

Unclassified

English - Or. English

20 November 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Balancing Prudential Regulation and Competition Considerations in Banking – Note by Portugal

5 December 2025

This document reproduces a written contribution from Portugal submitted for Item 10 of the 147th OECD Competition Committee meeting on 4-5 December 2025.

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03577091

Portugal

1. Introduction

1. Following the global financial crisis, in 2007-2009, and some bailouts, there was an increase in prudential measures to limit banking and systemic risk in several countries.¹ A key question is whether there is, currently, a balance between prudential regulation and competition considerations in banking. This question is particularly important in markets with relatively higher levels of concentration, or with a few very large banks, and higher spreads in the credit market. If the strengthening of prudential regulation hinders bank competition, or limits competition enforcement, both in terms of merger control and enforcement of anti-competitive practices, it can worsen stability in the financial system.

2. Competition policy should be regarded as a complement to prudential regulation to achieve a sound financial system. Competition can, particularly, play a crucial role in dealing with the too-big-to-fail (TBTF) problem. Policymakers should design policies that ensure financial stability, while fully applying competition policy and while considering the adverse effects on competition of prudential measures.

3. In the recent years, the Portuguese Competition Authority (Autoridade da Concorrência – AdC) issued two opinions related to the legal framework of credit and financial institutions in Portugal highlighting the importance of ensuring competition policy applies to the banking sector.

4. In addition, it is key to continue fostering innovation in the financial system, while protecting the system, consumers and investors, considering the risks associated with financial activities. For this reason, in 2018, the AdC highlighted the importance of reducing the costs for the entry of new providers based on digital technology, the so-called FinTech. These providers can deliver financial services and products, often complementing banking offers, to the benefit of consumers and business customers, while boosting efficiency in the system and promoting competition. This note presents a summary of this AdC’s advocacy work.

5. The role of competition has also regained attention in the recent context of pass-through bank deposit remuneration at the European Central Bank (ECB) to remuneration of customer deposits by banks, a process that has been considered slow and incomplete². This has prompted several national competition authorities to examine this issue, either on their own initiative or at the request of public decision-makers³. In general, these studies have concluded that the high degree of concentration and switching costs may contribute, albeit not entirely, to explaining the phenomenon of sluggish adjustment of deposit rates.

¹ One of the key reforms was the introduction of Basel III, which enhanced risk-based capital rules and imposed requirements on leverage, liquidity and large exposures. Other measures included more prudential supervision and resolution regimes and resolvability requirements for systemically important banks to prompt earlier recognition of credit losses. (Coelho, R., Restoy, F., & Zamil, R. (2020). *Convergence in the Prudential Regulation of Banks: What is Missing?*. Bank for International Settlements, Financial Stability Institute, available [here](#)).

² See, e.g., Messer & Niepmann “What determines passthrough of policy rates to deposit rates in the euro area?”, FEDS Notes, July 2023, available [here](#).

³ See, e.g., competition authorities in [Belgium](#), [Spain](#), and [The Netherlands](#).

6. On this regard, the AdC has recently launched a call for information to gather information on any difficulties consumers may have in terms of searching and switching for better banking offers, following the slow pass-through bank deposit remuneration in Portugal. This note also presents a summary of this advocacy work and outlines the next steps.

7. In sum, this contribution discusses briefly the balance between regulation and competition in banking (Section 2) and presents a summary of the AdC's most relevant views and findings arising from its advocacy work for the discussion (Section 3).

2. Balancing regulation and competition in banking

8. To conduct banking business in Portugal, which includes taking deposits and lending, an entity must be licensed as a credit institution by the Portuguese Central Bank (Banco de Portugal - BdP)⁴, and meet ongoing prudential requirements in relation to capital, liquidity, governance, operations and reporting. Portuguese credit institutions deemed as significant fall under the direct supervision of the ECB⁵, while the remaining are directly supervised by the BdP.

9. The main objective of prudential supervision in Portugal is to ensure the safety and soundness of banks, protect depositors and the stability of the financial system. For example, the BdP emphasises that “[b]anking conduct supervision aims to ensure transparency of the information provided to customers by the supervised entities offering banking products and services and to ensure compliance with the regulatory framework for these products and services, thereby contributing to the efficiency and stability of the financial system”⁶.

