

Unclassified

English - Or. English

28 May 2024

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Portugal

-- 2023 --

This report is submitted by Portugal to the Competition Committee FOR INFORMATION.

JT03544590

Table of contents

Executive Summary	3
1. Changes to competition law and policies	5
2. Enforcement of competition law and policies	5
2.1. Action against anticompetitive behavior, including agreements and abuses of dominant position	5
2.2. Judicial review of AdC decisions	9
2.3. Mergers and acquisitions	10
3. The role of competition authorities in the formulation and implementation of other policies	12
3.1. Promoting a pro-competitive legislative and regulatory environment.....	12
3.2. Reaching out to stakeholders on the benefits and rules of competition	13
4. International Cooperation	14
4.1. European Cooperation	14
4.2. Bilateral cooperation	15
4.3. Multilateral cooperation	15
5. Resources of Competition Authorities	17
5.1. Resources overall	17
6. Summaries of references to new reports and studies on competition policy issues	17
6.1. Issues Paper - Defense of competition in times of inflation: Recommendations on the value chain of consumer goods	17
6.2. Competition in self-regulated liberal professions	18
6.3. Issues Paper - Competition and Generative Artificial Intelligence.....	19

TABLES

Table 1. Summary of antitrust cases in 2023	6
Table 2. Merger decisions adopted in 2023	10
Table 3. Breakdown by nature of operation (Final Decisions)	10
Table 4. Relationship between undertakings' activities	10
Table 5. Breakdown by geographic scope of operation (Final Decisions)	10
Table 6. Breakdown by type of operation (Final Decisions)	11
Table 7. Number of employees (in 31.12.2023)	17
Table 8. Human resources applied to competition (in 31.12.2023)	17

Portugal

Executive Summary

1. In 2023 the AdC celebrated its 20th anniversary and continued to develop a consistent and intense activity, based on the pillars of its institutional activity: the promotion and defense of competition, demonstrating full compliance with the annual priorities established. Regarding its antitrust enforcement powers, the AdC issued eight sanctioning decisions concerning anticompetitive practices covering different types of behaviors and sectors, such as health and pharmaceuticals, labor markets, large retail distribution, energy, and public procurement. The AdC imposed a total amount of €34.3 million in fines.
2. Furthermore, the AdC issued four Statements of Objections, carried out three dawn raids in five premises of seven entities and received four leniency applications.
3. In the area of merger control, the AdC maintained its intense and effective activity, issuing a record number of 82 merger decisions, more than 30% vis-à-vis the previous year. Furthermore, the AdC continued to focus on the detection of non-notified mergers (gun-jumping), issuing one sanctioning decision and launching nine investigations. In particular, the AdC imposed a fine of €75,000 to a company in the health sector (provision of hospital and laboratory equipment) for gun-jumping.
4. Regarding judicial review, in 2023, the AdC was the addressee of 60 judicial decisions, most of them issued in the context of administrative offences and concerning final sanctioning decisions. The AdC continued to have a high success rate in judicial litigation, showing the technical robustness of its decision-making practice, to which the internal control system of checks and balances has contributed.
5. In the context of its advocacy powers, the AdC issued 24 opinions, studies and recommendations on draft and existing legislation and regulation in a wide range of sectors, such as Generative AI, self-regulated liberal professions, value chain of consumer goods, energy, conflict mediation, telecoms, and transports, seeking to promote a more competitive framework in Portugal.
6. In particular, the AdC published the Issues Paper “Competition and Generative Artificial Intelligence”, mapping the key determinants that affect the competitive process and anticipating the risks to competition in the Generative AI sector. The AdC also adopted a guidance document on “Defense of competition in times of inflation: Recommendations on the value chain of consumer goods”, where it highlighted concrete examples of risky behaviors along the value chain that may restrict competition and those that are prohibited by competition law, such as horizontal price fixing and vertical resale price maintenance.
7. Moreover, in the field of competition in self-regulated liberal professions, following the conclusions of the AdC/OECD cooperation project, the AdC issued not only a report on the framework of Law no. 12/2023 on the reserved activities of self-regulated liberal professions, but also a “Follow-up note of the AdC’s Action Plan regarding self-regulated liberal professions” in the context of the most recent developments occurring with the adoption of the referred legal act, which amends the framework-laws applicable to public professional associations and professional societies (Law no. 2/2013 and Law no. 53/2015).
8. In 2023, the AdC continued to pursue relevant outreach initiatives. In particular, the AdC launched the “20 Years, 20 Cities” campaign, which aims to raise awareness of

the benefits of competition and reach out to different audiences, namely by establishing a dialogue with consumers and stakeholders across the Portuguese territory. In addition, the AdC organized the VI Lisbon Conference on Competition Law and Economics, held its open seminars/webinars series, continued to launch its podcasts series “CompCast – Competition Talks” and “2 minutes of competition” on topics of competition law and economics.

9. The AdC also awarded the 6th edition of the Competition Policy Award, which encourages research in competition economics and law, to a law paper entitled “Challenges to the Enforcement of Predatory Pricing Practices in Online Marketplaces”.

