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**LATIN AMERICAN COMPETITION FORUM**

**Session I - Structural Issues in the Groceries Sector: Merger and Regulatory Issues**

**-- Contribution from Portugal --**

**23-24 September 2015, Montego Bay, Jamaica**

*The attached document from Portugal is circulated to the Latin American Competition Forum FOR DISCUSSION under Session I at its forthcoming meeting to be held on 23-24 September 2015 in Jamaica.*

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# LATIN AMERICAN COMPETITION FORUM



23-24 September 2015 • Montego Bay • Jamaica

## Session I - Structural Issues in the Groceries Sector: Merger and Regulatory Issues

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### MERGERS IN THE GROCERY RETAIL SECTOR - A PORTUGUESE CASE STUDY

#### -- CONTRIBUTION FROM PORTUGAL --

#### 1. Introduction

1. In the last eight years, the Portuguese Competition Authority (PCA) has analysed 7 mergers related to food retail<sup>1</sup>.

2. Merger cases in retail distribution pose specific challenges with regard to market definition, such as high number of relevant geographic markets, the types of formats (e.g. hypermarkets, supermarkets, and discount) to be included in the same relevant product market and the impact on buyer power of retailers towards their suppliers, which have been addressed in the different cases analysed by the PCA.

3. For the discussion, we submit a description of the case Sonae Distribuição /Carrefour analysed by the PCA in 2007, which illustrates the strategies and techniques used by the PCA to tackle these issues.

#### 2. The merger case Sonae Distribuição /Carrefour

4. In 2007, the PCA analysed a merger between Sonae, the largest retail chain in Portugal, and Carrefour Portugal, the third largest hypermarket chain active in Portugal, leading to a non-opposition decision with remedies<sup>2</sup>.

<sup>1</sup> Cases Ccent. 10/2013 - Modelo Continente / Hiper Sá; Ccent. 44/2008 - AUCHAN / SONAE; Ccent. 1/2008 - PINGO DOCE / PLUS DISCOUNT; Ccent. 52/2007 - GCT IMOBILIÁRIA/GRUGEST (Supermercados ULMAR); Ccent. 51/2007 - SONAE DISTRIBUIÇÃO/CARREFOUR (PORTUGAL); Ccent. 30/2007 - Bencom/NSL; Ccent. 13/2007 - ITMI NORTE SUL PORTUGAL/MARRACHINHO.

<sup>2</sup> Ccent. 51/2007 - SONAE DISTRIBUIÇÃO/CARREFOUR (PORTUGAL). The merger case was notified on the 6<sup>th</sup> of August, 2007, and the PCA adopted a Phase I clearance decision with remedies, on the 27<sup>th</sup> of December, 2007.

5. Sonae Distribuição, formerly called Modelo Continente, SGPS, S.A., is the sub-holding company of the Sonae Group for the retail distribution market. The Sonae Group is active in the wood derivatives industry and the retail, property, tourism, telecommunications and media sectors, among others. Through this sub-holding company, the group is active in the retail distribution of consumer goods (food and non food) in Portugal, via a number of trade names, such as Continente, Modelo, Modelo Bonjour, Worten, Sport Zone and Vobis.

6. Carrefour Portugal was part of the Carrefour Group, a French multinational dedicated to the retailing activity. Carrefour Portugal operated a chain of hypermarket outlets with the fascia “Carrefour”, as well as eight petrol stations next to their hypermarkets. The Carrefour Group further operated in Portugal a chain of discount stores under the fascia “Minipreço”, which was not involved in the transaction.

7. The merger consisted on the acquisition, by Sonae Distribuição, of the twelve Carrefour hypermarket outlets in Portugal, as well as licences to open thirteen new Carrefour hypermarkets. The transaction also included the eight petrol stations currently operated by Carrefour.

### **2.1 Market definition and assessment**

8. The product market definition in this case was particularly complex, and was essential to the case, as the market share would differ widely depending on which formats (hypermarkets, supermarkets, and discount formats) would be considered. If only hypermarkets were included in the relevant product market, the case could be considered as a 3 to 2 merger, which could raise further concerns.

9. Therefore, it was essential to carry out a robust analysis of the types of formats to be included in the relevant product market. Different formats base their offer on different competitive dimensions, such as price, quality, product range, level of service and location.

