da Concorrência, Regulação e Supervisão – TCRS, 1st instance) and the Lisbon Court of Appeal (2nd instance) handed down 44 judgements following appeals of the AdC’s decisions, of which only 3 were overturned (regarding procedural issues in a specific investigation).

48. In particular, two antitrust fining decisions of the AdC were upheld by the Lisbon Court of Appeal, confirming the TCRS’s previous decisions, namely: (i) the AdC’s decision in a vertical restraints case in the energy market; and (ii) the AdC’s decision of sanctioning an economic group for providing inaccurate, incomplete or false information in a request for information. In the 1st instance, a decision regarding a case of abuse of dominant position in the pharmaceutical sector was equally confirmed.

49. Finally, the TCRS upheld several AdC’s decisions related to mergers between undertakings regarding:

1. The prohibition of the merger Barraqueiro/Arriva in the sector of road and rail public transportation sector, which was prohibited by the AdC in October 2005;
2. Preliminary injunctions by eight companies and two municipalities regarding the non-opposition decision to merger Ccent. 37/2014 SUMA/EGF in the urban waste management, rendered in July 2015.

1.2.1. Abuse of dominant position by the National Pharmacies Association (ANF)

50. The TCRS ruled in favor of the AdC against the National Association of Pharmacies (ANF) and three other undertakings of the same group, Farminveste S. G. P. S, Farminveste – Investments, Participations and Management, S. A. and the Health Market Research (HRM), Lda, condemned for abuse of dominant position in the markets of commercial data from pharmacies and of market studies based on these data.

51. The TCRS considered proven the practice of “margin squeeze” – a serious infringement of the competition rules and of the Treaty on the Functioning of the European Union (TFEU) – just as the AdC had concluded in December 2015, when it condemned four entities of the ANF group to pay a fine in the total amount of € 10.34 million.

52. In its ruling, the TCRS set the value of the fine for a total of € 6.89 million, taking into account the market affected.

53. The practice condemned by the AdC affected all companies which found themselves unable to enter or compete in the market, as well as the clients purchasing market studies, namely, pharmaceutical laboratories, who use them to define the respective trade policy.

54. In 2015, the AdC concluded an investigation into the market of pharmacies' commercial data sales, following a complaint made by competitor IMS Health, having concluded that, between 2010 and 2013, the prices charged by the ANF group in the sale of pharmacies' commercial data, when compared to the prices charged by the same group in the sale of market studies based on those data, did not allow a competitor, yet equally effective, to achieve a sufficient margin to cover production costs in the sale of markets studies.

1.2.2. Vertical restraints by Galp and its subsidiaries in the bottled LPG gas market

55. On 4 January 2016, the TCRS ruled against Petróleos de Portugal-Petrogal, S.A. (Petrogal), Galp Madeira-Distribuição e Comercialização de Combustíveis e Lubrificantes, S.A. (Galp Madeira), and Galp Açores-Distribuição e Comercialização de Combustíveis e Lubrificantes, S.A. (Galp Açores) regarding a vertical agreement with anti-competitive effects. It was found that Galp Energia forbade its distributors from selling bottled LPG outside their allocated territory, which is an infringement of article 9(1)(c) of Law no. 19/2012.

56. The Court applied a total fine of €4.1 million on the Galp Energia group: Petrogal was fined €3.9 million, Galp Açores €150,000 and Galp Madeira € 40,000.

57. The AdC adopted a decision on 29 January 2015 considering the contracts concluded between Petrogal, Galp Açores and Galp Madeira were a serious infringement of article 9(1)(c) of Law no. 19/2012 and article 101 of the TFEU. In the same decision, the AdC imposed a total fine of € 9.3 million: €8.77 million on Petrogal, € 440,000 on Galp Açores and € 80,000 on Galp Madeira.

58. The TCRS reduced the fines imposed by the AdC, for it found the conduct to be negligent and that there was no infringement of article 101 of the TFEU.

59. The addressees, the Public Prosecution and the AdC appealed against this decision. In 2016, the appeals were still pending, and the Lisbon Court of Appeal upheld the ruling of the TCRS in January 2017.

1.2.3. Provision of inaccurate, incomplete or false information by Peugeot group in request for information

60. The TCRS upheld the decision of the AdC imposing a fine of € 150,000 on Peugeot Portugal, S.A. for providing false, inaccurate or incomplete information, further to a request for information of the AdC, under its sanctioning powers.

