

The Portuguese competition commission, launched last year as part of an effort to bring the country's business regulation into line with the standards of the European Union, has resolutely proved its worth despite notable cultural and economic constraints.

Carlos Botelho Moniz looks at what its future holds

A bright beginning

Already a business-friendly country with a successful track record of foreign investment inflow, Portugal has been undertaking reforms in order to enhance its competitiveness in a wide range of areas. Among them is market regulation. Under the new Competition Act, passed in early 2003, the Competition Authority was created with a mandate to prevent anti-competitive practices and to promote market transparency.

The new Portuguese competition watchdog — *Autoridade da Concorrência* — encompasses the substantive and procedural legal powers of both the former Competition Council and the directorate general for commerce and competition. Its foundation has accomplished a much-awaited reform that sceptics had thought would be impossible.

Prior to the establishment of the Competition Authority in March 2003 and the adoption of the new Competition Act in June 2003, there were three main weaknesses in the Portuguese competition legal system that the new authority is now successfully overcoming.

The first involved the absence of a competition culture in Portugal, mainly in the economic sector and in political spheres. This was compounded by the lack of a programme for competition law. The authority is taking relevant initiatives to overcome these difficulties. In the first instance it is making public its opinions on the main competition concerns in the most sensitive sectors, such as telecoms, gas and energy. This move demonstrated the authority's new, proactive posture. Likewise, we can find more than a dozen seminars and programs on competition issues that include a wide variety of topics ranging from "Structural separation and access in telecommunications markets" to "Competitive non-linear pricing in duopoly equilibrium", just by visiting the authority's website. The authority is passing its first test with honours in that it is instilling a competition culture.

The second issue, critical to many in the economic sector, was the fact that the former competition authority did not have the necessary formal institutional independence from the Government, notably because the Government had the power to nominate and reappoint its members on a case-by-case basis. This shortcoming was effectively removed by the new act because members of the Competition Authority are nominated for a five-period term and cannot be removed unless they commit a serious offence.

The third weakness concerns the low budgets with which its predecessor competition institutions had to work. Evidently, learning from experience, the law awarded the new Competition Authority not only the necessary autonomy from the Government, but also allocated adequate financial resources to it. This is clearly an important step towards the independence and smooth running of the authority. The authority can now receive from between €7,500 (\$5,000) and €37,500 (\$25,200) from the notifying parties when it assesses a merger filing. The precise figure depends on the annual turnover of the undertakings involved and on the need to make an in-depth analysis of the operation. In case of anti-competitive behaviour, it can also now apply fines of up to 10% of the annual turnover of the company in the previous year (retaining 40% of the collected fine).

From the beginning, the authority sought support

from other national regulators. It has now gained that support. It receives 7.5% of the taxes collected by other regulatory authorities, including the National Authority of Communications, the Portuguese Institute of Insurance, the National Institute of Civil Aviation, the Energy Services Regulatory Authority and the Institute of Public and Private Works and Real Estate Markets. The authority now has sound financial resources and clear independence from the Government.

One of the first companies to experience the determination of the Competition Authority was Portugal Telecom, the biggest telecom player in the Portuguese market — the dawn raid on its headquarters followed allegations of anti-competitive behaviour and made headlines in national newspapers. The retail vehicle-fuels sector is also the object of scrutiny by the authority. This follows the liberalisation of all fuel prices in the beginning of the year and the subsequent allegations of indirect fixing of prices by various distributors.

Bearing in mind that the state is a major user of telecom services, it has also issued a recommendation to the Minister of Finance regarding the acquisition of communication services by the state. Any purchasing contract for communications services for which the initial negotiations (not including automatic renewals) were held more than three years ago shall be the object of a new invitation to tender. It also raised concerns about the payment of public funds to public higher education establishments. It was feared that such support might constitute state aid in areas where the establishments operate in competition with private institutions.

In its 10 months of existence, the Competition Authority has analysed more than 50 merger filings and has eight pending cases, out of which two are proposed mergers that require in-depth analysis of their second phase. It has also initiated infringement procedures, applied fines to companies that were obliged to notify the authority of anti-competitive activities and analysed *ex officio* activities.

In addition to taking part in the European Competition Network, the authority also serves on the competition committee of the Organisation for Economic Co-operation and Development, on the working group on the interaction between trade and competition of the World Trade Organisation, and on the intergovernmental group of experts on competition law and policy of the United Nations Conference on Trade and Development. In April 2003, it also became a member of the International Competition Network, the informal forum in which competition watchdogs from around the world discuss the practicalities of competition policy enforcement and policy issues.

The authority has achieved encouraging and concrete results in a remarkably short time — its action and enterprise amply demonstrate its skill, confidence and strength, which seems built to last.

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Robert Harding

The Autoridade da Concorrência has already had a notable impact on Lisbon's business community

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