

PARLIAMENTARY HEARING

Budget and Finance Committee

Manuel Sebastião

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I. INTRODUCTION

➔ GOALS

- ✓ **MOTTO**

To serve competition

- ✓ **VISION**

To be a benchmark institution on competition enforcement and advocacy

- ✓ **MISSION**

To ensure competition enforcement and advocacy in Portugal

I. INTRODUCTION

➔ STRATEGIC OBJECTIVES

- a) To contribute to
COMPETITION IN THE PORTUGUESE ECONOMY
- b) To improve the
SERVICES PROVIDED BY THE PCA
- c) To strengthen the
PCA CAPACITY TO FULFIL ITS MISSION

I. INTRODUCTION

➔ ANNUAL OBJECTIVES

- i. To enforce and to foster competition in the Portuguese economy
- ii. To ensure a clear understanding of the economic realities concerning the PCA decisions
- iii. To consolidate greater participation in international competition fora
- iv. To foster an internal teamwork culture
- v. To keep the objective reached by the end of 2010, i.e. no cases pending older than 3 years

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II. OBJECTIVES FOR 2011

➔ Operational objectives

a) COMPETITION IN THE PORTUGUESE ECONOMY

- ✓ To improve the Competition Law
- ✓ To take good decisions in the exercise of its powers
- ✓ To strengthen competition enforcement and supervision
- ✓ To foster a competition culture

II. OBJECTIVES FOR 2011

➔ Operational objectives

b) SERVICES PROVIDED BY THE PCA

- ✓ To improve quality
- ✓ To shorten deadlines
- ✓ To reduce the wording of decisions
- ✓ To monitor costs and benefits of its work
- ✓ To publish judicial reviews on the PCA site
- ✓ To enhance the PCA domestic and international image

II. OBJECTIVES FOR 2011

➔ Operational objectives

c) PCA CAPACITY TO FULFIL ITS MISSION

- ✓ To invest in human capital
- ✓ To make the internal organisation more flexible
- ✓ To enhance institutional cooperation
- ✓ To consolidate the analytical agenda
- ✓ To expand the international agenda

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III. CASES

➔ Number of cases for infringement of competition rules

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Open	8	36	30	13	6	13	14	8	17
Concluded	0	5	6	9	14	24	21	29	14
With sanctions	0	1	5	4	3	3	4	5	2
Filed	0	4	1	5	11	21	17	24	12

III. CASES

➔ Undertakings condemned for competition infringements *

	2004	2005	2006	2007	2008	2009	2010	2011	TOTAL
Agreements between undertakings	1	2	2	2	1	1	1	1	11
Decisions by associations of undertakings		3	1		1	1	3		9
Concerted practices			1			1	2	1	5
Abuse of a dominant position				1	1	1	1		4
Abuse of economic dependency									0
TOTAL	1	5	4	3	3	4	7	2	29

* In 2003, there were no sanctioning decision

III. CASES

➔ Cases relating to unfair trade practices (DL 370/93)*

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Open	162	118	102	56	22	49	76	51	42
Concluded	50	14	12	183	177	14	42	95	57
W/ S**		1	2	4	75	5	27	36	21
Filed		4	6	12	38	4	6	20	25

* Decree Law on unfair trade practices, which are deemed to be different from infringements of competition rules;

** With sanctions

III. CASES

➡ Infringements of competition rules (Law 18/2003*)

	2004 – 2007	2008 – 2011
Number of cases open at end of period	85	52
Number of decisions with sanctions	13	14
Número of filed cases	21	74

➡ Unfair trade practices (DL 370/93)

	2004 – 2007	2008 – 2011
Number of decisions with sanctions	82	89
Number of filed cases	60	5