10. As such, competition is not set out explicitly as an objective to be pursued or, at least balanced, in banking conduct supervision by BdP in Portugal.

11. The relationship between bank competition and welfare, on the one hand, and financial stability on the other, is complex due to the intermediation role played by banks. While the literature is varied in terms of results, it does not find support for the argument that high market power and profitability levels in the banking sector necessarily deliver more resilient and financially sounded banks⁷. Indeed, competition induces banks to offer lower interest rates or more attractive non-price terms on new loans and/or offering higher

⁴ The Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários – CMVM) supervises the provision of investment services and the activity in capital markets, generally.

⁵ The European Central Bank enforces European legislation (namely, the Single Supervisory Mechanism (SSM) – Council Regulation (EU) No 1024/2013 of 15 October 2013, and the SSM Framework Regulation – Regulation (EU) No 468/2014 of the ECB of 16 April 2014).

⁶ See <https://www.bportugal.pt/en/page/objectives>.

⁷ There are two strands of economic literature. The competition-fragility view argues that competition reduces bank profit margins and charter values, encouraging banks to take riskier loans. In contrast, the competition-stability view argues that competition lowers bank profits and charter values, encouraging banks to reduce interest rates charged on loans and to attract lower-risk borrowers by reducing adverse selection and lessen risk shifting by reducing moral hazard. More recent literature attempts to link these two strands of literature (see, e.g., Tran, V. T., & Nguyen, H. (2024). Competition, liquidity creation and bank stability. *Accounting & Finance*, 64(2), 2111-2146).

deposit rates. This, in isolation, has the effect of squeezing profit margins; it does not, however, necessarily translate into less sound financial stability. Competition can, particularly, play an important role in markets where market concentration is high and as such in dealing with the too-big-to-fail (TBTf) problem, namely by alleviating a moral hazard problem where banks can take on excessive risks without considering the repercussions of their actions.

12. An adequate and proportionate level of prudential supervision in place along with market competition and contestability can bring benefits to consumers, in terms of competitively priced banking products, while maintaining an efficient and stable financial system⁸.

13. As such, competition policy should fully apply to banking, as it was defended by the AdC in its opinions from 2021 and 2022, as addressed below in Section 3.1.

14. Indeed, an example where financial stability concerns outweighed competition policy is the 2008 Lloyds–HBOS merger. Although the Office of Fair Trading (“OFT”) found grounds for an in-depth review due to the loss of a key competitor in UK retail banking, the UK Government intervened and approved the merger on public interest grounds amid the financial crisis, injecting £20.3 billion into Lloyds. The Independent Commission on Banking later concluded that a strong challenger to the major banks was essential for competition and recommended stronger divestitures from Lloyds to restore competitive conditions.

15. In addition, whenever adequate and proportionate, financial regulation should be designed as activity-based, as opposed to entity-based. As underlined previously by the AdC, in the context of its inquiry into the use of technologies in the financial sector (FinTech)⁹, it is key that licensing requirements and other regulatory provisions observe the principles of efficient regulation, i.e., they should be proportional to avoid placing unnecessary burdens on different types of players, with different risks, such as FinTech players given the risks associated with the activity they undertake.

3. AdC’s advocacy work on banking and related services

3.1. AdC’s opinions on the legal framework of credit institutions and financial companies

16. In August 2022, the AdC issued comments on the Draft Law no. 21/XV/1.³ (GOV), submitted by the Government to the Portuguese Parliament, which transposes Directive (EU) 2019/878 (CRD V), on access to banking activity and prudential supervision, and Directive (EU) 2019/879 (BRRD II), on the recovery and resolution of credit institutions and investment firms, regarding the Banking Package¹⁰.

17. Draft Law no. 21/XV/1.³ (GOV) amended and republished the Legal Framework of Credit Institutions and Financial Companies (RGICSF). The RGICSF is the framework

⁸ See, e.g., Tran, V. T., & Nguyen, H. (2024). See also a discussion on the topic in AdC (2018) Issues Paper “[Technological Innovation and Competition in the Financial Sector](#)”; and Working Party No. 2 on Competition and Regulation Co-operation between Competition Agencies and Regulators in the Financial Sector - Note by Portugal (available [here](#)).

⁹ AdC (2018) Issues Paper “[Technological Innovation and Competition in the Financial Sector](#)”.

