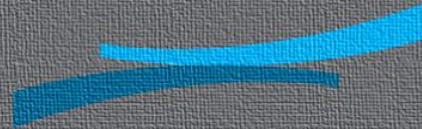


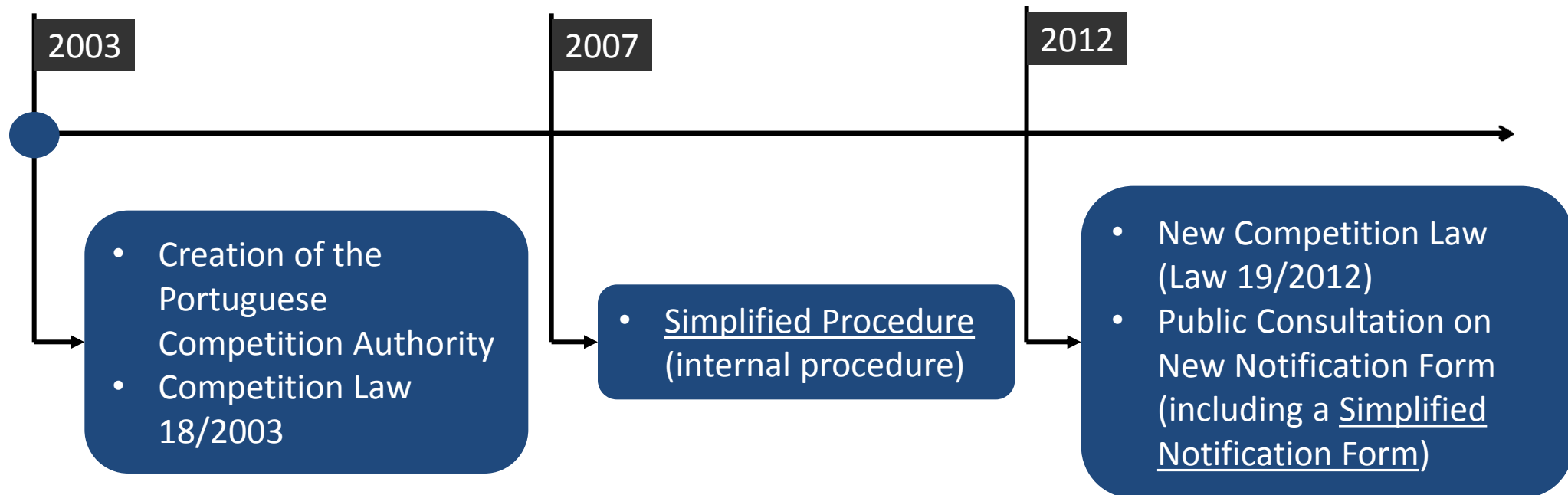
Simplified Procedure: The Portuguese Experience



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Simplified Procedure



Simplified Procedure

- Former Competition Law (Law 18/2012) did not establish a Simplified Procedure
- In 2007, the PCA approved a simplified procedure (called “Simplified Decision Procedure”)
 - Internal procedure
 - Communicated via press release
- To streamline the analysis of less complex mergers, with a decision in a shorter period of time
- Time period for review under simplified procedure was not publically disclosed
- Internally a review period of 20 working days
- Not a legally binding procedure – best efforts only

Simplified Procedure

- Simplified Decision: simpler decisions in terms of substantiation (limited to the essential)
 - A simplified decision describes the merger; the parties; the relevant markets and a short competitive assessment
 - Perhaps the PCA could move to even simpler simplified decisions
- Conditions which may permit a simplified decision (2007):
 - No significant change to the market structure, in particular when there is no overlap
 - Creation of joint venture with a foreseeable non-existent or negligible activity or not creating significant horizontal or vertical effects
 - The transaction does not constitute a concentration for the purposes of merger control or it is not subject to mandatory notification

Simplified Procedure

- The simplified procedure is not possible when it becomes necessary to send requests for information, when there are interested third parties and when a prior hearing is mandatory
- The simplified procedure was not linked to a simplified notification form (non-existent until 2012)
- Notification Form of 2009 allowed for some adaptation of the information submitted to the complexity of the merger cases
 - Compulsory information
 - Optional information (the PCA could waive the need to submit such information)
 - However, the Notification Form did not identify any criteria for the possibility of waiving information (at the PCA's discretion)
- Main objective: celerity (average review period in 2011: 19 working days; 28 calendar days)