10. In 2023, the AdC launched a new electronic platform through which any company may submit leniency applications (the Leniency Portal). The tool aims to simplify and increase procedural efficiency, allowing requests to be sent electronically in a simple and secure manner. Additionally, the AdC published an updated version of the Guidelines on the infringement procedures, aimed at strengthening the transparency and predictability of these procedures.

11. Finally, the AdC had a vigorous year concerning its international activity in 2023. The President of the AdC was appointed member of the ICN steering group, for the biennium 2023-25, as well as member of the OECD Competition Committee Bureau. Moreover, the AdC representatives participated in more than 45 meetings in the context of the OECD, the ICN and the European Competition Network context, while co-chairing the ECN Cooperation Issues and Due Process Working Group, alongside the national authorities of Germany and Hungary. In 2023, the AdC held the European Competition Authorities (ECA) Annual Meeting and organized the 9th Meeting of the Lusophone Competition Network, hosting representatives from the competition authorities of Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and East Timor. The AdC also continued to pursue an active bilateral cooperation with a set of initiatives organized together with competition authorities of Mozambique, the Netherlands, Angola, and East-Timor.

1. Changes to competition law and policies

12. As a result of the entry into force of the Law no. 17/2022, of 17 August, which transposed the Directive (EU) 2019/1 to the national legal framework, the AdC has been adapting the necessary regulations, guidelines, and procedures. Therefore, ten years after the adoption of the Guidelines on the infringement procedures concerning the application of Articles 9, 11 and 12 of Law no. 19/2012, of 8 May (Law no. 19/2012), and of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) (Guidelines), and based on the experience acquired by the AdC and the legal changes that have been introduced by the successive amendments to Law, the AdC published new and updated Guidelines on the infringement procedures. These are intended to facilitate the understanding of the procedures followed by the AdC, provide practical guidance, ensuring greater transparency and predictability. The Guidelines include provisions on the submission of commitments to the AdC, the settlement procedure, access to the file and the protection of confidential information.

13. Moreover, in 2023, the AdC established an online platform for the submission of leniency applications (the Leniency Portal). The new platform seeks to simplify and enhance procedural efficiency, allowing requests to be sent electronically in a simple and secure manner.

2. Enforcement of competition law and policies

2.1. Action against anticompetitive behavior, including agreements and abuses of dominant position

2.1.1. Summary of activities

14. In 2023, the AdC adopted a total of eight sanctioning decisions regarding anticompetitive behavior, which include an array of types of conduct, such as hub-and-spoke arrangements or retail price maintenance practices in large retail distribution, fixing retail prices on food supplements and healthy food products, a cartel in public procurement procedures for the provision of teleradiology services to hospitals and hospital centers in Portugal, bid-rigging in public procurement procedures concerning the supply of High Voltage cables (HV cables), concerted practices in labor markets, and another cartel in the provision of clinical analyses and COVID-19 tests.

15. Moreover, the AdC issued four statements of objections, including in condominium management and administration services (in the context of an investigation concerning the setting of minimum prices among companies that provide these types of services), in the supply of food supplements and healthy food products, in the audiovisual production services (in the context of an investigation concerning the setting of minimum prices by a business association.), as well as in computer and software services (for restricting sales to distributors, so as to divide the market of these types of products and associated services).

16. By the end of the year, the AdC was investigating 12 cases of anticompetitive behavior concerning alleged prohibited agreements - both vertical and horizontal ones -, concerted behavior and abuse of dominant position.

Fines.

17. The AdC fined undertakings in the total amount of €34.3 million in eight sanctioning decisions concerning anticompetitive behavior.

Inspections.

18. The AdC carried out inspections in five premises of seven undertakings in three proceedings.

Table 1. Summary of antitrust cases in 2023

	No. of cases
Sanctioning decisions	8
Commitment decisions	5
Investigations filed	2
Investigations launched	7
Ongoing investigations (31.12.2023)	12

2.1.2. Sanctioning decisions

Case No. PRC/2017/12 – concerted practices in the food retail sector

19. In 2023, the AdC concluded the last of the cases opened for concerted practices in the food retail sector, for indirectly price fixing between distributors, coordinated through a common supplier (a hub-and-spook arrangement)¹.

20. This case was concluded in the first trimester of 2023, targeting food distribution retail companies, as well as a common supplier of beauty, cosmetic and hygiene products. The practice lasted for more than 15 years – taking place between 2001 and 2016 – affecting products of the supplier in the areas of cosmetics and hygiene, such as tampons, shampoos, absorbing pads, and daily use mouth antiseptics and the fines amounted to approximately €17 million.

21. This sanctioning decision was, therefore, issued in the context of a set of investigations launched in 2017, concerning companies that represent a relevant share of the large food retail chain market, thus affecting the consumers in general. Since 2020, the AdC adopted ten sanctioning decisions and imposed fines amounting to more than €690 million to six supermarket chains and ten suppliers.