61. In the judgment delivered in 14 October 2016, the Court dismissed entirely the appeal filed by Peugeot Portugal, S. A. and considered that "the conduct of the undertaking puts in danger the investigative activity of the authority" and "jeopardizes market regulation".

62. This was the first time that the AdC fined an undertaking for providing false, inaccurate or incomplete information, pursuant to the 2012 Competition Act.

63. The provision by an undertaking, following an AdC's request, of all information in its possession that is to the best of its knowledge, accurate and complete, is fundamental for the exercise of the AdC's sanctioning and supervision powers.

64. In this regard, the supply by an undertaking, either negligently or deliberately, of information that turns out to be misleading or incomplete, could conceal competition problems in the market and harm businesses and consumers, besides raising obstacles to the investigation.

1.2.4. Decisions regarding merger SUMA/EGF in the urban waste management sector

65. By judgment of 24 November 2016, the Lisbon Court of Appeal upheld the TCRS's ruling on in the context of the interim measure procedure, in which it decided not to suspend the effectiveness of the decision of the AdC not to oppose the merger of between SUMA - Serviços Urbanos e Meio Ambiente, SA (SUMA) and EGF – Environmental Global Facilities.

66. The merger consisted of SUMA's acquisition of sole control over EGF. The AdC had adopted a non-opposition decision regarding the merger on 23 July 2015.

67. CITRI – Centro Integrado de Tratamento de Resíduos Industriais, S.A., FERROVIAL Serviços, S.A., FOMENTIVEST Ambiente SGPS, S.A., HIDURBE – Gestão de Resíduos, S.A., RECIVALONGO – Gestão e Tratamento de Resíduos, Lda., RECOLTE – Serviços e Meio Ambiente, S.A., RETRIA – Gestão e Tratamento de Resíduos, Lda., SEMURAL – Waste & Energy, S.A. requested the TCRS to suspend, as an interim measure, the effect of the AdC's non-opposition decision regarding the merger, claiming the decision contained procedural errors and illegalities that jeopardized its validity.

68. The TCRS decided there was no reason to declare the decision invalid.

1.3. Mergers and acquisitions

1.3.1. Statistics

Table 2. Merger decisions adopted in 2016

Notified mergers	64
Total decisions	63
Pending	8

Table 3. Breakdown by nature of operation (Final Decisions)

	Phase I	Cases
Non-notifiable transactions		2
Clearance		59
Clearance with commitments		1
Withdrawn cases		1
Non Clearance		
To Initiate an in-depth investigation		1
Referral to European Commission		
Tacit approval		
	Phase II	
Clearance		
Clearance with commitments		
Non Clearance		
Withdrawn cases		
Tacit approval		
TOTAL FINAL DECISIONS ADOPTED (does not include the Phase I decision to proceed into Phase II)		63

Table 4. Breakdown by merger type

	Cases	%
Horizontal	31	49
Vertical	9	14
Conglomerat	23	37
TOTAL	63	100%

Table 5. Breakdown by geographic scope of operation (Final Decisions)

	Cases	%
Multi-jurisdictional filings (within EU)	22	35
Multi-jurisdictional filings (outside EU)	6	10
National with involvement of undertakings from other EU member states	12	19
National with involvement of undertakings from countries outside EU	7	11
Completely national	16	25
TOTAL	63	100%

Table 6. Breakdown by type of operation (Final Decisions)

	Cases	%
Sole control	43	68
Joint control	9	14
Acquisition of assets	10	16
Takeover bid	1	2
TOTAL	63	100%

1.3.2. Summary of significant merger cases

Ccent. 55/2015 – EDP Renewables/Sociedades Ventinvest

69. On 4 February 2016, the AdC 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, belonging to Ventinvest.

70. Competition concerns arose, mainly, from the potential impact in the complementary services market as a result of the merger.

71. 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 behaviors 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.

72. As the main beneficiary of the referred to 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 behaviors when managing its own wind-power parks with negative effects to consumers.

73. EDP Renewables offered behavioral remedies that were considered adequate and sufficient to eliminate the competition concerns. If competition concerns still remain following the cessation of the remedies, a divestment remedy will be applied.