* Current Portuguese Competition Law

III. CASES

➔ Merger control decisions *

	2003	2004	2005	2006	2007	2008	2009	2010	2011
1 st phase, C, NR	30	35	68	53	78	58	43	53	43
1 st phase, C, R	1	2	1		3	5		2	3
2 nd phase, C, NR			1	1	1	1			1
2 nd phase, C, R		5	1	2	3	2			
Inapplicability	12	3	6	7	4	2	4	2	2
Prohibited			2	1			1	1	
Withdrawn		1		2	1		2		1
Sent to EU Commission	1				1			1	
TOTAL	44	46	79	66	91	68	50	59	50
<i>Memory items</i>									
2 nd phase	1	6	6	6	1	4	1		3
Pre-notification					13	6	7	14	8

* C, cleared; NR, no remedies; R, remedies

III. CASES

➔ Fees collected and fines applied and collected

<i>(In thousand of €)</i>	2003	2004	2005	2006	2007	2008	2009	2010	2011
Fees collected	268	953	1,550	1,185	1,368	1,180	850	958	678
Fines applied		3,292	25,844	5,201	38,493	16,761	76,739	2,951	326
Fines collected *	54	44	727	38	383	1,345	37	229	181

* The figures correspond to 40% of the fines collected, these being receipts due to the PCA

III. CASES

➡ Global Merger Control Index (GMCI)

- ✓ PCA ranked in the 4th position, among 71 competition authorities in 2011
- ✓ This ranking was the 3rd best among the 27 Member States of the European Union

➡ Agility Award

- ✓ The PCA was distinguished with an Agility Award by Outsystems for its SNEOC project (Merger Notification Electronic System)

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IV. OTHER ACTIVITY

- ➡ Finalizing the draft of the new competition law, which was the basis for the draft law 45/XII (GOV), currently going through Parliament's approval proceedings
- ➡ Participation in the discussions on competition issues during the preparation of the Memorandum of Understanding between Portugal and the so-called troika (EC/ECB/IMF) and in the three peer reviews already undertaken
- ➡ Cooperation with ECN (*European Competition Network*), especially through the ECN working groups (*e.g., mergers, food supply chain*)

IV. OTHER ACTIVITY

- ➡ **Institutional cooperation with sectoral regulators and the Centre for Judicial Studies (training centre for judges, Ministry of Justice)**
- ➡ **Intense activity in market studies (liquid fuels, telecommunications, energy, ...) and participation in PARCA (Working group on commercial relations in the food supply chain), an initiative of two ministries (Economy and Agriculture), as a result of one of the recommendations of the PCA 2010 *Final Report on Commercial Relations Between the Large Retail Groups and Their Suppliers***
- ➡ ***Competition and Regulation Review (C&R)*, quarterly, in cooperation with the Institute of Economic, Financial and Tax Law (IDEFF), Law School, Lisbon University; 1st issue in January 2010**

IV. OTHER ACTIVITY

- ➡ Two international training programmes of one or two weeks designed for competition experts of other competition authorities, one in 2010 (Brazil) and the other in 2011 (Turkey)
- ➡ Cooperation with ICN (*International Competition Network*), as co-chair of the Advocacy Working Group responsible for the *Report on explaining the benefits of competition and evaluation of competition interventions* and the *Market studies handbook*

