PORTUGAL

The 2003 Competition Law Reform in Portugal

Carlos Botelho Moniz, Margarida Rosado da Fonseca and Pedro Gouveia e Melo*

The Portuguese Competition law framework has been the object of important changes since the second half of 2002. Given the international and domestic negative economic environments, the Government set as one of its priorities to increase the international competitiveness of the Portuguese economy. In this context, the Council of Ministers approved Resolution 103/2002, of 26 July, which adopted a "Program for increased Productivity and Growth of the Economy" ("Program"). In this Program, the enactment of new legislation on Competition and the creation of a new Competition Authority were considered crucial instruments for the attainment of the aims pursued by the Program.

Consequently, Decree-Law 10/2003, of January, 18 created a new Competition Authority *(Autoridade de Concorrência)*, entrusted with the competences formerly held by DGCC both under the 1993 Competition Act and Decree-Law 370/93 (Individual Restrictive Practices Act), and also by the Competition Council, that has now been extinguished. According to the preamble of Decree-Law 10/2003, this reform is driven by the emergence of important internal and external factors. Among the several aims that are pursued, it is worthwhile noting that the reform seeks to enhance the credibility of the authority in charge for the defence of com-

* Morais Leitão, J.Galvão Teles and Associates, Lisbon. The authors wish to thank Katiá Cristina Antunes for her assistance.

petition in Portugal while simultaneously ensuring its full integration with the international and EC legislative approaches of competition.

This reform is included in a new trend that recognizes the importance an effective system of enforcement plays in the compliance of the law by individuals and undertakings. Also, the future competences to be exercised by the national competition authorities under Regulation 1/2003[1] require a thorough revision of the current enforcement system and current allocation of human resources. More precisely, the new Authority is expected to participate actively and efficiently in the newly created European network of national competition authorities, in the context of Regulation 1/2003.

Subsequently, the new 2003 Competition Act was adopted by Law 18/2003, of June, 11th, and may be characterized by the strong influence drawn by the EU competition rules. However, it is worthwhile mentioning that Decree 1097/93, of 29 October, that regulates the requests for previous review of restrictive practices by the competition authorities is in force until the enactment of a new procedure by the new Competition Authority. This procedure is similar to the voluntary notification of practices to the Commission under Form A/B that has now been eliminated as a result of the recent reform in competition policy proposed by the European Commission and adopted by the Council. The maintenance of the referred previous review mechanism in Portugal may be explained by the fact that the existing "competition culture" is substantially more incipient than the one at Community level and thus may arguably require a closer monitorisation by the Competition Authority while consolidation of the referred "culture" has not been completed.

The New Competition Authority

The preamble of Decree-Law 10/2003 recognises that the division of competences between two different enforcement agencies has often proved inefficient and gave rise to disagreeing approaches, which could decrease confidence of the citizens and undertakings in the effectiveness of the competition enforcement. This is the reason presented for the creation of a single Competition Authority (*Autoridade da Concorrência*), which concentrated all competences in the enforcement of competition law that were previously held by both the Directorate-General and the Competition Council. It is worthwhile noting that the concentration of the investigation and decisional powers in a same administrative entity has led to some criticism. More precisely, complex issues were raised as to its compliance with the safeguards of individuals within the context of administrative procedures, as pro-

[1] Council Regulation (EC) No 1/2003, of December 16, see above.

vided for in the Constitution of the Portuguese Republic.[2] In this context, it is worthwhile noting that those same arguments against the unification of competences at EU level have resulted in an effort to gradually clarify the division of competences for the safeguard of the rights of defence. For instance, Hearing Officers have seen their powers increased as concerns the pursuance of impartiality and the establishment of hierarchical independence towards the organic structure of the European Commission. Undoubtedly, the Portuguese enforcement system needs to take into consideration these concerns if the aim is to improve efficiency without neglecting the rights of individuals and respect for safeguards of due process in the context of competition enforcement.

