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**PUBLIC VERSION**  
**WORKING LANGUAGE**  
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**Subject:** SA.33243 (2012/NN) – Portugal  
Jornal da Madeira

Dear Sir/Madam,

**1. PROCEDURE**

- (1) By letter registered on 27 June 2011, Empresa Diário de Notícias da Madeira, Lda. ("the complainant" or "EDM") owner of the newspaper Diário de Notícias – Madeira, lodged a complaint with the Commission against the public funding provided to the Jornal da Madeira, a newspaper published by Empresa do Jornal da Madeira, Lda. ("EJM").
- (2) On 19 August 2011, the Commission sent a letter to the complainant including a preliminary assessment stating that, *prima facie*, the measure objected to does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). On 19 September 2011, the complainant submitted his observations disagreeing with the preliminary assessment of the Commission, without providing however any new material elements.
- (3) On 19 October 2011, the Commission sent a request for information to the Portuguese authorities along with a copy of the complaint. The Portuguese authorities replied by letter dated 27 January 2012.
- (4) By letters submitted on 17 August 2012 and 31 August 2012, the complainant submitted new information. On 4 September 2012, the Commission sent a letter to the complainant forwarding him the non-confidential version of the reply of the Portuguese authorities.

S. Ex.<sup>a</sup> o Ministro dos Negócios Estrangeiros <sup>1</sup>  
Paulo PORTAS  
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## **2. FACTS**

### **2.1 The complaint by EDM**

- (5) The complainant as a competitor of EJM claims that the regional authorities have supported the publication of the Jornal da Madeira newspaper in competition with his existing, viable commercial newspaper Diário de Notícias – Madeira. The complainant alleges that unlawful State aid has been granted to EJM in the form of shareholder loans of EUR 35 619 519.34 from 2000 to 2011, of a transfer of EUR 5 051 329 in 2012 and of direct subsidies of EUR 5 043 744.32 from 1993 to 1995 for the publication of Jornal da Madeira.
- (6) Allegedly, the Autonomous Region of Madeira ("the Region"), which owns 99.98% of the capital of EJM, has granted the financial assistance without requiring EJM to repay the loans, i.e. under conditions which are more advantageous than market conditions. According to the complainant EJM is technically bankrupt, its losses have been financed by the aforementioned support of the region and its situation only deteriorates with each new shareholder loan. Pursuant to the complainant, EJM would not survive without the financial support of the regional authorities. Furthermore, the complainant claims that there has been an unequal distribution of advertising contracted by the region in favour of EJM.<sup>1</sup> In addition, the complaint indicates that at the beginning of 2008, when Jornal da Madeira became a newspaper distributed for free (a "freesheet"), the price charged for advertising in that newspaper was substantially reduced and these actions directly affected the profitability of the complainant.
- (7) The complainant requested that the Commission issue a suspension injunction under Article 11(1) of Regulation (EC) No 659/1999 of 22 March 1999 laying down rules for the application of Article 93 of the EC Treaty<sup>2</sup> ("the Procedural Regulation") as well as to adopt a decision to initiate a formal investigation procedure under Articles 13(1), 4(4) and 6(1) of the Procedural Regulation and in due course, a negative decision in accordance with Article 7(1) of the Procedural Regulation and consequently, a recovery decision in accordance with Article 14 of the Procedural Regulation.

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<sup>1</sup> The complainant alleges that the Region distorts the advertising market in Madeira by channeling the bulk of its purchases of advertising space to the Jornal da Madeira. The National Court of Auditors found that, in 2005, the financial flows from the Region's direct administrative authorities to media organizations totaled EUR 6.1 million, of which 65.1 % took the form of shareholder loans to EJM, whilst 32 % of this amount was used to purchase advertising space. The Court of Auditors established that the financial flows used to purchase advertising, in 2005, were directed to 75 media organizations, with 74.9 % of the amount spent going to EJM, and the company in second place (Folio - Comunicação Global, Lda.) trailing with only 3.9 % of the total spending. What is more, according to the complainant, Jornal da Madeira has practised predatory price cuts in sales of advertising space, especially since switching to being a freesheet. In effect, prior to 2008 (when Jornal da Madeira became a freesheet), it would normally contain one page of classified/small advertisements, whereas currently, as a freesheet and thanks to the prices it charges, it each day contains an average of four to five pages. In contrast, Diário de Notícias - Madeira, which previously had an average of five pages given over to classified/other advertisements, now only has approximately three pages each day. Pursuant to the complainant, this change in advertising volumes has been achieved by means of predatory pricing on the part of Jornal da Madeira, severely undercutting the market, and thanks to a campaign targeted directly at Diário de Notícias - Madeira's customers, offering them terms and prices which no company could sustain unless it enjoyed public funding and it had no interest, unlike normal companies, in making a profit.