22. The practice at stake consisted of a hub-and-spoke arrangement. The retailers resorted to their vertical relation with a common supplier to horizontally promote the retail price alignment, thus restricting price competition between supermarkets and depriving consumers from the benefits of price differentiation.

23. In 2023, the strengthening of investigations concerning anticompetitive behavior remained a priority for the AdC. In particular, behaviors with the greatest impact on households, such as those sanctioned in this decision.

Case No. PRC/2021/3 – Cartel in public procurement procedures for the provision of teleradiology services to hospitals and hospital centers in Portugal

24. In December 2023, the AdC adopted a sanctioning decision against several companies for participating in a cartel in public procurement procedures for the provision of teleradiology services to hospitals and hospital centers in Portugal².

¹ https://extranet.concorrencia.pt/PesquisAdC/Page.aspx?IsEnglish=True&Ref=PRC_2017_12

² https://extranet.concorrencia.pt/PesquisAdC/Page.aspx?IsEnglish=True&Ref=PRC_2021_3

25. Previously, in 2022, the AdC had concluded the case in advance in relation to two companies due to their cooperation in settlement procedures, admitting their participation in the cartel and renouncing to litigate in court.

26. The AdC's investigation revealed that the undertakings implemented an agreement and/or concerted practice, under which they jointly defined which companies would submit the winning bids in public tenders for the provision of teleradiology services.

27. Through these contacts, the companies involved in the cartel would disclose to each other the prices they would bid in the future, to ensure that the best bid would be that of the company they defined. They also agreed that others would be excluded as a result of submitting bids that failed to meet eliminatory tender criteria.

28. The contacts that were established allowed the companies involved in the cartel to share among themselves the national market for the provision of teleradiology services in public procurement procedures.

29. Moreover, the companies jointly implemented strategies aimed at a general price increase in the market under consideration.

30. The total value of the fines imposed in this case amounts to €6,889,300.00, considering the fines imposed following the settlement procedures.

31. Given the seriousness of the infringement and the need to prevent this type of practice, the AdC also imposed an ancillary sanction on three companies. The sanction prohibits the companies from taking part, for a period of one year, in public procurement procedures whose purpose includes the provision of teleradiology services, in all or part of the Portuguese national territory.

Case No. PRC/2022/7 – Fixing the retail prices in the food supplements and healthy food products sector

32. In the end of 2023, the AdC sanctioned a supplier of food supplements and healthy food products with a presence in several distribution chains in the whole Portuguese territory, for fixing the resale prices of its products sold by independent distributors. The company was fined in €1,040,000.00³.

33. The practice in question, of fixing (re)selling prices to the public, harms consumers and is known as Resale Price Maintenance (RPM). In this case, the practice occurred from 2016 until 2022. During this period, the company fixed the resale prices charged by its independent distributors, implementing a control and monitoring system for the implementation of such fixed prices. It should be noted the significant role that digital investigation tools played in the opening of the case, particularly detection tools of potential price restrictions in digital markets, besides evidence from another sanctioning decision issued to another supplier in 2022.

Case No. PRC/2021/1 – Bid-rigging in public procurement procedures concerning the supply of Extra High Voltage cables (EHV cables)

34. The AdC adopted a settlement decision, imposing 3 companies a total fine of €1,055,800.00, for participating in a cartel established for the supply of cables for electricity transportation, at least between June 2015 and May 2020⁴.

³ https://extranet.concorrenca.pt/PesquisAdC/Page.aspx?IsEnglish=True&Ref=PRC_2022_7

⁴ https://extranet.concorrenca.pt/PesquisAdC/Page.aspx?IsEnglish=True&Ref=PRC_2021_1

35. The AdC concluded that the undertakings defined in advance who would win the procedures in an alternating manner, subcontracted the losing bidder, and offset the invoicing in a scheme of regular payments and settlements. The conduct allowed the undertakings to restrict competition through price fixing and market sharing in public procurement procedures launched by REN (the domestic electricity infrastructure manager).

36. The case was concluded following the participation of the undertakings in settlement procedures, admitting their participation in the cartel, and renouncing to litigate in court, enjoying a reduction of the fines imposed by the AdC. The economic and financial situation of the target companies was also considered and also led to an additional reduction in the fines.

Case No. PRC/2022/3– Concerted practices in labor markets

37. In November and December 2023, the AdC sanctioned two multinational groups in the sector of technology consulting for anticompetitive practices in labor markets.

38. The AdC concluded, based on the evidence gathered, that the concerned behaviors consisted of no-poach agreements, as the companies divided among themselves the supply sources for the provision of informatic consulting services, in Portugal, from 2014 to 2022.

39. These practices were qualified by the AdC as conducts with an anticompetitive object in violation of Article 9(1) c) of the Portuguese Competition Act and Article 101(1) c) of the TFEU.

40. The companies cooperated with the AdC, refraining from litigation, and presenting relevant evidence of the infringement, as well as voluntarily paying the fine under the settlement procedures.

41. The fines imposed amounted to €1,323,000 and €2,481,000, which were reduced following the settlement procedures. In addition, one of the companies also benefited from a reduction in its fine under the leniency regime.