The second distinctive feature of the Authority consists in its statute of independence *vis-à-vis* the Government, unlike what formerly happened with DGCC and, to some extent, with the Competition Council. In order to ensure this independence, which constitutes a critical factor for its efficient action/functioning, the Authority has been awarded financial and departmental autonomy. Moreover, Decree-Law 10/2003 establishes clear conditions for selection of the members of its Council/Board, a fixed term of office and a regime of incompatibility and impediment of such members.[3]

The third characteristic of this new Authority worth noting is the much broader and ambitious role in the consolidation of the "competition culture" in Portugal that is now assumed, following the new text of Article 1 of the 2003 Competition Act, which clarifies and extends its scope of application. Even though it remains to be seen whether the human resources and the financial means that have been granted to the Authority enable the same to implement all its ambitious aims, the assumption of such aims is no doubt an improvement when compared with the previous situation.[4] Similarly, the introduction by the 2003 Act of amendments that facili-

[2] The Constitution of the Portuguese Republic was enacted on April, 2, 1976 and has subsequently been subject to several amendments, the last being introduced by Constitutional Law 1/2001, of December 12, DR I-A, 286, of December 12 2001, page 8172.

[3] See Articles 11 to 22 of Decree-Law 10/2003.

[4] In this context, it is important to refer that a *Development Strategy* has been made available in the Authority's website (www.autoridadedaconcorrencia.pt/) and sets forth the factors considered by the new Authority as being critical for its success. Thus the new Authority's priorities pursue the following aims: *(i)* monitorisation of both concentration and cooperative entrepreneurship strategies and sanctioning of restrictive and abusive practices, with the aim of ensuring an adequate level of competition; *(ii)* identification of the markets in which competition is restricted and promoting solutions benefiting consumers and improving efficiency; *(iii)* increase in the public consciousness on the context and benefits resulting from competition; *(iv)* provision of services to the Government, to the regulatory authorities and to society in general, in line with the best practice standards at international level; and, *(v)* qualitative participation in International Relations.

tate a more effective application of competition law provisions in areas formerly outside the scope of enforcement of competition law – such as Public Procurement, State aids and arguably sectoral regulation – constitutes a positive development, as will be explained below.

Understandably, the new Authority considers that it is crucial to harmonize and clarify the possible ways of handling the procedures, in order to increase effectiveness in the enforcement of competition law and promote confidence by the public in general in the investigation of unlawful practices and behaviours. As a consequence and in line with the recent European Commission's practice, the Authority has established the drafting of several documents, among which a Proceedings Manual, setting forth practical guidance, *i.e.*, the type of classification to be given to the cases and the degree of priority in its handling; a Processing Manual containing a multiplicity of rules to be applied to each type of procedure, as well as models for economic simulation; and, regulations concerning subjects such as the imposition of fines, the notification of concentrations, the investigation and instruction of cases and the compliance programs.

Irrespective of a successful functioning of the new Authority, effective enforcement of national competition law and the consolidation of the "competition culture" in Portugal are not well achieved if pursued in isolation by the Competition Authority. In reality, the approach to be adopted by the political and judicial powers is crucial for the affirmation of competition law in Portugal as a cornerstone of the market economy. As referred above, an effective enforcement of competition law requires several structural problems to be solved in the short run in areas other than the administrative one. On the one hand, political powers need to improve their awareness of the importance and influence the principles of competition law have in the adequate and lawful implementation of other economic policies – such as the regulation of strategic sectors of the economy and the activities developed by undertakings entrusted with the provision of services of general economic interest. Also, the efficient enforcement of competition law in regulated sectors requires an adequate and efficient articulation of competencies with the sectoral regulators and calls for clear allocation of tasks. This means that it is expected from both of them to abstain from withdrawing the *effet utile* of competition law principles, by adopting legislation that contravenes them. On the other hand, the current judicial system and the conditions in which it functions call for substantial amendments to be introduced in the short term in order to allow competition law enforcement to become reality. These amendments include, as an example, the need to prevent the appeals' mechanism from being used by undertakings as a means of postponing or impeding implementation of administrative decisions condemning them for anticompetitive practices and imposing fines. Better conjugation between the Authority and the judiciary powers is also needed, namely in order to diminish the length of judicial procedures. Also, the alleged lack of spe-

cialization – and arguably, lack of interest too – in competition matters by judges and Public Prosecutors constitutes another complex problem requiring urgent treatment.