<sup>2</sup> OJ L 83 of 27.3.1999, p. 1.

## **2.2 Facts**

- (8) This decision concerns the funding to the newspaper Jornal da Madeira which has been provided in the past by the government of the Region. Jornal da Madeira is a daily newspaper which, apart from advertisement of other advertisers, also publishes advertisement of the regional government. This happened from 1993 to 1995 and then since 2000. For the period from 2000 to 2012, the support measures involve an amount of EUR 40 670 848.34. The financial support was granted in the form of shareholder loans which were not paid back by EJM.

### Press in Madeira

- (9) The press sector in Madeira consists of two daily publications, three weekly publications and thirteen monthly publications.
- (10) The two daily publications are:
- Diário de Notícias - Madeira;
  - Jornal da Madeira.

### The complainant

- (11) The complainant is a Portuguese newspaper company, which owns and publishes the newspaper ‘Diário de Notícias – Madeira’. The complainant has two Portuguese shareholders: the company Blandy, SGPS, S. A. and the company Controlinveste Media SGPS, S. A. The newspaper ‘Diário de Notícias – Madeira’ is a general regional daily newspaper whose content is predominately dedicated to matters relating to Madeira.
- (12) In addition to the publication and sale of the printed version of the said newspaper, the company's business activities also include the sale of advertising in Diário de Notícias – Madeira, the operation of a website on which it provides an online version of the same newspaper, and also the sale of advertising on the website.

### EJM

- (13) The ‘Jornal da Madeira’ is owned by EJM which in turn is controlled by the Region which holds 99.98% of the shares (the remainder is held by the Diocese of Funchal, and by three individuals). The ‘Jornal da Madeira’, like the ‘Diário de Notícias – Madeira’ is a general daily regional newspaper whose content is predominately dedicated to matters relating to Madeira. .

### The alleged aid

- (14) Over the years, the Region has financed EJM principally through shareholder's loans, namely those set out in the resolutions published in the Official Gazette of the Region from 2000 to 2012. During the period between 1993 and 1995, the regional government granted various other subsidies to EJM, based on the provisions of Regional Legislative Decrees. The complaint covers all these measures (i.e. the periods from 1993 to 1995 and from 2000 to 2012).

- (15) In EJM's management reports for the 2005 to 2010 financial years, published in the 'Jornal da Madeira', the following accumulated debts can be seen under the item 'Debts to Third Parties – Medium to Long Term – Shareholders':

<b>Financial year</b>	<b>Accumulated debt (EUR)</b>
2005	15 512 519.34
2006	19 604 519.34
2007	23 404 519.34
2008	26 404 519.34
2009	29 619 519.34

Publication and distribution of Diário de Notícias – Madeira and Jornal da Madeira

- (16) Between 2004 and 2011, the 'Diário de Notícias – Madeira' had an average daily print run and a cover price as follows:

<b>Year</b>	<b>Average daily print run</b>	<b>Cover price weekdays (EUR)</b>	<b>Cover price Sunday (EUR)</b>
2004	18 957	0.50; 0.60 from 12. 10.	0.75; 0.90 from 12. 10.
2005	18 227	0.60	0.90
2006	17 459	0.60	0.90
2007	16 592	0.60; 0.70 from 12. 10.	0.90; 1.00 from 12. 10.
2008	15 471	0.70	1.00
2009	14 856	0.70	1.00
2010	14 395	0.70	1.00
2011	13 741	0.70	1.00

