

## Annual Report on Competition Policy Developments in Portugal

-- 2018 --

5-7 June 2019

This report is submitted by Portugal to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 3-4 December 2019.

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## *Portugal*

This report covers the activities of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority from 1 January 2018 to 31 December 2018.

### **Executive Summary**

1. In 2018, the year in which the AdC reached 15 years of activity, the AdC achieved significant results in its enforcement action and developed an intense advocacy activity.
2. Regarding enforcement, the AdC imposed a total of € 12.37 million in fines for breach of competition law regarding restrictive practices. Among the 15 years of activity of the AdC, 2018 had the seventh highest amount of fines. These fines relate to two cartels, an investigation on railway maintenance stemming from a complaint received within the “Fighting Bid-Rigging in Public Procurement” campaign, as well as an investigation in the insurance sector. In these cases, the AdC sanctioned three companies and a manager following the settlement procedure, under which undertakings acknowledge participation in the infringement, waiving the right to appeal and benefiting from a fine reduction, which allows for a simplified and shortened procedure.
3. In addition, the AdC also issued a commitments decision in the postal sector. The commitments address the competition concerns identified by the AdC in the market for standard mail services, relating to the access to the postal network of the sector incumbent.
4. In the merger field, the AdC issued 48 merger control decisions, opening two in-depth investigations. A merger in the media sector, Altice/Media Capital, raised concerns regarding access to essential media content by rival pay-TV platforms and, in the imminence of a prohibition decision, Altice decided to withdraw the notification. Another in-depth investigation led to divestment commitments by Rubis II Distribuição Portugal, which allowed the AdC to clear the acquisition of the liquefied petroleum gas business from Repsol Gás Portugal in the two Autonomous Regions of Portugal (Madeira and Azores).
5. With respect to judicial review, there was a significant increase of litigation resulting from the reinforcement of the sanctioning activity, but with a high success rate for the AdC. The appeals related mainly to procedural grounds, including issues such as inspections, evidence review and handling, access to file, confidentiality, effect of appeals and rights of defence.
6. In the context of its supervision powers, the AdC published three studies analyzing the competition conditions in the financial services, energy and transport sectors, issuing recommendations to public decision-makers and sector regulators.
7. The AdC also concluded the AdC Impact 2020 Project, aimed at enhancing the techniques and methodologies used by the AdC to carry out competition impact assessment, and which included a cooperation with the OECD for the competition assessment of public policies in the transport sector and 13 self-regulated professions.
8. The “Fighting Bid-Rigging in Public Procurement” campaign, launched in 2016 with the aim of raising awareness regarding bid-rigging in public procurement and promoting competition in this area, reached a total of 1,800 participants from adjudicating bodies in 2018. The campaign has led to a significant increase, both in terms of quantity

and quality, of the complaints concerning public procurement received by the AdC, and it has already resulted in one sanctioning decision.

9. In 2018, the AdC organized the 5<sup>th</sup> Lisbon Conference on Competition Law and Economics, focusing on current competition policy topics and gathering around 300 participants from other competition authorities, international organizations companies and academia.

10. In order to mark the AdC's 15<sup>th</sup> anniversary, the AdC launched the AdC Competition Policy Award to encourage research in competition economics and law. The first edition award was given to an economic paper on pay-for-delay agreements in the pharma sector.

11. In order to reach a broader public, interested in the benefits and rules of competition, the AdC launched in 2018 the podcast CompCast – 2 minutes of competition, which covers the basics of competition rules and is aimed at a non-specialized public.

## 1. Enforcement of competition law and policies

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

#### *1.1.1. Summary of activities*

12. In 2018, the AdC adopted a total of 6 decisions on restrictive practices proceedings, including two decisions which led to the imposition of €12.37 million in fines. These two decisions relate to horizontal agreements, namely a price fixing and market sharing agreement in public tenders for railway maintenance services in mainland Portugal, and a price fixing and market sharing agreement relating to insurance of large corporate customers in the occupational, health and car accident segments.

13. The AdC also accepted commitments in the postal sector. The commitments address the AdC's competition concerns in the market for standard mail services, which related to the access by competing postal operators to the network of the postal incumbent, CTT – Correios de Portugal, S.A. – Sociedade Aberta.

14. In addition, the AdC closed three proceedings relating to two vertical agreements and one horizontal agreement regarding the markets for football media rights and electronic communication services. Simultaneously, the AdC issued a recommendation to the Government proposing changes to the distribution model of football media rights, notably through triannual tenders, an approach based on international best practices which would promote free competition between companies for the benefit of consumers.

15. By the end of the year, the AdC was investigating 21 cases of restrictive practices, 1 for an alleged abuse of dominance and 20 about alleged prohibited agreements or concerted practices.

16. **Fines.** The AdC fined undertakings € 12.37 million euros in two sanctioning decisions regarding anti-competitive practices.

17. **Inspections.** The AdC carried out inspections in 8 premises of 7 undertakings in 4 proceedings.

**Table 1. Summary of antitrust cases in 2018**

	No. of cases
Sanctioning decisions	2
Commitment decisions	1
Investigations filed	3
Investigations launched	5
Ongoing investigations (31.12.2018)	21

### *1.1.2. Sanctioning decisions*

#### *Case No. PRC/2016/6 – cartel in railway maintenance services*

18. In December 2018, the AdC imposed fines amounting to a total of € 365,400 on Sacyr Neopul S.A. and its production manager for participating in a bid rigging cartel involving price fixing and market sharing in public tenders for railway maintenance services.