The aim of consolidating "competition culture" in Portugal has led the new Competition Authority to propose to assist the Government, sectoral agencies and public in general in the clarification of competition law. This may concern namely the Opinions to be delivered in draft legal instruments (laws and regulations). The Authority intends to create its own Research Department ("*Gabinete de Estudos da Autoridade*") in order to establish the above referred Methodology documents and also to assist the Authority, namely by making recourse to outsourcing of thorough investigations in the competition law field. These innovations constitute a major shift in what concerns competition law enforcement as they follow a very proactive approach. Therefore, they are expected to face substantial hurdles before being fully implemented. Thus, the decentralization trend recently occurred at Community level in what concerns competition law and mainly results from Regulation 1/2003 will probably play an important influence in favour of modernization of the current Portuguese competition environment.

The New Competition Act

The 2003 Competition Act was approved by Law 18/2003, of June 11, and replaces the 1993 Competition Act.[5]

In the 1993 Competition Act the underlying principles followed the main aims of EC competition law but some specific provisions introduced differences impor-

[5] Chapter I of the 2003 Competition Act concerns substantive competition law provisions and contains rules concerning its scope of application (Article 1), services of general economic interest (Article 3), prohibition of agreements and concerted practices (Article and 4) and the conditions for those behaviours to be exempted (Article 5), abuse of dominant position (Article 6), abuse of economic dependence (Article 7); merger control (Articles 8 to 12) and state aids (Article 13).

Following Chapter II (The Competition Authority), Chapter III deals firstly with investigation procedure relating to forbidden anti-competitive practices (Articles 22 to 29), including the granting of interim measures (Article 27) and articulation of the Competition Authority with other regulatory authorities (Article 29). Merger control procedure includes rules on filings (Article 31), 1st phase decisions (to be made up to 30 days following the filing – Articles 34 and 35), 2nd phase decision (90 days after the opening of the 2nd phase investigation – Articles 36 and 37), hearing of interested parties (Article 38), articulation with sectoral authorities (Article 39) and the consequences of lack of notification (Article 40).

Chapter IV sets rules on Infringements and Sanctions: fines (Article 43), ancillary sanctions (Article 45), penalty payments (Article 46) and time limitation periods (Article 48). Chapter V deals with judicial appeals, whereas Chapter VI establishes fees for certain services rendered by the Authority.

tant enough to deter both competition authorities and individuals from taking full advantage of the consolidated EU doctrine and legislation on Competition Law. This included *i.e.* the concepts of "dominant position" and "full function joint ventures that constitute concentrations". Differently, this new Act clearly reflects the strong influence EC competition law currently plays in the national environment, particularly as concerns the consequences resulting from Council Regulation 1/2003. Notwithstanding, it is worthwhile noting that some features of this new Competition Act adopt an approach that differs to the one that has recently been adopted at Community level. The main example is the maintenance of the legal regime allowing for a previous review of restrictive practices, different to what has been recently adopted at Community level, where the system of legal exception concerning restrictive practices has been implemented. As referred above, this may be explained by the circumstance that the "competition culture" is much more recent in Portugal than at Community level. Accordingly, the Competition Act expressly provides for a revision clause after an experimental period maintaining the notification system, probably anticipating an evolution in the enforcement of competition rules in Portugal.[6]

Already in the context of application of the previous Competition Act, the enforcement agencies expressly recognized the importance EU competition provisions had in the interpretation and application of national legislation. Since 1986 the Competition Council had developed its practice and interpretation of national competition law "by promoting gradual harmonization of criteria in the application of national and Community competition law. In essence, it is a question of adopting and respecting Community law guidelines in cases where it is not directly applicable".[7] Therefore, it is not surprising – and is moreover to be considered as a positive development – that the new Competition Act expressly refers that in the situations where EU competition provisions are not applicable, they nonetheless constitute an important source for the interpretation of the former. As an example, we may mention Article 5 (4) of the new Competition Act that establishes that, notwithstanding the fact that restrictive practices do not produce effects on intra-State trade, they may be justified on the basis of the Community's Block Exemption Regulations.