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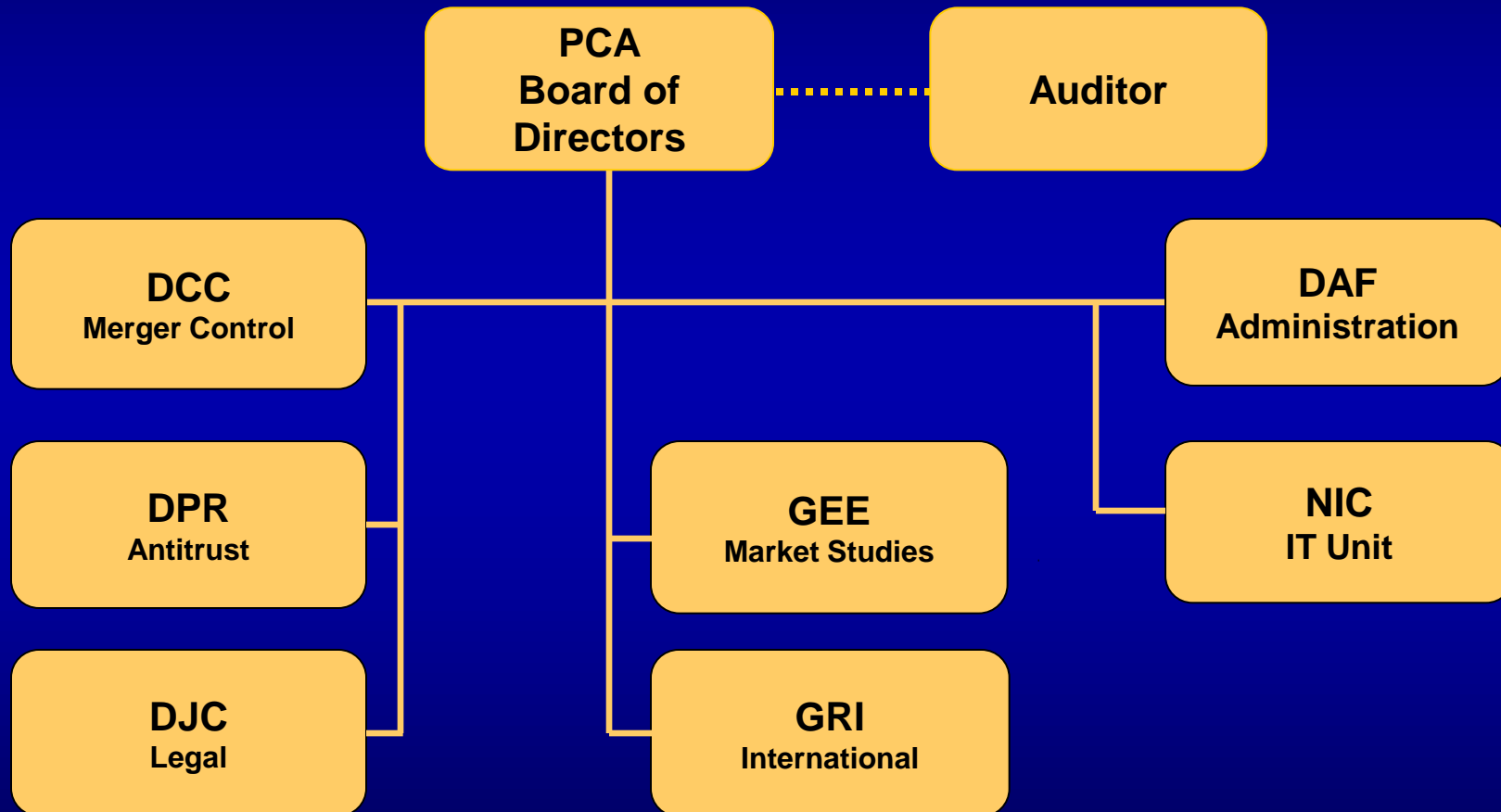
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V. MANAGEMENT REPORT

ORGANIGRAM

V. MANAGEMENT REPORT



V. MANAGEMENT REPORT

- ➔ **The organigram reflects a simple and efficient organization, with 3 case departments (DCC, DPR, DJC), 5 front offices (DCC, DPR, DJC, GEE, GRI) and a back office (DAF, NIC)**
- ➔ **It also reflects the three PCA features**
 - 1) **It is an enforcement agency and an institution of ideas**
 - 2) **It is an institution focused on cases and front office work**
 - 3) **It is a Portuguese and European institution**

