New Developments in Portuguese Competition Law: the Competition Authority in Action

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Competition is a recent branch of law in the Portuguese legal order. It was only with the accession to the European Communities that a competition law was adopted. Indeed, the very idea of competition was a strange concept in a country that was used to being ruled by a corporative system and where the state had always played an important role in the economy. In this framework, it proved difficult to satisfactorily implement competition law in the first decades.

The deep-seated changes in the Portuguese economy in the last 20 years and the decentralisation in the implementation of EC competition rules promoted by EC Regulation 1/2003 created the conditions for an improvement of the competition legal framework. Hence, there was a legislative reform in 2003 that led to the adoption of a new competition law and to the creation of an independent competition agency.

This article aims to give a brief overview of the 2003 competition law reform. Then it will focus on the Competition Authority action, mentioning the main decisions concerning the enforcement of competition law, in particular, in the field of cartels and merger control. The telecommunications decision, which is the most complex and controversial merger case decided by the Competition Authority, will deserve a final reference.

The evolution of Portuguese competition law

Competition law in Portugal is firmly linked to the rise of the democratic system and the accession to the European Communities. Indeed, there were several attempts in the past to adopt a legal framework for competition, but with scant success. The first was in 1936 with the adoption of a law on coalition's control, but this law was never implemented. Then, by the time that Portugal participated in the EFTA foundation, with the United Kingdom and other European countries, another competition law was passed, but again it was never implemented. The economic liberalisation promoted at the end of the political dictatorship led to the adoption of Law 1/72, on competition defence, which never came into force for lack of implementation.

It was only when the democratic regime was fully consolidated and Portugal was close to joining the European Communities that the first competition law was finally adopted, in 1983. It was an attempt to break with the old corporative system as well as state interference in the economic sector.[1] At the institutional level, enforcement of competition law came under the responsibility of the Directorate-General for Competition, an administrative unit acting under the Government hierarchic dependence, and by the Council for Competition, who had decision-making powers concerning the procedures investigated by the Directorate-General. The competition legal order was further complemented by the 1988 law on merger control.

The dynamic of the Portuguese economy following EC accession, as well as the growing trends of domestic liberalisation, deregulation of administrative rules and privatisation of state companies led to the adoption of a new competition law in 1993. Decree-Law 371/93 established the universal scope of application of competition rules, putting an end to the so-called excluded sectors that consisted of areas such as public administration, energy, telecommunications and transports.

Despite the changes introduced by the 1993 law, competition remained a minor area within the framework of public policies. That situation was due on the one hand to lack of assimilation of a competition culture by economic operators, and on the other to the fact

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1 J.P. Ferreira, "Contributos para um enquadramento da evolução das leis da concorrência em Portugal", in *Concorrência. Estudos* (A.G. Soares, M.L. Marques eds, Coimbra: Almedina, 2006), at p.205.

that the bodies charged with the enforcement of competition rules were unable to carry out their mission. In particular, there was general consensus on the need for an independent agency that could act with autonomy from the political power while remaining free from the exposure to business interests.

At the same time, the European Commission initiated a reflection on the implementation of EC competition rules with a view to reforming Regulation 17/62. With the adoption of Regulation 1/2003, which determined the end of the monopoly enjoyed by the Commission, Member States were fully associated in the implementation of Arts 81 and 82 of the EC Treaty. With the new regime of decentralised application, national authorities and Member State courts play a major role in the implementation of EC competition rules. Hence, the need for the Member States to strengthen the institutional dimension of competition policy in order to be able to fulfil the new tasks conferred by the EC reform and to participate in the network of public authorities involved in the implementation of EC competition law.

The 2003 legislative reform

The joint effect of the internal and external reasons convinced the Government that the time had come to introduce a deep reform on Portuguese competition law. With a view to preparing the new competition legal framework, the political power established a special legislative committee to draft proposals on competition law reform. On the basis of the work submitted by the legislative committee, the new pillars of the legal reform operated in 2003 were approved: the creation of a Competition Authority and the revision of substantial and procedural dimensions of competition rules.