New Simplified Form

- New Competition Law (Law 19/2012):
 - “In the case of concentrations which, in a preliminary assessment, do not pose significant impediments to competition, in accordance with criteria to be laid down by the Competition Authority, the notification shall be submitted on a **simplified form** approved in a Competition Authority regulation” (Art. 44(4))
- In July 2012, the PCA launched a public consultation on a new regulation regarding the Notification Form, including a **Simplified Notification Form**: reduce notifying parties’ costs
- The new competition law did not however establish a simplified procedure – The PCA will review its internal procedure

New Simplified Form

Summary of Criteria:

- No horizontal overlap or vertical relationships, no presence in neighbouring markets (conglomerational relationship)
- horizontal overlap, but
 - the parties combined market share is lower than 15%, or
 - the parties combined market share is above 15% but is under 25%, and the acquired market share is not above 2%
- Vertical relationship, but the individual or combined market shares, at any of the vertical levels (upstream or downstream) are not above 25%
- Presence in neighbouring or related markets, but the individual or combined market shares are not above 25%

New Simplified Form

- The fulfilment of any of the conditions for a Simplified Notification Form does not preclude the possibility of the PCA to require information from the Regular Notification Form
- Safeguards and exclusions
 - Difficult to define the relevant markets
 - Difficult to determine the parties' market shares
 - High barriers to entry
 - High level of concentration in the markets or when there are known competition concerns
 - Need for additional information for an appropriate analysis of the merger
- The acceptance of the notification under the Simplified Form does not imply an acceptance by the PCA of the parties' market definitions
- The acceptance of the notification under the Simplified Form does not imply any recognition of an absence of competition concerns

New Simplified Form

Main Mandatory Information in the Simplified Form

- Information on the Parties: main business, control and corporate structure, shareholdings and activities
- Notification to other Competition Authorities
- Description of the transaction
- Relevant information to decide upon the jurisdiction
- Proposed definitions on relevant and related markets
- Information on horizontal overlap, vertical and conglomerate activities and corresponding markets: market dimension, parties' market shares and market shares of 3 main competitors, and corresponding basis for the presented estimates

Criteria: PCA vs EC

Criteria for Simplified Form	Portugal New Simplified Form	European Commission Regulation 802/2004
No horizontal overlap or vertical relationship	Yes	Yes
No conglomeral relationships	Yes	Not expressly referred in the criteria but materially allows for a simplified form to be submitted (as a safeguard the Regulation states that a notification under Form CO may be necessary where at least two parties to the concentration are present in closely related neighbouring markets)
Horizontal Overlap limited by Market Shares	Combined market shares under 15% <u>or between 15% and 25%, if the acquired market share is not above 2%</u>	Combined market shares under 15%
Vertical Relationship limited by Market Shares	Individual or combined market shares under 25%	Individual or combined market shares under 25%
Conglomeral Relationships limited by Market Shares	Presence in neighbouring or related markets, but the individual or combined market shares are not above 25%	No reference

Criteria: PCA vs EC

Criteria for Simplified Form	Portugal New Simplified Form	European Commission Regulation 802/2004
Joint to exclusive control	Yes, if the party acquiring control does not have any interest (even if a minority stake without control) in the markets where the joint venture is present	Yes
Exclusive to joint control	Yes, if the party acquiring control is not an effective or potential competitor and does not have any interest (even if a minority stake without control) in the markets where the joint venture is present, in vertically related or in neighbouring markets	No reference
Creation of a joint venture	No reference	The joint venture has no, or negligible, actual or foreseen activities within the EEA: (a) the turnover of the joint venture and/or the turnover of the contributed activities is less than EUR 100 million in the EEA territory; and (b) the total value of the assets transferred to the joint venture is less than EUR 100 million in the EEA territory

ENSMO – Electronic Notification System for Merger Operations

- Web-based platform adopted in July 2009
- Allows the notifying parties to electronically submit a formal merger notification and to submit any subsequent information (e.g. replies to information requests)
- First step towards the reduction/elimination of physical workflow
- Linked to the PCA's Document Workflow System
- On-line access to file by the notifying party
- Warnings (automatic notes/reminders) concerning the procedure phases
- 71% of merger notifications in 2011

Thank you!

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<http://www.concorrencia.pt>