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**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Portugal

-- 2020 --

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

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## *Portugal*

1. This report covers the activities of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority from 1 January 2020 to 31 December 2020.

### **Executive Summary**

2. In 2020, and despite the Covid-19 pandemic, which severely impacted the global economy, the AdC conducted a significant and vigorous activity both on competition enforcement and advocacy.

3. Regarding its enforcement powers, the AdC issued sanctioning decisions covering different types of behaviors and sectors, totaling €393.2 million in fines. This amount of fines was mainly driven by the total fine of €304 million imposed on six large retail food chains, two liquor suppliers and two individuals for a hub-and-spoke arrangement.

4. The AdC's enforcement activity in 2020 was also marked by the sanctioning of a cartel in the telecommunications sector, in which the AdC imposed a fine of €84 million to one of the incumbent undertakings. In this case, another undertaking was exempted from paying any fine after filing a leniency application under the AdC's Leniency Program.

5. In addition, in 2020, the AdC opened a first ever investigation into a no-poach agreement, targeting the Portuguese Professional Football League (LPFP). In this respect, the AdC imposed an interim measure ordering the immediate suspension of the agreement to not recruit or hire other clubs' football players of the First and Second Leagues who unilaterally terminate their employment contract invoking reasons caused by the Covid-19 pandemic.

6. Furthermore, the AdC adopted a sanctioning decision that concluded the cartel investigation in the railway maintenance sector, imposing a total fine of €3.4 million and disqualification of participation in public tenders of two firms.

7. In the merger field, the AdC issued 50 merger control decisions. One of these decisions was a prohibition decision in the road transport sector. In particular, the AdC prohibited the merger because the notified acquisition would have resulted in an effective elimination of competition for future public transport service concessions or contracts, with damage for consumers and for public procurement tenders. The AdC also issued a decision with divestment commitments in a merger related to coatings for the ceramic industry.

8. During 2020, the AdC continued its focus on detecting non-notified mergers, in line with the operational objectives defined for the year. In this respect, the AdC imposed a fine to an undertaking in the health sector for acquiring sole control of an undertaking in the same sector without prior notification of the acquisition and, consequently, without obtaining approval from the AdC (gun-jumping).

9. With respect to judicial review, there was an increase of litigation resulting from the reinforcement of the AdC's sanctioning activity, with a high success rate for the AdC. The appeals related mainly to procedural grounds, including issues such as inspections, evidence review and handling, access to file, confidentiality, effect of appeals and rights of defense.

10. In the context of its advocacy powers, the AdC issued 28 opinions, studies and recommendations on draft and existing legislation and regulation in a wide range of sectors,

such as energy, telecoms, banking and finance, tourism, higher education and on the public procurement regime, seeking to promote a more competitive legal and regulatory framework in Portugal.

11. In addition, in the context of the Covid-19 pandemic, the AdC issued guidance to business, namely associations in the pharmaceutical and financial sectors, reaffirming the need to comply with competition rules, especially in crisis situations.

12. In 2020, the AdC continued its “Combating Bid-Rigging in Public Procurement” outreach initiative, launched in 2016 with the aim of raising awareness regarding bid-rigging in public procurement and promoting competition in this area. The initiative was extended to new sectors of the economy and new regions of Portugal, having reached a total of more than 2600 participants.

13. Moreover, in 2020, the AdC submitted to the Government the proposal of draft legislation for the transposition of 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.

14. The AdC also awarded the 3<sup>rd</sup> edition of its Competition Policy Award, which encourages research in competition economics and law, to an economics paper on killer acquisitions. The paper examined the anticompetitive motivations that lead to the acquisition of innovative companies, often start-ups, specifically with the purpose of eliminating potential competitors, with a focus on the pharmaceutical industry.

15. As to the AdC’s international activity, besides continuing to be an active member in the various European and international *fora*, such as the OECD and the ICN, the AdC and the Angolan Competition Authority (ARC) strengthened their bilateral cooperation with the signing of a Memorandum of Understanding (MoU). The AdC also organized the III Bilateral Meeting with the Autorité de la Concurrence (France), which took place in Lisbon and focused on the importance of competition rules during the Covid-19 pandemic, on the agencies’ priorities for 2021 and on the investigation of competition infringements in the context of the digital economy.

## 1. Enforcement of competition law and policies

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

#### 1.1.1. Summary of activities

16. In 2020, the AdC adopted a total of five decisions regarding anticompetitive behavior, which led to the imposition of €393.2 million in fines. The AdC's sanctioning decisions included an array of types of behavior, such as a cartel in the railway maintenance sector, a cartel in the telecommunications sector, two hub-and-spoke cases in large retail, and a decision by an association of undertakings concerning advertising services.