As expressly mentioned by Decree-Law 10/2003,[2] which established the new Competition Authority, the reform provided the agency with the powers that had previously been divided between the Directorate-General for Competition and the Council for Competition, putting an end to an experience that was a source of divergence and that undermined the credibility of competition policy in Portugal. The option for a single institutional structure gave the new Authority powers of both investigation and punishment of anti-competitive practices, as well as enabling it to exercise its functions in the field of merger control.

The independent status conferred to the Competition Authority is underpinned by its legal nature, the autonomy granted at the financial level and the requirements concerning the nomination, mandate and rules on incompatibility and impeachment of the Board of Directors. In particular, in light of its nature as an independent agency, the members of the Board of Directors can not be removed from power during the whole extent of their mandate.[3] By these means, the political power aimed to restore the credibility of the institution responsible for the enforcement of competition rules and assure its participation in the European network of competition regulators.

The second pillar of the 2003 legislative reform was the adoption of a new competition law, revising the procedural and substantive aspects of former competition rules. Law 18/2003[4] is expressly intended to modernise and improve the competition legal framework and to promote efficient markets and the satisfaction of consumer interests.

Law 18/2003 enlarges the scope of application of competition to areas that were previously excluded. For instance, financial institutions that once were exempted from merger control regime become subject to the general system of prior notification established by the new law. In the same way, Law 18/2003 put an end to the non-application of competition rules to undertakings providing services of general economic interest by saying that the public undertakings and those companies to which the state had granted special rights are covered by the provisions of the new Act.

It should also be noted that Law 18/2003 received the so-called doctrine of essential infra-structures.[5] Considering the general context of liberalisation of the economic activities, the new Act established that the refusal, upon appropriate payment, to provide any other undertaking with access to an essential network or other infrastructure which the first party controls, when without such access the second party cannot operate as a competitor of the undertaking with a dominant position in the market, may be considered abuse of a dominant position.

2 Decreto-Lei No.10/2003, Jan 18, 2003.

3 A.C. Santos, M.E. Gonçalves and M.L. Marques, *Direito Económico* (5th edn., Coimbra: Almedina, 2004), at p.328.

4 Lei No.18/2003, June 11, 2003.

5 M.L. Marques and J. Almeida, "Entre a propriedade e o acesso: a questão das infra-estruturas essenciais", in *Concorrência. Estudos*, cited above, at p.47.

Another major change introduced by Law 18/2003 concerns the mechanism of sanctions to the infringements of competition rules.[6] Indeed, the new Act abandoned the past system of fixed penalties in favour of a new regime, with an intended dissuasive effect, that foresees that the undertakings violating the provisions of competition law can be fined up to 10 per cent of the previous year's turnover. In the determination of the fine, the gravity of the infringement, its repeated or occasional nature and the eventual co-operation with the Competition Authority should be taken into account.

Concerning the last element, there was a recent development in the Portuguese competition legal order with the adoption of a leniency law. In fact, Law 39/2006, which approved the *Estatuto de Clemência*,[7] establishes the legal norms for which undertakings that co-operate with the Authority can benefit from immunity or a special reduction of the financial penalties in the proceedings for breach of competition rules.

The Authority's decisions can be subject to judicial review to the Lisbon Commercial Court. The Lisbon Court of Appeal delivers the final verdict concerning eventual appeals against the Lisbon Commercial Court's rulings.