Ccent.25/2016 – SIBS/Ativos Unicre

74. The AdC adopted a decision to proceed to an in-depth investigation into the merger operation involving the acquisition, by SIBS, SGPS, SA, of the exclusive control of a group of assets of Unicre – Instituição Financeira de Crédito, S.A. related to its merchant acquiring activity.

75. The AdC decided on 12 December 2016 to initiate an in-depth investigation of the merger on the grounds that, in light of the information gathered during the first stage of the proceeding, there are indications that the operation may result in significant impediments to effective competition in the market for merchant acquiring services through physical POS.

76. SIBS is the holding company of the SIBS Group which holds equity interests in several companies specializing in service areas in the electronic payments sector, including, in particular, the processing, management and maintenance of networks and payment solutions, as well as management of payments system under the MB brand.

77. The assets object of the merger are related to Unicre's merchant acquiring business area, under the Redunicre brand, which designs and commercializes solutions for accepting payments in shops, both physical and virtual, with payment cards from the main national and international payment systems, including, among others, MB, Visa and MasterCard.

78. Market foreclosure in the merchant acquiring market may result in significant lessening of competition in the merchant acquiring and payment systems markets, subsequently leading to higher merchant and acquirer fees and, ultimately, harming consumers.

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

2.1. Promoting a pro-competitive legislative and regulatory environment

79. The AdC continued to prioritize the development of internal capacities in competition impact assessment to perform ex-ante and ex-post evaluation of public policies on competition.

80. In 2016, the AdC issued 26 opinions and 5 recommendations on draft legislation and regulations, including taxi services, waste management, EU financing in the environmental sector, legal services and the principle of competitive neutrality in the provision of acupuncture services.

2.1.1. Report on the public passenger transport services by car hire

81. In 2016, the AdC published a report on competition issues emerging from the legal and regulatory framework in public passenger transport services by car hire. Following a public consultation which gathered contributions from regulators, consumer associations and representatives of taxi drivers, among others, a Final Report was published. The AdC recommended a regulatory review aiming to eliminate quantitative restrictions to entry, progress towards price deregulation (while considering that some form of - lighter - regulation may be justified in hailing and taxi stands) and to confine quality requirements which are deemed necessary to address market failures.

82. Regarding draft legislation for mobility platforms for public passenger transport services by car hire, the AdC issued an opinion recommending pro-competitive measures eliminating barriers to entry while simultaneously highlighting some potential distortions to competition that could follow from the differences in regulatory provisions for diverse types of service providers in the two-tier regulatory system created by the draft bill.

2.1.2. Public procurement

83. In 2016, the AdC also issued comments on the draft bill on the Public Procurement Code, set to transpose the 2014 EU Public Procurement Directives. The AdC welcomed the reduction of thresholds for direct awards and limits to financial capacity requirements, among others. The AdC also recommended pro-competitive measures, namely targeted at reconciling transparency with the risk of bid-rigging, e.g. allowing contracting entities not to publish the reserve price until bids are opened.

2.1.3. Public consultations on regulated sectors

84. During 2016, the AdC responded to 9 public consultations on regulated sectors: 6 public consultations by the Energy Services Regulatory Authority and 3 public consultations by the Telecommunications Sector Regulator. The AdC also issued an opinion regarding a draft bill on third party access to large oil facilities, as well as a draft regulation for switching contracts for gas supply.

2.1.4. Competition Impact Assessment Project

85. In parallel, in 2016, the AdC launched a Competition Impact Assessment Project in partnership with the OECD, named Project AdC Impact 2020. The joint project aims to perform a competition assessment in two Portuguese economic sectors, using the OECD

Competition Assessment Toolkit. The project involves relevant public stakeholders, including Government, through meetings of a High Level Committee. Maritime and terrestrial transport and twelve self-regulated liberal professions sectors were chosen as the first target of this initiative due to their importance to the economy. The impact assessment includes a thorough evaluation of the legal and regulatory frameworks of the two sectors. As a result, it expects to identify potential competition restrictions created by the mapped legislation, which will further enable a high level discussion in order to develop recommendations for legislative reforms.