19. Five railway maintenance providers colluded to present bids above the base-price in a tender launched by Infraestruturas de Portugal, leading to an increase in the price paid by this public enterprise for maintenance services on its railroad infrastructure. In a separate tender proceeding, the same companies had colluded to share between themselves the different tendered lots, in a cartel arrangement in existence during 2014 and 2015. The public tenders covered the provision of railway maintenance services in mainland Portugal between 2015 and 2017.

20. The AdC investigation was initiated in October 2016 following a complaint submitted within the context of the Fighting Bid-Rigging Campaign addressed to public procurement entities. The AdC carried out dawn raids in the regions of Lisbon and Porto, adopting a statement of objections against the five mentioned companies as well as six Board members and managers.

21. The early conclusion of the proceedings against Sacyr Neopul, S.A. and its production manager was possible due to the cooperation provided by this undertaking, which confessed its participation in the cartel and abstained from litigating, under a settlement procedure.

22. The use of this instrument is essential to hasten and simplify the proceedings whilst still sanctioning the undertakings that infringe competition rules. Under the settlement procedure, the parties that acknowledge the facts and accept their liability in the infringement benefit from a reduction of the applicable fine.

23. The investigation is still ongoing regarding the remaining four undertakings and their Board members and managers, in relation to whom a statement of objections was adopted by the AdC on 13 September 2018.

*Case No. PRC/2017/10 – Insurance cartel for large corporate clients*

24. In December 2018, the AdC imposed fines amounting to a total of € 12 million on the insurers Fidelidade – Companhia de Seguros, S.A. and Multicare – Seguros de Saúde, S.A. for market sharing and price fixing. The anticompetitive conduct covered insurance contracts purchased by large corporate clients in the segments of occupational, health and car accident insurances.

25. The AdC’s investigation was initiated in May 2017 following leniency applications by companies involved in the cartel. The latter began in 2010, lasted for 7 years and involved 5 insurance companies representing around 50% in each sub-sector (the two mentioned companies as well as Lusitânia – Companhia de Seguros, S.A., Seguradoras Unidas, S.A. and Zurich Insurance PLC – Sucursal Portugal), as well as 14 managers and directors of the companies.

26. In June and July 2017, the AdC conducted dawn raids in the companies’ premises, located in the region of Lisbon. In August 2018, the AdC issued a statement of objections. Fidelidade and Multicare acknowledged their involvement in the cartel and agreed to settle the case.

27. In setting the amount of the fines, the AdC took into account all the relevant factual and legal aspects, including the cooperation provided by Fidelidade and Multicare, and the fact that no specific advantages had been quantified in terms of potential supracompetitive profits arising from the anticompetitive agreement.

28. In February 2019, Seguradoras Unidas also agreed to settle. The proceedings continue regarding the two other investigated companies as well as for the respective managers and directors to whom the statement of objections was addressed.

*1.1.3. Commitment decisions**Case No. PRC/2015/4 – access to incumbent postal network*

29. In July 2018, the AdC adopted a decision rendering legally binding a set of commitments that expand the scope of the Postal Network Access Offer (Access Offer) of the sector incumbent CTT – Correios de Portugal, S.A. – Sociedade Aberta (CTT), available to competing postal operators regarding standard mail services, which in turn broadens consumer choice.

30. In order to address the competition concerns identified by the AdC, in December 2017 CTT submitted a set of commitments that expand the scope of CTT’s Access Offer available to competing postal operators:

1. Availability of new postal services in the Access Offer, notably publishing, priority and registered mail services;
2. Availability of new access points in CTT’s postal network, further downstream in the postal distribution chain, notably the Inward Sorting Centres and a wide range of CTT shops (except for standard mail weighing less than 50 g);
3. Faster delivery time for access at CTT shops concerning standard mail weighing more than 50 g and publishing mail;
4. Competing postal operators may carry out additional sorting tasks, notably sorting mail according to the delivery area of Delivery Offices and street name.

5. Access prices below retail prices for final customers, differentiated according to the access point, postal service and sorting tasks carried out by the competing postal operator.

31. Following a public consultation and after a number of minor adjustments that improved the Access Offer, the AdC concluded that the commitments presented by CTT were adequate so as to eliminate the potential harmful effects on competition and on consumer welfare. The AdC is monitoring the implementation of CTT's commitments.

## 1.2. Judicial review of AdC decisions

32. Judicial review has been a consistently positive indicator of the robustness of AdC decisions in recent years. In 2018, there was a significant increase in litigation, with the courts ruling in favour of the AdC in 48 of the 55 rulings on AdC decisions, which means the AdC had a success rate of near 90%. The increase in litigation reflects the AdC's recent reinforcement of investigation. In 2017 and 2018 the AdC carried out 19 dawn raids and opened 18 proceedings, which led to the increase of appeals on procedural grounds (75% increase regarding 2017 and more than 100% regarding 2016).

### *1.2.1. Decision regarding pay-TV operator MEO's complaint against collective rights society GDA*

33. On 9 June 2018, the Competition, Regulation and Supervision Court (TCRS) upheld the AdC's decision of 3 March 2016 rejecting a complaint from pay-TV operator MEO. According to the latter, GDA had allegedly abused a dominant position in the market for rights related to copyright of performing artists, infringing Article 102(c) of the Treaty on the Functioning of the European Union (TFEU) by charging higher prices to MEO than to other licensees such as pay-TV operator NOS.