- (17) In 2007 the 'Jornal da Madeira' had an average daily print run of 7 500 copies and the cover price was EUR 0.50. At the start of 2008, the 'Jornal da Madeira' increased its circulation to 15 000 copies and also began to be distributed free of charge in some public places. Beginning on 15 July 2008, the 'Jornal da Madeira' reduced its daily print run to between 6 500 and 9 500 copies per day, and at the same time set its cover price to EUR 0.10. The 'Jornal da Madeira' continued to be distributed free of charge in 641 locations, most of them public places (such as hospitals, health centres, schools, *lojas do cidadão* (public service centres), municipal markets, town halls, foyers of

registry offices, notary's offices and courts, and innumerable places along the access roads to Funchal, where the paper was distributed to motorists).<sup>3</sup>

- (18) EJM has an internet website with the address [www.jornaldamadeira.pt](http://www.jornaldamadeira.pt), which makes an online version of the 'Jornal da Madeira' available. EJM also owns and operates the local FM radio station called "Rádio Jornal da Madeira".

Alleged effect of the aid on the business of the complainant

- (19) According to the information provided by the Portuguese Print Run and Circulation Monitoring Association, the results for the 'Diário de Notícias – Madeira' in January 2007 and June 2010 were as follows:

	January 2007	June 2010
<b>Print run</b>	16 952	14 460
<b>Sales</b>	5 832	5 170
<b>Bulk sales</b>	339	243
<b>Subscriptions</b>	7 838	6 684
<b>Free copies</b>	755	47
<b>Circulation</b>	14 764	12 144
<b>Paid Circulation</b>	14 009	12 097

- (20) From 2005 to 2009 the complainant had the following advertising revenues and respective percentage variation:

Year	Total (EUR)	Variable costs (EUR)	Total w/o Variable costs (EUR)	Percentage Variation (%)
2005	4 704 641	11 420.52	4 693 220.40	
2006	4 661 687	52 586.59	4 609 100.45	-1.79 %
2007	4 776 382	76 002.31	4 700 379.52	1.98 %
2008	4 529 361	89 117.47	4 440 243.76	-5.53 %
2009	3 798 952	53 360.70	3 745 591.32	-15.64 %

- (21) The complainant alleges that the negative development of its business is due to the unfair competition of EJM which can undercut prices thanks to the subsidies of the Region.

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<sup>3</sup> This distribution was the result of a verbal agreement with Sodisnasa – Sociedade de Transporte e Distribuição, S.A. ("Sodisnasa"), the company that provides 'Jornal da Madeira' distribution services to EJM, under which it purchased from EJM, at the cover price, a substantial proportion of the newspapers that it had hitherto only distributed, and then distributed these newspapers free of charge in various public places. Within the scope of that agreement, EJM billed Sodisnasa the sum of EUR 64 101.70 between July and November 2008, corresponding to the purchase of about 641 000 copies of the 'Jornal da Madeira'.

## Assessment of the case by the national authorities

- (22) EJM's poor economic and financial situation was described by the Madeira Regional Section of the National Court of Auditors in a report entitled 'Audit of the financial flows between the Direct Regional Government and Media Entities – 2005' in 2006 and a report entitled 'Audit of the "Empresa Jornal da Madeira, Lda."' in 2009.<sup>4</sup>
- (23) On 7 April 2009, the complainant submitted a complaint to the Council of the National Competition Authority in which it complained about the conduct that it considered to be illegal and that was causing it direct losses, following which the Competition Authority issued Recommendation No 1/2009 on the 'Public aid granted by the Madeiran Regional Government to Media Entities' of 23 July 2009.<sup>5</sup>
- (24) On 10 August 2009 the complainant submitted a complaint to the National Media Regulator, following which the latter issued a decision of the Regulating Board of the Media Regulator dated 15 September 2010 and entitled 'Support provided by the Madeiran Regional Government to the Empresa Jornal da Madeira, Lda. with respect to its possible consequences for the pluralism and independence of the media'.<sup>6</sup>
- (25) Finally, EDM decided to bring the matter before the national courts and, in view of the urgency of the situation, applied for provisional relief, in the form of an injunction. The application initiating the injunction proceedings was filed with the Administrative and Tax Court of Funchal on 2 December 2010. That court dismissed the petition for interim relief on 16 December 2011.