V. MANAGEMENT REPORT

HUMAN RESOURCES

V. MANAGEMENT REPORT

PCA staff

(Staff numbers)	2007	2008	2009	2010	2011
Board of Directors	3	3	3	3	3
Head of Department	5	4	6	6	6
Deputy Head of Department	0	6	6	6	6
Coordinator	0	1	1	1	1
Competition experts	63	52	57	55	48
Technical staff	6	5	6	7	5
Administrative staff	7	6	12	10	9
Auxiliary staff	3	3	3	3	3
TOTAL	87	80	94	91	81
Memory items:					
Staff costs (in thousand euro)					
Total	5,397.6	6,027.4	6,613.3	6,431.0	5,569.8
Per capita	62.0	75.3	70.4	70.7	68.8

V. MANAGEMENT REPORT

Managers and experts, Case Depts. and Front Offices, 2008 – 2011

	2008	2009	2010	2011
<i>Staff numbers</i>				
PCA total	80	94	91	81
Managers and competition experts				
3 Case departments *	41	46	45	40
5 Front offices **	53	59	58	51
<i>In percent</i>				
PCA total	100%	100%	100%	100%
Managers and competition experts				
3 Case departments *	51%	49%	49%	49%
5 Front offices **	66%	63%	64%	63%
<i>Percentage change</i>				
PCA total		18%	-3%	-11%
Managers and competition experts				
3 Case departments *		12%	-2%	-11%
5 Front offices **		11%	-2%	-12%

* DCC, DPR, DJC

** DCC, DPR, DJC, GEE, GRI

V. MANAGEMENT REPORT

Staff breakdown by categories and departments, 2011

	Cons.	GDP	DCC	DPR	DJC	GEE	GRI	DAF	NIC	Total	In %
Board	3									3	4%
Managers			2	3	2	1	1	3	1	13	16%
Competition experts			12	14	7	7	2	5	1	48	59%
Technical		2						3		5	6%
Administrative		2	1	3	1			4		11	14%
Auxiliary								1		1	1%
Total	3	4	15	20	10	8	3	16	2	81	100%
As a %	4%	5%	19%	25%	12%	10%	4%	20%	2%	100%	
Managers & Experts											
Cases departments¹										40	49%
Front offices²										51	63%

¹. DCC, DPR, DJC

². DCC, DPR, DJC, GEE, GRI

V. MANAGEMENT REPORT

➡ Internal PCA Regulations approved in 2008–2011, filling previous regulation void

- | | | |
|-----|-------------|--|
| 1) | RCA | PCA Board of Directors |
| 2) | REGE | PCA Organisation |
| 3) | REDES | Business Travel |
| 4) | SAGE | Performance Evaluation |
| 5) | PRIDE | Performance Bonus |
| 6) | REPEX – ECN | PCA activities concerning participation in ECN |
| 7) | DOTEMPO | Working Hours |
| 8) | TODE | Management Positions |
| 9) | VALOR | Training |
| 10) | REGEST | PCA Internships |
| 11) | GESFUNDO | Cash Management |

V. MANAGEMENT REPORT

➔ Highlights

- 1) **The PCA Strategic Plan for 2009-2013 foresees a stable workforce of 115 staff members, thus requiring the following recruitment:**
 - ✓ In 2012, replacement of 10 experts lost to turnover in 2011; the 10 experts should be 5 economists and 5 lawyers
 - ✓ Until 2013/4, reinforcement of 20 to 25 new experts
- 2) **Amendments to the PCA Bylaws, articles 27 on Staff and article 28 on Mobility, would make it possible to converge with basic principles of government agencies and approve an internal career development plan**
- 3) **Taking into account its international agenda, the PCA would equally benefit from the possibility of having one competition expert from another competition authority on secondment and on a rotating basis, with a similar procedure involving other competition authorities, among them the DGCOMP**

V. MANAGEMENT REPORT

BUDGET OUTTURN

V. MANAGEMENT REPORT

➔ PCA budget outturn, 2008 to 2011

	(In millions of euros and %)	2008	2009	2010	2011
(1)	Expenditure Budget	9.6	12.5	10.7	8.9
(2)	Budget Outturn	8.4	9.1	8.6	7.5
	Budget consolidation				
(3) = (2) - (1)	Nominal	-1.2	-3.3	-2.2	-1.5
(4) = (2) / (1)	In percentage terms	88%	73%	80%	84%