17. Besides these five decisions, the AdC issued eight statements of objections, including in the food retail sector (potential hub-and-spoke infringements), in the advertising sector, in the waste management sector and in the provision of topographic survey services.

18. By the end of the year, the AdC was investigating 20 cases of anticompetitive behavior concerning alleged prohibited agreements - both vertical and horizontal ones -, concerted behavior and decisions by associations of undertakings.

19. **Fines.** The AdC fined undertakings in the total amount of € 393.2 million in five sanctioning decisions concerning anticompetitive behavior.

20. **Inspections.** Despite the impact caused by the Covid-19 pandemic, the AdC carried out inspections in two premises of four undertakings in two proceedings (telecommunications and food retail sectors).

**Table 1. Summary of antitrust cases in 2020**

	No. of cases
Sanctioning decisions	5
Commitment decisions	0
Investigations filed	5
Investigations launched	5
Ongoing investigations (31.12.2020)	20

### **1.1.2. Sanctioning decisions**

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

21. In March 2020, the AdC adopted a sanctioning decision that concluded an investigation initiated in 2016, resulting in a total fine of €3.4 million imposed on five companies and five board members or directors involved in a cartel in railway maintenance in public tenders launched by Infraestruturas de Portugal in 2014 and 2015.

22. The AdC imposed fines on Fergrupo - Construções e Técnicas Ferroviárias, S.A. and Somafel - Engenharia e Obras Ferroviárias, S.A., as well as to the member of the board of directors of each company, in the total amount of €1.8 million for participating in the cartel.

23. Due to the seriousness of the infringements and to prevent this type of behavior, the AdC also applied to these two companies an ancillary sanction of non-participation in public tenders, disqualifying these companies from participating for two years in contracting procedures aimed exclusively at the purchase of maintenance services for track equipment, on the national rail network.

24. Concerning the three remaining companies, Futrifer - Indústrias Ferroviárias, S.A., Mota-Engil - Engenharia e Construção, S. A. and Sacyr Neopul S.A., the AdC had decided earlier, between December 2018 and June 2019, following settlement procedures, in which the companies admitted fault and agreed to waive their rights to continue with judicial proceedings. These three companies were ordered to pay fines totaling €1.6 million.

25. The AdC's investigation revealed that five companies providing maintenance services for track equipment on the national rail network manipulated the bids submitted in the public tenders launched by Infraestruturas de Portugal to their benefit. For this purpose, the five companies agreed to make the tenders void due to the lack of participants, so that new tenders could be launched with a higher base price, and then split the market in the next tender procedure, placing a higher price.

26. The case originated from a complaint filed as part of the AdC's "Combatting Bid-Rigging in Public Procurement" campaign.

*Case No. PRC/2018/3 – decision on an association of undertakings in the advertising sector*

27. In October 2020, the AdC imposed a fine of €3.6 million on the Portuguese advertising agencies association - APAP (Associação Portuguesa de Agências de Publicidade, Comunicação e Marketing) - for restraining its associates from freely participating in procurement tenders for advertising services.

28. The proceedings were opened in August 2018 following a complaint submitted by an advertising agency. The complaint concerned the approval of the "Guide for Good Practices on Advertising Procurement" by APAP and the Portuguese Association of Advertisers (APAN).

29. The Guide was approved in March 2009 by APAP and APAN. In 2015, following the adoption of a "Commitment" by APAP, this association urged its members to exclude themselves or abandon a tender whenever advertisers did not follow the rules set on that "Commitment". Such rules included restricting the number of competitors in the tender to a maximum of four.

30. With such a "Commitment", APAP had the purpose of restricting competition between undertakings. APAP monitored procurement tenders and urged the advertising agencies to boycott the tender if any of those involved a larger number of companies.

31. This behaviour lasted, at least, for three and a half years.

32. In October 2018, the AdC carried out dawn raids in the premises of APAP and APAN, seizing several messages from APAP to both advertising agencies and advertisers. Messages sent by APAP included admonitions to the receiver and confirmed that APAP was aware of its anticompetitive and illegal behaviour.

33. Subsequently, in July 2019, the AdC issued its Statement of Objections against both companies.

34. In October 2020, upon concluding its investigation, the AdC decided to close the proceedings against APAN and sanction APAP for its anticompetitive behavior, concerning the period between 2015 and 2018.

*Case No. PRC/2017/1 and PRC/2017/7 – concerted practices in the food retail sector*

35. In December 2020, the AdC imposed fines amounting to a total of €304 million, in two sanctioning decisions, on six large food retail chains, two beverage suppliers, a board member and a director, for indirectly concerting the sale prices of those products, to the detriment of consumers, through a hub-and-spoke arrangement.

