



Portugal<sup>1</sup> was a world power during the 15<sup>th</sup> and 16<sup>th</sup> centuries, after which it lost most of its wealth with the destruction of its capital, Lisbon, in the 1755 earthquake; occupation during the Napoleonic Wars; and the loss of Brazil as a colony in 1822.

A 1910 revolution deposed the monarchy, and repressive governments ran the country for most of the following six decades. In 1974, a left-wing military coup installed broad democratic reforms. In 1975, Portugal granted independence to all of its African Colonies.

Portugal is a founding member of NATO and joined the EU in 1986.

### Economy

Despite being one of the smallest and relatively least developed countries in the EU, Portugal has become a diversified and increasingly service-based economy since joining the EU in 1986. Since then, it has been one of the major beneficiaries of EU funding, which has enabled the Portuguese Government to invest in large infrastructure projects.

### Competition Evolution and Environment<sup>2</sup>

The coup of 1974 initiated a social revolution in Portugal, transforming both the political and economic systems of the country. The revolutionary leadership undercut the old elite economic regime by nationalising banks and most of the country's medium and large-scale enterprises. A variety of economic models were proposed between 1974 and 1975, by the provisional armed forced movement – *Movimento das Forças Armadas* (MFA).

On May 15, 1974, the MFA published an economic and social programme. This document provided for the “adoption of new methods of government intervention in

PROFILE	
Population:	10.2 million***
GDP (Current US\$):	149.5 billion***
Per Capita Income: (Current US\$)	12,130 (Atlas method)*** 18,280 (at PPP)**
Surface Area:	91.98 thousand sq. km
Life Expectancy:	76.1 years**
Literacy (%):	92.5 (of ages 15 and above)**
HDI Rank:	26 ***
<i>Sources:</i> - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

the basic sectors of the economy and particularly in the sectors of national interest, without prejudice to the legitimate interest of private enterprise”, making no provision for the large-scale nationalisation of industry or agriculture.

In March 1975, the Marxist oriented office bearers of the MFA, together in league with the communist dominated trade union, began to bring about nationalisation reforms. During the remaining part of the year, the Government nationalised the banking sector, as well as sectors, such as insurance, cement, iron and steel, shipping lines, most public transport, and communications. Nationalisation was followed by the consolidation of several private firms in each sector into state monopolies, particularly in industries such as chemicals and fertilisers; oil and gas; tobacco; breweries; cement; shipping, and transport. An example of sectoral nationalisation was when the fourteen private electric enterprises were merged into a single power and transmission monopoly, *Electricidade de Portugal*.

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1 <http://www.cia.gov/cia/publications/factbook/geos/po.html>

2 Information compiled from various sources, including [www.oecd.org](http://www.oecd.org) and <http://www.country-studies.com/portugal/revolutionary-change-in-the-economy.html>

On the other hand, the sectors, where private firms were not consolidated into monopolies, were the commercial banking system and insurance industry. These sectors were left with a degree of competition. Though by 1979, only nine banks were left with public status, they still managed to compete with each other and retain their own identities. The Constitution of 1976 confirmed the large and interventionist role of the state in the economy.

Over the past decade, successive governments have privatised many state-controlled firms and liberalised key areas of the economy, including the financial and telecommunications sectors. Portugal began to participate in the European Economic and Monetary Union (EMU) in 1998, and introduced the Euro as its new form of currency on January 1, 2002.

Economic growth has been above the EU average for much of the past decade, but fell back in 2001-2003. GDP per capita stands at 70 percent of that of the leading EU economies. Liberalisation of the financial sector, far reaching privatisation and deregulation, high investment, and improved human capital has delivered notable results, creating favourable conditions for national and international organisations alike.

### Competition Law and Institutions

Article 81(e) of the Portuguese Constitution has evolved from the original 1976 version. It was amended in 1989, and establishes that it is the state's duty to eliminate and

prevent the setting up of private monopolies; and to oppose all abuses of economic power and any such practice that is harmful to the general interest, thereby guaranteeing the protection of the interests and rights of the consumer.

The above principle shows that competition is seen as an essential element of the Portuguese economic system, which has been declared and implemented by several Competition Laws, the latest of which is *Decree-Law No 371/93 of October 29, 1993*. This decree sets out rules very similar to the basic provisions of the European competition regime. This act entered into force on January 01, 1994, was based on the prohibition principle, and is directly inspired by the EC competition rules.

Two authorities that were responsible for enforcing law No. 371/93, and that were part of the Ministry of Economy: The Directorate-General for Trade and Competition, and The Competition Council.

