

ADVOCACY AND COMPETITION IMPACT ASSESSMENT SUPPORTING PRO-COMPETITIVE REFORMS IN SELF-REGULATED PROFESSIONS AND THE TRANSPORT SECTOR – THE PORTUGUESE COMPETITION AUTHORITY EXPERIENCE

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INTRODUCTION

This paper describes the results of the project developed by the AdC in cooperation with the OECD, of competition impact assessment in two sectors of the Portuguese economy (2016-2018). The Project led to a set of OECD recommendations and an *Action Plan* by the AdC with specific proposals to implement those recommendations. The paper further illustrates the follow-up and advocacy measures taken by the AdC to promote the implementation of these results. Finally, the paper highlights how the elimination of unnecessary and disproportionate legislative barriers to entry is particularly important for economic recovery.

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2 The paper corresponds to a version published in the OECD Regional Centre for Competition (RCC) in Latin America Newsletter (June, 2022). Published twice a year, it shares regional experiences and recent developments from the economies in the Latin American and Caribbean region. Further information available at: <https://www.oecd.org/daf/competition/newsletter-oecd-regional-centre-for-competition-in-lac-june-2022.pdf>. Key-Words: Advocacy; Competition impact assessment; Pro-competitive reforms; Economic recovery; Self-regulated professions; Transport sector.

MAIN OUTCOMES FROM THE AdC/OECD COOPERATION PROJECT

Between 2016 and 2018, the AdC and the OECD conducted a competition assessment of two sectors of the Portuguese economy (*Portugal: Competition Assessment Project*³), using the *OECD Toolkit*.

Self-regulated professions and the transport sector were chosen based on three criteria: the importance of the sectors to external competition and for exports; their weight in domestic consumption; and contribution to employability. The Project covered the transport of passengers and goods, by road, rail and sea, the management of ports and port services and a set of 13 self-regulated professions: lawyers, notaries, solicitors, enforcement agents, economists, certified accountants, statutory auditors, and customs officers, architects, engineers, and technical engineers, nutritionists and pharmacists.

One key aspect of the AdC/OECD Project was stakeholder interaction. The involvement of public stakeholders was ensured through meetings of a High-Level Committee, and over two hundred bilateral meetings with public and private entities, responsible for sectorial issues. The OECD also held training workshops for officials responsible for competition assessments.

The OECD issued a report identifying the restrictions on competition and putting forward over 700 recommendations (*OECD Recommendations: transport sector*⁴ and *self-regulated professions*⁵). To promote its implementation, the AdC developed an *Action Plan*⁶ with specific proposals for amending the Portuguese legal framework and highlighting a set of key proposals (Box 1). These recommendations would allow for promoting market entry, quality, innovation, and competitive prices. Their implementation was estimated to be able to generate direct savings of around 380M€ per year, in addition to multiplier effects.

3 Further information available at: <https://www.oecd.org/competition/portugal-competition-assessment-project.htm>

4 Further information available at: <https://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Vol1-Transports-preliminary-version.pdf>

5 Further information available at: <https://www.oecd.org/daf/competition/Portugal-OECD-Competition-Assessment-Review-Vol2-Professions-preliminary-version.pdf>

6 Further information available at: <https://www.concorrenca.pt/sites/default/files/documentos/Plano%20de%20A%C3%A7%C3%A3o%20para%20a%20Reforma%20Legislativa%20e%20Regulat%C3%B3ria%20Profiss%C3%B5es%20Autorreguladas%20Transportes.pdf>

Box 1: AdC's Action Plan key proposals (1)**Self-regulated professions**

- Separate the regulatory from the representative functions for self-regulated professional associations
- Reassess the reserved activities for professionals enrolled in professional associations
- Identify alternative ways to obtain the necessary qualifications
- Reassess the criteria related to traineeships, necessary for registration in a professional association
- Eliminate rules that restrict ownership and management of professional associations
- Allow multidisciplinary practice in professional associations
- Abolish restrictions on the free establishment of notarial services
- Remove rules that require auditors to send strategic information to the Statutory Auditors Order related to the exercise of public interest functions

Road Sector

- Abolish mandatory licensing regime for freight operators using solely motor vehicles between 2.5 and 3.5 tonnes
- Eliminate minimum capital requirements to start the business imposed on certain operators
- Eliminate access and price restrictions for the market of long-distance bus routes
- Abolish quotas and geographical restrictions for taxis
- Eliminate the geographical restriction on the location of driving schools
- Abolish licensing requirements of a minimum number of vehicles to start the activity imposed on certain operators

