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Annual Report on Competition Policy Developments in Portugal

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This report is submitted by Portugal to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 10-12 June 2020.

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Portugal

This report covers the activities of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority from 1 January 2019 to 31 December 2019.

Executive Summary

In 2019, the AdC had significant activity both on competition enforcement and competition advocacy.

Regarding its enforcement powers, the AdC imposed a total of € 340.2 million in fines, in seven sanctioning decisions, which single-handedly exceeds the total amount of fines the AdC had applied since its inception in 2003. This unprecedented result was mainly driven by the total fine of € 225.2 million imposed in a case for concerted practices of exchanging sensitive commercial information on credit products involving 14 banks.

The AdC's enforcement activity in 2019 was also marked by a sanctioning decision for abuse of dominance in the teleregulation market for electric energy, in which the AdC imposed a fine of € 48 million to the incumbent firm. Furthermore, the AdC imposed a fine of € 24 million for an RPM infringement concerning the supply of beverages in hotels, restaurants and cafes.

In regard to 2019's cartel decisions, three out of the four decisions issued were settlement decisions, under which undertakings acknowledged participation in the infringement, waiving the right to appeal and benefiting from a fine reduction, which allows for a simplified and shortened procedure.

Finally, the AdC also issued a commitments decision in the bakery sector, completing a total of eight decisions related to anti-competitive practices.

In the merger field, the AdC issued 59 merger control decisions, opening two in-depth investigations. One of these in-depth reviews was cleared (Ccent no. 45/2018 - Grupo HPA Saúde / HGSL) and in the other case (Ccent. No. 9/2019 - Fidelidade SGOII / Saudeinveste*IMOFID) the notifying party withdrew the notification.

With respect to judicial review, there was a significant increase of litigation resulting from the reinforcement of the sanctioning activity, but with an overall 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.

In the context of its advocacy powers, the AdC has been keen on addressing the challenges to competition created by the digitalization of the economy. In that regard, the AdC published an issues paper on digital ecosystems, big data and algorithms. With this issues paper, the AdC expects to further promote compliance, by reinforcing firms' awareness, and contribute to the public discussion on the impact and effects of the digitalization on competition.

Moreover, the AdC issued 25 opinions, studies and recommendations on draft and existing legislation and regulation in a wide range of sectors, such as transportation, e-commerce, digital economy, pharmaceuticals, energy and telecoms, seeking to promote a more competitive legal and regulatory framework in Portugal.

In 2019, the AdC continued its “Combatting 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, reaching a total of over 2,200 participants from adjudicating bodies. The campaign has already resulted in one sanctioning decision in a cartel case related to railway maintenance.

Moreover, the AdC initiated the preparation of the draft legislation to transpose the ECN+ Directive, which aims to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. The AdC promoted an open, transparent and inclusive process, namely by setting up an experts working group, holding an open workshop, and by launching a public consultation on its proposal.

The AdC also awarded the 2nd edition of its Competition Policy Award, which encourages research in competition economics and law, to a legal paper which analysed the history of regulation in telecommunications in the EU and US, extracting conclusions for the digital space with a view to providing policy-makers and enforcers with a toolbox to rationalize public measures towards platforms.

In the international activity, besides being an active member in the various European and international *fora* such as the OECD, the European Competition Network (ECN) and the International Competition Network (ICN), the AdC promoted meetings of the Lusophone Competition Network, participated in the 8th Bilateral Meeting with the Spanish Competition Authority and signed a Memorandum of Understanding with the Moroccan Competition Council.

1. Enforcement of competition law and policies

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

1.1.1. Summary of activities

1. In 2019, the AdC adopted a total of eight decisions on restrictive practices proceedings, including seven sanctioning decisions which led to the imposition of € 340.2 million in fines. The AdC's sanctioning decisions included a full array of practices, such as a concerted practice of exchanging sensitive commercial data between banks, a cartel in railway maintenance, a first-ever cartel in the insurance sector, an abuse of dominant position in the energy sector and retail price maintenance in food retail distribution. Regarding decisions covering cartels, three out of the four decisions issued were settlement decisions, under which firms and managers involved confessed participation in the infringement and waived their right to appeal.

2. The AdC also accepted commitments in one decision involving the bakery sector. This decision obliged the Northern Association of Manufacturers of Bread, Pastries and Similar Products (AIPAN) to commit to making clear to its members that they have full freedom and autonomy to set prices, thereby minimizing the potential restrictive effect of statements made by the president of the Association in regard to bread prices, safeguarding consumer interests.