Though it was thought that this Law is enough to provide effective protection to the functioning of markets, certain difficulties have been faced at the implementation level. These difficulties include the fact that decisions taken by the Competition Council are appealable before the civil courts. This involves a long procedure, which give big firms a strong staying power. Further, the rigmarole of lengthy proceedings has a deterrent effect on firms wanting to bring cases before the Directorate-General for Trade and Competition.

#### Box 90.1: Anticompetitive Business Practices: Distribution System of Multiópticas

*Multiópticas De Gestao* organises the distribution system of optical products by two types of arrangements. The first, involves 'franchisees' whose shops, as a whole, are integrated in the Multiópticas system. The second type of dealers are 'preferred dealers', who are free to sell outside the network, but they have to pay Multiópticas 10 percent of the net value of sales, and they also have to network and to grant to the retailers integrated in the network, the negotiated discounts.

As regards the relations with franchisees, Multiópticas allows them to use its name, brand and logo; gives them territorial exclusivity; allows them to keep the negotiated discounts agreed by their suppliers; and to make direct purchases from independent suppliers. The retailers agree to identify their shops with Multiópticas logo, to give preference to suppliers who share contracts with Multiópticas, and to inform Multiópticas about purchases made to independent suppliers, in which case they have to pay a fee of 15

percent of the value of these purchases, as a share of the costs of the franchising.

Multiópticas was accused, together with two other firms, of issuing a concerted recommendation, on the purchases to be made to preferential suppliers, that in practice would bar the entry to independent suppliers.

The Competition Council, in its decision, although ruling that some of the clauses of the contracts entered with suppliers and retailers were not in conformity with Competition Act, made a positive economic balance of the system as a whole, since it was recognised it provided an improvement in the market mechanisms.

The clause stipulating the obligation of a payment to Multiópticas, of an amount of 15 percent of the purchases made to independent suppliers, was not accepted by the CC, and ordered its removal from the present contracts, as being too limiting of the freedom of choice of the retailers.

Source: Paper on Portugal's Competition Law, 1997

In light of the above and the changes that occurred at EU level recently, the Portuguese competition regime underwent a significant transformation in the year 2003, with the adoption of a new Competition Act (i.e. *Law No. 18/2003 of June 11, 2003*), which replaced the former Competition Act i.e. Decree Law No. 371/93. This most recent comprehensive reform, in both substantial and procedural aspects, has widened the scope in the aim to increase the competitiveness of the Portuguese economy. This also, to a great extent, exhibits an increasing awareness of the importance of a 'competition culture'.

The new Competition Act significantly follows the rules established at the Community level. The Act addresses agreements, decisions of associations of undertakings and its concerted practices, the abuse of dominant position, the abuse of economic dependence, etc.

Basically, the following amendments were carried out in the new Competition Act:

- enlargement of the scope of the law to all economic sectors;
- clarification of the conditions, under which this new Law applies to public enterprises and to enterprises that benefit from special or exclusive rights granted by the Government;
- new set of procedures to take control in advance of mergers;
- introduction of clear and adequate rules for the relationship between the Competition Authority and sectoral regulators; and
- restructuring of penalties.

Furthermore, the new Competition Authority (*Autoridade da Concorrência*) was created by Decree-Law No. 10/2003 of January 18, who will be responsible for the enforcement of not only competition law but also of the statutes prohibiting individual restrictive practices. This disbanded the earlier authorities. Unlike its predecessor, which was part of the Ministry of Economic Affairs, the new Authority will be independent from the Government.

The Authority is comprised of two bodies: the Council (*Conselho*) and the Sole Supervisor (*Fiscal Único*). Whilst the Council is the highest body, responsible for the enforcement of competition law and for the management of the Authority's services; the Sole Supervisor will be responsible for the external audit of the Authority's assets and financial management, and it will also fulfill an advisory role to the Council.

The Authority also repealed the administrative entities entrusted with the enforcement of competition law. Thus, the newly formed competition authority will oversee the investigation and decision of infringement procedures. The decisions of the Competition Authority may be appealed before the competent court, Lisbon's Tribunal of Commerce. This independent authority will also have

powers to enforce competition rules in all sectors of activity, which will further intensify its cooperation with the regulatory authorities of various sectors.

In order to discharge all these duties/responsibilities, the Council has been granted powers to impose sanctions as well as supervisory and regulatory powers.

This independence gave a great impetus to the effective creation of a competition culture in Portugal.

### **Sectoral Regulation**

The new Portuguese Competition Act recognises that Sectoral authorities and the Competition Authority must cooperate in their application of Competition Law and sectoral legislation, so that both fields of law remain effective.

As in other OECD countries, the regulatory reform process in the traditional monopolistic sectors led to the creation of several regulatory authorities, in Portugal. Though it must be emphasised that not all regulatory authorities deal with the traditional monopolistic sectors.