¹⁰ Available [here](#).

diploma for the access to the activity and respective exercise by credit institutions and financial companies, as well as their supervision at a behavioural and prudential level.

18. Previously, in March 2021, the AdC issued comments on the Draft Banking Code (CAB), prepared by the BdP¹¹. It included rules which, by proposing amendments to the RGICSF (revoking it and replacing it by the CAB's rules), focused on competition policy, namely on restrictive practices and merger control. In that context, the AdC issued recommendations, on one hand, aiming to contribute to ensuring the compliance of the CAB with the European Union (EU) law and, on the other hand, to create effective competition conditions in the sector.

19. In particular, the AdC highlighted that one of the provisions of the CAB, under the heading "*Defense of competition*", was inconsistent with the Portuguese Competition Act, by considering that "*legitimate agreements*" and "*concerted practices*" whose object was "*a) Participation in the issuance and placement of financial instruments; b) Granting of credit or other high-value financial support to a company or group of companies*" did not constitute restrictive practices to competition. The AdC recommended this provision be eliminated.

20. Regarding provisions relating merger control, in the context of resolution measures, the CAB provided the following; "*[i]f the decision of the Bank of Portugal determining the disposal of the activity involves a concentration operation under the applicable competition legislation, this operation may take place before it has been the subject of a decision of non-opposition by the Competition Authority, without prejudice to the conditions or obligations that it may subsequently determine*". On this regard, the AdC highlighted that this provision called into question the basis for an ex-ante assessment of merger control and did not seem to consider the possibility that AdC could adopt a decision opposing the merger on the grounds that it is likely to create significant barriers to competition in the market. As such, the AdC recommended this provision be eliminated.

21. Regarding the effects of the BdP's decision on a measure to transfer the activity to a transitional institution, in the context of resolution measures, the CAB set the following: "*The transfer of activity to transitional institutions does not constitute a concentration of undertakings within the meaning and for the purposes of the applicable competition law.*" On this regard, the AdC recommended a duty to notify the AdC, provided for in the RGICSF, be maintained.

22. The CAB also established the effects of the Bank of Portugal's decision on a measure to segregate and transfer activity to an asset management vehicle in the context of resolution measures. It was envisaged that "*[t]he transfer of rights and obligations to an asset management vehicle does not constitute a concentration of undertakings within the meaning and for the purposes of the applicable competition law.*" The AdC recommended that the duty to notify the AdC, provided for in the RGICSF, be maintained.

23. Following these comments, Draft Law no. 21/XV/1.^a (GOV) proposed amendments to the RGICSF. Although the proposed amendments to the RGICSF did not deal with the four articles that mainly motivated the AdC's previous comments, with regard to the proposed amendments contained in the CAB's rules, it was identified the opportunity for the AdC to renew a set of its previous comments, from a competition perspective, with a view to its consideration by the legislator.

24. In fact, the RGICSF maintained an article in force, whose wording dates to its initial version, which focuses on competition policy, namely in what concerns restrictive practices

¹¹ Available [here](#).

(*in casu*, Article 87, no. 2 and 3 of the RGICSF, under the heading "Defense of competition"). The AdC recommended its elimination, as it considers them to be in contradiction with competition rules, namely the Portuguese Competition Act and Article 101 of the Treaty on the Functioning of the EU (TFEU).

25. Additionally, due to the legislative amendments introduced to the RGICSF, to accommodate the resolution measures that may be adopted by the BdP, this regime included three articles, which focus on the control of concentrations between companies.

26. The AdC recommended the elimination of Article 145-N (14) of the RGICSF, that ruled on the effects of the decision of the BdP, regarding a measure of sale of business, in the context of resolution measures, as it considered it to be in contradiction with the competition rules, namely the Portuguese Competition Act and Regulation (EC) No. 139/2004. In particular, the draft legislation envisaged that "*[i]f the sale of business results in a concentration under the applicable competition legislation, this operation may take place before it has been the subject of a decision of non-opposition by the [AdC], without prejudice to any measures that may be subsequently determined by this Authority.*" The AdC highlighted that this provision calls into question the basis for an ex-ante assessment of merger control and did not seem to consider the possibility that the AdC, or the European Commission, as the competent authority, may adopt a decision opposing the merger on the grounds that it is likely to create significant barriers to competition in the market. Furthermore, it could result in limitations on the design of the remedies. As such, the AdC recommended it be eliminated.

