



Organisation for Economic Co-operation and Development

DAF/COMP/AR(2018)13

Unclassified

English - Or. English

15 November 2018

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Portugal

-- 2017 --

27-28 November 2018

This report is submitted by Portugal to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

JT03439687

1. Executive Summary

1. In 2017, the AdC achieved significant results in terms of its sanctioning and investigative activities, having imposed a total of €38.8 million in fines for breach of competition law regarding restrictive practices and a non-notified merger. This is the largest amount of fines imposed for breach of competition rules since 2009. The AdC also initiated a total of 13 investigations, 85% of which are *ex officio* procedures.
2. The two sanctioning decisions for restrictive practices relate to an agreement not to compete in the respective markets of the undertakings, namely that of electricity distribution and retail distribution in mainland Portugal, and to a price fixing infringement by an association of undertakings concerning driving licenses.
3. Within the framework of its powers of investigation, the AdC carried out dawn raids in 16 proceedings (35 premises of 44 entities), with reinforced investigative capabilities in the digital environment, namely in terms of forensic IT capacity and streamlined procedures. Given the need for effective means to investigate anticompetitive practices, the AdC makes recourse to a specialised platform for the collection and review of forensic evidence gathered in dawn raids, which facilitates the selection, organisation and analysis of evidence. The AdC also developed a new online Complaints Portal and dedicated hotline.
4. The AdC continued its campaign on Fighting Bid-Rigging in Public Procurement, which seeks to raise awareness among public procurement officials of signs of collusion in procurement procedures and how they may be prevented. The campaign, which has reached over 1300 participants in 2017, led to significant results in terms of enforcement and is expected to continue to do so in coming years.
5. With regard to merger control, the AdC adopted 54 decisions in a wide variety of sectors. In the scope of its priority to reinforce the detection and sanctioning of gun jumping and failures to notify mergers, the AdC issued a decision to impose a fine of 38,000 euros.
6. The year was also marked by the SIBS/UNICRE notified merger, ultimately withdrawn by the parties in phase II following an AdC draft prohibition decision. The draft prohibition decision of the AdC on the acquisition of the merchant acquiring business of UNICRE by SIBS considered that the acquisition would strengthen the barriers to entry and competition in the market, which could ultimately lead to a monopoly in the Portuguese payment system, and consequently cause serious harm to merchants and the final consumer.
7. As regards the judicial review of decisions in 2017, the AdC had a 100% success rate in substantive issues concerning infringements of competition law which were confirmed by appeal courts. Overall, the agency reached a 89% success rate (including procedural matters related to access to file and the handling of complaints), with notable rulings regarding several AdC decisions.
8. Concerning its advocacy activity, the AdC conducted 2 major economic analyses: a study into the liquid fuel and bottled gas markets and a sector inquiry regarding the supply of natural gas to industrial consumers. In 2017, the AdC published the corresponding reports, having presented a series of recommendations regarding barriers to entry and expansion identified in its economic analysis.

9. Moreover, the AdC provided 15 opinions and two recommendations on relevant sectors of the economy, namely the energy and telecommunications sectors.

10. The recommendations provided to the Government relate to the use of the Green Dot trade mark by the Sociedade Ponto Verde (recycling non-profit body) according to the Integrated Packaging Waste Management System (SIGRE) - the Green Dot system. Other recommendations focused on limits on discounts offered by pharmacies, which, in the opinion of the AdC, should not be applied to the non-co-financed component of the cost of medicines.

11. In 2017, the AdC continued the Impact 2020 project which includes a collaboration with the OECD to assess the impact on competition of legislation in the transport sector (road and maritime) and to 13 liberal professions. More than 1,600 pieces of legislation were analysed and more than 3,000 potential entry barriers identified. The AdC will conclude the project in 2018 with recommendations and guidelines that address competition concerns in these sectors.

12. As regards advocacy and outreach initiatives, the AdC launched a monthly, bilingual newsletter to promote its main activities, as well as a thematic monthly seminar series, which are open to the public at the Abel Mateus Competition Library. At the end of 2017, the agency introduced “CompCast – Competition Talks”, a series of podcasts created to share conversations with national and international experts on key topics concerning competition.

2. Changes to competition law proposed and adopted

2.1. Changes to the Public Procurement Code

13. In 2017, changes were enacted in the Public Procurement Code which granted the AdC direct and full access to the Public Procurement Portal (BASE Portal) and the Public Works Observatory (*Observatório das Obras Públicas*), as of 1 January 2018. The access to BASE Portal was established in a Memorandum of Understanding (MoU) between the AdC and the Institute for Public Procurement, Real Estate and Construction (IMPIC) that was signed in November 2017.

