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Competition - Portugal

Competition Authority Issues Ambitious Development Strategy

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The new Portuguese Competition Authority, which was created by Decree-Law 10/2003 and commenced operations on March 24 2003, has already revealed its intention to create a new 'competition culture' in Portugal. A Development Strategy issued at the end of May contains a useful indication of the underlying principles and procedures to be adopted by the authority (www.autoridadedaconcorrenca.pt).

The Development Strategy indicates that the following factors are crucial to the authority's success:

- control of commercial strategies (involving both concentrations and cooperation), and elimination of restrictive and abusive practices with the aim of ensuring adequate levels of competition;
- identification of the markets in which competition is restricted and promotion of solutions which will benefit consumers and improve efficiency;
- promotion of public awareness of the role and benefits of competition;
- provision of services to the government, to the regulatory authorities and to society in general, in line with international best practice standards; and
- qualitative participation in international relations.

Competition policies aim to ensure the efficient functioning of the markets. In this context, the Development Strategy calls attention to areas - other than the traditional anti-competitive practices adopted by undertakings - where the absence of competition may seriously damage public interest, and in which more effective supervision is needed with respect to the enforcement of competition rules. These areas include public procurement, state aid, sectoral regulation and consumer protection, and have before never been the object of substantial intervention by the competition authorities - probably because the former authorities were never independent from the state. The financial independence of the new authority - which is comprised of at least 20 or 30 economists and an equal number of jurists - is also heavily emphasized in the Development Strategy, as this is considered to guarantee its independence and thus constitutes a critical factor for its efficient operation.

The Development Strategy additionally indicates the authority's concern for the harmonization and clarification of procedural norms. To this end, the following documents will be drafted:

- a proceedings manual, setting forth practical guidance such as the type of classification to be given to cases and the degree of priority in their handling;
- a processing manual, containing the different 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 compliance programmes.

The principles of transparency and access to information by interested third parties have also been taken into account, and have resulted in the establishment of hearing procedures in line with European Commission practice. In this context, reference is made to the need for enhanced cooperation with the court authorities, in order to reduce the length of judicial procedures and address the current lack of specialization in competition matters in the courts. Similarly, the Development Strategy calls for more support from the political powers, in order to improve awareness of the importance of competition policy and ensure that this accords with other economic policies. Ongoing dialogue with the sectoral regulators is also thought to be important for the adequate enforcement of competition law, as is the clear division of competencies.

It is also proposed that the authority will assist the government, the sectoral regulators and the general public in developing competition law, with the aim of consolidating the 'competition culture'. This will be achieved by issuing opinions on draft laws and regulations. The authority will create its own research department which will assist in the preparation of these documents and in conducting investigations in the field of competition law.

Finally, the authority aims to participate actively in international competition fora and to make the best use possible of the new resources made available by the implementation of European Council Regulation 1/2003 on the implementation of the competition rules laid down in Articles 81 and 82 of the EC Treaty.

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