86. The project was launched on 18 October 2016 at an event attended by members of the Government of areas relevant to the project in question. The Minister of Health, the Minister of Economy, the Minister of the Sea, the Secretary of State of the Presidency of the Council of Ministers, the Assistant Secretary of State, Treasury and Finance, the Secretary of State of Justice, the Secretary of State of Infrastructures and the Secretary of State of the Environment were some of the speakers.

87. The session was also attended by representatives of the OECD, including Deputy Secretary-General Rintaro Tamaki, the Acting Director of the Competition Division Sean Ennis, and the Head of Global Relations of the Competition Division, Ania Thiemann, as well as the Permanent Representative of Portugal to the OECD, Paulo Vizeu Pinheiro.

2.2. Reaching out to stakeholders on the benefits and rules of competition

88. Raising awareness of the AdC's Leniency Program has also been at the top of the agenda. In 2016, the AdC carried out a direct e-mail marketing campaign for business associations and the Portuguese bar association on the benefits of applying for leniency and the heavy sanctions that a business can risk if they do not apply.

89. In 2016, the AdC published its Guide on the Promotion of Competition for Business Associations, setting out the do's and don'ts for business associations as regards competition rules. The guide provides information and guidance for companies, promotes transparency and legal certainty, as well as encourages complaints and leniency applications. In 2017, the AdC will hold workshops and widespread mailing campaigns to increase awareness among the business community of the rules of competition and of the advantages and functioning of its leniency program.

90. Also in 2016, the AdC inaugurated the Abel Mateus Competition Library, the only library solely devoted to competition issues in Portugal, where competition-related works are available to researchers and public seminars are held to stimulate discussions on competition issues and contribute to the development of a competition culture in Portugal.

2.3. Transposing the EU Damages Directive

91. In 2016, the AdC prepared the draft legislative proposal to transpose Directive 2014/104/EU on Antitrust Damages Actions into national law, submitted to the Portuguese Government in June 2016. The AdC carried out the transposition process in an open and transparent manner, engaging directly with key stakeholders, including a working group of external experts, comprised of representatives from the judiciary, academia and private practice which functioned as a sounding board on the ongoing legislative work. The AdC also organized a workshop and public consultation on the draft to ensure ample participation in the process.

3. International Cooperation

3.1. European Cooperation

92. **ECN – European Competition Network.** The AdC actively participated in 34 formal and informal cooperation meetings held within the scope of the European Competition Network. In this regard, the AdC attended 9 Oral Hearings and Advisory Committee meetings regarding antitrust and merger issues. An economist from the AdC also took part in a four-week exchange program at the Energy and Environment Direction of the Mergers Unit within the Officials Exchange Program of the Directorate General for Competition of the European Commission.

93. **ECA – European Competition Authorities.** The AdC participated in the Annual Meeting of ECA that took place in Leuven, Belgium, in the end of February 2016. In 2016, the AdC notified 12 merger cases to the ECA Network regarding 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 analyzed by the AdC during the referred period.

3.2. Bilateral Cooperation

94. **Spain.** In December 2016, the AdC met with the Spanish National Commission on Markets and Competition (CNMC) to discuss matters of common interest and reinforce cooperation between both authorities. The AdC participated in the XIIIth Edition of the Iberian-American School of Competition, an event that gathers European and Latin-American specialists presenting experience on the panel "Anticompetitive practices: the experience of the Portuguese Competition Authority".

95. **Brazil.** During 2016, the AdC pursued bilateral cooperation relations with the Brazilian Administrative Council for Economic Defense (CADE) by exchanging experiences on institutional matters and competition law enforcement.

96. **Iceland.** In April, members of the Icelandic Competition Authority visited the AdC to discuss recent activities and the priorities of both authorities.

97. **Cape Verde.** In July 2016, the president of the National Communications Authority (ANAC) from Cape Verde visited the AdC for a bilateral meeting, which included an institutional presentation of the AdC and cooperation with the sectoral regulators in Portugal.

98. On 11 and 12 July, following an invitation by the Agência de Aviação Civil (Civil Aviation Agency, ACC) of Cabo Verde, the AdC provided training on competition law and economics included in the International Training Program organized by the AdC and Cape Verde and addressed to all sectoral regulators from that country.

99. **Mozambique.** In December 2016 delegates from the Mozambique's Ministry of Industry and Commerce Legal Department visited the AdC for a bilateral meeting, with presentations on the AdC's activity, including institutional matters, anti-competitive practices, merger control and judicial review.