36. The first decision adopted by the AdC concerned concerted pricing between Modelo Continente, Pingo Doce, Auchan and Intermarché, as well as supplier Sociedade Central de Cervejas (SCC), a SCC board member and a business unit director of Modelo Continente.

37. In the second decision, the AdC fined the same four large food retail chains (Modelo Continente, Pingo Doce, Auchan and Intermarché), as well as Lidl and Cooplenorte (E. Leclerc), for concerted pricing through spirits supplier Primedrinks.

38. These were the two first sanctioning decisions in Portugal for hub-and-spoke arrangements. Through a common supplier, companies ensured the alignment of sales prices to the public, thus restricting price competition between supermarkets and depriving consumers from the benefits of price differentiation.

39. In its two decisions, the AdC also imposed an immediate halt to the behavior, since it was not possible to rule out that the investigated behaviour was still ongoing.

40. The investigations were initiated by the AdC in 2017 and targeted groups that represent a large part of the large retail food distribution market, thus affecting the majority of the Portuguese population.

41. In the first case, the AdC's investigation determined that the behavior lasted for more than nine years, at least between 2008 and 2017, the year in which the AdC carried out inspections and seized evidence. In the second case, the behavior lasted for more than 10 years, at least between 2007 and 2017. In both cases, the anticompetitive behavior aimed at gradually and progressively increase prices in the retail market.

42. In 2020, the strengthening of investigations concerning anticompetitive behavior was one of the AdC's priorities. In particular, behavior with the greatest impact on consumers, such as those sanctioned in these decisions.

*Case No. PRC/2018/5 – cartel in the provision of mobile and fixed telecommunications services*

43. In December 2020, the AdC imposed a fine of €84 million on MEO - Serviços de Comunicações e Multimédia, S.A. (MEO) for entering into a market sharing and price fixing of mobile and fixed telecommunications services arrangement with Nowo Communications, S. A. (NOWO).

44. The cartel established by MEO and NOWO resulted in higher prices and less quality of service, as well as geographical restrictions that harmed consumers throughout the Portuguese territory.

45. Under the terms of the agreement, NOWO agreed not to launch mobile services outside the geographic areas where it provided fixed services, thus not competing with MEO in the Lisbon and Porto areas. In addition, NOWO agreed with MEO not to make mobile offers for EUR 5 or less (or with prices lower than the reference price of similar offers in the market). NOWO also agreed to implement price increases and reduce the quality of bundled offers of fixed and mobile services.

46. In exchange, MEO promised to improve the contractual conditions of the MVNO agreement concluded with NOWO, particularly with regard to prices, and to resolve operational problems within the scope of the execution of the agreement.

47. This case was opened in November 2018 following a complaint submitted by NOWO under the Leniency Program. NOWO was exempted, through this program, from the payment of a fine.

48. The cartel was in force at least between early January and the end of November 2018, when the AdC carried out unannounced inspections at both companies' premises.

49. The AdC had issued a Statement of Objections to MEO and NOWO on December 20, 2019, following which the companies had the opportunity to defend themselves against the Statement of Objections.

## 1.2. Judicial review of AdC decisions

50. Judicial review has been a consistently positive indicator of the robustness of the AdC's decisions in recent years. In 2020, 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.

51. The courts ruled in favor of the AdC in 76 of the 82 rulings, and five of these 82 rulings were partially favorable, which determines a success rate of more than 92%, constituting, once more, a remarkable year in what concerns the judicial actions of the AdC. These results were determined by two major factors: (i) the technical consolidation of the AdC in the area of litigation both regarding substantive and procedural aspects; and (ii) the constant improvement of the internal control system (checks and balances) implemented, leading to the adoption of decisions - interlocutory or final - that are technically robust and fully comply with the rights of defense of those subject to litigation.

52. In 2020, the specialized chamber of the Lisbon Court of Appeal (TRL) – Intellectual Property, Competition, Regulation and Supervision (PICRS) –, established in 2019, delivered an array of decisions concerning interlocutory appeals.

53. Furthermore, following the Constitutional Court's 2019 decision that harmonized and unified case law regarding the effects of appeals<sup>1</sup>, in 2020, the Competition, Regulation and Supervision Court (TCRS) resumed its judgments concerning judicial appeals against sanctioning decisions. In this context, it is worth noting that the TCRS confirmed an AdC's decision that found that two major national companies (EDP and SONAE) engaged in anticompetitive behavior through a non-competition pact, while reducing by 10% the fines totaling €38.3 million imposed in May 2017 by the AdC.

