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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Competition in Mobile Payment Services – Note by Portugal

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1. Introduction

1. The use of mobile payments and peer-to-peer mobile transfers has become more widespread over the past decade in Portugal.
2. The Portuguese Competition Authority (Autoridade da Concorrência – AdC) has been following the use and adoption of new technologies in Financial Services in Portugal.
3. In its 2018 Issues Paper¹, the AdC considered that, while FinTech can contribute to the modernization and efficiency of the financial sector, including through innovations in payment services, the adoption of some of these technologies in Portugal had been relatively slow.
4. The Issues Paper identified barriers to entry for FinTech in Portuguese payment services markets, which may have contributed to the slow adoption of FinTech in Portugal. It also included recommendations to address those barriers.
5. In March 2021, after conducting a survey addressed at market participants and potential entrants, the AdC published a follow-up report on the recommendations issued in this Issues Paper². It concluded that, despite some progress being made, the full implementation of most of the recommendations of the AdC was still pending at the time.
6. In the context of this survey, the AdC was also made aware of information that led to the opening of an abuse of dominance investigation. This investigation ultimately led to the adoption of an infringement decision in 2024, for abuse of dominance, for tying between the domestic payment scheme and the processing services of the same group³.
7. This contribution presents a summary of the views and findings of the AdC during its advocacy and antitrust work, focusing on the aspects related to mobile payment services.

2. The advocacy work of the AdC

8. In 2018, the AdC published an Issues Paper⁴ covering the use of technologies in the financial sector (FinTech and InsurTech). While these provide opportunities to increase competition and efficiency in the market, their adoption had been slower in Portugal than in other countries.
9. In what concerns payment services, the Issues Paper identified different types of barriers to entry: (i) barriers of a strategic nature, associated with the risk of foreclosure by the incumbent banks; (ii) regulatory barriers, namely with respect to the delay in the

¹ See the Issues Paper “[Technological Innovation and Competition in the Financial Sector](#)”.

² The follow-up report is available [here](#).

³ See case [PRC/2020/05](#), for a case summary and a link to the infringement decision (the latter is only available in Portuguese). The press release and Q&A is available [here](#), in English. The decision is currently under appeal at the Portuguese Competition, Regulation and Supervision Court.

⁴ See the Issues Paper “[Technological Innovation and Competition in the Financial Sector](#)”.

transposition of the Second Payment Services Directive⁵; and (iii) barriers arising from consumer behavior, such as a low consumer mobility in retail banking and low usage of e-commerce in Portugal. The AdC issued several recommendations to mitigate these concerns.

10. Mobile payment apps, e-wallets and payment services tailored to e-commerce were some of the innovations that the Issues Paper highlighted that FinTech have brought to the payment services sector, and which could become more widespread if barriers to entry were reduced.

11. In March 2021, after conducting a survey addressed at market participants and potential entrants, the AdC published a follow-up report on the recommendations issued in this Issues Paper⁶. The figure below shows the main recommendations of the AdC that were restated at the time:

Figure 1. AdC's key recommendations with respect to Payment services - 2021



Source: AdC

12. The AdC has also issued comments and recommendations with the aim of promoting competition and entry in the payment services in other contexts, namely through competitive neutrality from public entities in procedures to choose their payment service providers⁷.

13. The AdC continues to monitor developments in the payment services sector and will intervene if appropriate.

⁵ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015.

⁶ The follow-up report is available [here](#).

⁷ See, e.g., "[Competition neutrality in the choice of the means of payment accepted by the State](#)", from 6 November 2022, and "[Comments on the temporary program to stimulate the economy 'IVAucher'](#)", from 22 January 2021.

3. The AdC's investigation in the payment services sector

3.1. Timeline of the investigation

14. In November 2020, the AdC opened an *ex-officio* investigation⁸ for a potential abuse of a dominant position, in violation of Article 102 TFEU and Article 11 of the Portuguese Competition Act⁹.

15. The decision to open an investigation followed a supervisory and monitoring procedure in the financial sector, in particular the above-mentioned survey to FinTech firms, during which the AdC was made aware of potential anti-competitive behavior from the main national operator in the sector of payment services.

16. The AdC adopted a statement of objections in July 2022, and an infringement decision in March 2024, imposing a fine of €13,9M. The decision is currently under appeal at the Portuguese Competition, Regulation and Supervision Court.