V. BUDGET OUTTURN 2011

(In millions of euros and %)	Budget (1)	Budget Outturn (2)	Budget (3)	Budget Outturn (4)	Outturn / Budget (5) = (2) / (1)
RECEIPTS 2011					
Own receipts	2.7	1.0	26.3%	11.6%	36.0%
Recurrent transfers	7.3	7.3	71.0%	86.8%	100.0%
Transfers EU–Feder	0.2	0.1	2.1%	1.1%	41.5%
Other recurrent receipts	0.0	0.0	0.4%	0.4%	72.7%
Receipts not foreseen in the budget	0.0	0.0	0.2%	0.2%	99.9%
Sub-total	10.3	8.4	100.0%	100.0%	81.8%
Saving account changes	0.0	0.0			
Total	10.3	8.4			
Memory items:					
Saving account balance 2010			1.0		
Saving account balance to 2012			0.9		

V. BUDGET OUTTURN 2011

(In millions of euros and %)	Budget		Budget		Outturn /
	Budget	Outturn	Budget	Outturn	Budget
	(1)	(2)	(3)	(4)	(5) = (2) / (1)
EXPENDITURE 2011					
Staff costs	6.5	5.6	73.3%	74.5%	85.1%
Suppliers	1.9	1.6	21.5%	21.3%	82.9%
Interest and other charges	0.0	0.0	0.0%	0.0%	100.0%
Other recurrent expense	0.0	0.0	0.0%	0.0%	100.0%
Sub-total	8.5	7.2	94.8%	95.9%	84.6%
Investment	0.5	0.3	5.2%	4.1%	67.3%
Total	8.9	7.5	100.0%	100.0%	83.7%

V. MANAGEMENT REPORT

- ➔ **PCA budget concerns**
- ✓ **Exemplary budget outturn**
- ✓ **Assessment of the financing model and its sustainability**
 - **Financing sources**
 - **Annual authorization for the sectoral regulators to transfer their contributions to the PCA budget receipts**
 - **Saving account**
 - **Supplementary financing from the State budget**

V. MANAGEMENT REPORT

FINANCING MODEL

V. MANAGEMENT REPORT

PCA Financing Model ^{1/}

- 1. The 2003 Bylaws model with 5 financing sources**
 - a) Fees charged for services provided**
 - b) 40% of fines collected**
 - c) Sales of studies, publications and other documents**
 - d) Any other receipts from its activity, which are legally authorized or contractually agreed upon, as well as donations, entitlements or other financial support schemes**
 - e) Supplementary financing source: State Budget appropriation**

^{1/} DL 10/2003, 18 January (PCA Bylaws)

V. MANAGEMENT REPORT

PCA Financing Model

2. The model in force since 2004 ^{1/} with 2 financing sources and no State Budget appropriation
 - a) About 2/3 to 3/4: Sectoral regulators contributions
 - b) About 1/4 to 1/3: Own receipts (fees + 40% of fines collected)

^{1/} DL 30/2004, 6 February (Sectoral regulators contributions)

V. MANAGEMENT REPORT

Main difficulties with the current financing model

a) The budgeting of fines

- ✓ Makes about 25% of PCA receipts very difficult to foresee due to the fact that the final amount of the fine and the likely date of its collection, when fines are appealed, depend solely on the courts
- ✓ Is not operational, because fines cannot even be considered on an accrual basis due to the requirements set out in Law 8/2012
- ✓ As a result, reduces the operating budget to 75% of the approved budget

b) The PCA saving account

- ✓ It is instrumental to make up for the volatility of the fines component of the PCA financing sources
- ✓ The budgetary proceedings to get the necessary authorization to withdraw cash from this account could be more flexible without any loss of control on the budget outturn
- ✓ 85% of the balance of this saving account was transferred to the treasury as set out in the 2010 State Budget. The balance of this account should be exempted from such transfers