14. Since 1 November 2009, procurement procedures carried out under the Portuguese Code of Public Contracts are mandatorily processed on electronic platforms at every stage of the formation of a contract, from the date the notice of invitation to tender is published to the date of the conclusion of the contract.

15. This data is collected by the BASE portal given its interoperability with all electronic platforms involved with public procurement procedures. Prior to these changes in the legal framework, the AdC was granted access to the database following specific information requests related to an ongoing investigation. The data will be analysed by the AdC with quantitative statistical and econometric methods, namely through the application of screens which aim to detect behavioural patterns that indicate collusion.

3. Enforcement of competition law and policies

3.1. Action against competitive practices, including agreements and abuses of dominance positions

3.1.1. Summary of activities

16. With respect to investigation and sanctioning activities, the AdC adopted a total of 7 decisions on restrictive practices proceedings, including two decisions which led to the imposition of €38.7 million in fines. These two decisions relate to an agreement not to compete in the respective markets of the undertakings, namely that of electricity distribution and retail distribution, in mainland Portugal and to a price fixing infringement by an association of undertakings concerning driving licenses.

17. Also, in response to competition concerns identified by the AdC in the financial sector related to information exchange systems, two business associations responsible for implementing such systems offered commitments to eliminate the negative effect of their practices, which the AdC accepted and rendered legally binding.

18. By the end of the year, the AdC was investigating 20 cases of restrictive practices, 2 for an alleged abuse of dominance and 18 about alleged prohibited agreements or concerted practices.

19. **Fines.** The AdC fined undertakings €38.7 million euros in two sanctioning decisions regarding anti-competitive practices.

20. **Inspections.** The AdC carried out inspections in 35 premises of 44 undertakings in 16 proceedings, an eight-fold increase when compared to the AdC's historical annual average since 2003.

21. **Online Complaints Portal.** In 2017, the AdC launched a new Online Complaints Portal, available on its website. It provides a simple and intuitive way to report anti-competitive practices to the AdC. In addition to providing a user-friendly interface for complainants, the portal also provides information on anti-competitive practices, seeking to promote a better awareness of competition rules and the competences and mission of the AdC.

Table 1. Type the title here

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	No. of cases
Sanctioning decisions	2
Commitment decisions	2
Investigations filed	3
Investigations launched	13
Ongoing investigations (12.12.2018)	20

3.1.2. Sanctioning decisions

Case No. PRC/2014/15 – EDP/SONAE

22. The AdC imposed a fine 38.3 million euros on EDP – Energias de Portugal, S.A., EDP Comercial – Comercialização de Energia, S.A., Sonae Investimentos, SGPS, S.A., Sonae MC – Modelo Continente SGPS, S.A. and Modelo Continente Hipermercados, S.A. for having entered into an anticompetitive agreement within the partnership created for the commercial campaign "Plano EDP Continente", in 2012. The infringement concerns the agreement between Sonae and EDP not to compete on the sector for distribution of electricity or retail distribution in mainland Portugal for a period of 2 years.

23. The case was originated by consumer complaints, and the practice occurred in the context of the liberalisation of distribution of electricity and natural gas in Portugal, a particularly relevant moment for competition in the sector. To calculate the amount of the fines, the AdC considered the criteria established by article 69 of the Portuguese Competition Act, the Guidelines on the method of setting fines, as well as the companies' business turnovers.

24. The decision was adopted on 4th May 2017, following the adoption of the Statement of Objections on 29th July 2016. The proceedings were initiated on 3rd December 2014.

Case No. PRC/2016/8 – Driving schools

25. The AdC fined the Portuguese Association of Driving Schools (APEC) and its president in the total amount of approximately €414,000 for fixing a minimum price on driving licenses. The conduct harmed competition in the market of driving schools in the Greater Lisbon and Setúbal areas.

26. The fixing of minimum prices started on 28 September 2016 and was to be applied by about 170 driving schools in the area where the association operates. The president of the association was also found to have committed an infringement for having known about the practice and for taking no action to prevent or put an end to it. The total number of candidates for driving test, in the Lisbon and Setúbal districts, was about 37,000, according to last available information disclosed by IMT (Institute for Mobility and Transport), concerning 2014.

27. Following a complaint, the AdC carried out dawn raids related to this case on 17th January 2017 and obtained the evidence that substantiates the prohibition decision. The Statement of Objections was adopted on 27th July 2017, and the final decision was issued on 28th September 2017.

28. To calculate the amount of the fines, the AdC considered the criteria established by article 69 of the Portuguese Competition Act, the Guidelines on the method for setting fines, as well as the turnover of the associated driving schools, with regard to the Association, and the annual income derived from its role in the Association, in the case of its president. The decision closes the investigation initiated on 7th December 2016.