Equally relevant is the introduction by the new Competition Act of a major innovation as concerns the subsidiary application of the Code of Administrative Procedure in merger controls.[8] Besides contributing to a clarification of the legal provisions of the Competition Act with the help of relevant doctrine and

[6] See Article 60 (1) of the 2003 Act.

[7] See RA 1986, page 27.

[8] See Article 30 of the 2003 Act.

jurisprudence in Administrative Law, this novelty has the consequence of ensuring the application of all procedural safeguards concerning due process and the rights of the parties and interested third parties in a much more effective manner than the one currently existing in the Competition Law environment. Nonetheless, it is important to keep in mind that this subsidiary application should not prevail when the specificities of the Competition law procedure and aims are put into question as a consequence of the applicability of Administrative Law.

The Scope of Application of the New Competition Act

The increased scope of application of Article 1 of the 2003 Competition Act also constitutes a positive amendment and is in line with the aim of consolidating a "competition culture" in Portugal. This innovation means that undertakings that were formerly submitted to "special laws" and thus excluded from the scope of the former Competition Act are now subject to competition law. Moreover, similarly to what is provided for in Article 86 of the EC Treaty, the provision of services of general economic interest by undertakings may only exclude them from the scope of competition law when the applicability of the latter legislation impairs *de jure* or *de facto* the pursuance of the specific aim that is pursued by them.[9] As concerns specifically the legal regime on control of concentrations, Article 8(4) of the 2003 Act excludes from the concept of "concentrations" those transactions consisting in temporary acquisitions of non-financial undertakings by credit institutions.

The New Approach Concerning the Notion of "Dominant Position" and the Abuse of Economic Dependence

The legal provision of the 1993 Act maintained from the 1983 Act the applicability of a presumption of dominant position held by an undertaking in the relevant market if the thresholds concerning market share were met. Since this presumption was difficult to rebut in practice, its suppression by Article 6 of the new Competition Act seems to constitute a positive amendment. In reality, the notion of dominance is now limited to its general definition, which allows for sufficient flexibility when the referred concept is applied on a case-by-case basis. Moreover, this definition is more in line with what is the reasoning at Community level, thereby

[9] See Article 3 of the 2003 Act.

enabling the Competition Authority to make the best use possible of the consolidated doctrine and jurisprudence and also provides private parties a clearer assessment of the situations on that same basis.

Pursuant to Article 6 (3) (b), the forms of abuse of dominant position established in the Competition Act have been widened in order to include the refusal to accede to an essential facility. Notwithstanding the advantages inherent to the existence of a wider number of examples of abusive practices, this specific amendment may not achieve its aim. In reality, this is the type of definition that should not be identified autonomously but should instead be gradually adapted by national jurisprudence and the Competition Authority's practice, in line with developments occurred in the different markets, which should be assessed on a case-by-case basis.

Another concept that already existed in the 1993 Competition Act and is maintained in the new Act is the "abuse of economic dependence" (Article 7). In practice, this legal provision has rarely been applied in the past, one of the reasons for this being that the possible interconexion with the notion of "abuse of dominant position" has not yet been clarified enough. Notwithstanding, the new Competition Act introduces supplementary prerequisites for its application and therefore, may even increase the difficulty in its application by the new Competition Authority.