The Competition Authority in action

The Portuguese Competition Authority (PCA) has developed interesting action since its creation in 2003. It has been particularly active in the exercise of its powers of investigation and sanction against cartels and other anticompetitive practices, as well as in merger control. The Authority opened a significant number of investigations concerning prohibited practices, which in some cases resulted in the application of heavy fines to the undertakings involved. In relation to the prior notification system of merger control, the Authority has already decided on several hundreds of notified mergers.[8]

Cartels

The fight against cartels led the Competition Authority to impose severe penalties on companies. This was the case, for instance, of public procurement in state hospitals. The information delivered by a pharmaceutical company to the Authority allowed proving the existence of agreements on prices in the proposals submitted by several undertakings in calls for tenders to supply diabetes reagents to public hospitals. In particular, the Authority noted that the companies involved had presented the very same price in a wide range of hospital public tenders. Having considered the existence of a concerted practice in the tenders to supply state hospitals throughout the country with diabetes test strips by the same companies, the Competition Authority decided to impose fines of approximately €16 million on five major pharmaceutical companies.[9]

However, in determining the amount of fines imposed on the different undertakings involved in the concerted practice, the Authority considered the fact the Johnson & Johnson co-operated with the PCA during the administrative procedure by supplying documents of great value to prove the offences of competition law. Bearing in mind that the existence of cartels is difficult to detect, and that co-operation with the Authority is essential in the pursuit of such arrangements, Johnson & Johnson benefited from a reduction on the penalty imposed, with a fine of €360,000, unlike Abbott, Bayer and Menarini, who each were given fines ranging from €5.2 million to €6.8 million.

Another interesting case about the Competition Authority action against cartels concerns the price of bread. News reported by the press announced the rise of about 30 per cent in the price of bread. That news led the Authority to monitor the bread market on a permanent basis, watching both the milling sector and the bread-making industry. The investigation carried out by the Authority concluded that between December 2000 and September 2004 increases in the flour price were uniform in relation to the amount, the date in which the increase was announced to the public and the date in which the rises came into effect. These elements sustained the charge by the Authority of a concerted practice by 10 undertakings from the milling industry. The PCA imposed fines totalling €9 million on the companies investigated, considering that they

6 J.C. Vilaça, "Introdução à Nova Legislação da Concorrência: Vicissitudes dos Projectos de Modernização", in *Concorrência. Estudos*, cited above, at p.23.

7 Lei No.39/2006, August 8, 2006.

8 *Annual Report on Competition Policy Developments in Portugal—July 1, 2005-June 30, 2006*, Report submitted by the Portuguese Competition Authority to OECD Competition Committee, 2006, at p.10, *www.oecd.org/infobycountry/0,2646,en_2649_33725_1_70732_119687_1_1,00.html*

9 Competition Authority, Press Release 10/2005, Oct 13, 2005, *www.autoridadedaconcorrencia.pt/vImages/pressrelease10_2005.pdf*

infringed Art.4(1) of the Portuguese competition law by engaging in a concerted practice with the intention of uniformly establishing prices. For the Authority, the parallel pricing behaviour corresponds with a concerted practice when it creates price levels and competitive conditions that do not reflect the proper function of the market. Taking into account that bread is considered to hold the first place among essential goods for the Portuguese people, any modification of the price would affect all consumers.[10] For this reason the PCA decided to impose heavy fines on the companies involved in such practice.

Vertical restrictions

The Competition Authority's first decision condemning a vertical restriction concerned the abusive clauses in coffee supply contracts signed by Nestlé. Coffee consumed outside home in hotels, restaurants and cafeterias—the so-called Horeca channel—represents 61 per cent of the global market of toasted coffee in Portugal. About 80 per cent of the domestic market of coffee consumed outside home is controlled by four major undertakings, whose positions had not moved since the year 2000. This situation made the entry of new competitors harder and prevented companies with small market shares from winning new customers. In this framework, the Authority concluded after an investigation that the leading undertaking of the market, Nestlé, had been signing supply contracts containing exclusive deal clauses with indefinite duration. These contracts were combined with other clauses that imposed the purchase of minimum quantities of coffee. As a result, the contract would be extended, after an initial period of five years, whenever the customer had not purchased the minimum quantities of coffee previewed, on pain of the obligation to pay an indemnity, which in practice discouraged the cancellation of the contract. Those no-competition conditions were part of the standard contracts signed by Nestlé throughout the country. Considering that exclusive purchase clauses may not exceed five years, according to EC Regulation 2790/99, on the application of Art.81(3) EC to vertical agreements, and that the practical effect of those contracts was to reduce inter-brand competition in the Horeca coffee market, the Authority decided to impose a fine of €1 million on Nestlé, as well as obliging them to eliminate contractual clauses involving the obligation to make purchases for a period exceeding five years, or the renewal of the contract beyond five years without the express and free consent of both parties.[11]