The following regulatory authorities have been constituted in Portugal:

- *Entidade Reguladora dos Serviços Energeticos* – ERSE (Regulatory Entity for the Energy Sector)
- *Autoridade Nacional Comunicações* (National Communications Authority)
- *Alta Autoridade para a Comunicação Social* – AACS (High Authority for Social Communications)
- *Instituto Seguros Portugal* – ISP (Portuguese Insurance Institute)
- *Comissão Valores Mobiliarios* – CMVM (Stock Exchange Commission)
- *Instituto Regulador Águas e Resíduos* – IRAR (Water Regulation Institute)

### **Telecommunications Sector**

The regulatory structure in Portugal has been strongly influenced by the EU. The competition rules applying to the telecommunications sector are those governing all other fields of activity (Decree-Law 370/93, amended by Decree-Law 140/98 of May 16, 1998 and Decree-Law 371/93 of October 29, 1993). However, there are also specific competition provisions in the telecommunications legislation.

*Autoridade Nacional de Comunicações* (ANACOM) is the regulator, supervisor and representative of the communications sector in Portugal. It is the new designation of the *Instituto das Comunicações de Portugal* (ICP), after the publication of the new statutes in 6 of January of 2002. ANACOM is the regulatory authority for postal communications and electronic communications, in accordance with the base law for postal services, article

18 of Law no. 102/99 of 26 July, and also the law for electronic communications, articles 4 and 5 of Law no. 5/2004, of 10 February.

Among others, ANACOM is endowed with the responsibilities: to guarantee network access for communications operators under conditions of transparency and equality; to promote competition and development in communications markets, namely in the context of convergence of telecommunications, media and information technologies; to grant rights for the exercise of postal and telecommunications activities; to assure management of the radio spectrum, guaranteeing co-ordination between civil, military and paramilitary communications, along with management of numbering in the communications sector.

It also ensures application and supervision of laws, regulations and technical requirements applicable in the context of its responsibilities, as well as compliance by communications operators with provisions of the respective

licences or concession contracts. One of its major functions is to co-ordinate with the competition authority in matters of application of the competition law in the communications sector.

Pursuant to the law, the major player *Portugal Telecom* has been appointed as universal service provider until termination of the concession agreement (executed in March 1995 between the state and Portugal Telecom) in 2025.

The Portuguese Competition Authority (PCA) commissioned a study on the telecommunications sector. The objective of the study is to assess the level of competition in the sector, identify problems and propose corrective measures.

The study mainly takes an econometric evaluation of the situation in the sector and a structural evaluation of the telecommunications sector, adapting its premises and conclusions to the Portuguese situation.

**Box 90.2: Portuguese Authority Conducts First Dawn Raid on Telecom firm**

The new Portuguese enforcement agency, the *Autoridade da Concorrência* had expressed his concerns about the incumbent telecoms operator, Portugal Telecom Group. The authority raided the group's Lisbon offices earlier in 2004.

The purpose of the raid is still not known. However, Portugal Telecom has been under heavy attack from competitors, owing to a dominant position in both the telecom retailing and wholesaling sectors. Portugal Telecom has been allegedly accused by competitors of abuse of its dominant position in the broadband internet and the telephone calls sectors.

Various sources suggest that the authority was provoked by a dispute between the incumbent and competitors in the fixed telephone calls market, over alleged price squeezing. Though, there were reports that the dispute may be related to complaints for abuses in the broadband sector. Those complaints emanated from IOL and Clix, two internet service providers (ISPs) controlled by major Portuguese telecom players, Media Capital and Sonaecom respectively.

Both companies have suspended their ADSL services because of the alleged price squeeze, leaving Portugal Telecom a market share of 75 percent in broadband retailing. Despite an intervention by the Telecoms Regulator, both have failed to return to the ADSL market until a '50 percent wholesale pricing rule' is set.

Source: *Global Competition Review, 2004*

**Energy Sector**

On November 14, 2001, the Portuguese and Spanish Governments entered into cooperation protocol, in order to implement the Iberian Electricity Market (IEM).

The protocol followed the adoption of a National Energy Strategy, and was adopted by the Portuguese Council of Ministers in 2001, aiming to increase the overall efficiency of the Portuguese electricity system, in terms of production, transportation and distribution.

The Energy Services Regulatory Authority (ERSE) is the entity responsible for the regulation of the natural gas and electricity sectors. It aims to make available, as much useful and relevant information as possible, as regards the organisation and regulation of these sectors. The protocol for the sectoral regulatory framework was agreed in 1998.