The Control of Concentrations between Undertakings

As a preliminary remark, it is important to mention that the changes introduced by the new Competition Act reflect the influence of the EC Merger Regulation and the corresponding Interpretative Notices, even in those cases when the same will most probably be amended by the future EC Merger Regulation.[10] When considered in an overall view the amendments seem positive as they enable a clearer understanding and a more effective application of the regime on control of concentrations. Firstly, several substantive provisions have now been clarified, namely by providing for more detailed definition of the concepts in question and proceed to a harmonization with the existing Community provisions. Similarly, procedural rules are more flexible without being less effective, as they allow an adaptation to the specificities of the situations in question. One example is the entitlement of the Competition Authority, in exceptional circumstances, to grant waivers to the obligation of suspension of the implementation of the concentration before authoriza-

[10] See Commission Proposal for a Council Regulation on the control of concentrations between undertakings, OJ C 20, 28.01.2003, p. 4-57.

tion decision is obtained.[11] From the several innovations introduced by the new Competition Act, the following ones are worthwhile referring to.

Substantive Provisions

Examples of important amendments consist, on the one hand, in the widening of the scope of the control of concentrations that either take place, or at least produce their effects, in the national territory, and, on the other, on the elimination of the exclusion concerning concentrations where insurance and banking institutions participate. As referred above, the sole exception consists in transactions that constitute temporary acquisitions of non-financial undertakings undertaken by insurance and banking institutions (Article 8 and following). This rule is similar to the one established in Article 3 (5) (a) of the EC Merger Regulation, even though the definition of "temporary" according to the Competition Act allows for a longer time period (three years).

In what concerns the notion of "full function joint venture", the former Competition Act had the same text as the original version of the Merger Control Regulation and was not harmonized accordingly with the amendment of the ECMR. Therefore, the change introduced by the new Competition Act, which harmonizes the referred concept with the relevant EU legal provisions and consequently brings it within the scope of application of the regime on control of concentrations, may be considered as a positive development (Article 8 (2)). In the same way, the new Competition Act expressly provides that partial function joint ventures are submitted to the legal provisions on restrictive practices, thereby clearly establishing the distinction as concerns the applicable legal regime (Article 12 (6)).

The competition assessment of the concentrations was another issue that needed clarification and development in the former Competition Act, as regards the degree of independence of the authorities entitled to decide on the notified concentrations. The same may be said in what regards the application of the criteria to be used by the Competition authorities when undertaking the referred competition assessment. Formerly, the Minister for Economy was entitled to decide whether to authorize or to prohibit a concentration, pursuant to the conclusion of the competitive assessment undertaken by the former competition Authorities. Differently, the new Competition Act grants the Competition Authority exclusive competence to assess and decide on notified concentrations.[12] Notwithstanding, Decree-Law 10/

[11] See Article 11 (4) of the 2003 Act.

[12] See Articles 35 (for the 1st phase decision) and 37 (for the 2nd phase decision) of the 2003 Act.

2003, which created the Authority, provides for an exception to the referred competencies in Article 34. This provision allows that, upon appeal by the notifying parties, the Minister for Economy may authorize a concentration that was formerly prohibited by a decision of the Authority, when the benefits arising from the concentration result in the pursuance of interests fundamental for the national economy and outweigh the disadvantages concerning competition. The boundaries of this exception are clearly not well defined and its contents may not be compatible with the present developments occurred in Community law should it be the object of wide interpretation and applied unjustifiably. It is thus expected that the Government will take recourse to this exception only in very exceptional cases and as long as it does not constitute an instrument to pursue national interests contrary to Community law. Since this exception is based on the German legal system, it is thus expected to be used as rarely as possible in order to comply with Community law principles.

Secondly, unlike what happened formerly, the criteria for prohibiting concentrations are now described in detail in Article 12 of the 2003 Competition Act through an enumeration of the factors to be taken into account, thereby adopting what results from the consolidated EU courts jurisprudence and the Commission's practice. The new legal provision states that the aim of control of concentrations is to assess the effects of the transaction in the competition structure, taking into consideration the need to preserve and develop an effective competition in the national market, in the interest of the consumers. Not only does the new Competition Act confirm the applicability of the conditions for exemption subject to a positive economic balance[13] as a condition for clearance, but also provides expressly for several examples of criteria to be used for the competition assessment. These examples include the structure of the relevant markets and the existence of competition by the undertakings established on those markets or in distinct ones. Moreover, the second criterion established by the 1993 Act for justification of a concentration that would otherwise be prohibited, which concerned the "significant reinforcement of the international competitiveness of the undertakings participating in the concentration" has been transformed into one of the many criteria that may influence the decision of the Authority (Article 12(2) *l)*) , thus closing the discussion on the scope of the said criterion and especially the question of its subordination to the conditions of positive economic balance set forth in Article 5 of the 2003 Act.