3.1.3. Commitment decisions

Case No. PRC/2015/8 and PRC/2015/9 – Specialised credit

29. On 23rd April 2015, the AdC opened two separate infringement proceedings against the Portuguese Association of Leasing, Factoring and Renting (Associação Portuguesa de Leasing, Factoring e Renting - ALF), and the Portuguese Association of Specialised Consumer Credit Providers (Associação de Instituições de Crédito Especializado - ASFAC), as well as their members.

30. The inspections carried out on 28th and 29th January 2016 revealed the existence of a system for the exchange of sensitive and strategic information related to products and services in the markets for leasing, factoring and renting directly promoted by ALF, and products and services in the markets for leasing, ALD, credit, revolving and stock directly promoted by ASFAC.

31. The members of both associations regularly exchanged private, recent and disaggregated information on production data and client portfolios on a mutual and confidential basis. Considering the type of information, its age, the level of disaggregation and the target of the information exchanged, the AdC considered that the information exchange systems could have a restrictive effect on competition through the likely reduction of uncertainty in the market, allowing participants to act in the possession of sensitive information of its competitors, as well as frequently monitor their strategic behavior.

32. In order to respond to the competition concerns expressed by the AdC, both ALF and ASFAC presented a set of commitments, namely by increasing the age of the information exchanged between the associations' members, and changing the rules on the mutual disclosure of information. After the public consultation, the AdC accepted the commitments offered by ASFAC and ALF on 6th November 2017 and 21st December 2017, respectively, and rendered them legally binding.

3.2. Judicial review of AdC decisions

33. Judicial review has been a consistently positive indicator of the robustness of AdC decisions in recent years. In 2017, the AdC continued to demonstrate a strong track-record of proving its cases in court. These results reflect a priority of continuous improvement in the quality of decisions, both in terms of due process and substantive analysis, with appropriate internal checks and balances.

34. In 2017, of the 19 court rulings on AdC decisions regarding both procedural matters and substantive issues, the courts ruled in favour of the AdC in 17 proceedings. The AdC had a 100% success rate in substantive issues concerning infringements of competition law, and a total success rate of 89% success rate, including procedural matters related to access to file and the handling of complaints. There were 6 interlocutory decisions, all favourable to the AdC.

35. Two important infringement decisions and a merger decision became final, without the possibility for further appeal.

3.2.1. Vertical restraints by Galp and its subsidiaries in the bottled LPG gas market

36. In 2015, the AdC fined three companies of the Galp Energia Group on a total amount of €9.29 million for vertical restrictions in the bottled LPG market. The group forbade its distributors from selling bottled LPG outside their allocated territory thereby stifling intra-brand competition between these distributors. The Group appealed to the Competition, Regulation and Supervision Court (TCRS), which confirmed the decision of the AdC, but reduced the fine to €4 million in January 2016.

37. In this decision, the Court stated that the conduct of the parties was highly negligent, and showed significant lack of responsibility and lack of commitment to the competition rules. The Group then appealed against that judgment to the Lisbon Court of Appeal (TRL), which upheld the decision of the AdC, and upheld the €4 million fine imposed by the TCRS.

3.2.2. Abuse of dominant position by the National Association of Pharmacies (ANF)

38. In December 2015, the AdC fined the ANF Group €10.3 million for abuse of its dominant position by margin squeeze in the market of commercial data of Portuguese pharmacies, and in the markets of pharma market studies based on this data.

39. The AdC concluded that the prices charged by the ANF Group for the commercial data of the pharmacies (upstream market) and those charged by the ANF Group for pharma market studies based on the data (downstream markets) did not provide an equally efficient competitor active in the downstream market with a sufficient margin to cover the remaining production costs.

40. The AdC further concluded that the ANF Group acted in the sense of foreclosing the upstream and downstream markets. The Group appealed to the Competition, Regulation and Supervision Court (TCRS), which confirmed the decision of the AdC, but reduced the fine to € 6.89 million, taking into account the market affected. The case went to the Lisbon Court of Appeal (TRL), which reduced the fine of the TCRS to approximately €815,000 for considering that the requirements for establishing parental liability of Farminveste were not satisfied.

3.2.3. Decisions regarding SUMA/EGF merger in the urban waste management sector

41. Moreover, the Supreme Court of Justice confirmed the clearance decision of the AdC of a merger concerning the acquisition of sole control of Empresa Geral do Fomento, S.A. (EGF) by Serviços Urbanos e Meio Ambiente, S.A. (SUMA). This decision puts an end to the litigation against the clearance decision of the AdC initiated in 2015.

42. As regards procedural issues, the judicial decision allowed to clarify matters such as access to file, protection of confidential information and rights of defence.