Case No. PRC/2022/2– Cartel in the provision of clinical analyses and COVID-19 tests

42. In December 2023, the AdC sanctioned three laboratories for their involvement in anticompetitive practices in the provision of clinical analyses and COVID-19 tests.

43. After analyzing all the evidence, the AdC concluded that the behavior at stake consisted of price fixing and market sharing, achieved through an agreement between all the companies under investigation, facilitated by the sector's representative association, in the market for the provision of clinical analysis/clinical pathology in Portugal. This agreement has been in force continuously and uninterruptedly for at least six years (2016 to 2022).

44. These practices were qualified by the AdC as conducts with an anticompetitive object, in violation of Article 9(1) a) and c) of the Portuguese Competition Act and Article 101(1) a) and c) of the TFEU.

45. The companies resorted to settlement procedures, refraining from further litigation, and voluntarily paying the fines imposed. The fines amounted to €8,900,000, a reduced amount given the cooperation demonstrated throughout the AdC's investigation. In addition, one of the companies benefited from a fine reduction due to the leniency regime applicable.

2.2. Judicial review of AdC decisions

46. Judicial review has been a consistently positive indicator of the robustness of the AdC's decisions in recent years.

47. During 2023, the Lisbon Court of Appeal (TRL) upheld three relevant AdC sanctioning decisions, which had already been confirmed by the TCRS (first instance court), namely regarding a vertical restriction, a cartel investigation, and an abuse of dominance in the energy sector.

48. In these three judgements, the TRL confirmed the infringement of the competition law and applied the highest fine ever upheld by a national court of appeal. In the vertical restraints case, the Court maintain the total amount of fines (€24 million) and in the two other cases reduced the fines by around 15% compared to the amounts applied by the AdC (the cartel fine was reduced from € 84 million to € 70 million; and the abuse fine was reduced from € 48 million to € 40 million).

49. Moreover, following references for a preliminary ruling requested by the TRL, the European Court of Justice (ECJ) handed down two judgements corroborating the AdC's approach.

50. Concerning merger control, the court of first instance (TCRS) confirmed a decision by the AdC on a gun-jumping infringement, although reducing the amount of fine imposed.

51. Finally, the Constitutional Court (TC) handed down two judgments in which it ruled unconstitutional clauses in the competition law that empower the Public Prosecutor's Office to authorize the seizure of e-mails as part of search and seizure procedures. These judgements do not have general binding force. The TCRS has made requests for preliminary rulings to the ECJ on this matter.

52. In total, in 2023, the AdC was the addressee of 60 judicial decisions, most of them issued in the context of administrative offences concerning final decisions.

53. Of those 60 decisions, 28 should be considered for determining the success rate, as the other 32 concern: (i) cases in which the AdC was not directly an interested party in the proceedings; (ii) cases that do not concern the enforcement of competition law; (iii) decisions with a neutral decision-making content that do not translate into a win or a loss; or (iv) decisions that concern constitutional non-conformity, which consequences need to be extracted at a later date from the TRL or TCRS. As such, considering those 28 decisions, 20 of these were completely favorable to the AdC, four were partially favorable and four were unfavorable, which determines a success rate of roughly 72%, or 85% when considering partially favorable decisions as well.

2.3. Mergers and acquisitions

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

Table 2. Merger decisions adopted in 2023

Notified mergers	82
Total decisions	82
Pending (31.12.2023)	12

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

Phase I	Cases
Non-Notifiable transaction	
Clearance	80
Clearance with commitments	1
Withdrawn cases	1
Non clearance	0
To initiate an in-depth investigation	
Referral to European Commission	
Tacit approval	
Abandonment	
Phase II	
Clearance	
Non clearance	
Withdrawn cases	
Tacit approval	
Total final decisions adopted (does not include Phase I decisions to proceed into Phase II)	82

Table 4. Relationship between undertakings' activities

	Cases	%
Horizontal	37	45%
Vertical	11	13%
Conglomerate	34	42%
Total	82	100%

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

	Cases	%
Multi-jurisdictional filings (within EU)	6	7%
Multi-jurisdictional filings (outside EU)	7	9%
National with involvement of undertakings from other EU member states	24	29%
National with involvement of undertakings from countries outside EU	10	12%
Completely national	35	43%
TOTAL	82	100%

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

	Cases	%
Sole control	64	78%
Joint control	17	21%
Acquisition of assets	0	0%
Concession	0	0%
Other	1	1%
TOTAL	82	100%

2.3.2. Summary of significant cases

PVM/Mondelez

54. In October 2023, the AdC adopted a non-opposition decision with conditions and obligations in the merger operation above identified, due to the conclusion that, as a consequence of the alterations introduced by the notifying party, and in light of the commitments accepted, the merger will not hinder competition in the national market.