Merger control

The Portuguese Competition Authority has already analysed more than 200 mergers, notified under Law 18/2003. The PCA has been approaching merger control with an economic methodology, making use of quantitative models to assess its real impacts. Recently, and for the first time since it was established, the PCA issued three prohibition decisions. The first one was related to public transportation, the following one to the fuel market for harbour stations and the third one to the highway roads sector. The last prohibition decision was appealed to the Minister of Economy, and allowed on grounds of public interest. But the most interesting decision on merger control was, in fact, delivered in the framework of a takeover bid for the acquisition of the incumbent in the telecommunications sector.

The first prohibition decision was about public transportation on Lisbon's south bank, and it involved the acquisition of the undertaking Arriva by the Barraqueiro group. Barraqueiro, through Fertagus, enjoys the sole concession for public rail passenger transportation on the route between Lisbon and Setúbal, across the bridge Ponte 25 de Abril. In turn, Arriva provides public road transport on the south bank of the Tejo River. The Competition Authority considered that the companies compete directly with each other in the public transportation market between Lisbon and Setúbal, where Fertagus has a market share of 73 per cent, and Arriva enjoys nearly 22 per cent of the relevant market. Considering the severe entry barriers to this market, the acquisition of Arriva would create a near-monopoly scenario where the new company would be able to increase prices and downgrade the quality of service, thus, affecting 70,000 daily commuters crossing the bridge. During the case, the parties offered both behavioural and structural commitments. However, the PCA found them insufficient to eliminate its competitive concerns, since the proposal presented did not contain

10 Competition Authority, Press Release 11/2005, Oct 20, 2005, *www.autoridadedaconcorrencia.pt/vImages/pressrelease11_2005.pdf*

11 Competition Authority, Press Release 9/2006, April 27, 2006, *www.autoridadedaconcorrencia.pt/vImages/pressrelease2006_09.pdf*

demonstration that the remedies were able to prevent the dominant position predicted in the projected merger. Since the parties are responsible for such proof, the Authority adopted a decision of prohibition.[12]

The second prohibition decision involved Galp's acquisition of the coloured fuel diesel service stations held by Esso. Coloured diesel fuel is normally used by fishing boats, and the fuel stations concerned were located in the main fishing ports of the Portuguese coast. Galp is the leading Portuguese company of petroleum products; it has a 90 per cent market share, benefiting from its vertical integration of fuel import, storage, refining, distribution and marketing chain. In the relevant market of coloured diesel, Galp's price list was already above those of its competitors, with the company taking advantage of customer's loyalty, as a result of the trading conditions available, in particular the terms of payment with long delay periods. This indicates that Galp enjoys the ability to act independently from its direct competitors, showing substantial market power. As a result of the merger, Galp would have achieved a market share of coloured diesel above 50 per cent, and in four of the relevant regional markets just a single operator beside Galp would remain. This situation would aggravate the already high degree of concentration in the coloured diesel sector. The Competition Authority mentioned, additionally, Galp's unique upstream position in the fuel sector as a fact that cannot be duplicated by any competitor, which represents a huge entry barrier to the relevant markets. On these grounds, the PCA ruled against the merger because it might have created or strengthened a dominant position, which would have significantly restricted competition in the relevant markets for coloured diesel services stations.[13]