3.3. Mergers and acquisitions

43. In 2017, the AdC issued merger decisions in 54 cases. Two proposed mergers were withdrawn by the parties. Significantly, one merger in the payments sector was withdrawn by the parties in phase II following a draft prohibition by the AdC.

44. Also, for the second time since 2014, the AdC imposed fines on firms for failing to notify a merger.

3.3.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws

Table 2. Merger decision adopted in 2017

Notified mergers	50
Total decision	54
Pending	4

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

	Phase I	Cases
Non Notifiable transaction		1
Clearance		51
Withdrawn cases		1
Non clearance		
To initiate an in-depth investigation		
Referral to European Commission		
Tacit approval		
Phase II		
Clearance		
Clearance with commitments		
Non clearance		
Withdrawn cases		1
Tacit approval		
Total final decision adopted (does not include the Phase I decision to proceed into Phase II)		54

Table 4.

	Cases	%
Horizontal	27	50%
Vertical	6	11%
Conglomerate	21	39%
Total	54	100%

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

	Cases	%
Multi-jurisdictional filings (within EU)	3	6
Multi-jurisdictional filings (outside EU)	7	13
National with involvement of undertakings from other EU member states	17	31
National with involvement of undertakings from countries outside EU	12	22
Completely national	15	28
TOTAL	54	100%

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

	Cases	%
Sole control	40	74
Joint control	9	17
Acquisition of assets	5	9
Takeover bid		
TOTAL	54	100%

3.3.2. Summary of significant cases

Ccent 37/2016 SIBS/Ativos Unicre

45. On 14th July 2017, the AdC issued a draft prohibition decision on the acquisition of the merchant acquiring business of UNICRE by SIBS, for considering that the acquisition would strengthen the barriers to entry and competition in the market, which could ultimately lead to a monopoly in the Portuguese payment system, and consequently cause serious harm to merchants and the final consumer. Following this draft decision, SIBS decided to withdraw the proposed merger, and the AdC subsequently closed the procedure on 20th July 2017.

46. Unicre's acquiring business (with the brand name "Redunicre") is the largest card payment acquirer in Portugal, with a market share four times larger than its closest competitor, Netcaixa, owned by Caixa Geral de Depósitos. As Caixa Geral de Depósitos is a shareholder of SIBS, the bank would have a direct stake in the merchant acquiring business of UNICRE due to the merger, which would lead to an alignment of incentives and behaviour of the two main competitors in the market, thereby restricting competition. Moreover, the merger would also result in impediments to the competitive ability of current and potential competitors to SIBS' acquiring and processing businesses.

47. The European Commission had recently adopted new rules imposing maximum limits to interchange fees on debit and credit card payments. These lower interchange fees have not led to a decrease in merchant service charges, which reflects the low level of competitive pressure in the merchant acquiring market in Portugal.

48. Due to the strengthening of barriers to entry, the proposed merger would avoid merchant service charges to reflect the decrease of the interchange fees set by the EC Regulation. These impediments to the reduction in merchant service charges identified by the AdC could result in smaller merchants bearing significant costs to accept payment cards. Consumers could also be negatively affected by a reduction in the number of

merchants accepting card payments. SIBS submitted a set of remedies to address the risks of anticompetitive effects of the proposed merger, but the AdC concluded that they were not sufficient or adequate.

Sanctioning decision for failure to notify a merger – Grupo Vallis

49. The AdC adopted a fining decision against Vallis Sustainable Investments I, Holding S.à.r.l. and Vallis Capital Partners, SGPS, S.A. for implementing a merger without prior notification to the AdC through which the group acquired sole control of 32 Senses, a network of dental care clinics.

50. The group was fined €38.500, according to the turnover of each firm in 2016. The parties introduced a settlement submission during the proceedings whereby they admitted the facts of the case and for which they assumed responsibility.

51. The AdC considered all the relevant facts, in particular: the parties reported the infringement to the AdC; the parties subsequently notified the merger to the AdC on their own accord and, as of that date, suspended all voting rights on the acquired firm; the AdC did not detect any competition concerns resulting from the merger or any tangible benefits to the parties; and the parties engaged in full cooperation with the investigation carried out by the AdC.

4. The role of competition authorities in the formulation and implementation of other policies

4.1. Promoting a pro-competitive legislative and regulatory environment

52. In 2017, the AdC issued 15 opinions on draft legislation and regulation including on the energy, telecommunications and air transport sectors, waste management, and 2 recommendations. The AdC also published two in-depth studies on the industry of bottled LPG in mainland Portugal and the provision of natural gas to industrial consumers.