27. Regarding Articles 145-P (14) and 145-S (17) of the RGICSF, that rule on the effects of BdP decisions, in the context of resolution measures, the AdC recommended the maintenance of the duty to communicate to the AdC, both the initial decisions, as well as any eventual decisions extending the deadlines of the decisions that decided on the transfer to a bridge institution or the segregation and transfer of activity to asset management vehicles, respectively. In particular, the draft legislation envisaged that "*[t]he transfer decision (...), as well as any decision to extend the deadline (...), shall be communicated to the [AdC], but given its transitory nature, it does not constitute a concentration of undertakings for the purposes of competition law.*"

3.2. AdC's inquiry into barriers to entry and expansion for FinTechs

28. In 2018, the AdC published an Issues Paper¹² covering the use of technologies in the financial sector (FinTech and InsurTech). While these provide opportunities to increase competition and efficiency in the market, the AdC highlighted at the time that their adoption had been slower in Portugal than in other countries.

29. The AdC identified barriers to entry, in relation to payment services, namely: (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 transposition of the Directive (EU) 2015/2366 – Second Payment Services Directive (PSD2) - that fostered *Open Banking* - a paradigm-shifting policy that aimed at allowing banking data sharing to third party providers if a consumer consents; and (iii) barriers arising from consumer behavior, such as a low consumer mobility in retail banking and low usage of ecommerce in Portugal.

30. In addition, and although not directly related to prudential regulation, the AdC flagged the concern that new entrants (FinTech/payment service providers) often depend

¹² AdC (2018) Issues Paper "[Technological Innovation and Competition in the Financial Sector](#)".

on incumbent banks to access essential infrastructure (e.g., the clearing/settlement system known as SICOI in Portugal). The AdC flagged this as a risk in which incumbents could favor themselves or make access to this banking infrastructure harder for rivals.

31. Overall, the AdC advocated for the need for a swift and timely transposition of PSD2, a regulatory adaptation to allow innovation (FinTech), via regulatory sandboxes, and proportionate rules (including access to essential bank infrastructure).

32. In March 2021, after conducting a survey addressed at market participants and potential entrants, the AdC published a follow-up report on the recommendations from the 2018 Issues Paper¹³. The survey was conducted between July and September 2020 and sent to 139 FinTech companies. The AdC obtained 88 responses from companies covering more than 10 types of services, different regulatory frameworks and multiple geographies.

33. The AdC found that of the 70 firms providing services in Portugal, 74% perceive the existence of barriers to entry in the market and 64% refer to the position of incumbent operators and the existence of a closed ecosystem as barriers to entry. On access to banking data using API, the main barriers identified related to response time to the API access request and additional consent requirements than those required by applicable regulation. On access to banking infrastructure (SICOI), the main barriers identified were delays in the banks' response to requests for representation.

34. The AdC highlighted the need to (i) ensure effective FinTech's access to SICOI (via direct access or regulated indirect access); (ii) ensure banks have no scope to create obstacles to access to customers' banking data or consent; (iii) accelerate a full implementation of regulatory sandboxes that promotes innovation; and (iv) promote technology neutral specifications in public procurement procedures.

35. The AdC has not conducted an updated analysis on the impact of open banking in Portugal. Nonetheless, the AdC noted that, as of October 2025, only one account information service provider, and one payment initiation services provider were officially registered in Portugal, even though other similar providers, registered in other Member States, may operate in Portugal via passporting rights¹⁴.

36. The payment ecosystem in Portugal is characterized by the strong presence of local payment solutions managed by SIBS Group, Portugal's central payment processing network. This strong presence of SIBS was indeed a concern highlighted by FinTech providers in AdC's 2021 follow-up survey inquiry. Indeed, following this study, the AdC opened an antitrust investigation into the payment sector and has recently fined the undertaking for abusing its dominant position in the payment sector¹⁵.

37. On regulatory sandboxes, the AdC notes that the three regulators in the financial system (BdP, CMVM and ASF - Insurance and Pension Funds Authority), established the Portugal FinLab initiative in cooperation with Portugal Fintech. As of today, this program is in its 6th edition and "*is a communication channel between innovators – new players in the market or incumbent institutions having innovative tech-based financial projects or products – and the Portuguese regulatory authorities*"¹⁶. The aim is to lower regulatory

¹³ The follow-up report is available [here](#).