34. The TCRS requested a preliminary ruling from the European Court of Justice (ECJ) to understand whether the interpretation of the concepts of disadvantage and distortion of competition made by the AdC in its decision rejecting the complaint was in line with Article 102(c) TFEU. According to the AdC, in order to establish an infringement of subparagraph (c) of the second paragraph of Article 102 TFEU, any price discrimination must actually be capable of distorting competition on the market by putting one or more competing undertakings at a competitive disadvantage compared to the others.

35. The ECJ adopted a preliminary ruling on 19 April 2018 (case C-525/16), on the basis of which the TCRS upheld the AdC's decision, concluding that the tariff differentiation applied by GDA was, on the basis of its importance, incapable of distorting, limiting or restricting MEO's competitive position and, consequently, of producing a competitive disadvantage legally relevant for the purpose of qualifying an illegal price discrimination abuse.

### *1.2.2. Decision regarding MIDSID/3D Assets merger in the wholesale and retail tobacco markets*

36. The TCRS confirmed the AdC's clearance decision of a merger concerning the acquisition of sole control of various assets of Sociedade 3D – Distribuição, S.A. by MIDSID – Sociedade Portuguesa de Distribuição, S.A, relating to wholesale of tobacco products and retail of tobacco through vending machines. The sentence has been appealed.

### 1.3. Mergers and acquisitions

#### 1.3.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

**Table 2. Merger decisions adopted in 2018**

Notified mergers	46
Total decisions	48
Pending	4

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

Phase I	Cases
Non Notifiable transaction	2
Clearance	44
Withdrawn cases	
Non clearance	
To initiate an in-depth investigation	2
Referral to European Commission	
Tacit approval	
<b>Phase II</b>	
Clearance	
Clearance with commitments	1
Non clearance	
Withdrawn cases	1
Tacit approval	
<b>Total final decisions adopted</b>	<b>48</b>
(does not include the Phase I decision to proceed into Phase II)	

**Table 4. Relationship between undertakings' activities**

	Cases	%
Horizontal	31	64.6%
Vertical	7	14.6%
Conglomerate	10	20.8%
<b>Total</b>	<b>48</b>	<b>100%</b>

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

	Cases	%
Multi-jurisdictional filings (within EU)	6	13
Multi-jurisdictional filings (outside EU)	3	6
National with involvement of undertakings from other EU member states	16	33
National with involvement of undertakings from countries outside EU	5	10
Completely national	18	38
<b>TOTAL</b>	<b>48</b>	<b>100%</b>



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

	Cases	%
Sole control	35	73
Joint control	7	15
Acquisition of assets	4	8
Other	2	4
<b>TOTAL</b>	<b>48</b>	<b>100%</b>

### 1.3.2. Summary of significant cases

#### *Ccent. 35/2017 – Altice / Media Capital*

37. On 19 June 2018, the AdC decided to terminate the merger proceedings related to the proposed acquisition of sole control of the Media Capital Group by MEO (Altice Group), following MEO's withdrawal of the merger notification.

38. The merger involved a vertical integration between on the one hand one of the main players in the telecom sector, retail distribution of pay-TV services and multiple-play services (i.e. bundled services for voice, TV and internet), and on the other hand the market leader for the wholesale distribution of audiovisual content and Portuguese-speaking TV channels, including the top-viewing channel (measured in terms of share-view) TVI.

39. The investigation showed that, because of the merger, Altice would have had the ability and the incentive to implement several strategies to foreclose markets to competition, which, in turn, would result in a significant increase of rivals' costs in the markets for pay-TV and for the provision of multiple-play services.

40. These cost increases – which the AdC estimated could exceed, in some scenarios, € 100 million – would result in a reduction of competitive pressure which would ultimately lead to higher prices charged to consumers.

41. Specifically, the investigation showed that Altice would have the ability and clear incentive to foreclose access – totally or, at least, partially (supplying under lower quality standards or higher prices) – of rival competitors' telecom platforms to Media Capital's media contents and TV channels. This would jeopardize their ability to compete, thus leading to a serious impediment of effective competition in the telecoms and media markets.

42. Taking into account the significant disproportion between revenues generated by the TV business and those by the telecom business, as well as the importance of TVI's media content and TV channels (as shown in the results of a consumer survey organized by the AdC), the investigation concluded that the merged entity, as a vertically integrated telco operator, would use its TV business as a mean to reinforce its position in the pay-TV market and in the market for the provision of multiple-play services. This would occur in a market context where audiovisual content is essential for platform differentiation and constitutes an important factor in consumer choice.

43. Moreover, access to MEO's pay-TV platform by TVI's rivals (i.e. competing TV channels) would likely occur in worse conditions in terms of price, quality of service and position in the channel grid, thus decreasing their ability to produce or purchase quality contents and, consequently, decreasing the competitive pressure rival TV channels could exert on TVI.

44. On 30 April 2018, in order to address the AdC's concerns, Altice submitted a set of behavioural commitments, which would notably provide MEO's competitors with access, for a limited period of time, to TVI channels.

45. After assessing the proposed commitments, the AdC concluded that the latter were insufficient and inadequate to address the negative impact of the merger on effective competition in the telecom and media markets and, ultimately, on final consumers.