55. The notified concentration consists of the acquisition of sole control over the chewing gum business in markets operated by the Mondelez Group by Perfetti Van Melle Group (PVM). The AdC analysed the legal and competitive impacts of the operation on the chewing gum market in Portugal, including chewing gum with and without sugar and distribution brands by distribution channel, namely: (i) the large retailers distribution channel; (ii) wholesalers; and (iii) the traditional channel.

56. On the basis of the investigation carried out, it could not be ruled out, *prima facie*, that, in the absence of commitments, the operation, as notified, would not give rise to competition concerns, especially considering:

- the high degree of concentration of the chewing gum market in Portugal, with the Acquired Company being the main market player in all distribution channels;
- the elimination of an alternative to the Acquired Company's brands; and
- the existence of entry and expansion barriers, resulting from, but not limited to, the notoriety of the Acquired Company's brands.

57. To eliminate the above-mentioned competition concerns, PVM agreed to grant two gum brands, in Portugal, to one independent company for a period of fifty years.

Gun-jumping

58. In December 2023, the AdC sanctioned a firm with a fine in the amount of €75,000 million for gun-jumping, specifically for implementing a merger before the notification to the AdC⁵.

59. The merger in the wholesale distribution of medical devices, including for *in vitro* diagnostics, should have been notified to the AdC, since it met the market share notification threshold.

60. The company demonstrated adequate cooperation with the AdC, both during the merger review procedure and during the gun-jumping investigation, participating in a

⁵ <https://www.concorrenca.pt/en/articles/ad-c-sanctions-lusopalex-produtos-de-saude-unipessoal-gun-jumping>

settlement procedure. In determining the amount of the fine, the AdC took this into account, as well as the fact that the merger was voluntarily notified, albeit *a posteriori*.

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

3.1. Promoting a pro-competitive legislative and regulatory environment

61. In 2023, the AdC issued 24 opinions, studies and recommendations on draft and existing legislation and regulation across many sectors, including Generative AI, self-regulated liberal professions, value chain of consumer goods, energy, agriculture, conflict mediation, telecoms, and transports.

62. In case of the competition impact assessment of public policies, 9 opinions were issued, by initiative of the AdC or as requested by other entities, in multiple subjects such as self-regulated professions, waste management and circular economy. In fact, the AdC continued its work on the field of competition in self-regulated liberal professions, issuing a report on the framework of the recent adopted Law no. 12/2023 on the reserved activities of self-regulated liberal professions, as well as a “Follow-up note of the AdC’s Action Plan regarding self-regulated liberal professions”. These activities have arisen in the context of the most recent developments relating to the adoption of the above-mentioned legal act, which amends the framework-laws applicable to public professional associations and professional societies (Law no. 2/2013 and Law no. 53/2015).

3.1.1. AdC’s opinions, studies, and recommendations across various sectors

63. During 2023, the AdC issued 24 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:

- 2 Opinions on draft strategic plans related to circular economy and sustainability issues. In those opinions, the AdC recommended that the Government should take into account the application of the TFEU competition rules and the Portuguese Competition Act to voluntary agreements between firms that it may consider promoting in the context of those strategic plans. The AdC also recommended to the companies involved in such potential agreements to carry out a self-assessment on the compatibility between such agreements and competition rules, in particular taking into account the European Commission's 2023 Horizontal Guidelines.
- 3 Opinions on draft legislation related to waste management. One of those opinions relates to the draft legislation relating to the general waste management regime and to the legal regime for waste disposal in landfill. The AdC made several recommendations as to promote competition in the sector, namely on the responsibility for waste management and the complementary collection of waste.
- Comments on the proposed parameters for the supervision methodology of the National Petroleum System (NPS) applicable between 2023 and 2025. The AdC reiterated the recommendations of its contribution of May 2022 to the public consultation on the Regulation and Methodology of Supervision of the NPS. In the context of supervising the NPS, the AdC recommended a re-evaluation of the conditions of access and use of the facilities declared to be of public interest. Finally, the AdC issued specific comments and recommendations regarding the

criterion of variability of commercial retail offers and the respective parameters defined in this context.

- **2 Contributions to the Portuguese Energy Regulator (ERSE)** regarding proposed tariffs and prices for energy: one on the proposed tariffs and prices for electricity and other services in 2024 and another on the proposal for the gas tariffs and prices for the gas year 2023-2024 and for the parameters for the regulation period 2024-2027. As an example, on the former the AdC reiterated (i) the need to make the greatest possible effort to contain the costs of energy, environmental or general economic interest policies; (ii) the need to complete the process of ending the transitional tariffs for the sale of electricity to end consumers; (iii) the need for measures to encourage the transition of electricity consumers from the regulated market to the liberalised market, namely by communicating the savings associated with this change; (iv) that the exceptional and temporary mechanism for adjusting electricity production costs should be limited to the period of time strictly necessary to achieve public policy objectives; and (v) reiterated comments on the proposal for the Electricity Distribution Network Development and Investment Plan for the 2021-2025 period (PDIRD-E 2020).
- **3 Opinions to the Portuguese regulatory authority for communications (ANACOM)** regarding its draft decision on (i) the market for wholesale access to dedicated capacity. In its assessment, (ii) electronic communications wholesale markets for the access to physical infrastructure, for local access at a fixed location, and for central access at a fixed location; and (iii) electronic communications markets for trunk segments of leased lines. The AdC did not object to the definition of the relevant product and geographic markets, nor to the assessment of Significant Market Power (SMP), because the methodology adopted was generally appropriate for the purpose.