4.1.1. AdC opinions in regulated sectors

53. During 2017, the AdC responded to 5 public consultations on regulated sectors, out of which 4 were launched by the Energy Services Regulatory Authority (ERSE) and 1 by the National Authority for the Fuel Market (ENMC). The AdC also issued 2 opinions on draft legislation regarding the LPG sector and 1 opinion regarding a draft governmental ordinance imposing a maximum rate of discount on prices to final consumers by pharmacies.

4.1.2. Competition impact assessment

54. In 2017, the AdC continued the AdC Impact 2020 Project, which includes the implementation of the AdC/OECD project, which aims to assess the impact of the legal and regulatory frameworks on competition in the transport sector (road and maritime) and in 13 self-regulated liberal professions.

55. The cooperation between the OECD and the AdC, culminating in March 2018, began in September 2016, when the project team started to collect the legislation which was to be analysed based on the methodology set forth in the OECD Competition Assessment Toolkit. The results of the analysis were presented in high level meetings

meant to discuss the harm to competition arising from the legislative and regulatory provisions, and to propose draft recommendations. The meetings were chaired by the Secretary of State of the Presidency of the Council of Ministers, and attended by relevant stakeholders from the public and private sectors.

56. The AdC/OECD project further enhances the techniques and methodologies used by the AdC to carry out the competition impact assessment. The project is also intended as a tool for modernisation and capacity building, so that public intervention may be more efficient and effective in promoting the economic and social development. The ultimate goal of the AdC/OECD project is to present alternative solutions to laws and regulations that eliminate barriers against competition and boost the Portuguese economy, which will be drafted following the OECD recommendations.

57. The sectors analysed were selected based on their importance for the external competitiveness and exports, influence on public consumption, and contribution to employment in Portugal. More specifically, as regards the transport sector, the types of transport analysed include: passenger and freight transport by land (road and railway) and sea, including taxi services, as well as ports and port services. As for the self-regulated liberal professions, the team selected 13 professions from the following sectors: legal (lawyers, notaries, solicitors, bailiffs); economic/financial (economists, certified accountants, statutory auditors, customs brokers); technological (architects, engineers, technical engineers); health (nutritionists, pharmacists).

58. Four high-level meetings were held in 2017, 140,000 pieces of legislation identified (laws, regulations and decrees), and 1,600 selected for analysis. This project also included several bilateral meetings with stakeholders from the public and private sectors, and four workshops on capacity building. The estimated potential positive impact of the implementation of the recommendations is 380M euros/year for the Portuguese economy.

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

59. **Cooperation with Sector Regulators.** During 2017, the AdC held several workshops aimed at reinforcing institutional cooperation with sectoral regulators, notably with the Portuguese Securities Market Commission (CMVM), the Institute for Public Procurement, Real Estate and Construction (IMPIC), the central bank (BdP) and the Portuguese Authority for Mobility and Transport (AMT). These workshops focused on the main infringements to competition law and on opportunities for cooperation between the AdC and regulators in their respective sectors.

60. **Fighting Bid Rigging in Public Procurement.** In 2017 the AdC organised more than 10 sessions of the Fighting Bid Rigging in Public Procurement campaign, reaching more than a thousand public procurement officials and others with responsibilities in public procurement, including at the Public Prosecutor's Office. The outreach initiative regarding bid rigging in public procurement is an AdC priority given the expected benefits to the economy.

61. This campaign seeks to raise awareness of contracting authorities to suspicious behaviours which may indicate collusive tendering which seek to eliminate competition and how to prevent such behaviours.

62. **Promotion of Competition for Business Associations.** The AdC held seminars to increase awareness among the business community of the rules of competition and of

the advantages of a competition culture in Portugal. The AdC Guide on the Promotion of Competition for Business Associations that identifies the do's and don'ts for business associations was the object of several seminars with the business community.

63. **AdC Seminar Series.** In order to promote dialogue and debate on issues of competition policy, the AdC held a series of public seminars on competition law and economics which brought nationally and internationally renowned experts to Lisbon, including Massimo Motta (Barcelona GSE), Sofia Oliveira Pais (Católica School of Law), João Pearce de Azevedo (DG COMP), Robert D. Willig (Princeton University), Miguel Sousa Ferro (University of Lisbon School of Law), Giulio Federico (DG COMP), Pedro Pita Barros (NOVA School of Business and Economics) and Maria Eugenia Ribeiro (former Judge at the EU General Court). The seminars were held at the AdC Abel Mateus Competition Library.

64. **CompCast – Competition Talks.** At the end of 2017, the AdC created the “CompCast – Competition Talks” to share conversations with national and international experts on key topics concerning competition. The first CompCast featured Giulio Federico on Efficiencies in merger control, Head of Unit (Mergers), Chief Economist Team, DG Competition. The CompCast – Competition Talks are available on the AdC website.