3.2. Conduct and theory of harm

17. The AdC found that the main national operator in the sector of payment services abused its dominant position in the markets related to the group's payment schemes, in the form of tying, by conditioning access to these schemes upon the obligation to also contract its processing services. The infringement lasted, at least, between 13 February 2019 and 11 October 2021.

18. The undertaking at stake manages the main domestic payment scheme, the respective mobile app, distance payment services, and the MULTIBANCO network. It also provides processing services for both its own schemes and for international card schemes.

19. During the infringement period, any acquirer who wished to provide its clients (i.e. merchants) the ability to accept in-store payments under the payment scheme from the undertaking involved would also need to use the group's acquiring processing services¹⁰. Similarly, card issuers wanting to issue cards with the undertaking payment schemes would also need to hire the group's issuing processing services¹¹. This conduct is illustrated below:

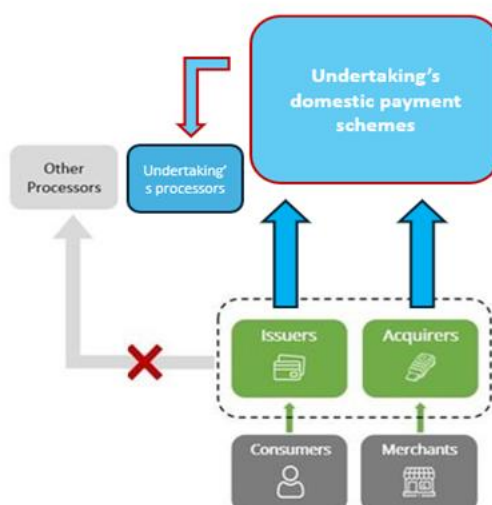
⁸ See footnote 3.

⁹ Law No. 19/2012 of 8 May, available [here](#), in Portuguese (consolidated version).

¹⁰ The restrictions also applied to payments under international card schemes such as Visa or Mastercard, as the undertaking in question required a minimum of total payments from a given acquirer to be processed using its processing services.

¹¹ Likewise, the restrictions to card issuers also applied to the processing of payments under international card schemes.

Figure 2. The tying restrictions from the Undertaking's Group



Source: AdC

20. The AdC concluded that the conduct limited the entry and expansion of alternative processors given that, to access the undertaking's payment schemes, acquirers and issuers would have to process their transactions with this group. This restricted the possibility for these entities to opt for alternative processors capable of offering a service more suited to their needs in terms of price or features. Some acquirers, despite having the ability to process their own transactions, were not allowed to do so in order to accept payments under the undertaking's schemes.

21. In addition, the AdC concluded that the conduct limited the differentiation and innovation capabilities of acquirers and issuers, with a negative impact on the services they offer to merchants and consumers.

22. Mobile payments played a role in the anti-competitive strategy.

23. The undertaking at stake launched an app in 2015, which is the most popular mobile wallet in Portugal, reaching 6 million users during 2024¹². It allows users to perform several operations such as instant transfers, in-store payments, online payments or ATM cash withdrawals. At least between 2016 and 2020 its most used feature was that of instant transfers¹³. This may be in part due to the fact that free instant transfers were not widely available in Portugal at the time.

24. The AdC's investigation shows that this digital wallet played a role in the overall strategy of limiting the entry and expansion of international processors in Portugal. In particular, as shown in the AdC's infringement decision, in the context of network effects and an early expansion of the app, the undertaking considered that this mobile wallet could be used to make the entry of international players more difficult, mitigating the impact of the openness sought by the Second Payment Services Directive in the undertaking's market position.

¹² See <https://www.mbway.pt/6-milhoes/>.

¹³ See paragraph 706 of the AdC's infringement decision.

25. As shown in the AdC's infringement decision, this app was valued by both acquirers and issuers. Many merchants consider it important to allow their customers to pay their purchases, and therefore acquirers want to make sure that they can make this service available to merchants. Likewise, given the popularity of the app amongst card users, card issuers consider it important to make this mobile app available to their clients.

26. Ultimately, accessing these mobile payment services may have contributed to the decision of acquirers and issuers to hire those services, even if this implied not having a choice with respect to their payment processor.