The last merger prevented by the Authority concerned the acquisition of the undertaking Auto-Estradas do Atlântico by Brisa. Brisa group is active in the construction and maintenance of motorways and holds the concession for the A-1 motorway, between Lisbon and Porto. Auto-Estradas do Atlântico is another player in the market, and it holds the concession for the section Lisbon-Leiria of the A-8 motorway. Both the A-1 and A-8 motorways run parallel to each other, constituting an effective alternative for users. The merger would lead to a 100 per cent market share for the Lisbon-Leiria motorway roads, and to a 75 per cent share for the Lisbon-Porto motorway roads, and it would affect, according to 2004 traffic levels, 1.3 million cars per month on the A-1, and around 570,000 vehicles on the A-8. Studies presented by international consultants indicate that for 30 per cent of the traffic using these roads, the two concessionaires are in direct competition, a fact that demonstrates a high degree of substitutability between them.

On these grounds, the Authority considered that the merger could harm the users, as a result of the suppression of competitive pressure between the motorways that run parallel. In particular, the PCA noted that the existence of two different holders of similar infrastructure concessions may lead to competition on road tolls, services provided over the roads, quality and safety of carriageways, and road maintenance. The PCA also stated that although the companies involved are bound by concession agreements, and therefore subject to regulation, the operation of motorways is still subject to competition. Moreover, under Portuguese law no sector is excluded from the application of competition rules, not even those that are regulated. In this case, the Authority stated that although many aspects of the concession agreements are regulated by the contracts signed with the state, the concessionaires have considerable leeway to fight for the market and attract new users. Hence, the PCA concluded that the merger would create and strengthen a dominant position, which would significantly restrict competition in the relevant market.[14]

The exceptional review procedure

Under Art.34 of the Competition Authority's Statutes, it is possible to appeal to the Minister of Economy about a prohibition decision delivered by the PCA, in the framework of the so-called exceptional review procedure. This provision admits that, through a reasoned decision, the Minister of Economy may reverse the prohibition taken by the Authority, on the grounds that the merger is beneficial to the Portuguese economy, thereby undermining its anti-competitive effects. Brisa appealed to the Minister of Economy under the exceptional review procedure.

12 Competition Authority, DOPC-Ccent. 37/2004, *Barraqueiro/Arriva (ATMS)*, Nov 25, 2005, *www.autoridadedaconcorrencia.pt*

13 Competition Authority, DOPC-Ccent. 45/2004, *Petrogal/Esso,* Dec 14, 2005, *www.autoridadedaconcorrencia.pt*

14 Competition Authority, DOPC-22/2005, *Via Oeste (Brisa)-Auto-Estradas do Oeste/Auto-Estradas do Atlântico*, April 10, 2006, at p.95, *www.autoridadedaconcorrencia.pt*

The Minister of Economy reversed the Authority's decision, allowing the acquisition of Auto-Estradas do Atlântico by Brisa, on the basis of fundamental interests for the national economy, in particular, the scale of the companies involved. For the Minister, with the proposed merger Brisa would turn into a larger player in the motorways sector, becoming more competitive at the international level and this would benefit the Portuguese economy.[15]

The decision taken by the Minister of Economy raises some criticism. One objection that should be made concerns the lack of proportionality. Indeed, after a long evolution Portugal finally adopted a competition legal order similar to the other Member States of the European Union. With the 2003 legislative reform, the promotion of competition in the market is a main goal of public policies. For this reason, any measures that derogate a decision adopted in the framework of competition policy should respect the principle of proportionality, i.e. that the effects produced by those measures should cause the least damages to the main value of competition between companies. In its decision, the Minister stated that the internationalisation of Brisa would pass through the strength of its position in the Portuguese market. However, respect for the principle of proportionality would require that the growth of Brisa in the domestic market be achieved without the anti-competitive outcomes detected by the Competition Authority. That would be the case if Brisa merged with other companies operating in the motorways sector, or if it obtained new concessions.[16] That scenario was not even considered by the Minister's decision.