## 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 2020**

Notified mergers	50
Total decisions	50
Pending	6

<sup>1</sup> The Constitutional 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) is not in breach of the Constitution.



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

Phase I	Cases
Non Notifiable transaction	2
Clearance	43
Withdrawn cases	3
Non clearance	
To initiate an in-depth investigation	2
Referral to European Commission	
Tacit approval	
<b>Phase II</b>	
Clearance	
Clearance with commitments	1
Non clearance	1
Withdrawn cases	
Tacit approval	
<b>Total final decisions adopted</b> (does not include the Phase I decision to proceed into Phase II)	<b>50</b>

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

	Cases	%
Horizontal	21	42%
Vertical	14	28%
Conglomerate	15	30%
<b>Total</b>	<b>50</b>	<b>100%</b>

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

	Cases	%
Multi-jurisdictional filings (within EU)	14	28%
Multi-jurisdictional filings (outside EU)	6	12%
National with involvement of undertakings from other EU member states	7	14%
National with involvement of undertakings from countries outside EU	4	8%
Completely national	19	38%
<b>TOTAL</b>	<b>50</b>	<b>100%</b>

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

	Cases	%
Sole control	42	84%
Joint control	6	12%
Acquisition of assets	1	2%
Other	1	2%
<b>TOTAL</b>	<b>50</b>	<b>100%</b>

### *1.3.2. Summary of significant cases*

#### *RBI/Grupo Fundão*

54. The AdC issued a prohibition decision concerning the acquisition of Fundão Group, as well as of the public transport service concessions currently held by Transerramar and Auto Transportes do Fundão, by the Transdev Group. The merger would have tended to eliminate competition in the public transportation services in central Portugal.

55. The merger, notified by Rodoviária da Beira Interior (RBI), a company held by the Transdev Group, was subject to an in-depth investigation by the AdC concerning competitive conditions of public transportation services.

56. The Transdev Group is active in public transportation services in Portugal, with a strong presence in central and northern Portugal, while the Fundão Group pursues its activity in public transportation services in central Portugal.

57. The AdC assessed the merger operation in light of its possible impact on future tender procedures in public passenger road transportation services in the concerned geographical areas.

58. In this context, given the strong presence of the Transdev Group and of Fundão Group in the regions of the Intermunicipal Community of Beira Baixa, Beiras and Serra da Estrela and Coimbra (central Portugal), the AdC concluded that the merger would have resulted in an effective elimination of competition for future public transport service concessions or contracts, with damage for consumers and for public procurement tenders.

59. In particular, the advantages of a local presence result from information asymmetries, economies of scope between the regular and occasional transport service, and also from privileged access to infrastructures supporting the activity, such as workshops and car parks.

60. Accordingly, in October 2020, the AdC adopted a decision prohibiting the merger.

#### *Pigments/Ativos Ferro*

61. In December 2020, the AdC issued a clearance decision concerning the proposed acquisition of Ferro Corporation (Ferro), subject to commitments by the acquiring undertaking, Pigments Spain, SL (Pigments Spain). The AdC had expressed concerns that the transaction, as originally notified, would have had a detrimental effect on competition.

62. On 12 June 2020, the merger involving the acquisition of sole control by Pigments Spain of a set of assets and companies integrated in Ferro Corporation's performance coatings business segment (Ferro Assets) was notified to the AdC.

63. Pigments Spain is a company incorporated under Spanish law owned by the Esmalglass-Itaca-Fritta Group (EIF Group), which mainly operates in the ceramic tile covering sector. In Portugal, the EIF Group is present through its subsidiary Esmalglass Portugal, S.A., which provides customer support services (including final blending of products).

64. Ferro Assets are a set of companies that develop, produce and sell ceramic tile coverings and are located in Europe, Africa, Asia and the Americas. In Portugal, the target business includes assets belonging to the group's national subsidiary, Ferro - Indústrias Químicas, Lda.

65. The AdC's initial market investigation indicated that the proposed merger could raise serious competition concerns, in particular because the merged entity's behaviour

could have the ability and incentive to deteriorate the offer conditions. These include price, quality or variety, thus possibly creating significant barriers to competition in the supply of enamels, enameled paints and digital paints, which are essential inputs to the ceramic floor and tile industry.

66. Such concerns led to an in-depth analysis (or Phase II) of the merger.

67. During the in-depth investigation, and through a simulation model, the AdC confirmed the concerns identified in Phase I of the merger assessment. In the post-merger scenario, the simulation model predicted that not only (asymmetric) price increases by the merging entities would take place, but also that the remaining firms present in the market would likely increase their market power, to the detriment of the companies producing ceramic tiles.