27. In its infringement decision, in addition to the fine, the AdC determined the undertaking involved was to refrain from adopting conduct whose effect would be equivalent to that described and sanctioned in this case.

3.3. Market definition and dominance

28. The AdC defined five relevant markets in its infringement decision. Three of these are tying markets and related to payment schemes, and two are tied markets, related to processing services. More specifically, the relevant markets in the decision, all national in scope, are:

1. Domestic scheme for in-store payments, on the issuing side;
2. Domestic scheme for distance payments, on the issuing side;
3. Domestic scheme for in-store payments, on the acquiring side;
4. Issuing processing services;
5. Acquiring processing services for in-store payments.

29. The AdC found that the undertaking involved was dominant in the three relevant tying markets, and that it would have still been considered dominant under a wider product market definition that included international card payment schemes¹⁴.

3.4. Cooperation with the relevant sector regulatory authority

30. The Portuguese Competition Act foresees cooperation mechanisms between the AdC and sectoral regulators.

31. In this context, it specifies that the AdC should communicate to the relevant sector regulators whenever it is made aware of facts that may constitute an infringement to competition law in activities subject to sector regulation. Conversely, sector regulators should communicate to the AdC whenever they are required to assess matters which could constitute competition law infringements¹⁵.

¹⁴ The undertaking at stake was also found to be dominant in the two relevant markets related to processing services. However, for the demonstration of a tying abuse, the AdC is only required to demonstrate dominance in the tying markets.

¹⁵ See article 35 of the Portuguese Competition Act.

32. The Portuguese Competition Act also stipulates that the AdC should request an opinion from the sector regulator before adopting an infringement decision for anti-competitive behavior in markets subject to sector regulation¹⁶.

33. The Bank of Portugal (Banco de Portugal – BdP) oversees compliance with the Interchange Fee Regulation (IFR)¹⁷ in Portugal, and also has regulatory powers with respect to the national Legal Framework for Payment Services and Electronic Money¹⁸.

34. Under this framework, the AdC informed the BdP of its abuse of dominance investigation in 2021. The BdP provided comments at an early stage of the investigation, and it later shared with the AdC further elements that it considered potentially relevant for AdC’s investigation. The BdP also issued an opinion on the draft infringement decision of the AdC, in 2024.

35. A relevant point on the interaction between the AdC and the BdP is that the IFR¹⁹ establishes, among other provisions, that payment card schemes and processing entities “*shall be independent in terms of accounting, organisation and decision-making processes*”²⁰.

36. The tying between payment schemes and processing services, that the AdC found to constitute an abuse of dominance under competition law is, therefore, partly related to activities that should be provided separately also by sectoral regulation. The BdP also took measures related to these services, from a regulatory perspective.

37. The AdC considered, in line with the opinion issued by the BdP, that the scope of their interventions was complementary, and that the same facts could simultaneously infringe competition law and sectoral regulation. Given this, it rejected a request from the undertaking to suspend its investigation until the measures determined by the BdP were implemented.

4. Conclusion

38. The introduction of mobile payments has been a significant innovation. This is evident from their increasing popularity over the past few years, making transactions more convenient for consumers.

39. To ensure that consumers benefit the most from innovation in the payments sector, it is important that there are no barriers to entry preventing payment firms from entering or expanding their activity in this field, in line with what has been envisaged by European legislation.

40. The barriers to entry that FinTech may face include those of a strategic nature, through conduct from incumbents. Given the increased importance of mobile payments,

¹⁶ *Ibid.* The Portuguese Competition Act also states that the AdC should request an opinion from the relevant sector regulator before adopting merger decisions (Article 55) and before concluding market studies (Article 61).

¹⁷ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015.

¹⁸ Decree-Law no. 91/2018 of 12 November 2018, which transposes the Second Payment Services Directive.

¹⁹ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015.

²⁰ See no. 1. (b) of Article 7 of the IFR.

they may be used as part of such strategies, either on their own or together with other services.

41. In this context, it is important for competition authorities to follow developments in this sector and intervene in case they identify competition concerns, either through advocacy or competition enforcement.

42. Cooperation with the relevant national regulatory authorities for payment services can also play a role, namely by ensuring that there are no inconsistencies between the sector regulation and competition law approaches.