46. Faced with the imminent adoption of a Draft Prohibition Decision by the AdC, Altice decided to withdraw the notification, which led the AdC to adopt a decision to terminate the merger proceedings.

#### *Ccent. 39/2017 – Rubis/Repsol*

47. On 27 September 2018, the AdC accepted the divestiture commitments brought forth by Rubis II Distribuição Portugal (Rubis) during an in-depth investigation, and hence approved Rubis's acquisition of the existing liquefied petroleum gas (LPG) business of Repsol Gás Portugal in the two Autonomous Regions of Portugal (Madeira and Azores).

48. Several competition concerns were raised by the AdC as a result of the proposed transaction, mainly because the merger would further increase concentration in the already highly concentrated LPG markets (notably, the proposed merger would have reduced the number of LPG players in most of the islands of the archipelagos of Madeira and Azores from three to only two). This scenario would be harmful for consumers, as it could result in higher prices or hindered product quality and service levels.

49. In its decision to initiate second phase proceedings, the AdC had also identified significant barriers to entry and expansion in these markets, regarding, namely, the access to existing storage infrastructures, the transport of LPG from the mainland to the islands, the existing distribution contracts, entry and switching costs, and the relatively small size of the markets under analysis. According to the in-depth investigation led by the AdC, these aspects would significantly impede the entry of new operators in the islands, unless such entry resulted from the acquisition of an existing market player.

50. Subsequently, Rubis submitted a set of commitments aimed at addressing the competition concerns raised by the AdC, which included, amongst others, the divestment to a suitable purchaser of a portion of the business that was part of the proposed transaction. Therefore, these commitments ensured the presence of a third alternative LPG supplier and thus the pre-merger market structure. As a result, the AdC considered the commitments to be sufficient, proportional and suitable to address the competition concerns.

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

### **2.1. Promoting a pro-competitive legislative and regulatory environment**

51. In 2018, the AdC concluded the AdC Impact 2020 Project, which included the implementation of the AdC/OECD project, aiming to assess the impact of the legal and regulatory frameworks on competition in the transport sector and in 13 self-regulated liberal professions.

52. Furthermore, the AdC issued 16 opinions and 1 recommendation on draft legislation and regulation including on the energy, telecommunications, financial,

transport, as well as water and waste management sectors. The AdC also published three in-depth studies on liquid road fuel, technologic innovation in the financial sector and the ports sector.

### *2.1.1. AdC opinions in regulated sectors*

53. During 2018, the AdC responded to six public consultations on regulated sectors, out of which three were launched by the Energy Services Regulatory Authority (ERSE) and three were launched by the telecom and postal regulator (ANACOM). The AdC also issued two opinions on draft legislation regarding the financial sector and one opinion on the legislative proposals in the transport sector regarding ride-hailing services.

### *2.1.2. Competition impact assessment – Project AdC Impact 2020*

54. In 2018, the AdC continued its involvement in the competition impact assessment of public policies, concluding the AdC Impact 2020 Project, which started on 1 April 2016 and ended on 6 July 2018. The project further enhances the techniques and methodologies used by the AdC to carry out competition impact assessment. The project is also intended as a tool for modernisation and capacity building, so that public intervention may be more efficient and effective in promoting the economic and social development.

### *2.1.3. AdC/OECD Cooperation Project.*

55. The AdC Impact 2020 Project included the AdC/OECD project, focusing on the transport sector and self-regulated professions, which started on 14 September and was concluded on 31 March 2018. The ultimate goal of the AdC/OECD project was to present alternative solutions to laws and regulations that eliminate barriers against competition and boost the Portuguese economy. The OECD and the AdC presented the project's conclusions in a public session on 6 July 2018.

56. The sectors analysed were selected based on their importance for the external competitiveness and exports, influence on public consumption, and contribution to employment in Portugal. More specifically, as regards the transport sector, the types of transport analysed included: passenger and freight transport by land (road and railway) and sea, including taxi services, as well as ports and port services. As for the self-regulated liberal professions, the team selected 13 professions from the following sectors: legal (lawyers, notaries, solicitors and bailiffs); economic/financial (economists, certified accountants, statutory auditors and customs brokers); technological (architects, engineers and technical engineers); and health (nutritionists and pharmacists).

57. The AdC/OECD cooperation led to the OECD Recommendations Report, which identified restrictions to competition resulting from the legal and regulatory framework in the transport sector and the 13 self-regulated professions covered by the project. The OECD Recommendations Report further proposed a total of 765 recommendations aiming to eliminate provisions which restrict competition, constitute an administrative burden or which are obsolete, estimating that the potential positive impact of the implementation of the recommendations for the Portuguese economy is € 380 million / year.

### *2.1.4. Action Plan for the Legislative and Regulatory Reform.*

58. Following the OECD Recommendations Report, the AdC issued an Action Plan for the Legislative and Regulatory Reform, which includes 9 key proposals regarding 13 self-regulated professions and 15 key proposals regarding the road, rail, maritime and port

sectors. These proposals aim to eliminate legal and regulatory barriers in these professions and sectors.

#### ***2.1.5. Strategic Plan for Competition Impact Assessment of Public Policies.***

59. Within the AdC Impact 2020 Project, the AdC also prepared a Strategic Plan for the medium- and long-term implementation of a Competition Impact Assessment of Public Policies Program. The Strategic Plan considers as a priority the promotion among the public decision-makers of the AdC's Action Plan for the Legislative and Regulatory Reform. For this purpose, the AdC initiated high-level work meetings in the second semester of 2018.