64. **Competition Impact Assessment of Public Policies.** In 2023, the AdC continued its work regarding the competition impact assessment of public policies, issuing nine opinions and recommendations. These opinions concerned various sectors, such as self-regulated professions, waste management and circular economy. In this respect, the AdC's work serves as a tool for modernization and capacity building, so that the public intervention may be more efficient and effective in promoting the economic and social development.

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

- **20 Years, 20 Cities.** On the occasion of its 20th anniversary, the AdC launched an advocacy initiative with public sessions with stakeholders across the country. It aims to put the AdC and civil society including local firms in close contact, raising awareness of the benefits of competition and the importance of defending fair and competitive markets.
- **VI Lisbon Conference on Competition Law and Economics.** In 2023, AdC's 20th anniversary was also marked by the organization of the VI Lisbon Conference, which took place on 8 and 9 November 2023. This event, which gathered more than 300 participants from 26 different jurisdictions, highlighted crucial themes and fundamental issues related to competition and economic regulation, such as AI, digital markets, recent trends in cartels and merger control, among others, featuring discussion panels with renowned competition experts.

- **Cooperation with Sector Regulators.** During 2023, the AdC sent 26 requests for opinion to sector regulators, in the context of 25 merger control proceedings affecting markets subject to sector regulation. These regulators include the Authority for Mobility and Transports (AMT), the Regulatory Authority for Energy (ERSE), the Portuguese Civil Aviation Authority (ANAC), the Regulatory Authority for Health (ERS), the Water and Waste Services Regulation Authority (ERSAR), the Bank of Portugal (BdP), and the Insurance and Pension Funds Supervisory Authority (ASF).
- **AdC's Strategy for Public Procurement.** In 2023, the AdC continued its cooperation in the context of the Informal Group for Innovation and Efficiency in Public tendering, in collaboration with other entities, such as the Court of Auditors (TdC), the General Inspectorate of Finance (IGF), IMPIC (Institute of Public Procurement, Real Estate and Construction) and eSPap (Public Administration Shared Services Entity). The group focuses on exchanging knowledge and experience in the field of Public Procurement.
- **6th Edition of the AdC Competition Policy Award.** The AdC held the 6th edition of the Competition Policy Award, which encourages research in competition economics and law. The award was given to paper entitled "Challenges to the Enforcement of Predatory Pricing Practices in Online Marketplaces" by María Mufdi Guerra.
- **AdC's Webinars and Podcast *CompCast* – *Competition Talks* Series.** To promote an open dialogue and fruitful debates on issues of competition policy, the AdC held six public seminars/webinars on competition law and economics. Speakers included Bruno Pellegrino (Maryland University, USA), Massimo Motta (ICREA- Universitat Pompeu Fabra and Barcelona School of Economics), Joseph Harrington (University of Pennsylvania, USA), Diego Montero (winner of an honourable mention within the AdC Competition Policy Award 2023), Pedro Domingos (AI expert and researcher) and María Mufdi Guerra (winner of the AdC Competition Policy Award 2023).

4. International Cooperation

4.1. European Cooperation

4.1.1. ECN – European Competition Network

65. The AdC participated in 45 meetings in the European Competition Network context, as well as in 11 Oral Hearings and Advisory Committee meetings regarding anticompetitive behavior, mergers, and sector enquiries. Moreover, in 2023, the AdC communicated the opening of 3 new antitrust investigations to the ECN, related with potential infringements of Articles 101 and 102 of the TFEU.

66. The AdC is also co-chair of the ECN Cooperation Issues and Due Process Working Group, alongside the national authorities of Germany and Hungary. Among other topics, this Working Group focuses on the transposition of the ECN+ Directive, aimed at making national competition authorities more effective enforcers and ensuring the proper functioning on the internal market.

4.1.2. *ECA – European Competition Authorities*

67. In 2023, the AdC held the ECA Annual Meeting, gathering the heads of 32 European competition agencies. Participants shared good practices with the aim of strengthening international cooperation in the defense and promotion of competition.

4.2. Bilateral cooperation

- **Mozambique.** In June 2023, the President of the AdC participated as speaker in a Seminar dedicated to Competition Law and Economic Regulation organized by the Mozambican Competition Regulatory Authority (ARC) and aimed at Mozambican magistrates, in Maputo. On the same occasion, the President of the AdC made an institutional visit to the ARC.
- **Netherlands.** In September 2023, the AdC hosted the Young ACM (a group of young professionals of the Netherlands Authority for Consumers and Markets), allowing the exchange of knowledge and experience between experts from both institutions, covering topics such as digital markets and labor markets.
- **Angola.** In 2023, the AdC developed a common project with the Angolan Competition Regulatory Authority (ARC), co-financed by the EU. This initiative focused on capacity building, included working sessions in Lisbon (September), practical workshops in Luanda (October), as well as an open seminar in Luanda (November).
- **East Timor.** In November 2023, the AdC welcomed a delegation from the Ministry of Trade and Industry of East Timor, as part of an institutional visit.