3. Besides these eight decisions, the AdC issued five statements of objections, three in the food retail sector (potential hub and spoke infringements), one in the advertising sector and one in the telecommunications sector.

4. By the end of the year, the AdC was investigating 20 cases of restrictive practices regarding alleged prohibited agreements - both vertical and horizontal ones -, concerted practices and decisions by associations of undertakings.

5. **Fines.** The AdC fined undertakings € 340.2 million in seven sanctioning decisions regarding anticompetitive practices.

6. **Inspections.** The AdC carried out inspections in 15 premises of 19 undertakings in three proceedings (health, waste management and private surveillance sectors).

Table 1. Summary of antitrust cases in 2019

	No. of cases
Sanctioning decisions	7
Commitment decisions	1
Investigations filed	0
Investigations launched	4
Ongoing investigations (31.12.2019)	20

1.1.2. Sanctioning decisions

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

7. In April 2019, the AdC imposed fines of € 906,485 on Mota-Engil – Engenharia e Construção, S.A. and one of its managers. Furthermore, in June 2019, the AdC imposed fines totalling € 300,000 on Futrifer – Indústrias Ferroviárias, S.A. and one of its Board members. Both fines were related to the participation in a bid rigging cartel involving price fixing and market sharing in public tenders for railway maintenance services.

8. In this case, 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 undertaking 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.

9. The AdC investigation was initiated in October 2016, following a complaint submitted within the context of the Combatting 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.

10. In December 2018, the AdC had already imposed fines amounting to a total of € 365,400 on Sacyr Neopul S.A. and its production manager for participating in this bid-rigging cartel.

11. The early conclusion of the proceedings against Sacyr Neopul, S.A., Mota-Engil – Engenharia e Construção, S.A., Futrifer – Indústrias Ferroviárias, S.A., as well as their management, was possible due to the active cooperation provided by the undertakings, which confessed their participation in the cartel and abstained from litigating, under a settlement procedure, foreseen in the Portuguese Competition Act. 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.

12. In regard to the two remaining firms under investigation, in March 2020 the AdC adopted a sanctioning decision which concluded the proceedings initiated in 2016, resulting in fines amounting to a total of € 3.4 million imposed on the five undertakings and respective Board members or directors involved in the cartel.

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

13. In July 2019, the AdC sanctioned Lusitania – Companhia de Seguros, S.A. and Zurich Insurance PLC – Sucursal Portugal, as well as two board members and two directors, to a fine of over € 42 million for market sharing and price fixing, in regard to the so-called “insurer cartel”. In February 2019, a fifth insurance company, Seguradoras Unidas, S.A., had agreed to settle. The undertakings involved in this cartel coordinated the prices for large corporate clients regarding occupational, health and car insurance. Undertakings presented higher prices so that the incumbent insurer retained the respective client.

14. 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 seven years and involved five insurance companies representing around 50% in each sub-sector (the four companies mentioned above and Seguradoras Unidas, S.A.), as well as 14 managers and directors of the companies.

15. In June and July 2017, the AdC conducted dawn raids in the companies’ premises, located in the Lisbon area. In August 2018, the AdC issued a statement of objections. While only Seguradoras Unidas, S.A. obtained full exemption of a fine given it was the first company to come forward under the Leniency Program, Fidelidade – Companhia de Seguros, S.A. and Multicare – Seguros de Saúde, S.A. had acknowledged their involvement in the cartel and agreed to settle the case for a fine of € 12 million in 2018, benefitting also from a reduction of the fine under the terms of the Leniency Program. The fining decisions in 2019 concluded the proceedings, which lead to a total of more than € 54 million of fines.

Case No. PRC/2012/09 – concerted practice of exchanging sensitive commercial data in retail banking

16. In September 2019, the AdC issued a sanctioning decision involving 14 banks, imposing fines in the total amount of € 225.2 million in connection with the concerted practice of exchanging sensitive commercial data, during a period of more than ten years, between 2002 and 2013.