¹⁴ Based on EBA Payment Institutions Register, available [here](#).

¹⁵ 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.

¹⁶ See <https://www.portugalfinlab.org/>.

uncertainty and compliance costs for smaller firms that are not yet under prudential supervision.

3.3. AdC's inquiry into retail banking with a focus on search and switching

38. In July 2025, the AdC launched a call for information to all interested parties, such as consumers, public entities, firms in the banking sector and other relevant sectors, potential entrants, and consumer and business associations¹⁷.

39. The call for information aimed at identifying (i) any difficulties in comparing banking or financial products and possible ways to improve product comparability; (ii) any challenges in the process of contracting banking or financial products and how that process might be streamlined; (iii) any obstacle in switching banks and ways to facilitate switching; (iv) any barriers to entry and expansion in the sector, including business strategies that may limit competition.

40. The call for contribution followed the concerns that interest rates on new term deposits (up to 1 year) in Portugal remained less attractive than the euro-area average; and for the five largest banks particularly less attractive. Based on their leading product offerings, these institutions show less variation in interest rates and a lower median rate compared to those offered by smaller banks. In addition, the five largest banks accounted for, by the end of 2024, 70,50% of total assets in the sector and 74.96% of all deposits in the banking system.

41. The AdC received 10 contributions in total: 3 consumer or consumer associations, 3 entities from the financial sector, 2 business associations and 2 public entities, including the BdP.

42. Overall, the call for information was positively received by the stakeholders, who recognized the relevance of AdC's initiative to assess the need for measures to promote competition and consumer switching. Consumer associations pointed out the relatively high levels of concentration and limited consumer switching and highlighted the need for improving comparability of banking offers and simplicity of switching processes. The banking association, on the other hand, contested the view that the Portuguese banking sector is concentrated and that switching should be assessed considering multibanking and the growing use of digital banks.

43. Switching costs can be an important source of market power in retail banking, particularly through banks with already an established customer base that remains locked in, facing less pressure to offer competitively priced offers (e.g., attractive deposit interest rates). As such, our aim is to assess whether there are any substantial barriers to searching and switching, particularly from the perspective of households (i.e., private consumers) and if so, recommend measures to easier switching processes, inducing healthy competition and a more efficient banking sector.

44. From a methodological standpoint, and to support our analysis, we have complemented the contributions received through the call for information with a series of meetings held with stakeholders to obtain a broader understanding of the difficulties consumers are likely experiencing. In addition, we have requested data from banks to collect information on the number of accounts and customer churn rates, and we have launched a broader questionnaire directed at consumers. We have also gathered information from other competition authorities regarding potential barriers to competition and recommendations in their jurisdictions. These diverse sources of information will provide

¹⁷ Available [here](#).

a more robust basis for the AdC's analysis and, where appropriate and justified, the formulation of potential recommendations.

4. Conclusion

45. An effective and efficient prudential framework for the banking sector should be guided by economic principles and implemented to correct market failures. By resolving the problems of information asymmetries, banks can efficiently intermediate the funds from depositors to borrowers, contributing to economic growth.

46. Competition should be regarded as a complementary tool to deal with market power and moral hazard problems, while inducing banks to offer competitively priced banking services.

47. It is therefore essential that the legal framework of credit and financial institutions is based on proportional and adequate prudential supervision and that competition policy is in place, both with complementary objectives.

48. Competition policy, with its varied toolbox, can be wary of the risk of mergers or anticompetitive behaviour aimed at hindering entry and innovation. Competition advocacy for efficient regulation also plays an important role in unleashing the potential of innovation and competition in the financial sector. Lastly, competition policy can also provide important insights on how to improve consumers' ability to search and switch easily to another provider, which offers them a better deal, inducing banks' incentives to compete more fiercely.

49. As highlighted by Christine Lagarde, President of the ECB, on November 5, 2025, “[t]here are well-founded reasons for strong competition policy and enforcement”, namely its “positive effects on growth”, “lower and less volatile prices”, and lastly, “makes the economy more sensitive to interest rates, which supports macroeconomic management by the central bank and the transmission of monetary policy”¹⁸.

¹⁸ Speech by Christine Lagarde, President of the ECB, at an event to mark the 15th anniversary of the Autorité de la concurrence, Paris, 5 November 2024 (available [here](#)).