[13] See Article 5 of the 2003 Act, which (in the sequence of Articles 15 of the 1983 Act and 5 of the 1993 Act) follows closely the wording of Article 81 (3) of the EC Treaty.

Procedural Provisions

The clarification of the thresholds above which concentrations are subject to prior notification to the competition authorities has been made with the new Competition Act. In this context, it is important to mention that the first criterion consisting in the 30% market share threshold is maintained by the new Act. Therefore, the problems and difficulties in defining the relevant product market in question may continue to result in legal uncertainty, as *inter alia* there is no updated public data available for each market. Moreover, this provision does not follow the approach adopted in most national competition legislations of the other Member States and the ECMR. In the 1993 Competition Act the second criterion was fulfilled by situations in which "the turnover[14] in Portugal of the participating undertakings exceeded 30 thousand million *Escudos* (approximately € 150 million), in the preceding financial year, after deduction of taxes directly related to the turnover". The new Act introduces an exclusion in the last part of the referred criteria and thus, it is now required that, at least two of the undertakings taken into account for the purposes of calculating the referred € 150 million threshold, achieve individually, in Portugal, a turnover of at least € 2 million, in order for such criterion to be fulfilled. Even though this does not constitute a substantial improvement of the criterion – as the threshold continues to be relatively low – it may nonetheless result in a slight decrease of the notifications of concentrations that do not have any impact on the competition in the market.

The obligation of payment of a fee when the notification is filed with the Competition Authority is another innovation worth referring to.[15] This constitutes one of the forms of self-financing of the new Authority, characterized by its independence towards the Ministry of Economy. Up to now there hasn't been an effective enforcement of the notification obligation in Portugal. Therefore, the amounts of fees to be fixed by the new Competition Authority in a regulation establishing the fees to be paid for the services rendered by the latter may constitute an important factor for companies when considering the notification of concentrations. In this sense, it is crucial that the new Authority shows an effective monitoring of the concentrations that are notifiable and an effective sanctioning of undertakings participating in concentrations that do not comply with the referred obligation. This policy will be successful to the extent judicial courts become more familiar with

[14] This turnover comprises the value of products sold and services provided to undertakings and consumers in Portuguese territory, but does not include the sale of products or the provision of services carried out between the undertakings part of the group (see Article 10(3) of the 2003 Act).

[15] See Article 56 of the 2003 Act, which subjects assessment of merger operations and previous review requests under Decree 1097/93, among others, to the payment of a fee.

competition law provisions since up to now fines imposed by the former competition authorities to participating undertakings for non-compliance with the obligation of notifying concentrations have frequently been decreased, thereby constituting a strong incentive for the absence of notification.

In line with what is provided for in the current version of the ECMR, the new Act has introduced a new timing for the mandatory notification of a concentration. From now on, notification should be made within one week after the conclusion of the agreement.[16] The same trend of harmonization with the ECMR seems to have influenced the possibility for undertakings being granted a waiver to the legal obligation of suspension of the implementation of concentrations, when the Competition Authority would consider that the specificities of the situation in question justify this. Such amendment responds to severe criticism on the patent rigidity of the law and inherent inadequacy of the 1993 Competition Act with the evolving reality of the economy. In practice, the suspension obligation, as provided for in the 1993 Act, led many undertakings to implement the concentrations in which they participated, as moreover the risk that competition authorities would monitor it was relatively limited and the fines that would be imposed would be less than damages resulting from waiting for the conclusion of the competitive assessment of the concentration.

