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**Co-operation between Competition Agencies and Regulators in the Financial Sector  
- Note by Portugal**

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Please contact Mr Chris PIKE if you have any questions about this document

[Email: [Chris.Pike@oecd.org](mailto:Chris.Pike@oecd.org)]

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## Portugal

### 1. Introduction

1. The financial crisis led to difficult economic conditions in Portugal that culminated in an economic and financial assistance programme in 2011 and the public recapitalisation of several banks<sup>1</sup> in 2012. The stated objectives of the economic and financial assistance programme regarding financial stability were to reinforce the solvency of the banking sector, promote the deleveraging of banks' balance sheets<sup>2</sup> and ensure their stable funding, strengthen the supervision of the banking sector and improve banking regulation.<sup>3</sup>

2. Ten years on from the financial crisis, the financial sector in Portugal is still subject to certain risks regarding financial stability. In a recent financial stability report (June 2017), the Portuguese Central Bank (Banco de Portugal - BdP) notes that these risks stem from factors such as high public and private sector indebtedness, low potential growth, significant stock of non-productive assets on credit institutions' balance sheets and sensitivity of banks' credit portfolio to changes in benchmark interbank interest rates.<sup>4</sup>

3. The financial sector is of vital importance to the Portuguese economy. It is crucial that financial institutions are financially sustainable, so that consumers can trust them to meet their obligations. It is also crucial that the financial sector is efficient, including through a thorough risk-based loan approval process, and that competition between market players acts as a driving force for efficiency and innovation, thus delivering high quality products and services at competitive prices.

4. This contribution provides a brief overview of the Portuguese financial sector regulatory and competition law frameworks. The contribution highlights regulatory changes that followed the financial crises, namely developments relating to transparency of information, financial innovation and "caps and floors". The note also addresses the changes in concentration and profitability in the banking and insurance sectors that followed the financial crisis. Finally, this contribution points to areas where conciliating competition concerns and financial stability require a more balanced approach in favour of the former.

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<sup>1</sup> Caixa Geral de Depósitos (CGD), Banco Português de Investimento (BPI) and Banco Comercial Português (BCP).

<sup>2</sup> The decrease of the loan-to-deposit ratio reflects the deleveraging of the Portuguese banking system, with loan-to-deposit ratios having shifted from 158% in 2010 to 117% in 2013. Source: Associação Portuguesa de Bancos, Portuguese Banking Sector Overview, January 2015, available at <http://www.apb.pt/content/files/2015.01 - Portuguese Banking Sector Overview.pdf>

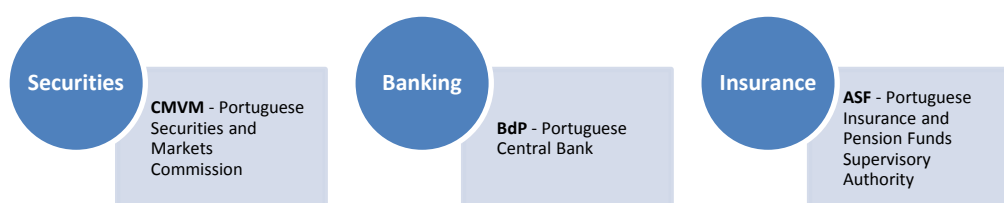
<sup>3</sup> See Box 1.1 Implementation of the economic and financial assistance programme: The financial stability pillar in Banco de Portugal, *Financial Stability Report*, May 2012, available in English at [https://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/ref\\_maior12\\_e.pdf](https://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/ref_maior12_e.pdf)

<sup>4</sup> Banco de Portugal, *Financial Stability Report*, June 2017, available in English at [www.bportugal.pt/sites/default/files/anexos/pdf-boletim/ref\\_06\\_2017\\_en.pdf](http://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/ref_06_2017_en.pdf)

## 2. Regulation and competition regime of the financial sector in Portugal

5. The Portuguese financial regulation framework is based on three separate agencies operating on functional lines (see Figure 1): i) the Portuguese Central Bank (BdP), which is both the macro-prudential authority and the micro-prudential supervisor<sup>5</sup>; ii) the Portuguese Securities Market Commission (CMVM) which is the supervisor and regulator of securities markets (and markets for other financial instruments); iii) and the Insurance and Pension Funds Supervisory Authority (ASF), in charge of supervising and regulating the insurance and pension funds sector.<sup>6</sup> All three have prudential responsibilities, although BdP and ASF concentrate most of them.

**Figure 1. Portuguese financial system regulation**



6. These institutions have the responsibility of maintaining the stability of the financial system and protecting consumers through implementing and governing the regulatory regimes that apply to the financial sector.

7. Co-operation among financial regulators falls under the National Council of Financial Supervisors (CNSF), in which the three national financial regulators are represented. The CNSF provides a forum for information exchange and aims at enhancing co-ordination among the sectoral authorities<sup>7</sup>.

8. In addition to these agencies, a number of European and international agencies have relevant competences that play an important role in the Portuguese financial system. For example, the European Banking Authority (EBA) ensures effective and consistent prudential regulation and supervision across the EU banking sector; the European Securities and Markets Authority (ESMA) contributes to improving the functioning of financial markets, by enhancing the protection of investors and promoting stable and orderly financial markets; the European Insurance and Occupational Pensions Authority (EIOPA) ensures the protection of insurance policyholders, pension scheme members and beneficiaries; and the Basel Committee on Banking Supervision issues the Basel Accords setting out the prudential capital requirements for banks globally. Finally, the Financial

<sup>5</sup> Since November 2014, BdP's responsibilities in the matter of prudential supervision are taken in the context of the Single Supervisory Mechanism (SSM) that comprises the European Central Bank and the other national supervisory authorities SSM members.

<sup>6</sup> We note, however, that in May 2017, the Portuguese Government announced the potential creation of a new supervision overarching entity, with responsibilities on macro prudential supervision and the resolution of credit institutions.

<sup>7</sup> The framework for financial supervision is currently under review. An initial proposal was subject to public consultation in September 2017: <http://www.gpeari.gov.pt/consulta-publica/relatorio-do-grupo-de-trabalho-para-a-reforma-da>

Stability Board (FSB) monitors and makes recommendations about the global financial system.

9. The Portuguese Competition Authority - Autoridade da Concorrência (AdC) – is in charge of enforcing competition law to the financial sector, just like in any other sector. There is however, co-operation between the AdC and financial regulators in the application of competition law in financial markets.

10. The Portuguese Competition Act<sup>8</sup> envisages the co-operation between the AdC and sectoral regulators, for example, through opinion requests by the AdC to the regulator and a reporting duty from the regulator to the AdC whenever the regulator finds indicia of a potential competition law infringement in the sector. In merger control, in addition to the request to the sector regulator for a (non-binding<sup>9</sup>) opinion regarding the impact of the merger, the AdC may request information or data to the sectoral regulators.

11. The AdC can also issue opinions regarding the competition impact of the regulatory framework. Co-operation between regulatory bodies is set out in Law No. 67/2013 (the legal framework applicable to independent regulatory bodies). The Legal Framework of Credit Institutions and Financial Companies also accounts for the co-operation between the AdC and the BdP, within the section of consumer protection and competition.

12. This note has benefited from contributions by the BdP and the ASF. The BdP's written contribution is available in Annex I, and ASF's contribution was made available in Portuguese and is summarised below.<sup>10</sup>

13. The CMVM highlighted the co-operation with the AdC in the context of the competition impact assessment currently being conducted jointly by the AdC and the OECD.<sup>11</sup> This impact assessment aims at identifying regulatory restrictions to competition in different sectors of the Portuguese economy and liberal professions, including auditors, which are supervised by CMVM.

### 3. The aftermath of the financial crisis

14. Ensuring stability in the financial sector has been a key consideration from a regulatory and policy viewpoint since the beginning of the financial crisis. There has also been, at least to some extent, a (mis)perception that competition could hurt financial stability, and concerns with a trade-off between competition and financial stability. Some arguments are that competition may reduce bank charter values and increase incentives for risk taking, to the detriment of sustainability. Similar arguments can be made for insurers and their solvability. Another argument relates to the alleged lower incentives of

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<sup>8</sup> Law 19/2012 of May the 8<sup>th</sup>, Diário da República, 1.<sup>st</sup> series, No. 89.

<sup>9</sup> Except for ERC (“Entidade Reguladora da Comunicação Social”), the Media Regulator, whose opinions regarding mergers, when negative, have a binding nature for the AdC. The sectoral regulator may effectively block a deal if it is deemed to threaten the ‘freedom of speech’ or the ‘plurality of the media’.

<sup>10</sup> Although the present paper has benefited from the sectoral regulators contributions, it does not necessarily reflect the position of those regulators.

<sup>11</sup> This project was launched in 2016.

banks to monitor the credit risk of their borrowers if it is easy for customers to switch between banks.

15. These concerns, along with the need to enhance financial stability, have resulted in some policy options that soften competition between banks. This approach seeks to reach better outcomes in terms of profitability and a higher financial sustainability of the banking system, often overseeing the impact on competition of legal and regulatory choices.

16. The policy options designed to address the sustainability problem included: “further vast injections of central bank liquidity; extensions of bank deposit guarantees to stave off bank runs by depositors; temporary bans on short selling; the U.S. troubled assets relief program; large-scale state ownership of banks and other financial institutions; sharp cuts in official interest rates; bypassing competition law to allow competition-threatening bank mergers”.<sup>12</sup>

17. Indeed, relaxing merger control is sometimes wrongly seen as a tool for financial stability and an alternative to state aid support to distressed banks. This approach is ill-argued as not only mergers’ benefits are uncertain and not immediate, but mainly, because rewarding mismanagement and providing a “licence to extract monopoly rents without condition” (Maels and Kiljanski 2009<sup>13</sup>) would not only hurt consumers but may also deepen the moral hazard problem.

18. An example of a merger deal where concerns with financial stability overrode competition concerns relates to the merger between Lloyds and HBOS, announced in September 2008 and implemented in January 2009, which is addressed in the Report of the UK Independent Commission on Banking. The merger entailed the elimination of the competitive pressure exerted by one of the main challengers to the incumbents in the sector. Despite the fact that the OFT found the merger to meet the conditions for referral for an in depth review in several retail banking markets, the merger was not referred to the to the UK Competition Commission because of an intervention by the UK Government that pushed the deal through on public interest grounds. In October 2008, the UK Government injected £20.3bn in Lloyds. The Report of the UK Independent Commission on Banking later found that a challenger to established incumbents in the UK banking markets would be highly beneficial for competitive conditions and recommended that for the divestitures foreseen for Lloyds should be strengthened, if they were to have a significant impact in competition.

