

Women & Antitrust Voices from the Field

Vol. I | Curation & Foreword by Evelina Kurgonaite

Teresa Moreira

UNCTAD

Margarida Rosado da Fonseca



Teresa Moreira has been Head of the Competition and Consumer Policies Branch of UNCTAD since 5 October 2016. She previously served as Consumer Director General of Portugal from January 2010 to September 2016 and as a member of the board of the Portuguese Competition Authority (March 2003 – March 2008) when it was first established. She also served as Portugal’s Director General and Deputy Director General for International Economic Relations, and held senior positions at the former Directorate General for Competition. She worked for 20 years as a teaching assistant at the Faculty of Law, University of Lisbon, in the areas of International Economic Law and European Law as well as in European Competition Law and European Economic Law (graduate studies). Teresa Moreira holds a law degree and a Masters degree in European Law (European Competition Law) from the Faculty of Law, University of Lisbon, Portugal.



Margarida Rosado da Fonseca heads the EU and Competition practice of CS Associados and has more than two decades of experience. Her professional career includes acting as an EU and competition (and regulatory) lawyer and, in the public sector, she was Merger Director at the Portuguese Competition Authority and a specialised jurist in the ESAME Team (XIX Government) during the Financial and Economic Assistance Programme to Portugal, notably participating in the working group for the reform of the competition legal framework. She is Secretary General of the Portuguese Association for European Law and of the Association of Portuguese Competition Lawyers.

Teresa, could you tell us a bit about your background?

I started as a competition case-handler in the Directorate General for Competition of Portugal in 1986. I moved to International Affairs (participating in the European Commission's Advisory Committee on Restrictive Practices and Dominant Positions; attending the OECD), and later became Head of the Legal Service and then Deputy Director General. In 2003, I was appointed a member of the board of the recently established Portuguese Competition Authority (PCA), an independent and fully-fledged public body.

Previously, I dealt with international trade, bilateral economic relations and the coordination of European Affairs, and cooperation for development issues within the vast remit of the Ministry of Economy of Portugal. It was a very special period that broadened my areas of interest and work, since it covered all trade issues and investment as well as sectoral policies such as competitiveness, energy and tourism.

For several years I also taught graduate studies in European Competition Law and European Economic Law at the Faculty of Law in Lisbon. The establishment of the PCA encouraged young lawyers and economists to take a strong interest in competition law, which led to larger, highly motivated audiences.

Consumer policy was surprisingly interesting: it is a cross-cutting topic, covering issues as diverse as contract terms and conditions, product safety, education and information, advertising and dispute resolution. Actions and initiatives have an almost immediate impact, which is gratifying in the civil service.

I worked closely with sector-specific regulators; discovered new topics such as alternative dispute resolution and behavioural insights for policymaking; and coordinated with municipalities, consumer associations and small non-governmental organisations as partners. Working with a

small, hard-working and very committed team, I had the opportunity of asserting Portugal's experience at regional and international levels, within the EU, the OECD, UNCTAD and other networks (including the Iberoamerican Forum of Consumer Protection Agencies (FIAGC) and the International Consumer Protection and Enforcement Network (ICPEN)).

In 2003 there was a reform of the competition rules and enforcement agencies which consisted in the creation of the first independent competition authority and the enactment of a Competition Act influenced by the 2002/2003 developments at EU level. Besides being a single purpose authority, the PCA had an innovative means of financing and interactions with sectoral regulators as some of its main features. You were one of the three members of the board of the PCA (and the only woman) in a country with incipient competition awareness in both the public and private sectors. Could you please comment on this and share with us some highlights of your experience?

Portugal adopted its first competition law in 1983: investigations were conducted by the Directorate General of Competition which sent the proceedings for decision by the Competition Council.

Despite some important cases throughout this period, there was no general awareness of competition law and policy. The establishment of the PCA as an independent public body, responsible for law enforcement against anticompetitive practices and also entrusted with full merger control responsibilities, and the adoption of a new Competition Law in 2003, played a major role in the dissemination of competition culture.

The initial PCA team combined senior civil servants with enforcement experience from the previous Directorate General and young highly qualified lawyers and economists, some with little work experience, others arriving from the academic world. This proved to be a very successful combination of skills, strengths and commitment, and a

This document benefited from contributions of experienced and less experienced competition authorities and is intended to serve as a guide to assist young and small competition authorities in developing countries in need of cooperation, foreseeing a more active involvement of the UNCTAD secretariat in assisting them during consultations. It is expected to be formally approved by the Eighth Review Conference that will take place under the auspices of UNCTAD in July 2020, thus reaffirming the UN Set as a relevant instrument to foster international cooperation.