68. Following the concerns identified by AdC, and in order to prevent a negative impact on competition, the acquiring company committed to the full divestment of the assets acquired to Ferro, in Portugal, to a third party operator, thus maintaining a similar market structure to the previous scenario.

69. Subsequently, such commitments were considered sufficient, proportionate and adequate in order to solve the competition concerns identified by the AdC.

#### *Hospital Particular do Algarve/Hospital S. Gonçalo de Lagos (gun-jumping)*

70. In March 2020, the AdC fined Hospital Particular do Algarve, SA (HPA) in the total amount of €155,000.00 for acquiring sole control of Hospital de S. Gonçalo de Lagos S.A. (HSGL) without prior notification of the acquisition and, consequently, without obtaining approval from the AdC (gun-jumping).

71. Given that the sanction involved a company in the health sector, the AdC accepted the payment of the fine in several instalments in order to avoid any impact on the provision of the company's services, at a time when the country faced the Covid-19 pandemic.

72. Due to the merger, which should have been previously notified to the AdC, HPA created or reinforced a 50% or greater share in the market of hospital health care services by private units in the Algarve region.

73. The opening of this investigation took place in September 2019. During the proceedings, the incumbent firm submitted to the AdC a settlement proposal, having confessed the facts and assumed responsibility for its behavior. The merger was subsequently cleared by the AdC in September 2019.

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

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

74. In 2020, the AdC issued 28 opinions, studies and recommendations on draft and existing legislation and regulation across many sectors. These included sectors such as Higher Education, Banking, Energy, Telecoms, Digital Economy, Transports, Water and Waste Management.

75. The AdC also continued to advocate 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.

76. In addition, the AdC submitted to the Government the proposal of draft legislation for the transposition of the ECN+ Directive, which aims at empowering the national competition authorities (NCAs) of EU Member States to be more effective enforcers and to bring about a common competition enforcement area in the EU.

## 2.2. AdC opinions, studies and recommendations across various sectors

77. During 2020, the AdC issued 28 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 the authorization process for new higher education degrees aimed at eliminating legal barriers in what concerns the authorization process for new higher education degrees and for new educational institutions;
- a recommendation on vehicle inspection centers in Madeira, in which the AdC identified a *de facto* monopoly by one operator – which owned all existing inspection centers -, and which resulted in the recommendation of introducing new rules favouring the entry by third operators in the market;
- comments to the draft Regulation for the 5G Spectrum Auction, in which the AdC recommended measures to the sectorial regulator, aimed at promoting entry and competition in the market, such as the inclusion of 5G lots in the initial bidding stage reserved for new entrants;
- comments on draft legislative proposals to limit fees associated to mortgages and consumer credit, in which, following a recommendation of the AdC, the Portuguese Parliament enacted legal amendments to prohibit banks from requiring a mortgage consumer to have an account with that same bank.

78. **Competition Impact Assessment of Public Policies.** In 2020, the AdC continued its involvement in the competition impact assessment of public policies, issuing six opinions and two recommendations involving various economic sectors. These opinions concerned different sectors, such as the water and waste management sector. 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.

79. **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 and 2020, the AdC continued to advocate for 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 concerning areas where consumer mobility is reduced.

80. In this respect, in March 2020, the AdC participated in a hearing with a Parliamentary Group with the purpose of promoting the implementation of the proposals for the self-regulated professions.

81. In 2020, the AdC also adopted a recommendation with direct and indirect impact on the access to self-regulated professions. In February 2020, the AdC issued recommendations concerning the legal framework for the accreditation process of higher education institutions and their respective courses, on relevant issues to competition policy, to be duly considered the political decision-maker.

82. In 2020, the AdC continued to implement measures to promote and disseminate the proposals of the AdC's Action Plan, as well as other AdC's recommendations, regarding the transport sector. In this respect, In September 2020, regarding the taxi sector, the AdC sent a letter to the "Working Group for the Modernization of the Taxi Sector". Furthermore, in November 2020, the AdC sent a letter regarding the ports and maritime transport to the Minister of Maritime Affairs, following the public consultation on the proposed "National Strategy for the Sea 2021-2030".

83. **Proposal of Draft Legislation for the Transposition of the ECN+ Directive.** In 2019, the Government entrusted the AdC with the task of preparing draft legislation transposing the ECN+ Directive in Portugal. With this purpose, the AdC organized meetings with various stakeholders, including with Government, the Judiciary, academia, business and competition lawyers. A public consultation of the first draft transposition ensued.

84. Subsequently, in 2020, the AdC submitted to the Government the proposal of draft legislation, which reflects the contributions received by the AdC in the framework of the Working Group established for the purpose, as well as in the workshop and public consultation organized by the AdC.