Another critique that can be made has to do with an opportunity evaluation of the reversed decision. As expressly referred to by the Preamble of the Competition Authority's Statutes, the exceptional review procedure was directly inspired by the German competition law. However, it should be noted that the exceptional review procedure plays a reduced role in the German legal order, with companies refraining from using such a procedure.[17] In the Portuguese case, the Competition Authority had already taken more than 200 decisions in the framework of its merger control powers. In only three cases were mergers operations not cleared. Of these, a single prohibition decision has been appealed to the Minister of Economy. Hence, the decision to reverse the Authority's prohibition should have been based on substantial reasoning, with the purpose of demonstrating Government commitment to respecting the proper implementation of competition rules by the PCA. However, the reasoning used by the Minister could be seen as a sign of political vulnerability to business interests, to the detriment of competition defence and the protection of consumer rights.

The Telecom case

The most controversial decision of the Competition Authority regards the proposed acquisition of Portugal Telecom by Sonaecom.[18] This merger was the most complex and contentious case ever presented to the Competition Authority.[19] After a long evaluation procedure that lasted for 10 months, involved 8 entities that established themselves as parties and had 4 opinions presented by the telecom regulator, the Authority delivered an 800-page decision that cleared the merger arising from the takeover bid launched by Sonaecom.

Portugal Telecom is the historic incumbent in the country and pursues its activities in the areas of fixed communications, mobile communications and the multimedia sector. In the field of fixed communications, it owns the fixed copper network, providing voice and internet services, both to final consumers and other telecom operators. Concerning mobile communications, it fully controls the first mobile operator in the country, TMN. In addition, through its multimedia company it owns the largest fixed cable network in the nation, providing cable TV and internet services.

Sonaecom is active in the area of fixed communications; it is an alternative operator to Portugal Telecom, offering voice and internet services. With regard to mobile communications, it controls Optimus, which is the third operator in the sector.

15 Ministério da Economia e Inovação—Gabinete do Ministro, "Recurso Extraordinário. Processo de concentração 22/2005 Brisa/AEO/AEA", June 7, 2006, at p.10.

16 P. Fernandes, "Comentário à decisão ministerial referente ao recurso apresentado pela Brisa/AEO", *Reckon LLP, Regulation & Competition Economics*, 2006,*www.reckon.co.uk*

17 S. Pais, "O novo regime do controlo das concentrações de empresas na Lei n°18/2003", in *Concorrência. Estudos*, cited above, at p.51.

18 Competition Authority, AC-I-08/2006, *Sonaecom/PT*, Dec 22, 2006, *www.autoridadedaconcorrencia.pt*

19 Another major decision taken by the Competition Authority in the field of merger control concerned the proposed acquisition of Bank BPI by Bank Millennium BCP. The Authority decided not to oppose to the takeover bid launched by Millennium BCP, though it has imposed remedies.
See Competition Authority, Press Release 4/2007, March 16, 2007, *www.autoridadedaconcorrencia.pt/vImages/pressrelease2007_04.pdf*

The Sonaecom commitments assumed in the area of fixed communications involve the horizontal separation of the fixed networks, with the obligation of selling either the fixed copper network business or the fixed cable network business. Should Sonaecom sell the cable network, it has to functionally separate the services provided to other operators in the copper network from those provided to final consumers. The remedies imposed in the area of fixed communications would allow for the ownership division of the copper and cable networks. As a result, consumers would benefit from more competition in the relevant markets even if the nature of the remedies imposed seem to be closer to the exercise of a regulatory power than to the jurisdiction of competition policy.