100. **China.** In March 2016, the AdC cooperated with China in the 12th EU-China Competition Week in Beijing. The initiative, organized by the European Commission with EU Member-States, was held with competition authorities from China, aimed to share experiences, challenges and best practices about competition law and policy.

101. **Philippines.** In September and October 2016, the recently created Philippine Competition Commission invited the AdC to speak on the Seminar Series on Competition Law and Economics. The seminars were addressed to members of the Philippine Competition Authority and magistrates.

102. **Morocco.** In February 2016, a delegate from the Morocco Competition Council came to the AdC for a one week visit, where market studies, coordination with sectoral regulators and other institutional matters were the topics of discussion.

3.2.1. Multilateral Cooperation

ICN - International Cooperation Network.

103. In 2016, the AdC continued to actively participate in the projects and teleseminars of all ICN working groups: Advocacy, Agency Effectiveness, Cartels, Mergers and Unilateral Conduct.

104. The AdC attended the ICN Annual Conference in Singapore in April 2016, in which the AdC's president spoke in the Cartels Plenary Session on "Detection and Deterrence". The AdC further participated in the sessions "Effective technical assistance programs", "When your own government's against you: How to turn the policy tide towards competition", and "Agency Recruitment: Challenges and opportunities".

105. The AdC also participated in the ICN Cartel Workshop, held in Madrid, in October 2016, in which spoke on the Plenary Session on "Public and private enforcement – challenges", as well as in the sessions "Challenges related to evidence gathering after dawn raids and other formal investigation tools" and "Public enforcement – settlement".

106. In November 2016, the AdC participated in the ICN advocacy Workshop, in Mexico, in which held a speaker position at the plenary session "Competition advocacy strategies in public procurement".

107. During 2016, the AdC actively organized the 2017 ICN Annual Conference, which would be held in Porto, from 10 to 12 May 2017.

OECD – Organisation for Economic Co-operation and Development.

108. In 2016, the AdC participated in the meetings of the Competition Committee and its Working Parties n.º 2 – Competition and Regulation and n.º 3 – Enforcement and Cooperation, which took place in Paris, on 13 to 17 June and 28 November to 2 December.

109. In the scope of the discussions, the AdC submitted contributions and participated in the discussion on "Commitment Decisions in Antitrust Cases", "Jurisdictional Nexus for Merger Notification and Review Regimes", "Public Interest Considerations in Merger Review", "Agency decision-making in merger cases: Prohibition and conditional clearances" and "Competition Assessment: The Implementation Challenge".

110. The AdC also participated in the 15th Global Forum on Competition, which took place in Paris, on 1 and 2 December, having moderated the session on "The steps of the fines setting process across jurisdictions" and spoken on the session "Sanctions in Antitrust Cases". At this meeting, the AdC also submitted a contribution on "Independence of competition authorities - from designs to practices".

111. Also in the scope of the OECD, the AdC participated in the 14th Latin American and Caribbean Competition Forum, co-organized by the OECD and Inter-American Development Bank (IDB), in Mexico City, on 12 and 13 April 2016. The AdC submitted written contributions and participated in the discussions on “Disruptive Innovation: Competition Enforcement Challenges and Advocacy Opportunities”, “The Portuguese Leniency Program” and “Promoting effective Competition in Public Procurement”. The AdC also spoke on the panel regarding “The use of screens to prevent and detect bid rigging in public procurement”.

UNCTAD.

112. The AdC participated in the 15th Session of the Intergovernmental Group of Experts on Competition Law and Policy, in which participated in a roundtable on “Enforcement of competition policy in the retail sector: Competition issues in the food retail sector”.

113. The AdC further participated in the 8th Sofia Competition Forum (SCF) with a presentation in Plenary Session I on “Remedies and commitments in competition cases”. The SCF is a joint initiative between the UNCTAD and Bulgaria’s competition authority aiming to promote technical assistance and experience sharing in competition matters in the region.

Ibero-American Competition Forum.

114. The AdC co-organized with the Spanish CNMC, and with the support of the Comisión Federal de Competencia Económica and the Instituto Federal de Telecomunicaciones of Mexico, the 2016 Iberian-American Competition Forum, which followed the OECD-IDB Latin American and Caribbean Competition Forum. The topics of the Forum were “Functioning of Competition Agencies: fundamentals and practical experience” and “Exchange of information between competitors – Where to draw the line?”.