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

85. **Cooperation with Sector Regulators.** During 2020, the AdC sent 24 requests for an opinion to sector regulators, in the context of 22 merger control proceedings affecting markets subject to sectorial regulation. These regulators include the Regulatory Authority for the Media (ERC), the Regulatory Authority for Communications (ANACOM), the National Authority for Medicines and Health Products (Infarmed) and the Regulatory Authority for Energy (ERSE).

86. **Combatting Bid-Rigging in Public Procurement.** In 2020, the AdC organized six sessions of the "Combatting Bid-Rigging in Public Procurement" campaign, reaching a diverse audience such as public institutions in the Madeira Region (Regional Chamber of the Court of Auditors and Regional Government), the Institute of Public Management and Administration (IGAP), the City Council of Funchal and the City Council of Porto. In total, since 2016, the AdC has reached over 2,600 participants in the campaign. The outreach initiative regarding bid-rigging in public procurement is an AdC priority given the expected benefits to the economy.

87. **AdC Seminar Series.** In order to promote dialogue and debate on issues of competition policy, the AdC held nine public seminars on competition law and economics, which brought nationally and internationally renowned experts to Lisbon, including Alexandre Barreto de Sousa (CADE, Brasil), Philip Marsden (Collège d'Europe, Belgium), Friso Bostoen (Catholic University of Leuven, Belgium), Alexandre de Streel (University of Namur, Belgium), Ignacio Herrera-Anchustegui (University of Bergen, Norway), Eric Posner (University of Chicago), Mike Walker (CMA, UK), Colleen Cunningham (London

Business School, UK), Florian Ederer (Yale School of Management) and Pierre Régibeau (DG-COMP, European Commission). The first three seminars were held at the AdC's Abel Mateus Competition Library, while the last six seminars were held in a virtual format due to the Covid-19 pandemic.

88. **3<sup>rd</sup> Edition of the AdC Competition Policy Award.** The AdC held the 3<sup>rd</sup> edition of the Competition Policy Award, which encourages research in competition economics and law. The award was given to an economics paper entitled “Killer Acquisitions” (Colleen Cunningham, Florian Ederer and Song Ma). The paper examined the anticompetitive motivations that lead to the acquisition of innovative companies, often start-ups, specifically with the purpose of eliminating potential competitors, with a focus on the pharmaceutical industry.

89. **CompCast Podcasts.** The “CompCast – Competition Talks” podcasts initiated in 2017 continued, sharing discussions 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.

90. **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). In 2020, a new version of the search engine was further enhanced to increase its performance and effectiveness. In addition, its case and decision repository was expanded.

### 3. International Cooperation

#### 3.1. European Cooperation

91. **ECN – European Competition Network.** The AdC participated in meetings in the European Competition Network context, as well as in Oral Hearings and Advisory Committee meetings regarding anticompetitive behavior, dominant positions and mergers.

92. **Portuguese Presidency of the Council of the European Union – preparatory works.** Between January 1 and June 30, 2021, Portugal takes over the rotating Presidency of the Council of the European Union. In this context, the AdC, together with the Ministry of Foreign Affairs, is part of the team that chairs the meetings of the Working Party on Competition, which is leading the negotiation of the Digital Markets Act, which aims at establishing, at the European level, rules applicable to digital gatekeepers, in order to ensure fair and open digital markets. In this respect, and throughout 2020, the AdC took part in preparatory works for the Portuguese Presidency of the Council of the European Union.

#### 3.2. Bilateral cooperation

93. **Angola.** The AdC and the Angolan Competition Authority (ARC) strengthened their institutional bilateral cooperation by concluding a Memorandum of Understanding (MoU). This was signed on the second anniversary of the ARC, on 21 December 2020. The MoU provides for cooperation in matters related to competition enforcement and advocacy, in a context in which both institutions are members of the Lusophone Competition Network.

94. **Brazil.** In January 2020, Mr. Alexandre Barreto de Souza, President of the Brazilian Administrative Council for Economic Defense (CADE), visited the AdC as part

of the bilateral cooperation between the AdC and CADE. During this visit, the President of CADE made a presentation on "Leniency in the fight against cartels – examples from CADE", in an open seminar organized by the AdC.

95. **France.** In December 2020, the AdC organized the III Bilateral Meeting with the Autorité de la Concurrence (France), which took place in Lisbon and focused on the importance of competition rules during the Covid-19 pandemic, on the agencies' priorities for 2021 and on the investigation of competition infringements in the context of the digital economy.