19. Note, however, that the findings of the empirical literature regarding competition and stability in the banking sector are mixed. For example, Beck et al. (2007)<sup>14</sup> find no support for the view that concentration increases the fragility of banks, whereas

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<sup>12</sup> John Vickers (2008) “The Financial Crisis and Competition Policy: Some Economics”, *Global Competition Policy*.

<sup>13</sup> Maels and Kiljanski (2009) “Competition and the financial markets: Financial sector conditions and competition policy” available at [http://ec.europa.eu/competition/publications/cpn/2009\\_1\\_4.pdf](http://ec.europa.eu/competition/publications/cpn/2009_1_4.pdf).

<sup>14</sup> Beck, T, Demirguc-Kunt, A. and Levine, R. (2007) “Bank Concentration and Fragility: Impact and Mechanics” In Carey, M., Stultz, R.M. (Eds), *The Risk of Financial Institutions*, University of Chicago Press, pp. 193-234.

Berger et al. (2008)<sup>15</sup> finds empirical support for elements of both the competition-stability and the competition-fragility views. Beck et al. (2011)<sup>16</sup> reconcile the mixed results regarding the competition-bank soundness relationship when accounting, amongst other aspects, for the regulatory framework. Using data for 45 countries during 1980-2003, Schaeck et al. (2009)<sup>17</sup> find evidence that more competitive banking systems are less prone to systemic crises. De Nicolò et al. (2004)<sup>18</sup> find support for the positive competition-stability relationship. More recently, Amidu and Wolfe (2012)<sup>19</sup> and Schaeck and Cihák (2014) find evidence that competition is stability-enhancing.<sup>20</sup>

20. Theoretically, the literature identifies potential different effects, in different directions, of competition in financial stability. Boyd and De Nicolò (2005)<sup>21</sup> find that banks become more risky as their markets become more concentrated. However, Repullo (2004)<sup>22</sup> finds that, in the absence of capital requirements, for low intermediation margins (i.e., very competitive markets), the gambling equilibrium exists in which the banks invest in the gambling assets; whereas for intermediate margins both the prudent equilibrium in which banks invest in the prudent asset and the gambling equilibrium exist.

21. The link that seems theoretically more robust in terms of a potential trade-off is that banks with lower value (expected returns) have less to lose from excessive risk taking and are thus more prone to engage in “gambling for resurrection”. Nonetheless, this argument is intrinsically linked to the moral hazard problem of banks not bearing the costs of bankruptcy due to bail outs, having thus limited liability, while fully reaping any potential future gains from excessive risk taking strategies. Furthermore, given the context of high return on equity values pre-crisis, the relevance of this argument within the financial crisis is highly questionable (Maels and Kiljanski, 2009<sup>23</sup>).

22. While the literature is varied in terms of results and perspectives, it clearly does not find support for the sometimes misplaced argument that high market power and profitability levels in the banking sector deliver more resilient and financially sounded

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<sup>15</sup> Berger, A. Klapper, and Turk-Ariss. (2009), “Bank Competition and financial stability” *Journal of Financial Services Research*, 35: 99-118.

<sup>16</sup> Beck, T., De Jonghe, O. and Schepens, G. (2011) “Bank competition and stability: reconciling conflicting empirical evidence” Working Paper.

<sup>17</sup> Schaeck, K., Cihak, M. and Wolfe, S. (2009), “Are Competitive Banking Systems More Stable?” *Journal of Money, Credit and Banking*, 41: 711–734.

<sup>18</sup> De Nicolò, G., Bartholomew, P., Zaman, J. and Zephirin, M. (2004), “Bank Consolidation, Internationalization and Conglomeration: Trends and Implications for Financial Risk,” *Financial Markets, Institutions and Instruments*, 13(4): 173-217.

<sup>19</sup> Amidu and Wolfe (2012), “Does Bank Competition and Diversification Lead to Greater Stability? Evidence from Emerging Markets”, *Review of Development Finance*, 3(3): 152-166.

<sup>20</sup> Schaeck, K. and Cihák, M. (2014), “Competition, Efficiency, and Stability in Banking” *Financial Management*, 43(1): 215–241.

<sup>21</sup> Boyd, JH, and De Nicolo, G. (2005), “The Theory of Bank Risk Taking and Competition Revisited”, *Journal of Finance*, 60(3):1329-1343.

<sup>22</sup> Repullo, R. (2004) “Capital Requirements, Market Power, and Risk-Taking in Banking” *Journal of Financial Intermediation*, 13: 156-182.

<sup>23</sup> See footnote 13.

banks. Rather, there is substantial evidence regarding the potential benefits from more competitive and efficient banks, particularly when adequate ex-ante regulation is in place.

23. Low levels of competition should thus not be regarded as an instrument to ensure financial stability. Actually, competition can play an important role in dealing with the too-big-to-fail (TBTF) problem.<sup>24</sup>

24. The underlying problem of the financial instability should not be regarded as competition driven but rather one that relates to the regulatory framework in which competition takes place. Indeed, the financial stability of banks depends mostly on the regulatory framework, as noted in the Report of the UK Independent Commission on Banking (known as the “Vickers Report”).<sup>25</sup>

25. As a preliminary remark, the AdC identifies here an important avenue for advocacy for competition authorities regarding the financial legal and regulatory frameworks: it is key to clarify established myths regarding the nature of the alleged link between the so-called “excessive competition” and financial (un)sustainability, and redirecting the discussion of financial stability to its core determinant, i.e., financial regulation.

26. From the point of view of enlarging the customer base, the price maximizing setting rules for financial institutions should be so as to capture an additional consumer through a competitive price if the net present value of capturing that consumer is positive – i.e., if it increases financial institutions’ intertemporal value.

27. In the absence of market failures, financial institutions should incorporate the risk taking associated with providing credit. However, financial markets are characterised by market failures that include asymmetric information, meaning that investors may be subject to adverse selection and moral hazard problems that may hinder efficiency in financial markets and in particular, may entail excessive risk taking.

28. Rather than softening competition, effectively addressing the problems of risk taking may entail regulatory measures aimed at mitigating the underlying market failures.

29. Even if one would be to accept an alleged trade-off between competition and sustainability, to some extent, in some specific situations, it could nonetheless be “regulated away” through the introduction of the necessary ex-ante regulatory measures. The literature identifies some of the regulations that are deemed needed to reduce the excessive risk taking behaviour of credit institutions. These often entail capital requirements to control excessive risk taking.

30. In the aftermath of the financial crisis, structural bank regulation initiatives have also been considered as a way of limiting the range of activities that may be carried on by banking firms. These initiatives include the US Volcker rule, the UK ring-fencing (recommended in the Vickers report) and the Liikanen proposal.

31. The Volcker rule prohibits deposit-funded, licensed commercial banks in the United States, or bank holding companies with US affiliates, from engaging in

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<sup>24</sup> The term “too-big-to-fail” or TBTF is used in the financial sector to describe market players, usually banks that are very important to ensure financial stability in the system, such that they cannot be allowed to go into bankruptcy.

<sup>25</sup> Independent Commission on Banking: Final Report – Recommendations, September 2011. Available at [http://www.ecgi.org/documents/icb\\_final\\_report\\_12sep2011.pdf](http://www.ecgi.org/documents/icb_final_report_12sep2011.pdf)

proprietary trading and investing in or sponsoring hedge funds and private equity funds. The UK ring-fencing requires the largest UK banks to separate core retail banking from investment banking. The Liikanen proposal suggests the separation of the investment and commercial banking from the proprietary trading and market making.

32. Although there are differences in detail across these initiatives, these generally aim at insulating certain types of financial activities considered important for the real economy (i.e. core retail banking activities) from the investment risky activities that are considered less important for the real economy.

33. At the EU level, this type of structural regulation was first proposed in 2012 with the Liikanen report. In 2014, the European Commission (EC) released its proposal on structural measures to improve the resilience of EU credit institutions. Recently, the EC has decided to withdraw the proposal, although some regulatory measures have entered into force via the European Banking Union. The UK ring fencing will enter into force in the beginning of 2019. This may increase divergences between national banking structures across the European financial sector.<sup>26</sup>

34. The financial crisis has not only exposed the banking system, but also threatened the stability of the insurance market in Europe. Currently, there are prudential concerns with the impact of a low-for-long yield scenario and the resulting mismatch between the duration of assets and the duration of liabilities (and thus in the asset-liability ratio)<sup>27</sup>, which are stronger for the segment of insurance companies with a higher share of life products. Prudential regulators concerns with the solvency of more vulnerable insurance companies and a looming pensions crisis are often strengthened with wariness regarding the effects of competition disciplining insurance premia levels and the transformation led by the fintech (and insurtech) sector (EIOPA, 2016).<sup>28</sup>

35. Overall, 10 years on from the financial crisis, there is still an important ongoing discussion on the appropriate structural regulation and its potential economic consequences for competition, risk taking and financial stability. In the current context, the low, and even negative, interest rate environment that has persisted since 2011 has created significant worries for prudential regulators. Solvency concerns, in particular for insurers and pension fund managers, have become urgent for those evidencing an asset-liability mismatch on their balance sheets.<sup>29</sup> That has often led to a tension between prudential regulators recommendations or incentives for price increases (i.e. banking fees, insurance premia) or sector mergers, and competition authorities' concerns.

36. Clearly, one lesson learnt both from the relevant literature and from the financial crisis is the need to ensure adequate regulation of the financial system to address market failure while fostering competition to ensure efficiency and competitive deals for consumers – as complementary policies. We argue that despite the benefits of a balanced

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<sup>26</sup> The Belgian, French and German authorities have also developed their own national-level structural banking reforms.

<sup>27</sup> The Economist, “The fall in interest rates”, September, 24th, 2016.

<sup>28</sup> 2016 EIOPA Insurance Stress Test Report, available at <https://eiopa.europa.eu/publications/surveys/eiopa-bos-16-302%20insurance%20stress%20test%202016%20report.pdf>.

<sup>29</sup> EIOPA highlights the threat posed by the continuing low-yield environment and the fact that market fundamentals might not properly reflect the underlying credit risk, in its recent Risk Dashboard: <https://eiopa.europa.eu/Publications/Standards/EIOPA%20Risk%20Dashboard%20-%20October%202017.pdf>



approach combining both concerns (i.e. financial stability and competition advocacy and enforcement), prudential authorities often fail to translate these views into practice.

### **3.1. Concentration and profitability in the Portuguese banking sector**

37. The Portuguese banking sector has been subject to several shocks since the financial crisis and faced significant changes in terms of market structure, as Table 1 highlights.