4. Resources of competition authorities

4.1. Annual budget

115. The AdC’s 2016 Annual budget was € 10,221,011.

4.2. Number of employees (in 31.12.2016)

Specialization	No. of Staff*
Economists	21
Lawyers	29
Other professionals and support staff	31
Total*	81

Note: * Includes management; does not include Board

4.3. Human resources applied to (in 31.12.2016)

Area of activity	No. of Staff*
Enforcement against anticompetitive practices**	22
Merger review and enforcement	12
Legal service	4
Advocacy efforts	18

Note: * Includes management; does not include support staff
 ** Includes Forensic IT team

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

5.1. Sector inquiries and market studies

5.1.1. Competition and Regulation in Passenger Transportation by car hire

116. In 2016, The AdC published the final version of a Report identifying the main constraints to competition in the public passenger transport services by car hire, including a set of recommendations aimed at promoting competition in the sector.

117. The report concludes that the sector is subject to intense regulatory intervention, namely in what concerns taxi services. This tight regulatory context limits the capacity of traditional taxi service providers to strategically react to the rise of new business models and simultaneously weakens the ability and incentive of new providers to enter and innovate in the market.

118. Amongst the constraints to competition identified in the report are the quantitative restrictions to entry and prices fixed by convention, which eliminate price as a dimension of competition and reduce service providers' incentives to compete.

119. The AdC further highlights that regulation on quality parameters should ensure safety and protection for users, though minimizing the associated restrictions to competition. The standardization of supply as a result of excessive regulatory requirements on the characteristics of vehicles soften competition in price and quality, and reduce the scope for innovation.

120. The AdC has also identified some regulatory provisions which unnecessarily discriminate between different types of service providers, thereby inducing undue restrictions to competition in the market. This is the case, in particular, for the procedural requirements regarding service contracting as well as the rules for vehicle inspections and driver licensing.

121. The emergence of new ways to hire passenger transport services, namely through electronic platforms, makes a review of the current regulatory framework even more compelling, so as to ensure equal opportunities to the different service providers, while duly accounting for the specificities of each type of service.

122. As such, the AdC defends a regulatory review that seeks not to favor a given type of service provider over the others, but rather one that promotes a level playing field capable of yielding the benefits of competitive interaction.

123. The AdC also highlights the need to undertake a regulatory review that does not entail replicating the existing regulation to new entrants but rather to make the set of rules currently applicable to taxi services in Portugal more flexible.

124. The report of the AdC also highlights a set of principles that should be observed in the regulatory review, as well as a number of specific recommendations that aim at overcoming the identified competitive constraints, so as to contribute to more vigorous competition in the provision of public passenger transport services by car hire, thereby promoting a broader supply range and higher quality of service.

125. The AdC recommended the following to the Government:

1. Eliminating quantitative restrictions in the provision of taxi services and the corresponding territorial restraints, and consider alternative, more efficient and less restrictive regulatory tools to achieve the public policy goals that the legislator chooses to pursue.
2. Evolve towards price deregulation. However, in particular for hailing and taxi stands, market failures may justify, in the short run, some form of regulatory intervention that should nonetheless be confined to the minimum required (e.g., price cap) to address the identified problems.
3. Limiting quality requirements to the level necessary to address market failures and pursue the public policy goals found relevant by the legislator, in observance with the principles of efficient regulation, and ensuring adequate and effective compliance monitoring.

126. The release of the final report was preceded by public consultation to a draft version, issued on July 20, 2016. The public consultation allowed for the gathering the views of different stakeholders in the sector, namely the sector regulator, consumer associations, and representatives of taxi drivers, among others.

5.1.2. Sector inquiry regarding the competitive conditions in the market of natural gas provision to industrial customers

127. The AdC developed a draft report for discussion with conclusions of the analysis undertaken in the market of natural gas provision to industrial customers and submitted to the regulator in December 2016.

5.1.3. Other Ongoing Market Monitoring Activities

128. **Electricity, natural gas and Telecoms.** The AdC maintained its monitoring activities over the energy (electricity and natural gas) and telecom sectors. The AdC 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.