### 3.3. Multilateral cooperation

96. **ICN - International Cooperation Network.** In 2020, and despite the pandemic context, 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. In addition, the President of the AdC continued acting as ICN/OECD Liaison in the ICN Steering Group, ensuring cooperation regarding competition policy between the two international organizations. Also, in 2020, the AdC, as a founding member, continued to integrate 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.

97. Due to the pandemic context, the ICN Annual Conference took place in a virtual format in September. The AdC participated as a speaker in the plenary session of the Agency Effectiveness Working Group "Digital Strategy of Competition Agencies" and in the session "Welcome and Promotion & Implementation: ICN Third Decade Project".

98. In addition, the AdC was the winner of the 2019-2020 Competition Advocacy Contest, organized by the World Bank and the ICN, in the category "Promoting pro-competition data regulation", with its Issues Paper on Digital Ecosystems, Big Data and Algorithms. The competition awards ceremony took place in September 2020, in a virtual format, during the webinar "Competition as a tool to reap the benefits and mitigate the costs of the new economy: Jobs, industry and data".

99. Regarding the AdC's role as ICN/OECD Liaison, the AdC actively participated in the work that led to the drafting and publication of the "Joint ICN/OECD Report on International Enforcement Cooperation". The AdC also co-organized the "Joint ICN/OECD Webinar on Competition Investigations During the Covid-19 Crisis".

100. Finally, it is worth highlighting the AdC's active participation in the ICN Steering Group Project on Competition, Consumer & Privacy, a project that deals with the intersection between competition, consumer protection and privacy.

101. **OECD – Organisation for Economic Cooperation and Development.** During 2020, 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 a virtual format from 8 to 16 June 2020, and from 30 November to 4 December 2020.

102. During these meetings, the AdC submitted written contributions and/or participated in discussions on "Start-ups, Killer Acquisitions and Merger Control", "Criminalisation of Cartels and Bid Rigging Conspiracies", "Consumer Data Rights and Competition", "Developments on Competition in Public Procurement", "The Role of Competition Policy

in Promoting Economic Recovery”, “Digital Advertising Markets” and “Joint OECD/ICN Report on International Enforcement Cooperation”.

103. In 2020, the President of the AdC’s Board was elected an effective member of the OECD Competition Committee Bureau, continuing to act as ICN/OECD liaison.

104. The AdC also participated in the 19<sup>th</sup> Global Forum on Competition (GFC), which took place in a virtual format, from 7 to 10 December 2020. In the context of the GFC, the AdC presented written contributions and/or participated in the discussions on the topics "Economic Analysis in Merger Investigations" and "Using Market Studies to Tackle Emerging Competition Issues".

105. Moreover, the AdC submitted a written contribution on "Digital Evidence Gathering in Cartel Investigations" for the 18<sup>th</sup> Annual Meeting of the Latin American and Caribbean Competition Forum (LACCF), which took place on 28-29 September 2020, in a virtual format, co-organized by the OECD and the Inter-American Development Bank (IDB).

106. As a speaker, the AdC took part in the OECD “Open Competition Day”, in February 2020, and in the OECD workshops “Vertical Mergers and Vertical Restraints” (February 2020), “Competition Enforcement and Advocacy in the Banking and Insurance Sectors” (organized by the OECD/GVH Regional Centre for Competition from Budapest, in February 2020), “Merger Control in Times of Crisis” (organized by the OECD Regional Centre for Competition in Latin America from Lima, in May 2020), “Health Sector” (organized by OECD Regional Centre for Competition in Latin America from Lima, in June 2020), “Presentation of the key findings of the Draft Joint OECD and ICN Report on International Enforcement Co-operation” (July 2020), “Competition in the Health Market” (July 2020) and “Cartels and leniency” (organized by OECD Korea Policy Centre in November 2020).

107. **Lusophone Competition Network.** 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 2020, considering the importance of competition for economic development, the AdC pursued technical cooperation with the authorities responsible for enforcing competition rules in Portuguese-speaking countries, sharing experience and good practices, with the purpose of assisting in the establishment and consolidation of competition legal regimes that comply with international best practices. In this context, it is worth highlighting the signing of a Memorandum of Understanding (MoU) between the AdC and the Angolan Competition Authority (ARC) in December 2020.

108. **United Nations Conference on Trade and Development (UNCTAD).** In October 2020, the AdC participated in the 8<sup>th</sup> United Nations Review Conference on Competition and Consumer Protection, being a speaker at the session “Strengthening consumer protection and competition in the digital economy”.

109. **Ibero-American Competition Forum.** In parallel to the OECD-IDB Latin American and Caribbean Competition Forum (LACCF), the Ibero-American Competition Forum was held, in a virtual format, in September 2020. 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.