Rail Sector

- Regulate the legislation applicable to the certification of train drivers
- Abolish the maximum period of validity for railway licences
- Favour a competitive tendering for a public service contract for rail passengers transport, establishing public service obligations

Maritime Sector

- Implement an alternative regulation model of public service obligations for cabotage between mainland Portugal and the Portuguese islands

Port Sector

- Amend the legal regime for port tariffs for the provision of services provided by the port authority, based on a common transparent and cost-oriented formula
- Foster the role of the private sector in pilotage services, port towing and cargo handling port operations
- Redesign port terminal concessions
- Liberalize the access to towing and piloting port service markets
- Amend the regime for obtaining Pilot Exemption Certificate

Note (1): AdC's Action Plan; AdC (2018) Competition in the Portuguese Ports Sector⁷; AdC (2018), Recommendation on the liberalization of passenger rail services⁸.

7 Further information available at: <https://www.concorrenca.pt/sites/default/files/imported-media/Estudo%2520sobre%2520a%2520Concorr%C3%Aancia%2520no%2520Setor%2520Portu%C3%A1rio.pdf>

8 Further information available at: <https://www.concorrenca.pt/sites/default/files/processos/epr/Recomendac%C3%A3o%20da%20AdC%20no%20%C3%A2mbito%20da%20Liberaliza%C3%A7%C3%A3o%20de%20Servi%C3%A7os%20de%20Transporte%20Ferrovi%C3%A1rio%20de%20Passageiros.pdf>

FOLLOW-UP AND STEPS TAKEN TO PROMOTE THE IMPLEMENTATION OF AdC's ACTION PLAN

Since 2019, the AdC has taken several advocacy measures to promote the implementation of its *AdC's Action Plan*.

These initiatives involved participation in conferences; interactions with relevant stakeholders (Ministries; Political Parties; and the Orders); and the adoption of opinions on proposals for legislative amendments or new legislation (see AdC's webpage⁹).

Some examples of AdC's opinions and recommendations include: on the competitive impact of the accreditation process of higher education study cycles with *direct* and *indirect* impact on the access to self-regulated professions (2020); on the amendments of specific dispositions of the by-laws of the Statutory Auditors Order (2021); and on legislative proposals aiming at amending the framework-laws applicable to all public professional associations and professional societies, subsequently allowing for specific amendments to the by-laws of all Orders (lapsed, in 2021, but discussion to resume in the Parliament, in 2022).

In the transport sector, some examples include: a Report on competition in the Port Sector (2018); an opinion on a framework law on access and exercise of the long-distance bus routes activity and access to interfaces (2019); and an opinion on the establishment of vehicle inspection centres in Madeira (2021).

COMPETITION POLICY AS A CATALYZER OF ECONOMIC RECOVERY

In face of the challenges brought about by the Covid pandemic, further deepened by the war in Ukraine and inflation, several countries are deploying economic recovery strategies. The Portuguese Government has adopted its *PRR – Resilience Reforms* (2021)¹⁰.

The AdC has contributed to this discussion, with a report *The role of competition in implementing the economic recovery strategy* (2021)¹¹. The Report advocates for three competition principles to be embedded in the recovery

9 Further information available at: <https://extranet.concorrencia.pt/PesquisAdC/SearchNew.aspx?IsEnglish=True>

10 Further information available at: <https://recuperarportugal.gov.pt/qualifications-and-skills-c6/?lang=en>

11 Further information available at: <https://www.concorrencia.pt/sites/default/files/2021-AdC-contribution-on-economic-recovery.pdf>

strategy: ensuring competitive neutrality in public financial support to firms; removing unnecessary barriers to entry and expansion, so as to unleash the full growth potential; and combatting bid-rigging and ensuring competitive and efficient public tenders, given the sizeable public spending and investment ahead.

AdC's President, Margarida Matos Rosa, has been further advocating in international *fora* that "*competition policy can be a catalyst for countries' efforts*"¹².

The AdC has been advocating for the removal of barriers to entry and expansion in crucial sectors of economic activity in Portugal, such as energy, transport and ports, telecommunications, and regulated professions, among others. Given that the Portuguese Government *PRR* foresees a reform to "*reduce restrictions in highly regulated professions*", the AdC advocated explicitly for the implementation of *AdC's Action Plan*.

The current moment can be seen as an opportunity to implement these measures, which can contribute to a sustained and inclusive economic recovery.

12 Further information available at: <https://www.concorrenca.pt/sites/default/files/Competition%20policy%20%E2%80%93%20a%20catalyzer%20for%20recovery%20-%20Margarida%20Matos%20Rosa.pdf>