#### ***2.1.6. Guidelines for Competition Impact Assessment of Public Policies.***

60. Following the AdC Impact 2020 Project, in July 2018 the AdC adopted Guidelines for Competition Impact Assessment of Public Policies with the aim of creating competences in competition impact assessment of public policies and raise awareness of public and private entities for the assessment of impact of legislation on competition. The Guidelines focus, in particular, on the potential application of a Competitive Impact Assessment procedure within a prior evaluation of legislative or regulatory proposals drawn up by the Portuguese National Parliament, the Government or other bodies of the Public Administration. The Guidelines are also applicable in the context of an ex-post assessment of existing legislation and regulations. They recommend the involvement of the AdC in case public entities identify a potential impact of the legislation on competition, so that the AdC is able to propose measures mitigating potential restrictions of competition.

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

### ***2.2.1. Cooperation with Sector Regulators.***

61. During 2018, the AdC held several workshops aimed at reinforcing institutional cooperation with sectoral regulators, notably with the civil aviation authority (ANAC), the telecom and postal regulator (ANACOM), the health regulator (ERS) and the authority for medicines and health products (Infarmed). These workshops focused on the main infringements to competition law and on opportunities for cooperation between the AdC and regulators in their respective sectors.

### ***2.2.2. Memorandum of Understanding with the authority for medicines and health products (Infarmed).***

62. On 21 September 2018, the AdC and Infarmed signed a memorandum of understanding (MoU) that establishes instruments for cooperation and exchange of information, thereby improving the effectiveness of both authorities in fulfilling their respective objectives. The timely detection of market failures or competitive distortions is one of the purposes shared by AdC and Infarmed. The MoU establishes a regular exchange of information on the supervision and monitoring of the sale and consumption of medical products for human use, medical devices and cosmetics. By allowing access to reliable information, the MoU will facilitate the detection of anti-competitive practices in the pharmaceutical sector. The pharmaceutical sector is of paramount importance to public health and to the economy, with medicines accounting for a significant share of household and public expenditure. It is of paramount importance to ensure the open and competitive functioning of markets in this sector in order to ensure access to safe and affordable

medicines and health products, whether they are innovative or well-established products in the market.

### ***2.2.3. Fighting Bid-Rigging in Public Procurement.***

63. In 2018 the AdC organised more than 10 sessions of the “Fighting Bid Rigging in Public Procurement” campaign, reaching around 500 public procurement officials and others with responsibilities in public procurement in 2018, including at the professional association for certified public accountants, the tax administration, the Ministry for Economics, the Institute for Public Management and Administration as well as the Metro de Lisboa, the company managing the Lisbon underground. The outreach initiative regarding bid-rigging in public procurement is an AdC priority given the expected benefits to the economy.

### ***2.2.4. Promotion of Competition for Business Associations.***

64. The AdC held seminars among the business community to increase awareness of the rules of competition and of the advantages of a competition culture in Portugal. The AdC Guide on the Promotion of Competition for Business Associations that identifies the do’s and don’ts for business associations was the object of several seminars with the business community, including the professional association for certified public accountants, the association of banks and the association of insurance companies.

### ***2.2.5. AdC Seminar Series.***

65. In order to promote dialogue and debate on issues of competition policy, the AdC held a series of public seminars on competition law and economics which brought nationally and internationally renowned experts to Lisbon, including Miguel de la Mano (Compass Lexecon), Natalia Fabra (University Carlos III, Barcelona GSE, Northwestern University), Julie Bon (UK Competition and Markets Authority), Nuno Cunha Rodrigues (University of Lisbon School of Law), Richard Whish (King’s College), Michiel Denker (ACM), Maria José Costeira (EU General Court), Ana Patrícia Carvalho (Nestlé Portugal), Cláudia Trabuco (Gilead Sciences Portugal) and Dorothee Serzedelo (L’Oreal Portugal). The seminars were held at the AdC Abel Mateus Competition Library.

### ***2.2.6. 5<sup>th</sup> Lisbon Conference on Competition Law and Economics.***

66. On 18 and 19 October 2018, the AdC organized the 5<sup>th</sup> Lisbon Conference on Competition Law and Economics gathering competition specialists and around 300 participants from competition authorities, international organizations, companies and academia of 30 countries and international organizations. The Conference marked the 15th Anniversary of the AdC, and focused on current topics such as innovation in merger control, the impact of digitalization on jurisprudence, vertical integration in the media sector or innovation in the financial sector. Invited speakers included: José Luís Cruz Vilaça (former ECJ judge), Frédéric Jenny (OCDE), Harry First (NYU), Johannes Laitenberger (DG COMP), Jacques Steenberg (Belgian Competition Authority), Jorge Padilla (Compass Lexecon Europe) Howard Shelanski (Georgetown Law), Tommaso Valletti (DG COMP), Konrad Ost (Bundeskartellamt), António Gomes (OECD), Ariel Ezrachi (Oxford University), Cristina Caffarra (Charles River Associates), Isabelle de Silva (Autorité de la Concurrence), Giulio Federico (DG COMP), Nancy Rose (MIT), Serge Moresi (Charles River Associates), Richard Gilbert (University of California at Berkeley), Andrea Gomes da Silva (CMA UK), Miguel de la Mano (Compass Lexecon Brussels

Office), Maria Ortíz (CNMC), Jorge Padilla (Compass Lexecon Europe), Massimo Motta (Barcelona Graduate School of Economics), Nils Wahl (European Court of Justice), Peter Freeman (UK Competition Appeal Tribunal) and Carlos Pinto Correia (CAPDC).