4.3. Multilateral cooperation

4.3.1. *ICN - International Cooperation Network.*

68. In 2023, the AdC kept its active participation at the ICN, as member of the ICN Steering Group, and at working group level, contributing to multiple initiatives of the Agency Effectiveness, Advocacy, Cartels, Mergers e Unilateral Conduct Working Groups.

69. In fact, the current President of the AdC was appointed member of the ICN Steering Group, for the biennium 2023-25.

70. The AdC also 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.

71. The AdC continues to be an active member of the ICN Special Project Group on International Enforcement Cooperation.

72. In October 2023, in the ICN Annual Conference, hosted by the Spanish competition authority (CNMC), the AdC participated as a speaker in the plenary session of the ICN Unilateral Conduct Working Group “Challenges around unilateral conduct cases”, as well as in the breakout session of the ICN Cartel Working Group “Labor market cartel enforcement: latest trends and challenges”. Furthermore, the AdC participated as speaker in the breakout session “Nuevas tecnologías y su aplicación en las investigaciones de competencia”.

4.3.2. OECD – Organization for Economic Cooperation and Development.

73. During 2023, the AdC took part in the meetings of the Competition Committee and its Working Parties No. 2 - Competition and Regulation and No. 3 - Enforcement and Cooperation, which were held in Paris, from 12 to 16 June 2022, and from 4 to 8 December 2023.

74. In 2023, the current President of the AdC was appointed member of the OECD Competition Committee Bureau.

75. The AdC also participated as a speaker in the 22nd Global Forum on Competition (GFC), which took place in Paris, from 7 to 8 December 2023, intervening in the breakout session “Use of Economic Evidence in Cartel Cases”. It also participated in the 21st annual meeting of the Latin American and Caribbean Competition Forum, which took place in Quito, Equator, in September 2023 – an event co-organized by the OECD and the Inter-American Development Bank (IDB).

76. The AdC took part and held speaking positions in different OECD initiatives, such as the workshops/seminars/webinars: “High Level Symposium on Pro-Competitive Policies for a Sustainable Economic Recovery” (in January), “Procedural safeguards in competition enforcement” (in February) e “Competition in digital markets: Recent enforcement and new regulations” (in February).

4.3.3. Ibero-American Competition Forum.

77. In parallel to the OECD-IDB Latin American and Caribbean Competition Forum (LACCF), the Ibero-American Competition Forum was held in Quito, Equator, in September 2023. The Forum was co-organized by the AdC and the CNMC (Spain). The Ibero-American Competition Forum includes the co-organizers and competition authorities from Latin America, the Caribbean, and the United States of America. The 2023 Ibero-American Competition Forum comprised two panels: “Gun Jumping in Merger Control: Recent Developments in Enforcement and Advocacy”, organized and moderated by the AdC, and “Challenges around Unilateral Conducts: Enforcement, Regulation, and Advocacy”, organized and moderated by the CNMC. Besides moderating one of the panels, a Member of the Board of the AdC intervened in the Opening Session.

4.3.4. Lusophone Competition Network.

78. As a founding member of the Lusophone Competition Network, cooperation with Portuguese-speaking countries is a priority for the AdC in the context of its international activity. In 2023, the AdC organized and hosted the 9th Meeting of the Lusophone Competition Network, which took place in Lisbon. Besides the AdC, representatives from the competition authorities of Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe, and East Timor participated in the meeting.

4.3.5. United Nations Conference on Trade and Development (UNCTAD).

79. In July 2023, the AdC participated as a speaker at the 21st Session of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, organized by UNCTAD in Geneva. The intervention covered the topic “Latest Developments in Competition Law and Policy”.

5. Resources of Competition Authorities

5.1. Resources overall

5.1.1. Annual budget

80. The AdC's 2023 annual budget was € 10,031,841.

Table 7. Number of employees (in 31.12.2023)

Specialization	No. of Staff*
Competition Economists	28
Competition Lawyers	38
Other NAC** staff (Forensic IT, Communications)	4
Other professionals and support staff	23
Total*	91

Note 1: Includes management, does not include the Board

Note 2: Non-administrative competition staff

Table 8. Human resources applied to competition (in 31.12.2023)

Area of activity	No. of Staff*
Enforcement against anticompetitive behavior**	29
Mergers	16
Legal Service	5
Advocacy	10

Note 1: Includes management, does not include the Board

Note 2: Includes forensic IT team

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

6.1. Issues Paper - Defense of competition in times of inflation: Recommendations on the value chain of consumer goods ⁶

81. In April 2023, the AdC published a paper reflecting on the current inflation scenario and its impact on the purchasing power of households, especially considering the sector of consumer goods.