**Table 1. Main events in the Portuguese banking sector**

Date	Event
November 2009	Barclays acquires the business of credit cards and associated products from the Portuguese branch of Citibank
November 2010	Finibanco is acquired by Montepio Geral
December 2012	Banco BIC Português acquires Banco Português de Negócios (BPN)
August 2014	Banco Espírito Santo (BES), one of the largest banks in Portugal, is resolved and a new bank, Novo Banco, is created with non-toxic assets
September 2015	Banco Espírito Santo de Investimento (BESI) is acquired by Haitong Securities Co
December 2015	Banco Internacional do Funchal (Banif) is the target of a resolution measure by BdP, under which a part of its assets and liabilities are sold to Santander Totta
April 2016	Bankinter buys Barclay's Portuguese retail banking business <sup>30</sup>
March 2016	Banco CTT enters the Portuguese retail banking <sup>31</sup>
June 2017	Banco Popular is acquired by Santander Totta <sup>32</sup>
March 2017	The sale of Novo Banco is announced by the Portuguese Government that signed a share purchase agreement with Lone Star, a private equity firm, with contingent aid measures <sup>33</sup>

38. Among the main events, the ones relating to Banco Espírito Santo (BES) are particularly relevant as BES was one of the major financial groups in Portugal.

<sup>30</sup> This sale included retail banking, wealth and insurance management businesses and part of the corporate banking businesses.

<sup>31</sup> Banco CTT opened at a first stage (end of 2015) only to the CTT employees and at a second stage (March 2016) to the general public with roughly 50 branches across Portugal. At the end of 2016, Banco CTT had opened 200 branches and had attracted more than 100 thousand customers, 74 thousand current accounts opened and over €250 million in deposits. Source: Banco CTT, Annual Report 2016, available at <http://web3.cmvm.pt/sdi/emitentes/docs/FR63325.pdf>.

<sup>32</sup> This merger was cleared by the EC. The EC found that the merger did not give rise to raise competition concerns in the European Economic Area. According to the EC – Press release of 08/08/2017 available at [europa.eu/rapid/press-release\\_IP-17-2421\\_en.htm](http://europa.eu/rapid/press-release_IP-17-2421_en.htm), “On 6 June 2017, the European Central Bank decided that Banco Popular was “*failing or likely to fail*” in accordance with Article 18(1) of the Single Resolution Mechanism set out in Regulation (EU) No 806/2014. On 7 June 2017 the Commission approved, in line with the Single Resolution Mechanism Regulation, the resolution scheme of Banco Popular, based on the proposal by the Single Resolution Board”. The BdP also released a press release stating that the merger did not raise competition concerns regarding the Portuguese banking activity (BdP’s Press Release on 07/07/2017, available in Portuguese at [www.bportugal.pt/comunicado/comunicado-do-banco-de-portugal-sobre-venda-do-banco-popular-portugal](http://www.bportugal.pt/comunicado/comunicado-do-banco-de-portugal-sobre-venda-do-banco-popular-portugal)).

<sup>33</sup> According to the EC Press Release of 11/10/2017, “Lone Star would inject €1 billion in capital into Novo Banco and committed to implement an in-depth restructuring of the bank. In addition, Novo Banco plans to raise €400 million on the market by means of issuing Tier 2 capital instruments. In turn, the Portuguese Resolution Fund agreed that: if and when the capital ratio falls below a threshold due to losses on a legacy asset portfolio, it would inject capital of up to €3.89 billion; if the issuance of Tier 2 capital instruments cannot be completed successfully from private means, it will subscribe the remainder (the amount of which is offset against its commitment to inject capital). Finally, only to the extent that capital needs arise under severe adverse circumstances, which cannot be addressed by Lone Star or other market players, Portugal will provide limited, additional capital.”

- In August 2014, Portugal decided to put BES into resolution under the Portuguese resolution framework and determined the strategy for its resolution. Portugal designed a number of support measures, including State aid for the transfer of certain BES assets to a bridge bank – Novo Banco.
- In October 2017, the EC approved the Portuguese aid for the sale of Novo Banco and the acquisition of Novo Banco by Lone Star. According to the EC press release on the matter, the restructuring plan submitted by the two parties includes “*several measures to limit distortions of competition, such as by divesting non-core business activities and other downsizing, as well as commitments to prevent distortive commercial behaviour by the bank*”.<sup>34</sup>

39. Some of the events shown in Table 1 relate to mergers that were analysed by the AdC within its merger control remit, such as:

- Barclays’ acquisition of the business of credit cards and associated products from the Portuguese branch of Citibank was notified in 2009 and cleared by the AdC. The analysis conducted allowed concluding that the merger would not create or strengthen a dominant position that could have resulted in significant constraints to effective competition in the relevant markets, namely: (i) issuing of credit cards; (ii) consumer credit market; and (iii) insurance market. The AdC received contributions from the BdP and the ASF, among other stakeholders.<sup>35</sup>
- The acquisition of Finibanco by Montepio Geral, notified to the AdC in 2010, was cleared as the merger did not raise competition concerns regarding the provision of banking products/services to private consumers and SMEs, payment cards, securities and real estate funds and in the insurance sector. The AdC benefitted from contributions from the financial sector regulators.<sup>36</sup>
- The acquisition of BPN by Banco BIC, notified in 2011 and undertaken in the context of a reprivatisation of BPN, was cleared by the AdC. The AdC received an opinion from the sectoral regulator, BdP. In addition, we note that the BPN was nationalized in November 2008, through Law 62-A/2008 of 11 of November, and its management was attributed to CGD.<sup>37</sup>

40. In what regards merger control in the Portuguese banking sector, it is relevant to note that according to the Legal Framework of Credit Institutions and Financial Companies, Article 145-S, no. 17: “*The partial or total transfer of rights and obligations of a credit institution under resolution or a bridge institution<sup>38</sup> to asset management*

<sup>34</sup> European Commission Press Release of 11/10/2017, available at [europa.eu/rapid/press-release\\_IP-17-3865\\_en.htm](http://europa.eu/rapid/press-release_IP-17-3865_en.htm)

<sup>35</sup> See the AdC decision, Process Ccent. 40/2009 – Barclays/Activos Citi (decision of 05/11/2009), available in Portuguese at [http://www.concorrenca.pt/FILES\\_TMP/2009\\_40\\_final\\_net.pdf](http://www.concorrenca.pt/FILES_TMP/2009_40_final_net.pdf)

<sup>36</sup> See the AdC decision, Process Ccent. 39/2010 – Montepio/Finibanco (decision of 22/10/2010), available in Portuguese at [concorrenca.pt/FILES\\_TMP/2010\\_39\\_final\\_net.pdf](http://www.concorrenca.pt/FILES_TMP/2010_39_final_net.pdf)

<sup>37</sup> See the AdC decision, Process Ccent. 48/2011 - BIC/BPN (decision of 24/01/2012), available in Portuguese at [www.concorrenca.pt/FILES\\_TMP/2011\\_48\\_final\\_net.pdf](http://www.concorrenca.pt/FILES_TMP/2011_48_final_net.pdf)

<sup>38</sup> According to the Legal Framework of Credit Institutions and Financial Companies, Article 145-E, no. 1 and 2, the BdP may apply a partial or total transfer of the business to bridge institutions as a resolution action when the following requirements are in place: (i) a credit institution is failing or likely to fail; (ii) there is no reasonable prospect that the failure can be prevented within a reasonable time frame through recourse to measures carried out by the credit institution itself; (ii) the resolution action is necessary and in proportion to pursuing any of the objectives set out in

vehicles created for the purpose shall be notified to the Competition Authority, but in view of its transitional nature it does not constitute a concentration for the purposes of the applicable legislation on competition”.<sup>39</sup>

41. In addition, there were some mergers taking place in the insurance sector that involved firms which are also active in the banking sector (e.g., Ccent. 17/2012 - BES/BES-VIDA and Ccent. 58/2015 - Bankinter/Ativos Ramo Segurador Barclays, both cleared by the AdC), as noted in Table 3.<sup>40</sup>

42. Currently, there are 33 banks in the Portuguese banking sector.<sup>41</sup> The combined market share of the five largest providers (CR5) in terms of number of branches, assets and client loans have slightly increased since 2010 (see Table 2). In 2016, the five largest providers in terms of assets, client loans and number of branches were Caixa Geral de Depósitos (CGD), Millennium BCP, Novo Banco, Santander Totta and Banco BPI.

**Table 2. Concentration in Portugal’s banking sector**

Indicators	2010		2012		2014		2016	
	CR5	HHI	CR5	HHI	CR5	HHI	CR5	HHI
Number of branches	71%	1144	69%	1139	70%	1177	78%	1368
Assets	78%	1418	74%	1325	80%	1614	81%	1496
Client loans	77%	1427	78%	1457	83%	1720	82%	1550

*Note:* The market shares were calculated using the APB database that only includes APB members. This implies that the following financial institutions are not considered in these calculations: Banco Atlântico Europa, BAI Europa, Banco Efisa, Banco Madasant, Banco Português de Gestão, Banco Primus, BNI and Wizink Bank. Note that the database includes Crédito Agrícola, but we chose to exclude this institution as it is not classified as a “bank” according to the BdP and hence, not regulated as such.

*Source:* AdC calculations based on information of the member institutions of the Portuguese Association of Banks (APB). The individual ratios are calculated using data from nonconsolidated balance sheets and income statements available at [www.apb.pt/estudos\\_e\\_publicacoes/estatisticas](http://www.apb.pt/estudos_e_publicacoes/estatisticas).

43. The Herfindahl-Hirschman Index (HHI) for the different indicators and years suggest that with respect to both assets and client loans the Portuguese banking sector remains relatively concentrated. The HHI increased until 2014 and has decrease in 2016.

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Article 145-C(1); and (iv) the winding up of the credit institution, by virtue of the revocation of the withdrawal of authorisation for the pursuit of its business, does not help achieve more effectively the objectives set out in Article 145-C(1). In addition, this bridge institution shall not constitute a concentration between undertakings for the purposes of the applicable law concerning competition, according to Article 145-P, no. 14.