The rise of the digital economy underlines how international cooperation is crucial to effectively tackle challenges and opportunities both for consumers and business in a global setting. Global challenges need global solutions: competition and consumer protection authorities should take the lead in advocating for a healthier, fairer and more competitive digital economy. Through inter-agency coordination and cooperation at national, regional and international levels, knowledge and tools will be accessible and assistance available to overcome resource constraints and limited experience.

There are different degrees of competition awareness and enforcement in various regions of the globe, despite the positive developments that occurred in the last decade. What could be useful guidelines to attenuate such differences? What are the features you would identify as typical of jurisdictions where the enforcement of competition rules faces more hurdles, and what are the ways to successfully overcome them?

Effective enforcement of competition law remains a challenge in several developing countries due to market structure, incipient competition culture, limited resources, and lack of understanding of the policy's contribution to achieve economic growth development.

The early focus of UNCTAD's technical assistance on the adoption of legal frameworks and the set-up of the respective institutions, usually

combined with the strengthening of capacities of competition authority staff, already widened some years ago to target a larger audience of relevant stakeholders – governmental bodies, sectoral regulators, the judiciary, business and civil society organisations. Without their engagement it is not possible to mainstream competition law and policy, and that is crucial to achieve progress. We always bring together experts of experienced and young authorities to share experience and foster mutual learning, and we involve other international and regional organisation colleagues in our technical cooperation activities to promote synergies.

Due to its wide membership and expertise, UNCTAD is well placed to advise Member States to make full use of competition policy within their development strategies. Policy advice should be supported by sound research to evidence policymaking. The positive impact of implementing competition law and policy in a jurisdiction also needs to be assessed and measured to enhance public understanding and support and to make a more compelling case for this important public instrument. This is one of the issues to further explore in UNCTAD's future work.

What do you think is most difficult goal to achieve when pursuing the public interest in the context of competition law enforcement, and what advice could you give to younger generations?

Communication of the benefits and of the impact of competition law enforcement is essential for market players and public opinion to understand its contribution for consumer welfare. It is necessary to improve the message and to tailor it to the target audience to achieve wider support.

Competition law enforcement is very demanding as it requires strong legal and economic analysis. Investigations of anticompetitive cases can take a long time, differently from merger control cases. It is important to have experience of both anticompetitive cases and merger cases to have

a comprehensive view. I also recommend attending judicial proceedings to understand the role of the judiciary when reviewing competition authorities' decisions.

Furthermore, competition law and policy goes beyond law enforcement and should spread to the legislative domain and regulatory frameworks, to have a more significant impact. So, there are other close areas of interesting work to be explored as well.

My final suggestion refers again to the importance of collaboration with other public bodies – sectoral regulators, consumer protection agencies, data protection authorities – to gather knowledge and skills so that it is possible to fully grasp the profound changes that economies and markets are undergoing and to be able to design the most appropriate measures.

Women & Antitrust

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In this first volume of Women & Antitrust, leading competition professionals from around the world present reflections and forecasts on topical issues in antitrust and competition law and policy. Nestled among the exchanges are insights into the professional paths of the women interviewed. Through personal anecdotes, they share perspectives on their chosen roles, if and how gender has informed their career choices, and offer advice to young practitioners interested in joining this field.

This volume has been published in cooperation with W@Competition. A second volume will be published in cooperation with Women's Competition Network (WCN).

With contributions by: Academy of the Netherlands Authority for Consumers & Markets; AILI Consulting; AlixPartners; Allianz; Ashurst; Baker McKenzie; BHP Billiton; Bowmans; Brazilian Administrative Council for Economic Defense; Chiomenti; C-Law; Cobalt Legal; Competition & Consumer Commission of Singapore; CS Associados; Cuatrecasas; Danish Competition and Consumer Authority; DG COMP; Freshfields Bruckhaus Deringer; Gattai, Minoli, Agostinelli & Partners; Gilbert + Tobin; Google; Hannes Snellman; Hogan Lovells; HSBC; Infonavit; King & Wood Mallesons; McDermott Will & Emery; Mexican Federal Economic Competition Commission; New South Wales Department of Customer Services; Nortons Inc; O2 Telefónica UK; Oxera; Renmin University; RBB Economics; Siemens; Spanish National Markets and Competition Commission; Sullivan & Cromwell; Swedish Competition Authority; Tauil & Chequer, associated with Mayer Brown; thyssenkrupp; UK Competition and Markets Authority; United Nations Conference on Trade and Development; University of East Anglia; US Department of Justice; W@; ZX Ventures.

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