65. **Monthly bilingual newsletter AdC News.** The AdC launched a monthly bilingual newsletter that reports on the main activities of the AdC, including decisions, studies and recommendations, events and other advocacy activities.

5. International cooperation

5.1. European Cooperation

66. **ECN – European Competition Network.** The AdC participated in 23 formal and informal cooperation meetings in the European Competition Network context, as well as in 10 Oral Hearings and Advisory Committee meetings regarding restrictive practices, dominant positions and mergers.

67. **ECA - European Competition Authorities.** The AdC participated in the annual meeting of European Competition Authorities - ECA that took place in Berlin. The President of the AdC spoke on a panel on leniency and infringement detection tools. During 2017, the AdC notified 11 merger cases regarding multijurisdictional transactions within the EEA to the ECA Network.

5.2. Bilateral cooperation

68. **Angola.** In September 2017, the AdC received a delegation from Angola's National Procurement System. During the visit, the AdC shared its experience with the Fighting Bid-rigging in Public Procurement Campaign.

69. **Brazil.** The AdC had a bilateral meeting with the *Conselho Administrativo de Defesa Económica* – CADE to share experiences and identify good practices in fighting bid-rigging and in the *ex officio* detection of cartels, following a fruitful history of cooperation between the two institutions.

70. **China.** In March 2017, the AdC participated in the 14th EU-China Competition Week, that took place in Beijing, sharing AdC experience in competition impact assessment of public policies. The objective of this initiative is to foster cooperation in competition policy between the EU and China.

71. **Spain.** In January 2017, the AdC and CNMC gathered to discuss issues of common interest and enhance the cooperation between both agencies. The AdC also attended the 14th edition of the *Escuela Iberoamericana de la Competencia*, an event that gathered competition experts from Europe and Latin America. The AdC addressed issues of enforcement in the fight against bid-rigging in public procurement.

72. **United States of America.** A High-Level Meeting between the AdC and the US Federal Trade Commission took place in Porto, during the ICN Annual Meeting in May 2017. Topics of mutual interest were discussed and possible areas for future cooperation in competition policy were identified.

5.3. Multilateral cooperation

73. **ICN - International Cooperation Network.** In 2017, the AdC had a particularly active role in the ICN having hosted the Annual Conference of the network in Porto, from 10 to 12 May 2017.

74. Over 600 high-level representatives from over one hundred jurisdictions and international organisations (OECD, European Commission, World Bank, UNCTAD, among others) attended the event, including the European Commissioner for Competition, Margrethe Vestager. The President of the AdC, Margarida Matos Rosa, Andreas Mundt, Chair of the ICN, and Manuel Caldeira Cabral, Minister of Economy, chaired the opening session of the event. The members of the Board of the AdC spoke on plenary sessions regarding strategies for communicating for deterrence, challenges in leniency and advocacy. Another eight AdC representatives spoke in breakout sessions on several topics including advocacy, cartels, mergers, unilateral conduct and agency effectiveness.

75. Furthermore, the AdC kept its active participation in all ICN working groups: Agency Effectiveness, Advocacy, Cartels, Mergers and Unilateral Conduct.

76. In October, the AdC participated in the ICN Cartel Workshop in Ottawa, Canada, speaking on the plenary session on “Bid-rigging in public and private enforcement” and in the mini-plenary session on “High tech tools in cartel enforcement.”

77. In December, the AdC participated in the ICN Unilateral Conduct Workshop in Rome, Italy, participating in the session on “Assessing price parity agreements.”

78. Also in December, the AdC participated in the ICN Merger Workshop, in Mexico City, Mexico, in which the AdC held a speaker position in the plenary session on “Challenges in Modern Merger Analysis.”

79. Finally, the AdC, was nominated by the ICN Steering Group of which it is a member, to be co-chair, with the US Federal Trade Commission, of the ICN Advocacy and Implementation Network (AIN). The AIN is responsible for promoting the implementation of ICN recommendations and the use of ICN work products by competition authorities around the world.

80. **OECD – Organisation for Economic Cooperation and Development.** In 2017, the AdC participated in the meetings of the OECD Competition Committee and Working

Parties No 2. on Competition and Regulation and No. 3 on Enforcement and Cooperation, that took place in Paris, in June and December. The AdC presented written contributions to and participated in roundtables regarding “Common ownership by institutional investors and its impact on competition”, “Cooperation between Competition Agencies and Regulators on the Financial Sector: 10 years on from the financial crisis”, “Safe harbours and legal presumptions in competition law” and “Regulation affecting competition in light of decentralisation.” The AdC also participated at the 16th Global Forum on Competition, in December, having submitted a written contribution on “Judicial perspectives on competition law.”