<sup>39</sup> The Legal Framework of Credit Institutions and Financial Companies is available in English at [https://www.bportugal.pt/sites/default/files/anexos/legislacoes/rgicsf\\_en.pdf](https://www.bportugal.pt/sites/default/files/anexos/legislacoes/rgicsf_en.pdf)

<sup>40</sup> These decisions are available in Portuguese at [http://www.concorrenca.pt/FILES\\_TMP/2012\\_17\\_final\\_net.pdf](http://www.concorrenca.pt/FILES_TMP/2012_17_final_net.pdf) and [http://www.concorrenca.pt/FILES\\_TMP/2015\\_58\\_final\\_net.pdf](http://www.concorrenca.pt/FILES_TMP/2015_58_final_net.pdf)

<sup>41</sup> Information obtained at the BdP’s website on authorised entities in the banking sector (see <https://www.bportugal.pt/entidades-autorizadas/67/all>, accessed on 19/10/2017). We note, however, that i) Deutsche Bank, Itaú and Wizink are not classified as authorised entities in the banking sector in contrast with the list of banks available in *Portal do Cliente Bancário*. In addition, the bank BANIF is still accounted as an authorised entity in the banking sector, despite having ceased its activity. The number of credit institutions is larger than the number of banks. According to the ECB’s database, Portugal had, in 2014, 150 credit institutions.

44. The evolution of the concentration measures in terms of the number of branches displays a different trend. This can be explained by the resizing of branch network in Portugal following 2013, implemented in order to decrease operational costs. This resizing was associated with the fact that the Portuguese branch network was significantly dense vis-à-vis other countries. According to the IMF, the Portuguese banking sector has roughly 20 percent more branches (adjusted by population) than the euro area average (see IMF, Portugal Selected Issues, September 2017, IMF Country Report No. 17/279).

45. Using the underlying data of Table 2, we observe that the number of branches of two of the largest banks in Portugal, CGD and Santander Totta, decreased by 4% and 1%, respectively, from 2013 to 2016 (annual average), whereas the number of branches of some smaller banks decreased in a larger proportion (e.g., Banco Best's number of branches decreased by 33%).

46. These changes led to greater disparities between larger banks and smaller banks in terms of branch network, which is illustrated by the increase in the concentration measures. As noted in the economic literature, a large branch network is an important tool that banks have to capture deposits and loans since local customers reward institutions with broad branch networks (see e.g. Honka et al. 2017).<sup>42</sup> Hence, this disproportionate change in branch networks (i.e., larger banks did not decrease their branches in the same relative degree as smaller banks) might have strengthened asymmetries and reduced contestability in the market.

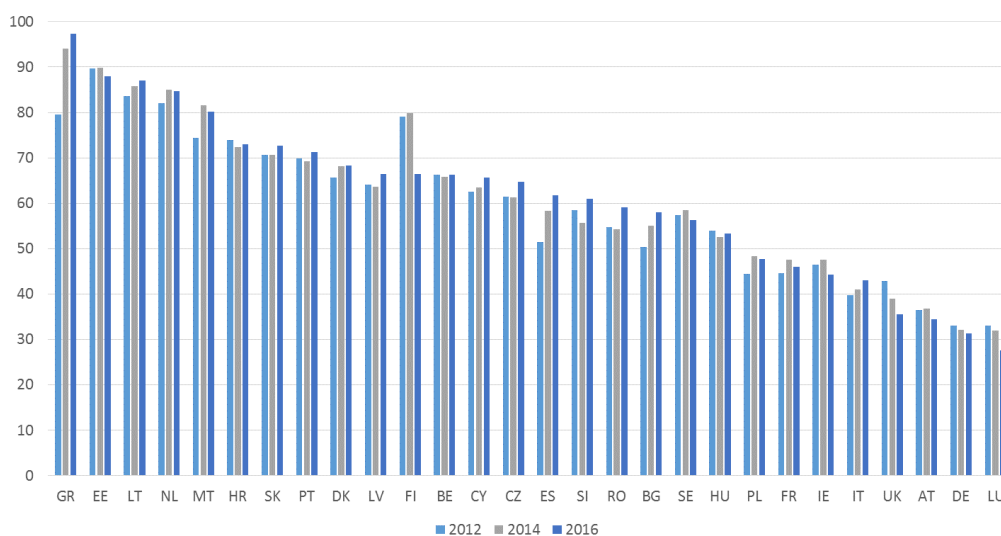
47. In general, the informative nature of international comparisons can be hindered, to some extent, by the diversity of backgrounds and competitive dynamics across countries. Notwithstanding, high concentration levels in the banking sector appear to be relatively common in many countries as shown in Figure 2,<sup>43</sup> with the Portuguese level of concentration of credit institutions' assets being among the highest.

48. We note, however, that Portugal has not experienced the substantial increases in the degree of concentration in banking that occurred in countries that have also undergone deep banking sector restructuring processes, such as Greece or Spain.

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<sup>42</sup> Honka, Elisabeth; Hortaçsu, Ali and Vitorino, Maria Ana (2017) "Advertising, consumer awareness, and choice: evidence from the U.S. banking industry" *RAND Journal of Economics*, 48(3): 611-646.

<sup>43</sup> The concentration based on total assets (CR5) in Figure 2 does not match the concentration value in Table 2. This is most likely due to the incomplete set of banks available in the information source of Table 2 (i.e. APB's dataset). In spite of this limitation, the APB's dataset allows us to disaggregate the data for different indicators (i.e. number of branches and client loans) and for a wider range of years than the ECB's database.

**Figure 2. International comparisons of concentration based on total assets (CR5)**

Note: CR5 –Share of total assets of the five largest credit institutions.

Source: AdC, based on Statistical Data Warehouse - European Central Bank.

49. In what concerns profitability, the unfavourable macroeconomic conditions that followed the financial crisis have contributed to a lower profitability in the Portuguese banking sector. In particular, between 2008 and 2016, the banking sector generated an accumulated loss of approximately €9 billion.<sup>44</sup>

50. We note the following highlights of the financial performance of the banking sector in Portugal since the beginning of the financial crisis:<sup>45</sup>

- The flow of new bank loans for house purchase increased in 2016 to levels close to those in 2011, although still far from those seen prior to the financial crisis;
- Increase on loan impairment costs<sup>46</sup> that according to the BdP is driven by the high level of non-performing assets;
- Low profitability of banks in the euro area, including Portuguese banks, that according to the ECB has been largely driven by the high level of impairments<sup>47</sup>;
- Decline of operational costs: since 2013, most financial institutions have made efforts to rationalize costs, specifically with resizing of branch network<sup>48</sup> and the reduction of the number of employees;<sup>49</sup>

<sup>44</sup> Banco de Portugal, *Financial Stability Report*, June 2017.

<sup>45</sup> For more details on the most recent financial performance indicators in the banking sector see Banco de Portugal, *Financial Stability Report*, June 2017.

<sup>46</sup> I.e., costs for credit and first party customer fraud losses.

<sup>47</sup> European Central Bank, *Financial Stability Review*, May 2017, available at

<https://www.ecb.europa.eu/pub/pdf/other/financialstabilityreview201705.en.pdf>

<sup>48</sup> According to the APB dataset, there was a total of 6,240 branches in 2010 and 4,454 branches in 2016, implying almost a 30% reduction of the branches in Portugal. We note, however, that the APB dataset does not include all banks in Portugal.

- Cost-to-income ratio remains unchanged at around 60%, despite the decrease in operational costs because of the decline in gross income; and
- Decline on the contribution of non-interest income to return on assets partially due to banks' strategies to collect resources from customers in the form of deposits.

51. These indicators suggest that the Portuguese financial institutions are still facing difficulties in boosting revenues, although there have been significant efforts in improving operational efficiency through the resizing of branch network and the reduction of the number of employees.

52. According to the IMF, there is still room to decrease operational costs as the Portuguese banking sector, as noted earlier, still has a dense branch network with 20% more branches (adjusted by population) than the euro area average, and 55% more bank employees (in percentage of bank assets) than the euro area average.<sup>50</sup>

53. We note, however, that an improvement of operational efficiencies can also be reached by incentivising institutions and markets to innovate, as digitalisation has the potential to lower cost of service.<sup>51</sup>

### 3.2. Concentration and profitability in the Portuguese insurance sector

54. The Portuguese insurance sector has also been subject to domestic consolidation in terms of market structure, as Table 3 highlights. Important events in the banking sector, such as the resolution of the Portuguese bank BES, have contributed to relevant changes in the ownership of some insurers, in particular with the strengthening of foreign shareholder control in the Portuguese insurance sector.

55. The insurance sector faced a significant merger and acquisition activity that persisted in 2016 and that has led to less insurers being integrated in banking groups:

- Fidelidade, formerly controlled by the Portuguese national bank CGD is now controlled by the Chinese private equity group Fosun;
- Tranquilidade, formerly part of Novo Banco and now controlled by the US private equity group Apollo; and
- Ocidental, formerly controlled by Millennium BCP banking group, is now controlled by the insurance group Ageas.<sup>52</sup>

56. In spite of this recent activity and its impact on the degree of ownership of banks on the insurance sector, banks are still an important distribution channel for insurance

<sup>49</sup> According to the APB dataset, there was a total of 56,844 employees in 2010 and 46,069 employees in 2016, implying almost a 20% reduction in the number of employees in the banking sector in Portugal. We note, however, that the APB dataset does not include all banks in Portugal.

<sup>50</sup> IMF, *Portugal Selected Issues*, September 2017, IMF Country Report No. 17/279, available at <http://www.imf.org/~media/files/publications/cr/2017/cr17279.ashx>

<sup>51</sup> See, e.g., European Central Bank, *Financial Stability Review*, May 2017.

<sup>52</sup> Ageas is one of the largest insurers in Belgium (both present in life and non-life segments). Besides Portugal and Belgium, Ageas is also present in other countries in Europe (UK, France, Luxembourg, Italy and Turkey) as well as in Asian countries.

products, especially in the life insurance segment with 56% share in the structure of the distribution channels in 2016, roughly the same as in 2012 (57%).<sup>53</sup>

**Table 3. Main events in the Portuguese insurance sector structure**

Date	Event
September 2009	Lusitania acquires Real Seguros
November 2009	Global Companhia de Seguros is acquired by Rentipar Seguros
April 2011	Exclusive control of (i) non-life risk coverage of a specific portfolio of insurance contracts of American Life Insurance Company by CNP Vida Seguros y Reaseguros and (ii) life risk coverage of the same portfolio of insurance by CNP Barclays Vida y Pensiones
April 2012	BES acquires 50% of BES-Vida Companhia de Seguros share capital in Crédit Agricole Assurances
May 2014	The Portuguese State sells part of Caixa Seguros e Saúde group (via the national bank CGD) to Fosun International. Caixa Seguros includes Fidelidade, Multicare and Cares
June 2014	Ageas Group acquires Ocidental and Médis of the non-life segment previously controlled by the banking group Millennium BCP
September 2014	A company controlled by the affiliate investment fund of Apollo Global Management acquires Companhia de Seguros Tranquilidade, previously owned by Novo BancoCOSEC (Companhia de Seguros de Créditos) acquires the assets of the credit insurance business of MAPFRE Seguros Gerais
December 2015	Bankinter Seguros de Vida acquires Barclays, Vida y Pensiones Compañía de Seguros, branch in Portugal
April 2016	Ageas (that also includes Ocidental) acquires Portuguese operations of AXA Portugal Companhia de Seguros, AXA Companhia de Seguros de Vida and AXA Global Direct Seguros y Reaseguros?
December 2016	ASF, the Portuguese insurance regulator, authorises the incorporation of Açoreana Seguros and T-Vida – Companhia de Seguros into Tranquilidade (resulting in the consolidation of Tranquilidade, T-Vida, Logo Seguros e Açoreana)ASF authorises Tranquilidade to change the name company to “Seguradoras Unidas, S.A.”Real Vida Seguros acquires Finibanco Vida

57. In 2016, there was a total of 73 insurers operating in the Portuguese insurance sector, of which 30 were branches of foreign insurers, compared to 79 insurers in 2012, of which 37 branches of foreign insurers.<sup>54</sup> These differences relate significantly to mergers and the reorganisation of international financial groups.