	<b>Price</b>	<b>Location</b>	<b>Product Range</b>	<b>Service</b>
Substitutes	Hypermarkets Supermarkets Discount Stores	Supermarkets Discount Stores Traditional groceries shops	Hypermarkets Supermarkets Discount Stores	Hypermarkets Supermarkets Discount Stores
Not Substitutes	Traditional groceries shops	Hypermarkets	Traditional groceries shops Discount Stores	Traditional groceries shops

Source: Sonae Distribuição.

10. All aspects considered, the PCA concluded that the relevant product market, for the analysis of this merger case, would include hypermarket, supermarket and discount formats (groceries retailing market).

11. To carry out its analysis, the PCA took into account marketing studies regarding the strategic positioning of the different fascias, the evolution of their positioning, and the main drivers for consumer choice.

12. Moreover, the PCA considered WIN/LOSS studies, namely the transfer of clients between Continente fascia (Sonae) and Carrefour fascia, and between those and the rest of the fascias in the market.

13. In addition, the PCA performed a Shock Analysis of the impact on the sales and prices as a consequence of a new shop opening. The PCA analysed the ex-post impact of the opening of new shops on the sales of shops in the same catchment area, as well as marketing studies developed by the notifying party on the strategy adopted following the opening of a competitor shop.
14. It was also particular important to look at how monitoring of prices among different fascias occurred, namely how changes in prices in different types of format and different fascias were considered when defining their own store prices. Different fascias generally had systems of monitoring competitors' prices.
15. In terms of geographic scope, the delimitation of the markets was centred on the demand side substitutability, taking into account the easiness for consumers to reach different locations.
16. In technical terms, the catchment area of a given store was measured through means of isochrones reflecting travelling time by car to the store, varying between 10 and 30 minutes, depending on the specificities of the store and the local area, such as the size of the store or the availability of transportation.
17. Furthermore, whenever the overlap between the catchment areas of two contiguous stores was significant, they were considered to be part of the same relevant market, which enlarged the catchment area.
18. Another important aspect which was analysed for the definition of the relevant geographic markets was retail chains' pricing policy. Even if many retail chains had a general national price policy, the PCA observed that each shop made adjustments at local level, according to the local competitive pressure.
19. The PCA concluded that the geographic relevant markets were local, as undertakings only reacted to the opening of new shops in their catchment area.
20. In order to assess the impact of the merger in the groceries retailing markets, the PCA analysed sixteen relevant local markets, based on the catchment areas around each of the Carrefour stores that were being transacted.
21. To deal with the large number of relevant markets, the PCA used a two-step approach. In a first stage, the PCA calculated market shares, and assumed that there were no competition concerns if the aggregated market share of the merging firms was below 30%. Then, the PCA carried out an in-depth analysis of local markets in which the market shares were above 30%, and, in particular, markets with shares above 40%.
22. Moreover, the PCA developed a dynamic analysis in terms of the foreseeable evolution of those market structures, including any licences already granted for new stores.
23. In the analysis of the merger, the PCA also considered the issue of reinforcement of buyer power by the retailers with regard to their suppliers. Reinforcement of upstream bargaining power may raise particular concerns if it affects competition in the downstream markets. In the Sonae/ Carrefour case, the PCA concluded that there were no particular issues regarding buyer power, as the increase of the market share of Sonae with regard to its suppliers was not significant<sup>3</sup>.

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<sup>3</sup> For the assessment of buyer power issues, the PCA analysed 23 categories of products purchased by Sonae.

## 2.2 *The PCA's decision*

24. The PCA concluded that the merger would lead to the creation or strengthening of a dominant position in some of the local markets.

25. The PCA adopted a Phase I clearance decision to the merger subject to a set of remedies put forward by Sonae Distribuição, in order to guarantee that effective competition was maintained in all relevant markets.

26. Among the remedies proposed, we can highlight the following:

- Divestiture of two supermarket stores of the “Modelo” fascia, owned by Sonae Distribuição (in the relevant markets of Coimbra and Portimão);
- Divestiture of two projected Carrefour stores (a hypermarket outlet in Viana do Castelo and a supermarket in the relevant market of Coimbra); and
- Abstaining from applying for new licenses for grocery retailing in the twelve months following the date of the PCA's decision, in most of the relevant markets where the merger would give rise to competition concerns.

27. This was the first time the PCA accepted structural remedies in a Phase I decision.

## 3. **Concluding remarks**

28. Competition in retail markets has a local dimension, which makes merger assessment more challenging, namely due to the potentially high number of relevant markets. Moreover, the definition of the catchment areas requires a careful assessment of local characteristics, such as rural/urban areas, location of shops and other parameters that influence consumers' choices.