82. Competition is key to reduce the risk of supply disruptions and to ensure better prices, more variety and higher quality of the products to consumers. Competition is also crucial when it comes to guarantee that, once the factors that triggered increases in production costs abate, firms have incentives to reflect cost reductions in the prices charged to final consumers.

83. In this paper, the AdC adopted a set of recommendations aimed at raising awareness among companies along the value chain of consumer goods of the importance of adopting strategies in line with the best competition practices.

⁶ <https://www.concorrenca.pt/sites/default/files/processos/dcc-pcc/Defense%20of%20competition%20in%20times%20of%20inflation.pdf>

84. The paper highlights concrete examples of risky behaviours along the value chain that may restrict competition and those that are prohibited by competition law, such as horizontal price fixing and vertical resale price maintenance.

6.2. Competition in self-regulated liberal professions

6.2.1. AdC's report on the framework of Law No. 12/2023 on the reserved activities of self-regulated liberal professions⁷

85. In April 2023, the AdC adopted a report, presented to the Government, aimed at contributing to the adoption of proposals for the revision of the statute of public professional associations and other legislation applicable to the exercise of the profession, by the public decision maker, whereby it is made an identification of own acts, exclusive and or shared, with other professions, which, being justified and proportional, should continue to exist.

86. In the AdC's report, the competitive impact assessment of reserved activities was therefore developed. The AdC's comments and recommendations aim to contribute to the identification of inappropriate, unnecessary, or disproportionate legal and regulatory restrictions on reserved activities, and to the identification of alternative, less restrictive proposals that mitigate the risks of distortion of competition. Such restrictions are likely to result in losses for consumers of the services in question and for the economy in general.

87. The AdC's report took into consideration the results of the AdC/OECD Cooperation Project, under which the AdC and the OECD analysed the legislation and regulation of a set of 13 self-regulated liberal professions, resulting in OECD recommendations and an AdC's Action Plan, with proposals for legislative and regulatory changes, for the implementation of those recommendations.

6.2.2. Follow-up of the AdC's Action Plan⁸

88. In May 2023, the AdC adopted a Follow-up of the AdC's Action Plan, justified and motivated by relevant recent developments, occurring with the adoption of Law No. 12/2023, which amends the framework-laws applicable to public professional associations and professional societies (Law No. 2/2013 and Law No. 53/2015) in line with key proposals from the AdC's Action Plan.

89. Several dispositions of Law No. 12/2023 are in line with the following key proposals from the AdC's Action Plan: (i) separation of regulatory and representative functions in public professional associations; (ii) reevaluation of reserved activities, with the purpose of altering or revoking those that are inappropriate, unnecessary or disproportionate; (iii) alteration of characteristics of professional internships (object, duration, evaluation model and associated costs) towards their proportionality; (iv) reduction of restrictions on the offer of multidisciplinary activities by professional societies; (v) elimination of restrictions on the ownership and on the management of professional societies; (vi) elimination of the possibility for the statutes of public professional associations to derogate the principles of the framework-laws in matters of

7

https://www.concorrenca.pt/sites/default/files/processos/epr/Relato%CC%81rio%20da%20AdC%20no%20C3%A2mbito%20da%20Lei%2012-2023%20sobre%20Atividades%20Reservadas_0.pdf (in Portuguese).

⁸ https://www.concorrenca.pt/sites/default/files/processos/epr/Follow-up%20of%20the%20AdCs%20Action%20Plan_Self-regulated%20Liberal%20Professions.pdf

access to, and the exercise of, self-regulated liberal professions; (vii) the need to amend the statutes of all public professional associations and other laws/regulations, in matters of access to, and exercise of, self-regulated liberal professions.

90. In the context of Law No. 12/2023, the need for the Parliament to amend the statutes of all public professional associations already created and other laws, in matters of access to, and exercise of, self-regulated liberal professions, creates a window of opportunity for the public decision-maker to implement other key-proposals from the AdC's Action Plan.

6.3. Issues Paper - Competition and Generative Artificial Intelligence⁹

91. In November 2023, the AdC published an Issues Paper addressing competition issues in Generative Artificial Intelligence (AI), mapping the key determinants that affect the competitive process and anticipating the risks to competition in the Generative AI sector.

92. The paper highlighted how Generative AI epitomizes all the competition challenges already identified in the digital sector. Generative AI models require large volumes of data, computing power, and expertise, entailing strong scale effects. These effects may result in accumulated competitive advantages to digital incumbents. These characteristics makes markets prone to elevated levels of concentration.

93. As is the case with other digital markets, the characteristics of these markets may raise risks to competition, particularly exclusionary strategies, in the markets for cloud computing, hardware and Generative AI models.

94. As such, the focus of competition defense in the context of Generative AI lies on the following cornerstones, addressed in the Issues Paper: (i) access to data, (ii) access to cloud computing or specialized hardware and (iii) access to foundation models in Generative AI.

⁹ <https://www.concorrenca.pt/sites/default/files/documentos/Issues%20Paper%20-%20Competition%20and%20Generative%20Artificial%20Intelligence.pdf> .