58. Table 4 displays data on the market structure of the different lines of life and non-life insurance segments. The non-life segment is less concentrated than the life segment, and overall the insurance sector seems to be less concentrated than the banking sector. There is, however, significant variation across the different lines of both life and non-life insurance segments also driven by the fact that the number and types of insurers differ across the different lines.

59. In 2016, the five largest providers in the overall life insurance segment were Fidelidade, Ocidental Vida, BPI Vida, Santander Totta Seguros and Allianz Portugal; whereas in the overall non-life segment the five largest providers were Fidelidade, Seguradoras Unidas, Allianz Portugal, Ocidental and Liberty Seguros.

<sup>53</sup> The share of the banks as a channel in the life insurance segment excludes retirement savings plans. Banks are not as relevant in non-life insurance products. Data is obtained from the ASF’s statistics that calculate shares using the premia of direct insurance. The ASF’s statistics are available at <http://www.asf.com.pt/NR/exeres/34CBFBFE-40B5-4ECF-AA75-5934E13A57E4.htm>.

<sup>54</sup> ASF’s statistics.



**Table 4. Concentration in Portugal's insurance sector (production of direct insurance)**

Line	2013		2014		2015		2016	
	CR5	HHI	CR5	HHI	CR5	HHI	CR5	HHI
<i>Life insurance segment (total)</i>	80%	1620	80%	1674	79%	1785	75%	1868
Life insurance	80%	1620	80%	1677	79%	1785	75%	1868
Retirement savings plans	90%	2566	90%	2865	93%	3107	91%	3281
Insurance contracts	64%	1086	71%	1890	64%	1236	53%	919
Investment contracts	90%	2566	90%	2865	93%	3107	91%	3281
<i>Non-life insurance segment (total)</i>	56%	1029	55%	1005	55%	1020	64%	1195
Accidents & health	62%	1159	62%	1133	62%	1154	68%	1301
Fire and other damage	60%	1238	60%	1215	60%	1205	67%	1305
Motor	60%	1058	59%	1044	59%	1061	71%	1309
Transport	80%	1748	80%	1646	81%	1788	88%	2074
General third-party liability	66%	1230	65%	1193	64%	1186	71%	1327
Sundry	55%	825	56%	824	58%	854	62%	963

*Note:* The life insurance segment produces a wide range of financial products, such as life insurance, pensions and annuities and products that combine insurance and saving elements. The non-life insurance segment produces products that protect against damage or loss from a particular event.

*Source:* AdC's calculations based on the production of direct insurance of the member institutions of the Portuguese Association of Insurers, that includes almost the entire insurance sector (more than 99% of turnover).

60. The impact of the financial crisis was extended to the insurance sector. From 2009 to 2016, the production of direct insurance decreased, on average, 3.9% per year (of which 4.3% in the life segment and 0.3% in the non-life segment, though we note that in 2016 the life segment represented 61.4% of the total production of direct insurance).<sup>55</sup> The total workforce dropped by 16% from 2010 to 2017 in order to reduce operation costs.<sup>56</sup> To this respect, we note that, and similarly to the banking sector, innovative technology developments may contribute to further reduce costs, premia and develop new products/services that better meet consumer demands.

61. Along with the wave of consolidation in the Portuguese insurance sector, there have been legislative changes at the European level that have had an impact on the profits and solvency of the insurance sector in Portugal.<sup>57</sup> In particular, in 2016, the new statutory framework (Solvency II Directive) introduced changes in terms of prudential

<sup>55</sup> Statistics from the Portuguese Association of Insurers (APS).

<sup>56</sup> Insurance Europe Data and AdC's calculations.

<sup>57</sup> In addition to the Solvency II Directive, future changes at the European level in the insurance sector are expected, which in turn will affect the Portuguese insurance sector. These changes include the Packaged retail investment and insurance products (PRIIPs) Regulation on the key information for packaged retail and insurance-based investment products, and the Insurance Distribution Directive designed to ensure a level playing field across all participants selling insurance products, both of which are expected to enter into force in early 2018.

supervision of insurers, including capital requirements, which so far has translated into the following with respect to capital requirements:<sup>58</sup>

- The coverage ratio of the solvency capital requirement of the insurers supervised by ASF, at the end of 2016, was 154%, which represents an increase of 26 percentage points relative to the beginning of 2016;<sup>59</sup> and
- The minimum capital requirement ratio of all supervised insurers by ASF, at the end of 2016, was 428%, which represents an increase of 41 percentage points relative to the beginning of 2016.<sup>60</sup>

62. Similarly to the banking sector, these requirements are important in order to ensure financial soundness in the sector. In addition, the Solvency II Directive aims at minimising the differences in regulation across EU member states which may increase cross-border activity due to lower regulatory entry barriers.

63. We note, however, that these requirements may also negatively affect competition since insurers must have the required equity in advance. Hence, it is crucial to assess the impact on competition of this new regime and whether there is proportionality of capital regulation in all lines of both life and non-life insurance segments.

### 3.3. Barriers and contestability

64. In the financial sector, there are barriers that affect competition both at the supply and demand side. At the supply side, examples include regulatory barriers (e.g. compliance), scale economies and heterogeneity of products and their complexity; whereas at the demand side examples include high search and switching costs and the lack of financial literacy of consumers.

65. Ensuring entry and expansion of firms in the market will often stimulate competition. If firms face significant difficulties in entering or expanding, incumbent or larger firms will not face the threat of new firms, which can reduce their incentive to reduce costs, innovate and price competitively to retain and attract customers.

#### 3.3.1. *Transparency and switching*

66. In a well-functioning market consumers are more likely to respond to variations in prices and quality of service. The transparency of information in the market is likely to have implications for dynamic competition. The more informed consumers are, in the absence of collusion, the more competition in the market, as better informed consumers can optimize their choices of consumption.

67. Opacity of information and search costs are likely to create consumer inertia, and consequently, search costs can constitute entry and/or expansion barriers due to the difficulties of new operators attracting consumers. When faced with a price increase by the current supplier (or a reduction in the price of alternative suppliers), consumers

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<sup>58</sup> Solvency II is a EU Directive that entered into force on 1 January 2016. This new statutory framework introduced measures in the following areas: (i) risk-based capital requirements; (ii) market-based valuation of assets and liabilities; (iii) governance and risk management; (iv) external reporting; and (v) harmonised regulations in Europe.

<sup>59</sup> Based on information presented by the ASF in the Parliament, in July 2017.

<sup>60</sup> Based on information supported by the ASF in the Parliament, in July 2017.

incorporate in their decision the cost associated with changing supplier. Hence, search costs reduce consumer sensitivity to price changes.<sup>61</sup>

68. The main changes relating to transparency of information in the financial sector, and in particular in banking, have been introduced in 2008/2009 following the joint market study in retail banking in Portugal undertaken by the AdC and the BdP, which led to the report “Mobility in the Retail Banking Sector in Portugal” issued in December 2009.<sup>62</sup>

69. This market study analysed the degree of mobility of retail banking clients in Portugal, including individual consumers and small and medium enterprises (SMEs). It also identified factors that may constitute barriers to searching and switching within the banking sector.

70. The market study reached a number of conclusions regarding the negative impact of search and switching costs. In particular, the study showed that the degree of mobility in Portuguese retail banking, measured by the churn rate,<sup>63</sup> was low and lower than the European average for both private consumers and SMEs. Accordingly, the average longevity of the client/bank relationship was found to be higher than the European average.

71. The market study identified relevant measures to (i) promote information transparency and comparability; (ii) to limit the closing costs, in particular commissions on the early repayment of mortgage and consumption loans; and (iii) to promote financial education in order to promote financial literacy.

72. Starting in 2008/2009, a number of initiatives have been undertaken in order to improve information transparency and comparability and to promote financial literacy in the retail banking market. For example,

- The BdP updated the information requirements of credit institutions in relation to the disclosure of comparable price and product features information. These regulations made it compulsory for credit institutions to list the interest rates and other price items, such as the maximum level of fees, commissions and other charges. The price lists of credit institutions must be composed of a leaflet of commissions and charges and a leaflet of interest rates.<sup>64</sup>
- The BdP has also intervened in information requirements in advertising campaigns (e.g. media, leaflets, emailing), which can have an important impact on consumers’ search and choice of supplier and product.

<sup>61</sup> Autoridade da Concorrência, Horizontal Merger Guidelines: “Linhas de Orientação para a Análise Económica de Operações de Concentração Horizontais” available in Portuguese at [www.concorrenca.pt/vPT/Noticias/Eventos/ConsultasPublicas/Documents/Linhas%20de%20Orienta%C3%A7%C3%A3o%20para%20a%20An%C3%A1lise%20Econ%C3%B3mica%20de%20Opera%C3%A7%C3%B5es%20de%20Concentra%C3%A7%C3%A3o%20Horizontais.pdf](http://www.concorrenca.pt/vPT/Noticias/Eventos/ConsultasPublicas/Documents/Linhas%20de%20Orienta%C3%A7%C3%A3o%20para%20a%20An%C3%A1lise%20Econ%C3%B3mica%20de%20Opera%C3%A7%C3%B5es%20de%20Concentra%C3%A7%C3%A3o%20Horizontais.pdf)

<sup>62</sup> Autoridade da Concorrência e Banco de Portugal, *Mobilidade na Banca a Retalho em Portugal*, Dezembro de 2009, available in Portuguese at [www.concorrenca.pt/SiteCollectionDocuments/Estudos\\_e\\_Publicacoes/Banca\\_e\\_Seguros/01\\_MobilidadeBanca\\_Dez2009.pdf](http://www.concorrenca.pt/SiteCollectionDocuments/Estudos_e_Publicacoes/Banca_e_Seguros/01_MobilidadeBanca_Dez2009.pdf)

<sup>63</sup> Based on the AdC/BdP 2009 market study, the churn rate is a simple average between the opening rate and the closing rate of current account deposits (DD). For more details see: Autoridade da Concorrência e Banco de Portugal, *Mobilidade na Banca a Retalho em Portugal*, Dezembro de 2009.