#### ***2.2.7. AdC Competition Policy Award.***

67. The AdC established the Competition Policy Award in 2018, marking the AdC's 15<sup>th</sup> anniversary, to encourage research in competition economics and law. The first edition award was given to the work "Pay-for-Delay with Settlement Externalities" (Emil Palikot and Matias Pietola), which proposes a new research model for pay-for-delay agreements. The AdC also gave an honourable mention to the work "Drip Pricing When Consumers Have Limited Foresight: Evidence from Driving School Fees" (Katja Seimy, Maria Ana Vitorino and David M. Muir).

#### ***2.2.8. CompCast podcasts.***

68. The "CompCast – Competition Talks" podcasts initiated in 2017 continued, sharing conversations with national and international experts on key topics concerning competition. In addition, in the context of its 15<sup>th</sup> anniversary, the AdC introduced a series of short CompCast episodes in Portuguese ("CompCast – 2 minutes of competition") to explain the importance of competition to consumers. The CompCast podcasts are available on the AdC website.

### **3. International Cooperation**

#### **3.1. European Cooperation**

##### ***3.1.1. ECN – European Competition Network.***

69. The AdC participated in 25 formal and informal cooperation meetings in the European Competition Network context, as well as in 7 Oral Hearings and Advisory Committee meetings regarding restrictive practices, dominant positions and mergers.

##### ***3.1.2. ECA - European Competition Authorities.***

70. The AdC participated in the annual meeting of European Competition Authorities (ECA) that took place in Copenhagen. The President of the AdC spoke on a panel on "Digitalization: what are the challenges for competition enforcement?". During 2018, the AdC notified 12 merger cases regarding multijurisdictional transactions within the EEA to the ECA Network.

#### **3.2. Bilateral cooperation**

71. **Brazil.** In February 2018, the AdC organized a *workshop* in Lisbon with the *Conselho Administrativo de Defesa Económica* (CADE) to discuss methodologies of analysis used for the detection of bid-rigging, notably through forensic IT tools.

72. **China.** In September 2018, the AdC hosted a delegation of the Chinese Academy of Social Sciences, presenting the AdC's institutional framework and its activity in the enforcement and promotion of competition.

73. **Germany.** In October 2018, the AdC hosted a group of young professionals of the Bundeskartellamt with the aim of fostering a mutual knowledge of the authorities' activity. The AdC and the Bundeskartellamt discussed recent cases in the areas of merger control and antitrust.

74. **Netherlands.** In October 2018, the Young ACM, a group of young professionals of The Netherlands Authority for Consumers and Markets (Autoriteit Consument & Markt - ACM), visited the AdC to share the ACM's experience and learn more about the AdC's activity, notably regarding its Fighting Bid Rigging in Public Procurement outreach initiative, as well as recent initiatives and cases in the field of detection, investigation and sanctioning of anti-competitive practices.

### 3.3. Multilateral cooperation

#### 3.3.1. ICN - International Cooperation Network.

75. In 2018, the AdC kept its active participation in all ICN working groups: Agency Effectiveness, Advocacy, Cartels, Mergers and Unilateral Conduct. The AdC continued acting as co-chair of the ICN Promotion & Implementation initiative, which is responsible for promoting the implementation of ICN recommendations and the use of ICN work products by competition authorities around the world. The President of the AdC was also appointed ICN/OECD Liaison in the ICN Steering Group, ensuring cooperation regarding competition policy between the two international organizations.

76. In October, the AdC participated in the ICN Cartel Workshop in Tel Aviv, Israel, speaking in the plenary session on "How to prepare an investigation case in the era of big data/antitrust and computer forensics - big data - data screening" and in the mini-plenary session on "Sharing information and collaboration among governmental agencies".

77. In November, the AdC participated in the ICN Unilateral Conduct Workshop in Stellenbosch, South Africa, speaking in the session regarding "Exclusive dealing."

78. Also in December, the AdC participated in the ICN Merger Workshop, in Tokyo, Japan, in which it held speaking positions in the plenary session on "Merger Review in the Digital Economy" and in the session "Economic Theory and Evidence in Analysis of Vertical Mergers."

#### 3.3.2. OECD – Organisation for Economic Cooperation and Development.

79. In 2018, the President of the AdC was appointed member of the OECD Competition Committee Bureau, as ICN/OECD Liaison. The AdC participated in the meetings of the OECD Competition Committee and Working Parties No 2. on Competition and Regulation and No. 3 on Enforcement and Cooperation, that took place in Paris, in June and November. The AdC presented written contributions to and participated in roundtables regarding "Challenges and co-ordination of leniency programmes", "Taxi, ride-sourcing and ridesharing services", "Suspensory Effects of Merger Notifications and Gun Jumping" and "Personalised Pricing in the Digital Era". The AdC also participated at the 17<sup>th</sup> Global Forum on Competition, in November, having submitted a written contribution and participated in a roundtable on "Unannounced Inspections on the Digital Age".