17. The banks fined are Banco BIC Português, S.A. (for practices of BPN – Banco Português de Negócios, S.A.), Banco Bilbao Vizcaya Argentaria, S.A., Sucursal em Portugal, Banco BPI, S.A., Banco Comercial Português, S.A., Banco Espírito Santo, S.A. – em Liquidação, Banco Santander Totta, S.A. (for its own actions and those of Banco Popular), Banif - Banco Internacional do Funchal, S.A. – em Liquidação, Barclays Bank PLC, Caixa Central – Caixa Central de Crédito Agrícola Mútuo, CRL, Caixa Económica Montepio Geral, Caixa Económica Bancária, S.A., Caixa Geral de Depósitos, S.A., Deutsche Bank Aktiengesellschaft - Sucursal em Portugal e Unión de Créditos Inmobiliarios, S.A., Establecimiento Financiero de Credito (Sociedad Unipersonal) – Sucursal em Portugal. These banks exchanged sensitive commercial data on their offers of credit products in retail banking, namely mortgages, consumer and small and medium enterprises credit products.

18. In this scheme, each bank provided to the others sensitive information on their commercial offers indicating, for example, the spreads to be applied in the near future on mortgage loans or the volume of loans made in the previous month, information that would not otherwise be available to their competitors.

19. Therefore, each bank knew, in a detailed, precise and timely manner, the credit offers being made by other banks, discouraging these banks to make available better offers to their clients, thus eliminating the normal competitive pressure that is beneficial to consumers.

20. In some cases, this practice lasted more than ten years and the relevant, strategic and non-public nature of the information shared was unequivocally proven in the AdC's decision.

21. The procedure involved a very significant amount of litigation and was suspended during approximately one year as a result of judicial decisions. Even so, of the 43 appeals submitted by the banks involved, only 5 judicial decisions did not uphold the AdC's position, indicating a very high success rate for the AdC in court.

22. The sector and the offer of credit products covered in this case is crucial for consumers, whether individuals or firms, harming them directly, given that the practice involved key banking segments, such as mortgages, consumer and small and medium enterprises credit products.

23. Barclays benefitted from immunity given it was the first company to reveal the practice and provide evidence of the infringement. Montepio was the second bank that availed itself of the leniency program and provided additional evidence of the practice, obtaining a reduction of 50% of the fine applied.

Case No. PRC/2016/04 – fixing minimum resale prices and other commercial conditions of beverages in hotels, restaurants and cafes

24. In July 2019, the AdC sanctioned Super Bock Bebidas S.A., one board member and one director of the company with fines of € 24 million for fixing minimum resale prices and other commercial conditions of beverages in hotels, restaurants and cafes, over more than ten years (2006-2017).

25. The affected markets are of paramount importance in the lives of consumers, in general, as the distribution of beer, water (soft and sparkling), soft drinks, iced tea, wines, sangrias and ciders in hotels, restaurants and cafes roughly corresponded to all consumption away from home. Furthermore, Super Bock is one of the largest competitors in these markets, with a strategic importance in the national market and for exports. Therefore, this practice may cause harm to consumers.

26. The investigation was initiated by the AdC in June 2016, following two complaints of former Super Bock's distributors. During the course of the investigation, in 2017, the AdC conducted dawn raids at the undertaking's premises.

27. In August 2018, the AdC issued a statement of objections, giving the opportunity to Super Bock to exercise its rights of defense, which was duly assessed and taken in consideration in the final decision issued in 2019.

Case No. PRC/2016/05 – abuse of dominance in the teleregulation market for electric energy

28. In September 2019, the AdC imposed a fine of € 48 million to EDP – Gestão da Produção de Energia, S.A., (EDP Produção), for abuse of dominance in the market for secondary reserve services in mainland Portugal, over a period of five years.

29. Secondary reserve, or teleregulation, is the balancing service that ensures that consumers have access to the electricity they require at any moment, by balancing the offer from power generating units with the demand from families and companies.

30. EDP Produção is, by far, the main supplier of teleregulation services in the national electricity system, as well as the main operator with teleregulation capacity, making it an indispensable player in this market.

31. This dominant position provided EDP Produção the opportunity to influence price formation in the teleregulation market, an opportunity of which the firm availed itself.

32. Between 2009 and 2013, EDP Produção manipulated its offer of teleregulation, limiting the offer from its generating units subject to the CMEC regime, so as to increase the offer from its units in the open market, thus being paid twice, to the detriment of consumers.

33. The CMEC regime (“Custos de Manutenção do Equilíbrio Contratual” or the cost of maintaining the contractual equilibrium) was the mechanism created by the Portuguese government in 2004 to guarantee that, in the open market context then introduced, generating plants received a remuneration equivalent to what they would have received under the Power Purchase Agreements (PPAs) signed with the system operator, REN, and still in effect.

34. Through its abusive behaviour, EDP Produção could, simultaneously, obtain higher compensation payments in the context of the CMEC regime as well as higher revenues from the placement in the open market of reserve services from its non-CMEC generating units.