<sup>64</sup> These must be in line with a standardised model <https://www.bportugal.pt/instrucao/212009>

- A Bank Customer website (“Portal do Cliente Bancário”)<sup>65</sup> was created, which provides information on price lists of all supervised institutions and most recently, the BdP has made available a comparison website on fees applicable to payment accounts.<sup>66</sup>
- In 2015, a new information requirement was introduced via Law 66/2015.<sup>67</sup> This law requires financial institutions to annually send to all clients with a current account, at no extra cost, an invoice-receipt discriminating commissions and expenses from the previous civil year. Since the implementation of this requirement, the BdP has issued 30 recommendations reinforcing the obligation to issue the invoice-receipt.<sup>68</sup>

73. A number of initiatives regarding transparency of information have also been undertaken in the insurance sector. In particular, we note the following, that were highlighted by the ASF in its contribution to this note:

- A number of rules regarding the disclosure of information on commissions and profitability were introduced in 2008 relative to retirement savings funds that finance retirement savings plans in the form of autonomous funds in the life insurance segment,<sup>69</sup>
- In 2009, the ASF established the principles applicable to the financial reporting of insurance or reinsurance intermediaries and the principles applicable to market conduct;<sup>70</sup> and
- In 2010, the ASF established the principles and rules to be observed by insurance companies, insurance intermediaries and pension fund managers in their advertisement.<sup>71</sup>

74. In addition, in 2011, the CNSF developed a number of initiatives including the National Plan for Financial Education that applies to the financial sector.<sup>72</sup> As part of this plan, the Ministry of Education in partnership with the financial regulators developed a financial education benchmark, aimed at providing knowledge and skills in areas such as budget planning and management, savings and indebtedness.

75. We note, however, that, theoretically, there might be additional costs to switching that do not necessarily relate to transparency of information and financial literacy from consumers. For instance, termination and early repayment fees and the loss of fiscal benefits from switching can act as significant switching costs.

<sup>65</sup> See [cliente.bancario.bportugal.pt/pt-PT/DireitosdosClientes/DireitoInformacao/Precarios/Paginas/Precarios.aspx](http://cliente.bancario.bportugal.pt/pt-PT/DireitosdosClientes/DireitoInformacao/Precarios/Paginas/Precarios.aspx).

<sup>66</sup> See <http://cliente.bancario.bportugal.pt/pt-PT/Paginas/ComparativoComissoes.aspx>. This Website also has a set of tools that allows for the improvement of consumers banking literacy.

<sup>67</sup> This is an amendment of the Decree-Law No. 27-C/2000.

<sup>68</sup> Banco de Portugal (2017), *Relatório de Supervisão Comportamental 2016*, available in Portuguese at [https://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/rsc\\_2016\\_pt.pdf](https://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/rsc_2016_pt.pdf)

<sup>69</sup> Regulatory Standard Norm no. 15/2008 -R, of December 4.

<sup>70</sup> Regulatory Standard no. 15/2009 -R, of December 30 and Regulatory Standard No. 10/2009 -R, of June 25.

<sup>71</sup> Regulatory Norm no. 3/2010 -R, of March 18.

<sup>72</sup> See <http://www.todoscontam.pt/>

76. To this matter, we note the recent legislative initiative, Law 106/2017, of 4 September 2017, aiming at reducing households' debt. There are two relevant points in this law for our discussion on switching: (i) the interest rate paid from mortgage credit contracts signed following the beginning of 2013 are not considered for tax purposes; and (ii) a transfer of a mortgage loan to another institution is defined as a new credit agreement. This may result in a switching cost for consumers with mortgage loans prior 2013, because switching credit institutions would imply the loss of fiscal benefits associated with positive interest rates of mortgage loans.

77. Data that would allow calculating churn rates (the indicator of degree mobility used in the AdC and BdP market study) is not readily available for evaluating the changes in the banking sector vis-à-vis the levels found in the market study. We note, however, the following information related to customer mobility:

- Using the 2015 database of Consumer Markets Monitoring Survey<sup>73</sup>, a large majority of the respondents had the perception that switching bank accounts and bank services is easy in Portugal, in line with the European average. When compared to previous waves of this survey, the perceived ease of switching has slightly increased. Nonetheless, only roughly 7% of the respondents from the 2015 survey have switched bank accounts or services, below the European average, and compared to previous waves of this survey, the number of respondents who reported having switched banks in the past has not increased. It should also be noted that the vast majority of retail banking clients do not hold a securities portfolio,<sup>74</sup> which has reportedly been more difficult or more costly to transfer when switching banks.
- Bonfim et al (2017),<sup>75</sup> using a dataset on loans to private non-financial firms by all commercial banks in Portugal between June 2012 and May 2015, found that at least 17.6% of the sample switched at least once, corresponding to 5.9% per year.<sup>76</sup>

78. This indicates that there is still space for improving customer response engagement which in turn can lead to lower barriers to entry and/or expansion. Increased transparency in the market as a result of sharing price information to consumers can indeed increase consumer welfare via consumer choice improvement.

79. It is important, however, to ensure that the availability of information does indeed help eliminating search and switching barriers such that efficiency gains are generated.

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<sup>73</sup> See European Commission (2015), 'Consumer Market Monitoring Survey', available at [http://ec.europa.eu/consumers/consumer\\_evidence/consumer\\_scoreboards/market\\_monitoring/index\\_en.htm](http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/market_monitoring/index_en.htm).

<sup>74</sup> Less than 10% of Portuguese households held a securities portfolio in 2009, according to CMVM (Profile of the Portuguese Retail Investor): <http://www.cmvm.pt/pt/EstatisticasEstudosEPublicacoes/Estudos/Documents/EstudoCMVM0320093.pdf>

<sup>75</sup> Bonfim, Diana, Gil Nogueira, and Steven Ongena, (2017), "Sorry, We're Closed: Loan Conditions When Bank Branches Close and Firms Transfer to Another Bank".

<sup>76</sup> The study also found that switching loans had interest rates that were on average 58 basis points lower than non-switching loans. However, the significant number of branch closures during the period under analysis offset this effects such that there was little difference between the interest rates of the switching and non-switching loans, for those loans obtained right after the branch closure.

However, exchange of information may also lead to restrictions of competition. In this topic, we note that the AdC is currently investigating fifteen banking institutions on suspicion of a concerted practice, in the form of exchange of sensitive commercial information, regarding the supply of credit products in the banking system, consumer credit, corporate credit and mortgage loans.

80. Nonetheless, vertical information transparency – i.e., along the value chain, is less likely to lead to competition concerns than horizontal transparency. It is often the case that information is opaque to consumers – who may have difficulties interpreting complex pricing structures – while transparent amongst market players – who are able to fully understand their competitors' prices.

### *3.3.2. Financial innovation*

81. The level of innovation provides further indication of competitive pressure in a financial system since high levels of innovation signal competition to provide new products/services valued by consumers. This has been particularly relevant in the financial sector where innovation developments have been made.

82. Financial innovation has the potential to lower the costs of services for end-users, increase the quality of the financial services and boost economic performance.

83. Portugal has a sophisticated network, shared by all banks, which fully integrates automated teller machines (ATMs). Information about the penetration of ATMs indicates that there were, in 2016, 1466.3 ATMs per million inhabitants in Portugal, a level higher than that in France (with 874.7 ATMs per million inhabitants) and the UK (with 1067.8 ATMs per million inhabitants).<sup>77</sup> Hence, Portugal has a relatively dense network of ATMs when compared to other countries.

84. The main ATM interbank network in Portugal is owned and operated by SIBS, which links the ATMs of the different banks in Portugal. SIBS is owned by a significant number of banks operating in Portugal. End-consumers are not charged directly for ATM services, including cash withdrawal or bill payments. The costs are borne by financial intuitions, including banks, schemes, and infrastructure providers that supply these payment services.

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<sup>77</sup> European Central Bank, Statistical Data Warehouse.

85. Recently, the AdC analysed a merger involving SIBS which was initially deferred to an in-depth investigation and later withdrawn by SIBS when the AdC issued an S.O. to the merger. (see Box 1).

#### **Box 1. Merger SIBS/Ativos Unicre**

In July 2017, the AdC issued a draft decision (S.O.) blocking the purchase of Unicre – Instituição Financeira de Crédito, S.A. (Unicre) by SIBS, SGPS, S.A. (SIBS), following an in-depth investigation of the merger.

SIBS is the holding company of the SIBS Group which holds equity interests in several companies specializing in service areas in the electronic payments sector, including, in particular, the processing, management and maintenance of networks and payment solutions, as well as management of payments system under the MB (Multibanco) brand.

The assets targeted by the merger related to Unicre's merchant acquiring business area, under the Redunicre brand, which designs and commercializes solutions for accepting payments in shops, both physical and virtual, with payment cards from the main national and international payment systems, including, among others, MB, Visa and MasterCard.

After a phase II investigation, the AdC concluded that the merger would strengthen barriers to entry and weaken competition in the market, and would ultimately contribute to the creation of a monopoly in Portuguese payment system market.

Throughout the process, SIBS put forward to the AdC several attempted solutions and arguments to seek approval for the merger. However, the analysis undertaken by the AdC allowed concluding that the remedies offered by SIBS were not adequate nor sufficient to compensate for the merger's negative effects on competition.

On the same day of the AdC's announcement, SIBS withdrew the proposal of purchase.

86. Innovations related to the processing of transactions based on information technology such as online banking have also reduced costs and allowed new products and services to be offered to consumers. Information about online bank penetration in Portugal shows that, in 2016, 29% of individuals used the internet for online banking whereas in the survey wave of 2007, only 12% of individuals used online banking.<sup>78</sup>

87. Despite the significant improvements in terms of innovation in the financial sector, FinTech<sup>79</sup> nonetheless faces a set of barriers to entry and expansion that may prevent the society from fully appropriating the benefits of innovation in financial services.