80. The AdC also participated in the OECD workshops "Cartel screening in the digital era" and "Regulation and competition in light of digitalization" (January), as well as in the OECD/BWB workshop on "Complex Cartel Case Management" (December), as a speaker. Furthermore, in November 2018 the AdC participated as a speaker in the "Seminar in

European Competition Law for National Judges on Competition Issues in the Digital Age”, organized by the OECD-GVH Regional Centre for Competition of Budapest and financed by the European Commission “Training of National Judges” Program.

81. Finally, the AdC participated in the 16<sup>th</sup> meeting of the Latin American and Caribbean Competition Forum that took place in Buenos Aires, Argentina, in September, which is co-organised by the OECD and the Inter-American Development Bank (IDB).

### 3.3.3. UNCTAD

82. The AdC participated in the 17<sup>th</sup> Session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE), that took place in Geneva, Switzerland, from 11 to 13 July, where it participated in the roundtable regarding “Competition issues in the sale of audiovisual rights for major sports events”.

### 3.3.4. Lusophone Competition Network.

83. In October 2018, the AdC organized a meeting of the Lusophone Competition Network with the participation of Angola, Brazil, Cape Verde and Portugal, and with the aim of sharing experience and good practices in competition policy, with a view to promoting a strong competition policy and culture in the Portuguese-speaking countries. The meeting was also attended by representatives of the European Commission’s DG Competition, OECD and UNCTAD.

### 3.3.5. Ibero-American Forum on Competition.

84. The AdC co-organised the 2018 Ibero-American Forum on Competition, jointly with the Spanish CNMC and the Argentinian CNDC, in Buenos Aires, Argentina, on the margins of the OECD-IDB Latin American and Caribbean Competition Forum. The two topics of the agenda were “Competition in professional services” and “Leniency coordination between countries”. Speakers and moderators included Argentina, Brazil, Chile, Mexico, Peru, Portugal and Spain.

## 4. Resources of Competition Authorities

### 4.1. Resources overall

#### 4.1.1. Annual budget

85. The AdC’s 2018 Annual budget was € 9,017,251.

#### 4.1.2. Number of employees (in 31.12.2018)

Specialisation	No. of Staff*
Competition Economists	25
Competition Lawyers	34
Other NAC** staff (Forensic IT, Communications)	7
Other professionals and support staff	24



<b>Total*</b>	90
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Note: \*Includes management, does not include the Board / \*\* Non-administrative competition staff.

## 4.2. Human resources applied to competition (in 31.12.2018)

Area of activity	No. of Staff*
Enforcement against anticompetitive practices**	31
Mergers	14
Legal Service	6
Advocacy	15

Note: \*Includes management, does not include the Board / \*\*Includes forensic IT team.

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

### 5.1. Analysis of road liquid fuel

86. In May 2018, the AdC published an analysis of the road fuel price analysis requested by the Portuguese Government, as well as the extent to which previous AdC recommendations regarding this sector had been implemented<sup>1</sup>.

87. The AdC concluded that a significant part of the measures recommended in 2004, 2009 and 2012 to promote competition in the sector had not been implemented or had only been partially implemented, highlighting the lack of implementation of the measures concerning concessions for service stations on motorways.

88. The AdC noted that the increase in gross margins in 2015 occurred alongside a sharp fall in international reference crude oil prices, allowing for an increase in margins in the short-run. Notwithstanding, the AdC reported a relative stability of the absolute gross margins in the sector and greater volatility of the mark-up as a result of price variability.

89. The AdC also concluded that fiscal policy costs had the highest relative weight on road fuel retail prices. In February 2018, they represented around 63% of the consumer price for gasoline and around 56% for diesel.

90. Thus, the AdC presented a "4th package" of recommendations to the Government aimed at promoting competition and providing more competitive offers for consumers in the road fuel sector. These include, for example, (i) the completion of the pipeline connection between the Galp refinery and the port of Sines, which remains incomplete and limits the third-party use of the storage facility of CLC - Companhia Logística de Combustíveis, as well as access to competitive imports; (ii) the organization of tender procedures (rather than invitation or direct negotiation) for the award of concessions of

<sup>1</sup> [http://www.concorrenca.pt/vEN/News\\_Events/Comunicados/Pages/PressRelease\\_201805.aspx?lst=1&Cat=2018](http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201805.aspx?lst=1&Cat=2018)  
[http://www.concorrenca.pt/vPT/Estudos\\_e\\_Publicacoes/Estudos\\_Economicos/Energia\\_e\\_Combustiveis/Paginas/Análise-AdC-Combustiveis-Rodoviários.aspx?lst=1](http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Estudos_Economicos/Energia_e_Combustiveis/Paginas/Análise-AdC-Combustiveis-Rodoviários.aspx?lst=1) (in Portuguese)

motorway service stations; and (iii) stopping the disclosure of reference prices given that these do not include the retail component and are therefore useful only for operators, not for consumers.

91. The AdC urged the promotion of competition for the market in the sub-concession for service stations on motorways. In spite of a window of opportunity in 2015, with the end of the sub-concession contracts of some motorway service stations, not all were subject to new award procedures, at least until June 2017, according to information submitted to the AdC. The cases in which there was a new award procedure did not follow all the measures recommended by the AdC, and the procedures' results mostly maintained the previous sub-concessionary companies.