35. This was achieved by two ways. On the one hand, the price of energy rose as a result of secondary reserve becoming more expensive; on the other, the higher CMEC compensations raised the costs of a general economic nature (Custos de Interesse Económico Geral - CIEG), included in final electricity tariffs.

1.1.3. Commitment decisions

Case No. PRC/2018/4 – bread prices in the bakery sector

36. In June 2019, the AdC adopted a decision rendering legally binding a set of commitments guaranteeing that the Northern Association of Manufacturers of Bread, Pastries and Similar Products (AIPAN) would make it clear to its members that they had full freedom and autonomy to set prices, thereby minimizing the potential restrictive effect of statements made by the President of the Association in regard to bread prices, safeguarding consumer interests.

37. In order to address the competition concerns identified by the AdC, in April 2019 AIPAN submitted a set of commitments that can be summarised as follows:

1. AIPAN, through its representatives, undertook not to issue any statements or informations regarding prices or other conditions of trade that could, in any way, promote or allow for the coordination of behaviour by members;
2. AIPAN undertook to inform its members, by means of an information letter, within 15 workdays of a final decision by the AdC, that prices and other commercial conditions were to be set autonomously by each member;
3. AIPAN undertook to publish the abovementioned information letter on its website, after sending it to its members;

4. AIPAN undertook to send to the AdC, within 10 workdays of sending the letter and placing it on its website, proof thereof.
38. Following a public consultation, the AdC concluded that the commitments presented by AIPAN were adequate so as to eliminate the potential harmful effects on competition and on consumer welfare.

1.2. Judicial review of AdC decisions

39. Judicial review has been a consistently positive indicator of the robustness of AdC decisions in recent years. In 2019, there was an increase in litigation regarding procedural decisions, covering issues such as the legality of search and seizure orders, evidence, digital evidence gathering, access to file, confidentiality, legal professional privilege, withdrawal of documents, effects of an appeal and right of defense. In 2019 only, 49 new interlocutory appeals were filed.

40. The courts ruled in favour of the AdC in 79 of the 93 rulings on AdC decisions, mostly referring to interlocutory appeals, which means the AdC had a success rate of nearly 85%. The increase in litigation reflects the AdC's recent reinforcement of investigation. Regarding unfavorable decisions, the AdC appealed against six of them, managing to reverse three decisions in its favour, while other appeals are still pending, which reflects the consolidation of checks and balances for legal robustness from an early stage of the process and throughout the investigation life cycle.

41. It is worth noting that in 2019 the Constitutional Court harmonized and unified case law regarding the effects of appeals. The Court concluded that the rule according to which the appeal of decisions imposing fines or other sanctions does not suspend the effect of those decisions (unless the party concerned requests such an effect, based on the argument that the decision may cause the said party considerable harm, while offering to pay a guarantee *in lieu*) does not breach the Constitution.

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 2019

Notified mergers	63
Total decisions	59
Pending	6

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

Phase I	Cases
Non Notifiable transaction	6
Clearance	50
Withdrawn cases	1
Non clearance	-
To initiate an in-depth investigation	2
Referral to European Commission	-
Tacit approval	-
Phase II	-
Clearance	1
Clearance with commitments	-
Non clearance	-
Withdrawn cases	1
Tacit approval	-
Total final decisions adopted (does not include the Phase I decision to proceed into Phase II)	59

Table 4. Relationship between undertakings' activities (Final Decisions)

	Cases	%
Horizontal	23	39%
Vertical	10	17%
Conglomerate	26	44%
Total	59	100%

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

	Cases	%
Multi-jurisdictional filings (within EU)	4	7
Multi-jurisdictional filings (outside EU)	14	24
National with involvement of undertakings from other EU member states	13	22
National with involvement of undertakings from countries outside EU	9	15
Completely national	19	32
TOTAL	59	100%

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

	Cases	%
Sole control	53	90
Joint control	3	5
Acquisition of assets	1	2
Other	2	3
TOTAL	59	100%

1.3.2. Summary of significant cases

Ccent. 47/2019 – Cofina / Media Capital

42. In December 2019, the AdC decided not to oppose to the merger whereby Cofina SGPS S.A. would acquire sole control of Grupo Media Capital SGPS, S.A.

43. After an exhaustive analysis, the AdC concluded that the merger was unlikely to harm competition in any of the relevant markets, such as the supply of basic pay-TV channels, the press and other digital contents and advertising markets.