81. Finally, the AdC participated in the 15th meeting of the Latin American and Caribbean Competition Forum, that took place in Managua, Nicaragua, in April, that is co-organised by the OECD and the Inter-American Development Bank. It presented written contributions on “Cartels: Estimation of Harm in Public Enforcement Actions” and “Merger Control in Latin America and the Caribbean – Recent Trends and Development – General Discussions.”

82. **UNCTAD.** The AdC participated in the 16th Session of the Intergovernmental Group of Experts on Competition Law and Policy (IGE), that took place in Geneva, Switzerland, from 5 to 7 July, where it moderated the session on the Peer Review of Competition Policy in Argentina.

83. **Iberian-American Competition Forum.** The AdC co-organised the 2017 Iberian-American Competition Forum, jointly with the Spanish CNMC and the Nicaraguan competition authority - Procompetencia, in Managua, Nicaragua, on the margins of the OECD-IDB Latin American Caribbean Competition Forum. The two topics of the agenda were “International Cooperation” and “Enhancing cartel detection: tools and strategies.” Speakers and moderators included Argentina, Brazil, Chile, Mexico, Nicaragua, Portugal and Spain.

6. Resources of Competition Authorities

6.1. Resources overall

6.1.1. Annual budget

84. The AdC’s 2017 Annual budget was € 8,189,114.

6.1.2. Number of employees (in 31.12.2017)

Table 7.

Specialisation	No. of Staff*
Economists	24
Lawyers	26
Other (Forensic IT, Communications)	7
Other professionals and support staff	23
Total*	82

*: Includes management, does not include the Board.

6.2. Human resources applied to (in 31.12.2017)

Table 8.

Area of activity	No. of Staff*
Enforcement against anticompetitive practices**	22
Mergers	12
Legal Service	5
Advocacy	18

*: Includes management, does not include the Board

** : Includes forensic IT team

7. Summaries of references to new reports and studies on competition policy issues

7.1. Report on the Industry of Bottled LPG in mainland Portugal

85. The AdC identified barriers to entry and expansion in the distribution of bottled liquefied petroleum gas (LPG), likely to reduce the competitive pressure in the market, in a Report on the Industry of Bottled LPG in mainland Portugal.

86. The Report demonstrates that the bottled LPG (butane and propane) industry is concentrated in a small number of market players (Galp, Rubis, Repsol, OZ Energia, and Prio, which is still active in propane distribution), with a stability in the market shares of the main players over time which is consistent with a lack of competitive pressure. Since the liberalisation of the market in September 1990, only two new entries took place in the industry: Repsol, in the mid 1990's and Prio, in the last five years.

87. Galp is the market player with the largest market share, and the owner of the two sole refineries in Portugal as well as of the majority of the storage capacity of the country. Access to LPG storage facilities is one of the key factors for competition in the sector. This aspect is particularly relevant since the AdC's study demonstrates that access to maritime imports is a factor in competitiveness of the storage cost. However, currently, the three main market players, Galp, Repsol and Rubis, currently detain ownership of the entire share capital of the Sines (Sigás) and Perafita (Pergás) storage facilities.

88. To address these structural barriers to entry and expansion, the AdC recommended that the Portuguese Government grant a public interest status to the Perafita and Sines storage facilities, such as that established for the CLC storage facility, to ensure negotiated access to these storage facilities.

89. The AdC further identified other potential barriers to new entrants that may be mitigated through regulatory provisions, namely:

- Non-standardised LPG reducers (that make it difficult for a consumer to switch from one operator to another which offers more competitive prices);
- The logistics of empty bottles, as a new entrant holding a smaller sized bottled-gas depot will depend on his competitors to obtain empty bottles that will allow for refilling and distributing of new bottles.

90. The Report demonstrates that LPG import costs decreased significantly since 2014. However, the pace of the retail price decrease was slower than that of import costs, leading to the growth of gross margins. The analysis of the AdC also demonstrated that

the wholesale prices of bottled LPG of the two largest operators, which account for more than two thirds of supply, are generally approximated. The profit margins associated with the pricing strategy of the main market players show that they exercise market power to some extent, which likely follows from the high degree of concentration in the market together with the rigidity of demand for bottled gas with respect to price.

91. These characteristics of the demand for bottled gas reinforce the concerns regarding the impact of the lack of competitive pressure, in terms of consumer welfare. Regarding the comparison with the prices of bottled LPG in Spain, the AdC highlights that caution must be taken as prices of bottled gas in the neighbouring country are regulated, while the Portuguese market has been liberalised in 1990. Moreover, Spanish courts have already rendered judgements pointing to regulated prices that have circumstantially been set below cost.