A different outcome seems to arise from the remedies imposed in the field of mobile communications. To start, it should be said that the Authority accepted the Sonaecom request for the merger between TMN, which have 50 per cent of market share, with Optimus, which enjoys 15 per cent of the relevant market. The commitments imposed on Sonaecom are the obligations to surrender radio spectrum frequency rights and associated licences in order to allow the entry of a new MNO (mobile network operator), to divest itself of sites, to guarantee access to any interested MVNOs (mobile virtual network operators) in its network, and to reduce customer loyalty programmes.[20]

The reasoning used by the Authority to accept the reduction of the mobile market from three to just two operators seems rather fallacious, stating that a competition analysis can not be confined to actual competition, but should also take into account potential competition, i.e. the market conditions that might emerge as a consequence of the remedies, which could promote the entrance of new operators and increase competitive pressure. As a result, the Authority believes that the increase of concentration would be offset by the introduction of contestability in the mobile market, with the creation of conditions for the entry of new competitors.[21]

More than the competitive reasoning, it is the reality of the mobile market that raises concern. It should be noted that the rate of penetration of mobile phones in Portugal is 108 per cent.[22] In this framework, the economic conditions for the entry of a new MNO are less attractive, considering the scant potential for growth in the relevant market. In fact, a new operator would have to face a duopoly created by the concentration in an almost saturated market.

Moreover, it is not clear what the effects of the entrance of MVNOs in the market would be. These operators usually benefit from price competitive advantages, because they do not face the costs of building their own networks. In Portugal there are no MVNO's at the moment, but the field has already been occupied by the existing mobile operators through the establishment of low cost companies associated with their own mobile networks. This makes the market less interesting for virtual operators.

It is clear that the remedies stemming from the Authority's decision would produce a decrease of the actual competition level in the mobile communications market.[23] Considering how the relevant market functions and contrary to the Authority's belief, the commitments imposed would hardly allow compensation of the competitive pressure through the entrance of new operators. That is to say that the intended increase of potential competition, brought about by the introduction of more contestability, would have to face the reality of a market situation where the growth of new operators would be almost residual. In these circumstances, the reduction of the number of mobile operators sanctioned by the Authority will not allow for a potential competition enhancement; it merely remains a theoretical competition exercise.

Conclusion

The 2003 legislative reform represented a step forward for competition policy in Portugal. In particular, the Competition Authority action allowed for important development in the enforcement of competition rules. It could be argued that the Competition Authority introduced competition policy to the heart of the public debate, with politicians and economic operators paying more attention to competition issues. In addition, the questions raised by the implementation of competition

20 Competition Authority, AC-I-08/2006, *Sonaecom/PT*, cited above, at p.721.
21 *ibid*., at pp.218–294.
22 *ibid*., at p.215.

23 The offer made by Sonaecom failed because the Portugal Telecom EGM, hold in March 2007, rejected the Sonaecom's conditions concerning the removal of single-shareholder 10% voting rights restrictions. Despite this failure, it is generally recognised in Portugal that the content of the Competition Authority decision paved the way for a wide market restructure within the telecommunications business.

rules deserved larger media coverage. In this sense, it could be said that the Competition Authority contributed to the spread of a competition culture, which was one of the purposes mentioned by the 2003 legal acts.

Despite the Authority's global accomplishment in the enforcement of competition rules, some aspects of its action should not go without criticism. This is particularly the case of the *Telecom* decision, where the Authority seemed to be captured by a regulatory mission, instead of staying in the field of competition defence. Indeed, the complexities of the case led the Authority to impose a set of remedies in the fixed communications sector that would belong more to the jurisdiction of the telecommunications regulator than to a strict competition policy. On the other hand, it seems that with the changes introduced in the fixed communications sector through the commitments imposed, the Authority tended to neglect the protection of competition in the mobile communications market, accepting a final solution that will reduce the existing competitive pressure and can cause harm to consumers.

At the legislative level there are some aspects that claim urgent amendment. At the top of the provisions that need to be revised there is the subject of the exceptional review procedure against a prohibition decision delivered by the Competition Authority, in the framework of merger control. Indeed the political context in the country has to take into account a certain degree of promiscuity that exists between politicians and entrepreneurs, with the national elite moving frequently from business to politics, and vice versa. In these particular circumstances, it is strongly recommended that competition law would not foresee any sort of ministerial review from the decisions taken by the Competition Authority. If not the reliability of competition policy will be at stake.