110. The 2020 Ibero-American Competition Forum comprised two panels: "Advocacy to boost economic recovery", organized and moderated by the CNMC, and "How to keep antitrust enforcement effective in the COVID-19 context and beyond", organized and



moderated by the AdC. Besides moderating one of the panels, the AdC intervened in the opening session.

## 4. Resources of Competition Authorities

### 4.1. Resources overall

#### 4.1.1. Annual budget

111. The AdC's 2020 annual budget was € 8 525 095.

#### 4.1.2. Number of employees (in 31.12.2020)

Table 7.

Specialization	No. of Staff*
Competition Economists	25
Competition Lawyers	30
Other NAC** staff (Forensic IT, Communications)	5
Other professionals and support staff	31
<b>Total*</b>	<b>91</b>

Note: \*Includes management, does not include the Board

\*\* Non-administrative competition staff

### 4.2. Human resources applied to competition (in 31.12.2020)

Table 8.

Area of activity	No. of Staff*
Enforcement against anticompetitive behavior**	25
Mergers	11
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. Report on loyalty policies in telecommunication services

112. In April 2020, the AdC published the final version of its report “Loyalty policies in telecommunication services”.

113. The adoption of the AdC's recommendations is particularly important in the context of social distancing. Telecommunication services are vital for consumers, as they the only option to remote work, to shop for goods and services and to communicate with friends and family.

114. It is thus crucial that consumers are not faced with unjustified barriers to switching providers, to adapting their consumption patterns to new needs and to optimizing spending

accordingly. Consumers should always be able to terminate a contract online or on the phone, just as easily as they can subscribe new services. This possibility, envisaged in one of the AdC's recommendations, is particularly important in the current context, as citizens face reduced physical mobility.

115. The final version of the report identifies a set of relevant situations that should not be allowed to entail a renewal of loyalty clauses. Such situations include subscribing premium pay-TV channels or service-related apps, changing maximum consumption levels, adding or bundling a mobile (i.e., SIM card) to an existing service or using accumulated 'customer points' (e.g., to buy accessories or handsets).

116. This process was initiated in December 2019, when the AdC launched a public consultation on its analysis to the telecoms sector<sup>2</sup>, in which it identified vulnerabilities in terms of competition, such as higher prices in comparison 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.

117. The telecom sector – which is amongst the priorities of the AdC for its relevance for a well-functioning economy – is characterized 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.

118. 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.

119. The low mobility driven by loyalty clauses is strengthened by the generalized 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.

120. 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.

121. 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.

122. 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.

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[www.concorrencia.pt/vPT/Noticias\\_Eventos/ConsultasPublicas/Documents/A%20Fideliza%20nos%20Servicos%20de%20Telecomunicacoes.pdf](http://www.concorrencia.pt/vPT/Noticias_Eventos/ConsultasPublicas/Documents/A%20Fideliza%20nos%20Servicos%20de%20Telecomunicacoes.pdf)

## 5.2. Recommendation of best practices for awarding outdoor advertising concession rights

123. In June 2020, the AdC issued a set of best practice recommendations to local authorities for the award and design of outdoor advertising contracts, which aim at promoting competitive conditions in the allocation of outdoor advertising concession rights.

124. Local authorities award contracts for street furniture advertising, in urban setting, through public tenders. These contracts tend to be of long duration (e.g. 10 years) and bundle together the installation and maintenance of street furniture with the right to advertise on that street furniture.

125. In order to promote competition for the market, the AdC recommended, for example, that the relevant elements of information for adequate bid preparation were made available to tender participants, in order to reduce information asymmetry.

126. The AdC also recommended local authorities to assess the suitability of splitting the tender into lots, as a way to promote tender participation. In this context, the AdC noted that it could be relevant to (i) consider a separation between the different formats of street furniture; (ii) ensure that the number of expected participants is higher than the number of lots, as well as splitting the lots asymmetrically; and (iii) assess if any limits on the awarding of lots by a single firm is needed.

127. The AdC recommended local authorities to assess the suitability of separating out contracts for installing and maintaining street furniture from contracts to advertise on that street furniture. This could shorten the duration of the advertising contracts and promote entry in market. In line with other recommendations in concessions, the AdC recommended that the contract duration should not exceed the minimum number of years necessary for the concessionaire to reasonably be able to recover the investment made and to obtain a return on the capital invested under normal operating conditions.

128. The AdC also recommended local authorities to assess the suitability of introducing an award criterion that takes into account more favorable conditions for advertisers, and not only the maximization of the income to be paid to local authorities.

129. Furthermore, the AdC recommended that the opening of a new public tender should be privileged, considering the renewal or renegotiation of a concession, thereby increasing the frequency with which the concessions return to the market.