44. From the users' perspective, there was overlap between the merging parties in the market for (wholesale) supply of basic pay-TV channels and in the market for digital press and contents. From the advertisers' perspective, there was overlap in the market for TV advertising and in the market for online advertising.

45. The AdC considered that the entity resulting from the merger would have significant market positions in several markets. However, these already existed pre-merger and, where overlapping occurred, the market share increment would be small and not give rise to competition concerns.

46. For example, in the pay-TV access channel market, the merger aggregates the second and fifth largest operators in the market. The resulting company becomes the main operator of this market which, however, does not have a particularly high level of concentration. The structural change resulting from the operation is therefore of little significance.

47. The investigation involved interviews with two associations representing media buying agencies (covering over 90% of the sector in Portugal) and one association representing advertisers. All of them had a positive view regarding the merger and confirmed the AdC's preliminary assessment.

48. Furthermore, both the sector regulator for communications (ANACOM) and sector regulator for the media (ERC) issued opinions in which they did not oppose the merger.

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

2.1. Promoting a pro-competitive legislative and regulatory environment

49. In 2019, the AdC issued 25 opinions, studies and recommendations on draft and existing legislation and regulation across many sectors. These included transportation, e-commerce, digital economy, pharmaceuticals, energy and telecoms.

50. In addition, the AdC published an issues paper on digital ecosystems, big data and algorithms.

51. Moreover, the AdC worked on preparing the draft legislation for the transposition of the ECN+ Directive in Portugal, launching a public consultation in October 2019.

52. The AdC also advocated for the implementation of the pro-competitive recommendations issued in 2018 in regard to the legal and regulatory frameworks of 13 liberal professions and the transportation sector (road and maritime transport), in the context of the AdC-OECD Competition Impact Assessment Project (2016-2018).

2.1.1. AdC opinions, studies and recommendations across various sectors

53. During 2019, the AdC issued 25 opinions, studies and recommendations on draft and existing legislation and regulation, covering a wide range of economic sectors. These opinions, studies and recommendations included, among others:

- a recommendation on loyalty clauses in the telecoms market, in which the AdC found that current loyalty policies in the telecoms sector (minimum contract durations and early termination charges) reduce consumer mobility and restrict competition, launching, as a result, a public consultation to a set of recommendations to the legislator and the sector regulator, aimed at mitigating competition concerns;
- a recommendation on a draft regulation on fares for public passenger transport, in which the AdC proposed to eliminate barriers to competition identified in the initial draft proposed by the transports sector regulator, which was accommodated in the final version of the Law;
- a recommendation on a draft Decree-Law transposing the EU Regulation on Geoblocking, in order to include an obligation by the entities in charge of monitoring the regulation to report to the AdC infringements to the regulation that could also be considered as potential infringements to competition law, namely those related with passive sales restrictions, which was also accommodated in the enacted Law.

54. **Competition Impact Assessment of Public Policies.** In 2019, the AdC issued nine opinions involving various economic sectors, such as environment (water and waste management) and health.

55. **AdC/OECD Cooperation Project.** The AdC Impact 2020 Project included the AdC/OECD project, focusing on the transport sector and self-regulated professions, which started on 14 September 2018 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. Subsequently, in 2019, the AdC advocated the implementation of the recommendations to public stakeholders (such as the Government, political parties and professional associations), with the aim of promoting the implementation of the project's recommendations. Also, in 2019, the AdC issued two recommendations in the transport sector, aimed at decision-makers.

56. The sectors analysed in the project 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.

58. **Proposal of Draft Legislation for the Transposition of the ECN+ Directive.** In 2019, the task of preparing draft legislation transposing the ECN+ Directive in Portugal was given to the AdC by the Government. The ECN+ Directive empowers the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

59. For the purpose, the AdC organized a working group with various experts, including with the Government, the Judiciary, academia, private practice lawyers and the business community, as well as an open workshop. In October 2019, a public consultation of the first draft transposition ensued. More recently, in April 2020, the AdC submitted to the Government the proposal of draft legislation.

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

60. **Cooperation with Sector Regulators.** During 2019, the AdC held competition seminars aimed at reinforcing institutional cooperation with sectoral regulators, notably with the Regulatory Authority for the Media (ERC) and the Water and Waste Services Regulation Authority (ERSAR). These seminars focused on the main infringements to competition law and on opportunities for cooperation between the AdC and regulators in their respective sectors.