The Authority was created by Decree-Law 187/95. Decree-Law 97/2002 subsequently extended its regulatory powers to the regulation of natural gas, in accordance with the EU Gas Directive, which was transposed into national law by Decree-Law 14/2001.

As in the telecommunications sector, the PCA also conducted a similar study in the energy sector, in connection with the restructuring of the energy sector proposed by the Government, with the main objective being to analyse the electricity and natural gas markets in Portugal; the proposed restructuring; and to propose measures that would allow the mitigation of any foreseeable harmful effects of the restructuring on competition.

After an initial period of activity, the Authority has submitted itself to a peer review by the OECD. Such a review is focused on institutional performance and will

lead to the 2006-09 business plan. This review was expected to be completed by mid-2005.

### Consumer Protection

In Portugal, consumer protection is enshrined in the Constitution. Consumer policy has been placed under the responsibility of the Council of Ministers, clearly testifying to the importance attached to it, and to its across-the-board nature.

At the same time, a process of consolidation of consumer protection legislation is in progress. In many cases, Portugal guarantees a higher level of consumer protection than that required by the EU. Finally, Portugal is one of the EU member states, which has done a great deal to ensure the harmonisation of directives in this field.

In Portugal, the agency responsible is the *Instituto do Consumidor* (Consumer Institute).

The country's consumer organisations help implement policies and measures adopted by the authorities. Thus, they must be consulted in the context of drafting legislative and regulatory texts concerning consumers. Moreover, they are represented on the National Consumer Council and are involved in the work of the Economic and Social Council, the national quality system, the Committee on Competition and Prices, and the consumer disputes arbitration system.

### Concluding Observations and Future Scenario

In order to stimulate the adoption of legislative and administrative measures, the PCA drafted and issued certain recommendations, with a view to informing the economic agents, and which it considered important if the

conditions for competition in the marketplace are to be improved. Some recommendations were:

- Following a study and survey of higher educational establishments' activities outside their natural areas of education, science and technology. This study would consist of services that compete with other public and private establishments. A recommendation was transmitted to the Government, which proposed that these services be supplied in conformity with the principles of free and healthy competition;
- The removal of barriers to the provision of fuel stations by large-scale trading units, addressed to the Minister of the Economy; and
- Regarding the procurement of communication services by the Central State Administration, addressed to the Minister of State and Finance, the Competition Authority underlined the role that the Administration could play as a large purchaser of communication services, and requested the Government to alter the procedures for these acquisitions.

The Competition Authority opined that if the recommendations were strictly adhered to, the Central State Administration could contribute to better and more transparent structuring of the market, fostering increased competition, as well as enhancing the economic efficiency and competitiveness of the national economy.

In this regard, it is worth noting that the recommendations, regarding fuel stations and procurement of communication services have been fully accepted by the Government, and that appropriate legal adjustments have already been enacted.

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### Suggested Readings

1. International Law Office – *Legal Newsletter/Legal Overview section*
2. Global Competition Review
3. European Antitrust Review, 2005
4. Paper on Portugal's Competition Law, 1997 (*anon*)
5. Annual Report on Competition Policy Developments in Portugal, 2004.

### ✦ Portugal Investigates Notaries

Portugal's Competition Authority has published a draft recommendation on how to boost competitiveness in the public notary market. This is open to public comment until October 26, 2006. Proposed changes include ending limits on the volume of work public notaries can do and where they can do it, eliminating the need for licences, and letting notaries advertise. Notaries will also be able to manage more than one office.

Other suggestions include abolishing the Compensation Fund, which all notaries contribute to in order to pay a minimum salary to notaries who cannot cover their own costs, and dropping a maximum price for services rendered in competition with lawyers and chambers of commerce.

(Source: *Global Competition Review*, 04.10.06)

### **Portugal Publishes Leniency draft**

Portugal's Competition Authority has published a draft notice for the country's new leniency programme, in line with other European countries and with DG Comp. The draft procedures and leniency application form are open to public comment until September 28, 2006. Portugal's Parliament introduced the leniency programme in May 2006. It provides total immunity for the first company to bring evidence of price-fixing to the authority. There is also a 50 percent reduction available for the second company to come forward, provided it cooperates with any ensuing investigation. Cartel members providing evidence of involvement in a separate cartel may also receive a reduced fine.

The new Law stipulates that leniency applicants should identify members of a company's board of directors who are complicit in the cartel activity, as well as identifying the company itself. The Authority has also put a marker system in place, whereby applicants have 15 days to complete their leniency request, once they have notified the authority of their involvement in a cartel. Portugal's Parliament passed the Bill after the Government argued that cartels have a strong damaging effect on consumers and social welfare. The leniency Law will reduce the damage that cartels inflict on consumers and the national economy.

*(Source: Global Competition Review, 06.09.06)*