## 5.2. Issues Paper on technological innovation and competition in the financial sector

92. In October 2018, the AdC published an Issues Paper on “Technological Innovation and Competition in the Financial Sector in Portugal”, assessing the market entry conditions for operators whose business models are based on technology applied in the financial sector – FinTech<sup>2</sup>. This topic is particularly relevant for the sector given the significant opportunities for increasing competition, innovation and consumer welfare associated with FinTech.

93. The Issues Paper focused on payment services and crowdfunding, providing a number of recommendations to mitigate existing barriers to entry and expansion. The paper also covers new technologies in the insurance sector (*InsurTech*) and asset management advice (*robo-advisory*). In addition, the paper recommends the adoption of regulatory regimes that promote innovation in the financial sector.

94. The AdC promoted a public consultation of a preliminary version of the paper in April 2018, incorporating feedback received from various stakeholders, including regulators, consumer associations, business associations and market players.

95. Regarding payment services, the AdC identified a risk of market foreclosure by the incumbent banks, which could hinder FinTech entrants' access to key inputs, namely client account data and settlement and clearing infrastructures. The AdC also identified a set of specificities of the Portuguese retail payment systems that are likely to entail added difficulties for FinTech entrants, notably the lack of regulatory framework and the delay in the transposition and implementation of the Second EU Payment Services Directive (PSD2).

96. The AdC recommended that, in the context of implementing PSD2, the legislator and sectoral regulator reduce the degree of freedom granted within the obligations for incumbents to grant access to the necessary inputs, ensuring quality, exemption from charges and that incumbents do not block the use of payment initiation and account information services.

97. With respect to crowdfunding, stakeholders confirmed that existing investment limits constitute a barrier to expansion in the market. The AdC thus recommended that the necessity and proportionality of these limits should be evaluated, in light of the underlying

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<sup>2</sup> [http://www.concorrenca.pt/vEN/Estudos\\_e\\_Publicacoes/Estudos\\_Economicos/Banca\\_e\\_Seguros/Pages/Executive-Summary-Issues-Paper.aspx?lst=1](http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Banca_e_Seguros/Pages/Executive-Summary-Issues-Paper.aspx?lst=1)  
[http://www.concorrenca.pt/vEN/Estudos\\_e\\_Publicacoes/Estudos\\_Economicos/Banca\\_e\\_Seguros/Documents/Issues%20Paper%20Technological%20Innovation%20and%20Competition%20in%20the%20Financial%20Sector%20in%20Portugal%20-%20Final\\_Version.pdf](http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Banca_e_Seguros/Documents/Issues%20Paper%20Technological%20Innovation%20and%20Competition%20in%20the%20Financial%20Sector%20in%20Portugal%20-%20Final_Version.pdf)

public policy goals. The Issues Paper also outlined the importance of granting FinTech operators full access to the Central Credit Register. This access would contribute to mitigate the disadvantages of lending crowdfunding platforms vis-à-vis the remaining credit-granting institutions, as the former have less information to assess credit risk. Furthermore, the AdC recommended opening the market to platforms already licensed in other EU Member States under the Markets in Financial Instruments Directive (MiFID).

98. Finally, the AdC recommended the creation of regulatory frameworks promoting innovation in the financial sector, in particular regulatory sandboxes, which promote market entry by temporarily adapting regulatory barriers. These solutions allow FinTech and InsurTech to test innovative products, services and business models in a live market environment, while safeguarding the interest of consumers and preserving system security.

### 5.3. Report on the port sector

99. In December 2018, the AdC published a report concerning competition in the port sector, recommending to the Government and port authorities the adoption of measures to promote competition in the market for port terminal concessions, the liberalization of market access for towing and piloting services, and the redefinition of the port governance model<sup>3</sup>.

100. The report builds on previous analysis of the port sector, including a report from July 2015. It also takes into account the competition assessment carried out with the OECD regarding this sector in the AdC Impact 2020 Project.

101. The AdC considered that the adoption of the recommendations to promote competition and efficiency in port terminal concession contracts, namely through new open tender procedures, was a pressing issue given that a significant number of terminal concession contracts would expire within 5-10 years. In addition, the implementation of the investment plan for ports (amounting to around € 1.8 billion) represented an opportunity to mitigate capacity constraints and improve intermodality conditions.

102. The analysis carried out by the AdC showed that the award of port terminal concessions were likely to be improved, for example, through favouring public tender procedures over contract renegotiations. Additionally, a substantial share of port terminal concession contracts were awarded for a 30-year period. These contracts showed no significant relationship between contract duration and the level of private investment.

103. The AdC also concluded that the liberalization of towing and piloting services would introduce more favourable conditions for competition in the respective markets. The AdC concluded that there would be a significant margin to increase participation of service providers through a higher use of the licensing regime.

104. Regarding port governance, the AdC identified some features in the current governance model which could restrict competition in and for the market. Notably, the current model entrusts port authorities with regulatory, port management and service provision roles, which could lead to conflicts of interest. Furthermore, revenue maximization and the weight of variable concession rents create incentives for increasing port service prices and restrict port competitiveness to capture more load.

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<sup>3</sup> [http://www.concorrencia.pt/vEN/Estudos\\_e\\_Publicacoes/Estudos\\_Economicos/Other/Pages/Port-Sector-Study.aspx?lst=1](http://www.concorrencia.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Other/Pages/Port-Sector-Study.aspx?lst=1)