61. **Combatting Bid-Rigging in Public Procurement.** In 2019, the AdC organised 11 sessions of the “Combatting Bid-Rigging in Public Procurement” campaign, reaching public procurement officials in the Lisbon and Porto municipalities, in the autonomous region of the Azores, as well as in the Defence sector. In total, since 2016, the AdC has reached over 2,300 participants in the campaign. The outreach initiative regarding bid-rigging in public procurement is an AdC priority given the expected benefits to the economy.

62. **AdC Seminar Series.** In order to promote dialogue and debate on issues of competition policy, the AdC held 10 public seminars on competition law and economics which brought nationally and internationally renowned experts to Lisbon, including Luís Cabral (Stern School of Business, New York University), Ariel Ezrachi (Oxford University), Alexandre Cordeiro (CADE), Carla Farinhas (former Référendaire at the CJEU), Thomas Hoehn (Visiting Researcher at the Imperial College Business School), Amelia Fletcher (University of East Anglia), Wouter Wils (European Commission, King’s College London), Adalberto Cawaia (Angolan Competition Authority), Jacques Crémer (Toulouse School of Economics) and Stephen Hunt (UK Competition and Markets Authority). The seminars were held at the AdC Abel Mateus Competition Library.

63. **2nd Edition of the AdC Competition Policy Award.** The AdC held the 2nd edition of the Competition Policy Award, which encourages research in competition economics and law. The award was given to the paper “Regulating online platforms: lessons from 100 years of telecommunications regulation” (Friso Bostoen), which surveys the history of regulation in telecommunications in the EU and US, extracting conclusions for the digital space with a view to providing policy-makers and enforcers with a toolbox to rationalize public measures towards platforms.

64. **CompCast Podcasts.** The “CompCast – Competition Talks” podcasts initiated in 2017 continued, sharing conversations with national and international experts on key topics concerning competition. In addition, the AdC continued to hold its 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.

65. **New Search Tool (PesquisAdC).** In 2019, in line with its commitment to transparency and in order to promote a greater understanding of its work and of competition policy, the AdC launched a new online search tool for its antitrust decisions (PesquisAdC). The tool will be further enhanced in 2020 with judicial and merger decisions.

3. International Cooperation

3.1. European Cooperation

66. **ECN – European Competition Network.** The AdC participated in 28 formal and informal cooperation meetings in the European Competition Network context, as well as in 12 Oral Hearings and Advisory Committee meetings regarding restrictive practices, dominant positions and mergers.

67. **ECA - European Competition Authorities.** The AdC participated in the annual meeting of European Competition Authorities (ECA) that took place in The Hague. The President of the AdC moderated a panel on the application of competition rules in regard to concerted practices, which included a discussion on the challenges raised by the use of pricing and online monitoring algorithms.

3.2. Bilateral cooperation

68. **Angola.** The AdC received the visit of a delegation from the Angolan Competition Regulatory Authority, for 10-day training program, as well as experience sharing between the two agencies.

69. **Brazil.** In May 2019, the AdC welcomed Mr. Alexandre Cordeiro Macedo, the General Superintendent of the Conselho Administrativo de Defesa Económica (CADE), for an exchange of experiences in regard to the enforcement activity of both authorities. In addition, the President of the AdC participated in the Brazilian Competition Day, organized by the International Chamber of Commerce Brazil, intervening as a speaker on the topic “Digital economy and competition – main trends and global discussions”. Also, the President of the AdC, alongside the President of the CADE, participated in a session on “The challenges and priorities of the Brazilian and the Portuguese competition authorities”, promoted by the Portuguese Chamber of Commerce, in Brazil.

70. **China.** In July 2019, the AdC hosted a delegation of the State Administration for Market Regulation (SAMR) of the People’s Republic of China. Both authorities presented their institutional framework and recent activity in the enforcement and promotion of competition.

71. **Morocco.** In November 2019, the AdC and the Moroccan Conseil de la Concurrence signed a Memorandum of Understanding, promoting the bilateral cooperation and the exchange of good practices on competition enforcement and policy. The signing of the Protocol took place during the International Conference in Rabat, in which the President of the AdC shared the authority's experience on collusion and technological innovation - the case of algorithms.

72. **Poland.** The AdC welcomed a visit from the Polish UOKiK with the aim of exchanging experience regarding antitrust enforcement.

73. **Spain.** In April 2019, the AdC participated in the 8th Bilateral Meeting with the Competition Authority of Spain (CNMC), which further coordinated the investigation and sanctioning activity in the Iberian Peninsula. In addition, in July 2019, the AdC participated

as speaker at the Escola Ibero-americana de Defesa da Concorrência, organized by the CNMC, in which several countries of Latin America also participated, sharing its operational experience.