<sup>78</sup> Statista website, available at <https://www.statista.com/> accessed on 11/10/2017.

<sup>79</sup> Most recently, these financial innovation developments have been referred as “FinTech”. The Financial Stability Board (FSB) defines FinTech as “technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services” (FSB, “*Financial Stability Implications from FinTech, Supervisory and Regulatory Issues that Merit Authorities’ Attention*”, June 2017, available at [www.fsb.org/wp-content/uploads/R270617.pdf](http://www.fsb.org/wp-content/uploads/R270617.pdf)).

88. There is the risk that incumbents may seek to strategically hamper the FinTech potential. Innovators may impact on the established market positions of long standing incumbents, thus creating incentives for incumbents to protect their position in the market. Hence, it is crucial to ensure the potential benefits from innovation are not hindered by strategic barriers to entry and competition. This is in line with some risks identified by competition authorities around the globe. For example, in a stakeholders workshop promoted by the Canadian Competition Bureau<sup>80</sup>, the main barriers to entry identified related to consumer trust issues, access to data and infrastructure, scale and a complex and dated regulatory environment. Regarding access to data, stakeholders highlighted that “*start-up FinTech firms need to interact with the legacy or operating/infrastructure systems of incumbents, who may not want to allow for that interaction even if the customer consents*”.<sup>81</sup>

89. The recent dawn raids carried out by the EC in some Member States are illustrative of the risk of strategic barriers to entry. The EC’s unannounced inspections in October 3, 2017 regarded online access to bank account information by competing service providers, on concerns that banking associations allegedly engaged in anti-competitive practices aimed at excluding non-bank owned providers of financial services by preventing them from gaining access to bank customers’ account data, despite the consent that had been given by the customers.<sup>82</sup>

90. Regulatory barriers to entry may also hinder the FinTech potential, if not swiftly and adequately adjusted. In the last years, the financial crisis has raised new challenges due to the regulatory tightening. Indeed, the innovation developments in the financial sector poses important challenges as to the rules established for the sector.

91. Again, these risks have been identified in some studies/public consultations. In the stakeholders workshop promoted by the Canadian Competition Bureau, one of the aspects highlighted by the stakeholders related to the different perspectives of sector regulators and the resistance of incumbents to change standards and regulations that may de facto allow entrants into the market. The UK CMA, in its recent investigation on retail banking services (August, 2016), identified the need to intervene for speeding up the pace of adoption of Application Programming Interfaces, and imposed a timeframe for banks to adopt and maintain a common open standard and require data sharing through them<sup>83</sup>.

92. International and domestic sector regulators are well aware of the threats and opportunities posed by financial innovation. As noted by the BdP’s contribution to the present paper,<sup>84</sup> the BdP, the European Central Bank (ECB) and the EBA have engaged in this debate.<sup>85</sup>

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<sup>80</sup> The Competition Bureau launched a market study into technology-led innovation in the Canadian FinTech sector in May 2016.

<sup>81</sup> Available at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04208.html>.

<sup>82</sup> See [http://europa.eu/rapid/press-release\\_MEMO-17-3761\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-3761_en.htm).

<sup>83</sup> <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>.

<sup>84</sup> See Annex I – Contribution from *Banco de Portugal*.

<sup>85</sup> For example, the BdP organised a workshop on “Digital Banking and FinTech: Challenges and Threats for the Banking System” in 4 October 2016 and a conference “Financial Innovation Day” in 30 January 2017. More recently, in 4 August 2017, the EBA published a discussion paper on its



93. On 23 March 2017, the EC launched a public consultation on “*FinTech: a more competitive and innovative European financial sector*”,<sup>86</sup> with the aim of collecting stakeholders’ views to input into the shaping of the EC’s approach towards technological innovation in financial services. Stakeholders acknowledged the opportunities associated with FinTech, namely in terms of efficiency and competition, while simultaneously highlighting the risks in terms of cybersecurity, the use and control of data, as well as money laundering.

94. In terms of regulatory approach, respondents to the EC’s public consultation defended that technological neutrality, proportionality and integrity were the right principles to guide the EU policy and regulatory approach to FinTech activities and the “same activity, same rule” principle to ensure a level playing field between all market participants.

95. This has not yet led to the issuance of specific regulation or to the definition of supervisory practice focused in these activities, except in the area of authorisation.<sup>87</sup> In this respect, the BdP emphasises that there is still some controversy in the EU, specifically in what concerns the creation of the so-called regulatory “sandboxes”,<sup>88</sup> a matter for which the ECB has not issued a stance yet.

96. Increased cooperation will be particularly important to mitigate the risk of fragmentation or divergence in regulatory frameworks, which could impede the development and diffusion of beneficial innovations in financial services, and limit the effectiveness of efforts to promote financial stability.

97. Nonetheless, we note the following highlights regarding recent regulatory changes that can affect financial innovation developments in Portugal:

- *Opening of bank deposit accounts using remote channels*: in June 2017, the BdP allowed the opening of bank deposit accounts exclusively through digital channels (online and mobile), i.e. without the customer’s physical presence at the bank’s premises.<sup>89</sup>

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approach to financial technology (FinTech), including a public consultation on EBA’s EU-wide FinTech mapping exercise and its proposals for future work on FinTech.

<sup>86</sup> European Commission (2017), *Summary of contributions to the 'Public Consultation on FinTech: a more competitive and innovative European financial sector'*, available at [https://ec.europa.eu/info/sites/info/files/2017-fintech-summary-of-responses\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2017-fintech-summary-of-responses_en.pdf)

<sup>87</sup> See European Central Bank, *Guide to assessments of fintech credit institution license applications*, September 2017, available at [https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/licensing\\_and\\_fintech/ssm.guide\\_on\\_assessment\\_for\\_licensing\\_of\\_fintech\\_credit\\_insts\\_draft.en.pdf](https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/licensing_and_fintech/ssm.guide_on_assessment_for_licensing_of_fintech_credit_insts_draft.en.pdf)

<sup>88</sup> According to the BdP’s contribution in Annex I, regulatory sandboxes are “*infrastructure set up in order to provide financial institutions and non-financial firms with a controlled space in which they can test innovative FinTech solutions with the support of an authority for a limited period of time, allowing them to validate and test their business model in a safe environment*”.

<sup>89</sup> According to BdP’s Notice No. 3/2017 and Instruction No. 9/2017. See also the BdP’s Press Release in 26 June 2017, available at <https://www.bportugal.pt/en/comunicado/banco-de-portugal-approves-opening-bank-deposit-accounts-video-conference-exclusively>.

- *Crowdfunding*:<sup>90</sup> this type of funding is defined in Law 102/2015 and by CMVM's Regulation 1/2016<sup>91</sup> (on equity and lending forms of crowdfunding).
- *Electronic money*: Directive 2009/110/EC on prudential supervision of electronic money institutions was transposed to Portuguese law via Decree-law 242/2012.

98. These regulatory changes aim at adapting the current regulatory framework to the recent financial innovation developments, while securing an appropriate degree of protection for consumers. We note, nonetheless, that it is important from a competition policy perspective to ensure that additional regulation is not disproportionate nor overly burdensome, so that it does not act as a barrier to new entrants in Portugal.

99. The advent of FinTech and InsurTech has brought challenges to traditional banking and insurance. This, in turn, has spurred competitive tension between those and more innovative entrants.<sup>92</sup> A number of barriers to entrance have been signalled by competition authorities in recent years<sup>93</sup>, including access to consumer transaction data and access to the incumbent banking infrastructure so as to provide consumers with seamless interoperability and faster transactions. Another significant barrier to be consistently signalled is the uncertainty around regulation, in particular when it takes long to materialise (possibly enabling incumbents to internalise innovation ahead of its younger competitors), and the sometimes cumulative burden that arises from legislation that has not been adapted to innovation in the sector. Barriers to mobility (or switching) have also been tackled by competition authorities, by recommending an easier comparison among banking products and services, but also an easier switching of funds through a single provider.

### 3.3.3. *Banking regulation and information*

100. Prudential regulators require financial institutions to meet a number of regulatory standards in order to enter the sector and a number of ongoing requirements to demonstrate that they are financially sound and have high standards of conduct. The Portuguese prudential banking regulation, as its EU and Euro area peers, includes entry requirements, rules of conduct and disclosure of information rules to all products and services (current accounts, time deposits, payment services, consumer credit and mortgages).

101. With the financial crisis, regulation has become stricter than shortly before the crisis in order to secure financial stability. According to Philippon (2017)<sup>94</sup>, before the

<sup>90</sup> See UK FCA's definition of crowdfunding: "a way in which people and businesses (including start-ups) can try to raise money from the public to support a business, project, campaign or individual." This may take the form of a loan, an investment, a donation, among others: <https://www.fca.org.uk/consumers/crowdfunding>

<sup>91</sup> CMVM Regulation 01/2016 on equity and lending crowdfunding: <http://www.cmvm.pt/pt/Legislacao/Legislacaonacional/Regulamentos/Documents/REGULAMENTO%20CMVM%201-2016.pdf>. However, this regulation has to date not yet come into force.

<sup>92</sup> See the EC's antitrust investigation on access to bank account information in October 2017: [http://europa.eu/rapid/press-release\\_MEMO-17-3761\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-3761_en.htm)

<sup>93</sup> See, for example, the Canadian Competition Bureau's report of May 2017 in: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04208.html> and the UK CMA's report of August 2016 in: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/544942/overview-of-the-banking-retail-market.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544942/overview-of-the-banking-retail-market.pdf)

<sup>94</sup> Philippon, Thomas (2017) "The FinTech Opportunity", BIS Working Papers No 655.

financial crisis, banking regulation was mostly based on risk-weighted assets ratios that were set at low levels. Currently, (i) risk-weighted assets ratios are higher; (ii) there are several metrics (e.g. liquidity ratios); (iii) there are surcharges for systemically important financial institutions and systemic risk regulation extends beyond banking; and (iv) there are stress tests from regulators.

102. This regulatory tightening has been relevant to ensure sustainability of the financial system, but it can place regulatory constraints that combined with powerful incumbents can limit competition among financial institutions and potential entrants. In particular, funding advantages of TBTF entities can constitute a regulatory barrier to entry and expansion of smaller banks, as argued by Vives (2016).<sup>95</sup>

103. In addition, with financial stability as a primary goal in many countries, together with a strong view of the positive association between market power and bank-level stability, central banks fostered policies to ensure financial stability and enhance banks' profitability, while restricting competition.