V. MANAGEMENT REPORT

- ➔ **Feasibility of the 2004 financing model has been ensured, though there is one negative aspect countering two positive ones:**
 - ✓ **(+) Strict operating cost management;**
 - ✓ **(+) Saving account withdrawals only to make up for cash flow shortages due to the volatility of some receipt flows; and**
 - ✓ **(-) Sacrifice of recruitment**

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VI. MEMORANDUM OF UNDERSTANDING

➔ REFORM OF THE 3 PILLARS OF COMPETITION

- 1. Competition Law:** Draft Law
- 2. Competition Authority:** Sufficient and stable financing
Effective and sustained operation
- 3. Appeal courts:** Competition, Regulation & Supervision Court
Functioning of the courts of appeal (specialist court of 1st instance, court of 2nd instance and Constitutional Court)

VI. MEMORANDUM OF UNDERSTANDING

➔ MEASURES 7.17 and 7.18 MoU, 2nd update, December 2011

- | | |
|---------------------------|---------------------------|
| 1. Draft law: | Measure 7.17.ii |
| 2. Competition Authority: | Measure 7.17.iii and 7.18 |
| 3. Specialist court: | Measure 7.17.i |

VI. MEMORANDUM OF UNDERSTANDING

➡ **PCA financing model and PCA budget rules**

- ✓ **Financing model**
 - **Financing sources**
 - **Saving account**
 - **Annual Executive Order authorizing the transfer of sectoral contributions to the PCA receipts budget**
- ✓ **PCA budget rules**
 - **Recruitment freeze**
 - **Career development plan**
 - **PCA budget rules, which have to comply with State Budget rules**

➡ **Judicial review**

- ✓ **Sanction of PT on 28 August 2008**

VI. MEMORANDUM OF UNDERSTANDING

➔ Sanction of Portugal Telecom (PT), 28 August 2008

- ✓ Abuse of a dominant position through discriminatory pricing and fine of € 2,1 million
- ✓ 29 November 2008: PT appeal and PCA counterclaim lodged with the court of 1st instance (*Tribunal de Comércio de Lisboa, TCL*)
- ✓ 16 May 2011: PCA request for fast track proceedings by the TCL
- ✓ 15 February 2012: beginning of court hearings
- ✓ 29 February 2012: not guilty sentencing by the TCL
- ✓ 7 March 2012: PCA appeal lodged with the court of 2nd instance
- ✓ 8 March 2012: statute of limitation

➔ 3 years, 2 months e 15 days without any court activity, between 29.11.2008 (appeal lodged with TCL) and 15.02.2012 (begining of court hearings)

➔ 8 days between 29.02.2012 (sentencing TCL) and 08.03.2012 (statute of limitation)

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VII. CONCLUSION

1. **The PCA is a well organized institution, which accomplishes its competition enforcement and advocacy mission with exemplary budget outturns**
2. **Deserve reassessment, specifically to comply with the Memorandum of Understanding measure 7.17.iii:**
 - ✓ **The PCA financing model, in order to ensure *sufficient and stable financial means*;**
 - ✓ **The PCA budget rules, in order to adjust them to the requirements of an independent regulatory authority, which is a member of the European competition system;**
 - ✓ **The conditions tha could guarantee the PCA *effective and sustained operation***

VII. CONCLUSION

3. The reform of the 3 pillars of competition (specialized court, Competition Law, and the PCA financing model and budget rules) are essential *to improve the speed and effectiveness of competition rules' enforcement* (MoU, measures 7.17 and 7.18)
4. The reform of the 3 pillars of competition should be buttressed with the so called *economic approach to competition*—in the line of Mário Monti's reform when he was EU Competition Commissioner—at the level of the new specialist court, for example, by including judges with specialist economic background or by requiring that judges have mandatory economic advice when hearing competition cases