7.2. Sector Inquiry on the supply of natural gas to industrial consumers

92. The AdC identified barriers to entry and expansion in the natural gas market likely to have an impact on the competitive conditions of supply to industrial consumers and to undermine the likelihood of more competitive bids arising and disciplining the price-setting strategies in the market.

93. The AdC assessed the performance of the supply of natural gas to Portuguese industrial consumers and developed an in-depth analysis of the sector in order to identify potential bottlenecks to competition which could hinder the performance and competitiveness of the supply of natural gas to Portuguese industry. The AdC decided to carry out an analysis of this sector due to its relevance for the competitiveness of Portuguese industrial activity, given the high share of natural gas in the cost structure of several Portuguese industries.

94. The AdC found that, between 2010 and 2016, natural gas prices, before taxes and levies, paid by Portuguese industrial consumers were consistently amongst the highest of the 28 Member States of the European Union (EU-28). Despite a decline towards the EU-28 average price level for the higher consumption bands in 2016, natural gas prices in Portugal remain amongst the highest of the EU-28 for industrial clients with a lower consumption.

95. In terms of market structure, Galp is the operator with the highest market share in the supply of natural gas to industrial clients, followed by EDP. Galp is also the historic importer of natural gas in Portugal. The AdC Report shows that the supply of natural gas to industrial consumers is characterised by a high degree of concentration, with the two main operators accounting for more than 70% of the market.

96. Galp has a leading position both in the import of natural gas and in the secondary market of natural gas. Furthermore, Galp has contractual ties at the wholesale level with some of its competitors in the retail market. In the Report, the AdC highlights a set of other aspects likely to constrain the efficiency of the market, namely the lack of integration between the Portuguese and the Spanish markets and the double application of transmission network access tariff in the cross-border trade between Portugal and Spain. The AdC has also found that small-scale operators face high access costs to the Liquefied Natural Gas (LNG) Terminal in Sines.

97. The combined effect of these barriers restricts the ability of retailers to import natural gas through pipeline at competitive prices and limits the use of the Sines LNG

Terminal, thereby affecting the competitiveness and performance of the Portuguese Natural Gas System and thus the final prices paid by industrial clients.

98. In addition to these structural factors, the AdC Report shows that there was an increase in network access costs as well as an increase in import costs in 2013/2014, which coincided both with a strengthening of the trading activity of the historic importer following the Fukushima nuclear disaster and with a change in the way the historic importer managed its supply portfolio. The increase in network access costs was stronger for the medium and low pressure networks, and was partially driven by a contraction in demand.

99. With the aim of fostering competition and reducing barriers to entry and expansion, the AdC recommended the strengthening of intergovernmental cooperation between Portugal and Spain, so as to implement high-level measures capable of granting the extension of the Iberian Natural Gas Market (MIBGAS) to Portugal as well as eliminating the double application of transmission network access tariff in the cross-border trade between Portugal and Spain.

100. The evolution towards an internal natural gas market in the European Union and, in particular, a deeper integration between the Spanish and Portuguese wholesale gas markets would allow a more competitive natural gas price-setting, an increase in the number of players active in the Portuguese Natural Gas System and a greater diversification of the sources of supply of natural gas in Portugal.

101. The AdC recommended measures to foster the use of the LNG Terminal in Sines by small-scale operators. While the extension of MIBGAS to Portugal is still pending, access to the LNG Terminal in Sines is the key option to foster competition in the natural gas market in Portugal.

102. As such, the AdC recommended to the Energy Regulator the consideration of additional measures so as to promote the access of new entrants to competitive imports and to reduce the burden of infrastructure costs for the entry of natural gas into the National Gas System (Sines LNG Terminal and pipeline interconnection with Spain), as follows:

103. The adoption of market-based LNG auctions with a delivery point at the Sines LNG Terminal, granting small-scale competitors the opportunity to acquire LNG at competitive conditions.

104. In the past, ERSE already implemented LNG auctions, but these did not elicit the expected interest from market players. This recommendation defines a delivery point, contrary to what happened in the past, and also emerges under a different market context, with several new retailers having entered the Portuguese Natural Gas System.

105. The adoption of regulatory solutions that allow the exchange of natural gas between different delivery points of the National Gas System (swaps between locations), namely between the Sines LNG Terminal and the interconnection with Spain through pipeline at Campo Maior, providing smaller competitors with more options regarding the destination for the LNG received at the Sines Terminal.

106. The auctions and swaps herein recommended aim at (i) attracting the entry of more retailers, namely those that are active in the Spanish market; (ii) increasing the number of operators using the LNG Terminal in Sines; and (iii) increasing the flexibility of usage of the LNG Terminal, namely in terms of the destination for the LNG therein received.