104. In Portugal this has led, for example, to specific regulatory initiatives undertaken by the BdP in 2010, and later reinforced in 2011 and 2012 that aimed at introducing a *de facto* cap or maximum limit on the interest rates in deposits accounts.<sup>96</sup> In fact, banks were given an incentive (through penalties on their capital requirements) not to exceed the reference interest rate (e.g. Euribor 6mo). Until 2012, only term deposits were subject to such penalties as determined by the BdP. As of April 2012 (through Instruction 16/2012), all deposits and similar operations that rose funds from clients (including deposit certificates) were brought within the remit of BdP's instruction. Later, in April 2017, the BdP revoked through Instruction 6/2017 previous regulatory initiatives related to limiting interest rates in deposit accounts.

105. In a similar initiative, in Spain, the central bank allegedly made informal verbal request to banks for establishing a hard cap through a limit on interest rates on term deposits<sup>97</sup>.

106. Also related to the matter of caps and floors in the banking sector, it is relevant to discuss the recent regulatory initiatives in the mortgage market given its importance to the sector. This includes the transposition of the Mortgage Credit Directive to the Portuguese law via the Mortgage Decree-Law, as explained in Box 2.

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<sup>95</sup> Vives (2016) *Competition and stability in banking: The role of regulation and competition policy*. Princeton: Princeton University Press.

<sup>96</sup> Bank of Portugal's Notice 6/2010, Instruction 28/2011 and Instruction 16/2012.

<sup>97</sup> According to PaRR news, 16 January, 2013.

### Box 2. Mortgage Decree-Law

Decree-Law 74-A/2017, of 23 June 2017 (Mortgage Decree-Law) partially transposes Directive 2014/17/UE (Mortgage Credit Directive).

This decree-law concerns the regime of loan agreements for the purchase of property and will enter into force on 1 January 2018.

The Mortgage Decree-Law introduces measures for the promotion of a responsible granting of credit and intervention of an independent evaluator expert. It also defines specifications for the provision of pre-contractual information and computation of the annual percentage rate of charge (APRC). In particular, it states that the contracting of financial instruments to limit the interest rate risk of the mortgage must be included in an autonomous document to the credit contract.

107. Prior to the publication of the Mortgage Decree-Law, in April 2017, the Portuguese Association for Consumer Protection (DECO) stated that certain banks imposed an implicit floor or minimum interest, so as not to apply negative interest rates to housing credit contracts.<sup>98</sup>

108. In Portugal, the interest rate of the majority of mortgage contracts is obtained through the sum of the spread and an index, usually Euribor 3, 6 or 12 months. When Euribor rates decrease, the interest rate paid by consumers is smaller because of the fixed spread. Theoretically, because spreads can be relatively small, mortgage rates may be negative and thus consumers may receive interest on their loan.

109. BdP's circular 26/2015/DSC states that financial institutions should not impose a minimum in the Euribor index in ongoing credit contracts (even if negative). However, following the decrease of Euribor 6mo to negative rates in early 2016, the BdP - in statements made in Parliament in April 2016<sup>99</sup> - advocated a restrictive understanding of this Circular, opening the door for banks to impose a zero floor.

110. The Mortgage Decree-Law does not introduce an explicit minimum to the interest rate in mortgage loan contracts, but it does not also explicitly prohibits a zero floor.

111. Clear contractual information is crucial so that consumers can act on their best interest. Hence, this apparent lack of clarity in the regulation is likely to act as a barrier to accessing and assessing information. That is, it may impact negatively on consumers' ability to access information about the various products available in the market and to assess them so as to identify the best-value option, thus potentially affecting the conditions for competition.

<sup>98</sup> See DECO's press release on 20/04/2017 in: <https://www.deco.proteste.pt/institucionalemedia/imprensa/comunicados/2017/euribor-negativa-2004>

<sup>99</sup> See BdP's intervention in a parliamentary hearing, 27.04.2016, available in Portuguese at <https://www.bportugal.pt/sites/default/files/anexos/documentos-relacionados/intervpub20160427.pdf>

#### 4. Concluding remarks

112. The financial crisis that started in 2007 and its aftermath constituted a shock to competition in the financial sector. The Portuguese banking and insurance sectors have become increasingly concentrated since the beginning of the crisis, with the implementation of regulations that contributed to larger banks. The Portuguese insurance sector suffered from the cascading effect of the crisis given the strong interrelation between banking and insurance sectors.

113. Ensuring stability in the financial sector was a key consideration for policy makers, even if that had negative impacts on competition. This led to TBTF and other associated policies which created barriers to entry and expansion and high levels of concentration. Policy options have often been embedded with a misperception that competition could hurt financial stability, and that circumventing competition principles to allow for higher profitability for banking firms would deliver a more resilient banking sector.

114. Ten years on from the financial crisis, the low for long interest rate environment that has persisted since 2011 prompted prudential regulators concerns with solvency, which may often lead to a tension between prudential regulators recommendations, incentives for price increases or sector mergers, and the competition principles – at the core of competition authorities' concerns.

115. This contribution highlights that this view lacks theoretical and empirical support (which is, at most, mixed), while potentially strengthening moral hazard problems in the sector. We further argue that conciliating competition concerns and financial stability requires a more balanced approach in favour of the former. Advocacy by competition authorities can play a key role in clarifying established myths and misperceptions regarding the relationship between competition and stability.

116. An effective and efficient regulatory framework for the financial sector should be guided by economic principles and implemented in order to correct market failures. By resolving the problems of information asymmetries, banks are able to efficiently intermediate the funds from depositors to borrowers, contributing to economic growth. Competition should be regarded as an important tool to deal with problems in the banking sector, including those introduced by the TBTF policies.

117. The new wave of financial innovations may help increase efficiency in the sector and decrease concentration rate. Competition policy, with its varied toolbox, must ensure that these emergent technologies do not face unnecessary barriers to entry, of either a regulatory or strategic nature. The main barriers that have been highlighted by stakeholders and competition authorities relate to access to consumer transaction data and access to the incumbent banking infrastructure. On the one hand, it is thus crucial that competition authorities are wary of the risk of mergers or anticompetitive behaviour aimed at hindering entry and innovation. On the other hand, competition advocacy for efficient regulation can be central in unshackling the potential of innovation in the financial sector.

## Annex I – Contribution from *Banco de Portugal*

A process of financial deregulation, including widespread privatization and the lift of barriers to entry, took place starting in the 1980's in all OECD countries. The liberalization in the Portuguese market was completed in the mid-nineties when the bulk of privatizations had been undertaken.

However, an international-wide re-regulation process took place following the outburst of the international financial crisis in 2008, aiming at providing the financial sector with appropriate cushions against possible severe adverse shocks. In fact, the regulation prevailing until then proved to be too lenient in certain cases, allowing banks to operate with inadequate liquidity buffers and insufficient capital for the actual risks taken namely in terms of quality and quantity. In addition, governance issues were also addressed as moral hazard related with low levels of commitment of shareholders. Finally, a macro-prudential dimension was adopted with the introduction of new harmonized instruments, as, for instance, the counter-cyclical capital buffer, the O-SII capital buffer and the systemic risk buffer, being introduced in the EU regulatory framework.

The EU regulatory framework follows the principle of the single rule book seeking maximum harmonization within the Union. Through the establishment of uniform rules in all Member States the EU legislator intended to remove and prevent future obstacles to trade and other distortions of competition that could result from divergences between national laws.

The specific thematic of Fintech, mentioned in one of the OECD questions, is being followed by Banco de Portugal, the European Central Bank (ECB) and the European Banking Authority (EBA). However, such a monitoring has not led yet to the issuance of specific regulation or to the definition of supervisory practice focused in these activities, except in the area of authorisation (see Guide to assessments of FinTech credit institution license applications issued by the ECB and published in the respective website<sup>100</sup>).

It should be stressed that the regulation of these new activities is subject to controversy in the European Union, namely in what concerns the creation of the so-called regulatory “sandboxes” (i.e. infrastructure set up in order to provide financial institutions and non-financial firms with a controlled space in which they can test innovative FinTech solutions with the support of an authority for a limited period of time, allowing them to validate and test their business model in a safe environment), a matter for which the ECB has not issued a stance yet.

In what concerns the mobile payments thematic, it should be stressed that Banco de Portugal has already issued regulation (Circular Letter n°55/2015/DSP) dedicated to the security of payments over the internet, with recommendations to supervised institutions following the “Guidelines of security of payments in the internet” issued by EBA on 19 December 2014.

Banco de Portugal is also the authority in charge of conduct supervision of retail banking markets in Portugal. In this capacity, Banco de Portugal regulates, oversees and sanctions the conduct of credit institutions, financial companies, payment institutions and electronic

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<sup>100</sup> [https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/licensing\\_and\\_fintech/ssm\\_guide\\_on\\_assessment\\_for\\_licensing\\_of\\_fintech\\_credit\\_insts\\_draft.en.pdf](https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/licensing_and_fintech/ssm_guide_on_assessment_for_licensing_of_fintech_credit_insts_draft.en.pdf)

money institutions and promotes the financial information and education of bank customers. The activity of Banco de Portugal as conduct supervisor does not intend to prevent or control anticompetitive practices in the retail banking markets, a mission which is legally entrusted to the Competition Authority. Notwithstanding, Banco de Portugal cooperates with the Competition Authority in the performance of its functions.

Since 2008, Banco de Portugal has adopted a comprehensive set of initiatives to improve transparency in the retail banking markets. Just to give a few examples, Banco de Portugal approved several regulations which oblige supervised institutions to provide information regarding the characteristics of the products presented to customers (notably, deposits, consumer credit and mortgage credit products), as well as on the fees and other expenses charged (e.g., imposing the obligation to publish a price list with all the fees and other expenses applicable). Banco de Portugal also decided to publish the price lists of all supervised institutions in the Bank Customer Website<sup>101</sup> and has recently made available a comparison website<sup>102</sup>, which allows the consultation and comparison of fees applicable to payment accounts.

The pace of technological innovation in the provision of retail banking products and services is also being considered in the regulatory initiatives carried out by Banco de Portugal. In this context, Banco de Portugal has recently issued a regulation which allows the opening of bank deposit accounts exclusively through digital channels (online and mobile)<sup>103</sup>.

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<sup>101</sup> *In* <http://cliente bancario.bportugal.pt/pt-PT/DireitosdosClientes/DireitoInformacao/Precarios/Paginas/Precarios.aspx>.

<sup>102</sup> *In* <http://cliente bancario.bportugal.pt/pt-PT/Paginas/ComparativoComissoes.aspx>.

<sup>103</sup> *In* <https://www.bportugal.pt/en/comunicado/banco-de-portugal-approves-opening-bank-deposit-accounts-video-conference-exclusively>.