3.3. Multilateral cooperation

74. **ICN - International Cooperation Network.** In 2019, 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.

75. In addition, the President of the AdC was elected member of the ICN Steering Group and continued acting as ICN/OECD Liaison in the ICN Steering Group, ensuring cooperation regarding competition policy between the two international organizations.

76. Also, in 2019, the AdC, as a founding member, joined the ICN Framework for Competition Agency Procedures (ICN CAP). The ICN CAP is a multilateral informal instrument designed to strengthen procedural fairness in competition law enforcement.

77. In 2019, the AdC participated in the ICN Annual Conference, as well as in the ICN Cartel Workshop, ICN Unilateral Conduct Workshop and the ICN Advocacy Workshop.

78. **OECD – Organisation for Economic Cooperation and Development.** In 2019, the President of the AdC continued acting as a 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 on “Analysing Competition Issues in Labour Relations”, “Digital Disruption in Financial Markets (FinTech)”, “Vertical Mergers in the Technology, Media and Telecom Sector” and “Hub and Spoke Arrangements”.

79. In February 2019, the AdC participated in the OECD “Open Competition Day”. In the same month, the AdC participated as a speaker in the OECD workshop “Recent Challenges in Competition and IP in Pharmaceutical Markets”. Furthermore, in May 2019, the AdC participated as a speaker in the seminar on European Competition Law for National Judges regarding “Competition Economics”, organized by the OECD-GVH Regional Centre for Competition of Budapest and financed by the European Commission “Training of National Judges” Program.

80. **Lusophone Competition Network.** In May 2019, during the ICN Annual Conference, the AdC promoted and participated in a meeting of the Lusophone Competition Network, attended by Angola, Brazil and Portugal, which aimed at sharing experience and good practices in competition policy, with a view to promote 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 and by the OECD, as well as private practitioners of lusophone countries. Furthermore, in October 2019, during the ICN Cartel Workshop, the AdC promoted and participated in a meeting of the Lusophone Competition Network, attended by several members of the network.

4. Resources of Competition Authorities

4.1. Resources overall

4.1.1. Annual budget

81. The AdC's 2019 annual budget was € 8,718,717.

4.1.2. Number of employees (in 31.12.2019)

Specialisation	No. of Staff*
Competition Economists	25
Competition Lawyers	34
Other NAC** staff (Forensic IT, Communications)	6
Other professionals and support staff	27
Total*	92

Note: *Includes management, does not include the Board

** Non-administrative competition staff

4.2. Human resources applied to competition (in 31.12.2019)

Area of activity	No. of Staff*
Enforcement against anticompetitive practices**	30
Mergers	13
Legal Service	6
Advocacy	8

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. Issues Paper on Digital Ecosystems, Big Data and Algorithms

82. In July 2019, the AdC published an issues paper on digital ecosystems, big data and algorithms¹.

83. With the issuing of this paper, the AdC aims to further promote firms' compliant behaviour, by reinforcing their awareness, and contribute to the public discussion on the impact and effects of the digitalization of the economy on competition.

84. The paper immerses into different characteristics of the digital economy and intends to have an impact on the elimination of barriers to firms' entry and growth in the digital market, on the mitigation of the risks of collusive behaviour between firms and on the promotion of innovation.

85. The digitalisation of the economy led to the emergence of new business models, based on multi-sided platforms, which are characterised by the large volume and diversity of data they collect about their users (big data) and strong network effects. The digitalization of the economy has also drastically changed consumption patterns.

¹ [http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Estudos_Economicos/Outros/Documents/Digital%20Eco systems,%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf](http://www.concorrenca.pt/vPT/Estudos_e_Publicacoes/Estudos_Economicos/Outros/Documents/Digital%20Eco%20systems,%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf)

86. The AdC concluded that the analysis developed in the scope of the application of competition law must take these specificities into account, otherwise it may run the risk of failing to capture the essence of competition in these markets. It is particularly important to highlight that, in these markets, prone to high concentration levels, potential competition plays a key role. The incentives of incumbents to protect their ecosystem may trigger strategies aimed at promoting the persistence of market power, and limit contestability and potential competition.

87. Nonetheless, in digital markets, rather than competition being a “click away”, it may well be exclusion that is “a click away”, given that incumbent platforms may engage in exclusionary strategies, namely by exploiting consumer behavioural biases.

88. In this context, big data has allowed the development of pricing, monitoring, ranking and recommendation algorithms that may have positive effects in terms of product discovery and price comparison, but may also facilitate reaching and sustaining collusive equilibria in the market.