Cooperation between the Competition Authority and the Sectoral Authorities

In the last years, the growing tendency in Portugal has been the creation and reinforcement of the powers held by sectoral authorities entitled with the surveillance of liberalizing sectors, such as electricity or telecommunications. In line with this approach, Articles 29 and 39 of the 1993 Competition Act have established that sectoral authorities and the Competition Authority are due to collaborate in the application of Competition Law, namely in the investigation of anticompetitive practices where the participating undertakings are active in those sectors and the control of concentrations in those same markets.[17] However, the articulation of the referred powers is not sufficiently clarified in the text of the Competition Act,

[16] See Article 9(2) of the 2003 Act.

[17] Already in the past competition enforcement agencies recognized the usefulness of consultations to be made by the various regulatory authorities. In this context, we may mention a statement made by the Council in the *Portugal Telecom* case (case 2/2001), considering that, particularly in technical domains, the opinion of the sectoral regulatory authorities are of a considerable relevance, as these entities are especially suited and equipped to deal with these kinds of situations.

which may lead to unnecessary overlaps and arguably contradictory decisions should both Authorities adopt a rigid interpretation of their competences.

Description of the Procedures to be Undertaken by the Authority

The new Competition Act provides for further detail of the procedures to be held by the Authority, namely by describing the investigation procedure,[18] as well as interim relief that may be obtained.[19] This seems to reinforce the idea of due process and increased transparency of competition policy in the overall, in line with what is the approach adopted at Community level. An example of this new trend is the establishment of oral hearings within the context of investigation procedures of anticompetitive practices and of concentrations.[20] An interesting issue to raise in this ambit would be the importance in the development of private litigation, as a complementary means of obtaining enforcement of competition law provisions. Moreover, the circumstance that from now onwards infringement procedures will become more transparent may constitute a deterrent factor for undertakings when considering the adoption of anticompetitive practices.

This novel approach brings advantages to the parties participating in the procedures, to interested third parties and to the public in general. This constitutes an important improvement from the former Competition Act as it is expected to increase the awareness and interest of the public in general in the enforcement of competition policy. Accordingly, the new Authority is responsible for the publication of the essential references of notified concentrations in national newspapers, within a strict time limit,[21] in order to enable the timely submission of observations to the Authority. The Competition Act also establishes time limits for presentation of observations by third parties in the context of merger control.[22] Similarly, the Authority is bound to inform a complainant of its intention to close an investigation procedure started by a complaint before closing the referred procedure.[23] Lastly, the new Authority is due to present its Annual Report to the Government and Parliament and subsequently, publish it.[24]

[18] See Articles 22 to 29 (anti-competitive practices procedure) and 30 to 41 (merger control procedure) of the 2003 Act.

[19] See Article 27 of the 2003 Act.

[20] See, respectively, Articles 26 (2) and 38 of the 2003 Act.

[21] According to Article 33 of the 2003 Act.

[22] See Article 38 of the 2003 Act.

[23] See Article 25 (2) of the 2003 Act.

[24] Pursuant to Article 37 of Decree-Law 10/2003.

Concluding Remarks

In spite of its relatively recent implementation in Portugal, competition law has experienced considerable developments throughout the last years, due essentially to the efforts of the enforcement agencies, and has attained today a considerable degree of maturity. In particular, the Competition Council, notwithstanding the many difficulties encountered, has created a consistent set of case law, which constitutes a solid basis for the future advance of Portuguese competition law.

The influence played by EC competition law in the Portuguese competition law framework has been decisive for its development, and it is significant that the 2003 Competition Act expressly provides the direct applicability of EC block exemption regulations, even when trade between member states is not affected. It is paramount that national competition law follows closely advances of EC law in the future, especially in the framework of the de-centralization of some of the Commission's competences to national authorities initiated by Regulation 1/2003.

Finally, it is interesting to observe that the importance of competition law for the evolution of the Portuguese economy has at last started to be fully appreciated, both by political and by economic spheres. In this context, the enactment of a substantially improved Competition Act and the creation of a new, independent Competition Authority must be considered as very positive signs for the future of competition law in Portugal.