89. Pricing algorithms may also allow firms to engage in personalised pricing strategies that, while potentially expanding output, may also allow for an enhanced ability of firms to appropriate consumer surplus. Algorithms used to monitor online prices of competitors are already a widely used tool by firms in Portugal. About 37% of a sample of firms active online in Portugal have reported using this type of software. These results are in line with those of the e-commerce sector inquiry of the European Commission.

90. The AdC has not found evidence indicative of a widespread use of pricing algorithms (7.9%) in the inquired sample of firms. Nonetheless, the analysis showed that the use of pricing algorithms may already have implications in some markets and marketplaces and may represent a challenge for competition policy in the future.

91. In this context, the AdC warned firms that they are responsible for the algorithms they use and that employing these tools with the aim of coordinating prices, or otherwise weaken competition in the market, is incompatible with the Portuguese Competition Law.

92. In its paper, the AdC also assessed the risk of aggressive mergers that target small or potential competitors, allowing incumbent platforms to “close the entry point” to the market, in the digital era.

93. These pre-emptive mergers may be driven by the aim of expanding or strengthening the ecosystem through product incorporation or discontinuing/limiting the introduction of new products (killer acquisitions). These deals may, however, escape merger control by competition authorities for failing to meet the notification thresholds, namely due to the low turnover of the target firm.

94. As a result, there has been much debate on the need to adjust the criteria foreseen in legal competition frameworks, so as to capture these deals, in particular those that harm competition.

95. Incumbent platforms may also adopt exclusionary strategies by restricting their rivals’ access to the data they need in order to carry out their activities. This topic has experienced some recent legal and regulatory developments towards providing users with more control over their data.

96. Following the successful outcome of this issues paper, the AdC established an internal digital task force to better incorporate the realities of the digital era in the application of competition rules.

5.2. Report on loyalty clauses in the telecoms market

97. In December 2019, the AdC launched a public consultation on its analysis to the telecoms sector², in which it identified vulnerabilities in terms of competition, such as higher prices relative to the EU average, low consumer mobility and high level of consumer complaints. The analysis focused on loyalty policies and switching costs which, together with other aspects, contribute to Portuguese consumers perceiving this sector as the least competitive.

98. The telecom sector – which is amongst the priorities of the AdC for its relevance for a well-functioning economy – is characterised by services that include minimum contract periods and early termination charges for consumers. The telecom operators claim that this allows them to offer discounts in the prices of terminal equipment, the activation/installation and supply of services.

99. However, current loyalty policies reduce the share of consumers that are available to switch supplier, thereby reducing the disciplinary effect on market prices, innovation and quality of service. As a result, the incentives to compete are weakened, making consumers more vulnerable to market power.

100. The low mobility driven by loyalty clauses is strengthened by the generalised practice of renewing these clauses, which account for more than 48% of loyalty contracts in Portugal. This context, together with other factors such as the complexity of the procedure for contract termination and the lack of transparent information, weaken the competitive dynamics of the sector.

101. The AdC considered that the strategies adopted by telecom operators hindered the effectiveness of the 2016 legislative intervention, aimed at widening the effective choice set for consumers, in terms of loyalty contract duration. The telecom operators were obliged to offer contracts with loyalty periods of 6 and 12 months, as well as an option with no loyalty clause. However, telecom operators reacted by increasing the prices charged to consumers for the services activation/installation, thus setting substantially higher prices for those options vis-à-vis contracts with 24 months loyalty period.

102. As such, the AdC decided to issue a set of eight recommendations to the legislator and the sector regulator, aimed at mitigating the competition concerns.

103. In February 2010, the AdC had already issued a report on *Consumer Mobility in the Telecom Sector*. Since then, the market has experienced relevant developments, duly considered by the AdC. Notwithstanding, the results regarding consumer mobility remain relevant given that in September 2019 the majority of contracts included loyalty clauses.

104. Finally, it is worth mentioning that after a period open to public consultation, and since April 2020, a final version of the report is available at the AdC's website³.

² www.concorrenca.pt/vPT/Noticias_Eventos/ConsultasPublicas/Documents/A%20Fideliza%20nos%20Servi%20de%20Telecomunica%20es.pdf

³ Loyalty policies in telecommunication services (2020): http://www.concorrenca.pt/vEN/News_Events/Comunicados/Documents/Loyalty%20clauses%20in%20the%20telecom%20market_Onepager.pdf.