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<sup>4</sup> The 2006 and 2009 reports can be consulted at [www.tcontas.pt](http://www.tcontas.pt).

<sup>5</sup> The Recommendation concluded with the following recommendations: '*... In view of the above, the Council of the Competition Authority ..., having consulted the Media Regulator ..., recommends to the Madeiran Regional Government that:*

*1. In order to confer legal certainty on its decisions to finance media entities, the Madeiran Regional Government should notify the European Commission of such financing whenever aid granted to any one company over a maximum period of three financial years exceeds 200 000 [euros], particularly the aid granted to the "Empresa Jornal da Madeira".*

*2. With regard to future aid to the media, the Madeiran Regional Government should follow a set of principles designed to avoid undue distortion of competition and, potentially, of trade between Member States, namely:*

*2.1 Define the specific objectives pursued, based on a thorough assessment of the market failures justifying the aid (e.g. development of pluralism, diversity of opinions and the regional press);*

*2.2 Ensure that the aid is proportional to the market failure that it is intended to solve;*

*2.3 Ensure that any financing granted which exceeds the amount that would be expected from a private investor operating under normal market conditions is provided based on objective, non-discriminatory rules and in compliance with sectoral laws ...'*

<sup>6</sup> The analysis set out in the decision of the National Media Regulator can be illustrated by the statements in paragraph 63 and the matters were decided as indicated in pages 40 to 43 available under the following link: <http://www.erc.pt/download/YToyOntzOjg6ImZpY2hlaXJvIjtzOjM5OjJtZWRpYS9kZWNpc29lcy9vYmplY3RvX29mZmxpbmUvMTE0NC5wZGYiO3M6NjoidGl0dWxvIjtzOjIyOjJkZWxpYmVyYWNhby01cGx1LWkyMDEwIjt9/deliberacao-5plu-i2010>

## **2.3 Comments of Portugal**

- (26) Firstly, the Portuguese authorities consider that the Commission is not competent to deal with the facts covered by the complaint. Referring to Article 11(6) of Regulation 1/2003<sup>7</sup>, they argue that the National Competition Authority (including the Administrative and Fiscal Court of Funchal) is investigating the case under 101 TFEU and that the Commission has not consulted that National Competition Authority.
- (27) Second, Portugal claims that the Region's financial measures to the benefit of EJM do not, in any event, constitute State aid. The Portuguese authorities' main argument in this respect is that any advantage to EJM from the financial measures could not, in any event, affect trade between Member States within the meaning of Article 107(1) TFEU. In support of this claim the Portuguese authorities have argued i.a. as follows:
- *Jornal da Madeira is published only in Portuguese, with a daily print run of 15 000 copies, with regional content, distributed free of charge and exclusively to the population resident in the Madeira archipelago, and there is no distribution agreement for anywhere else in the Union. In 2010, the number of daily newspapers distributed outside Portugal was two copies a day, the same as in previous years.*
  - *What is more, revenue obtained from advertising on the Jornal da Madeira website is very low, as follows:*

<b>Year</b>	<b>Advertising revenue (EUR)</b>
2006	1 253.11
2007	3 122.38
2008	2 672.91
2009	4 354.27
2010	4 211.37
2011	6 609.04

- (28) Finally, the Portuguese authorities claim that their right to a prior hearing was breached because they did not receive all annexes to the complaint in due time before the extended deadline for their reply to the Commission's request for information (26 January 2012).

## **3. ASSESSMENT**

### Preliminary remarks on procedure

- (29) The Portuguese authorities' argument that the Commission is not competent to deal with the case is not relevant in this context, since Article 11(6) of Regulation 1/2003 does not apply to State aid procedures.

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<sup>7</sup> COUNCIL REGULATION (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L of 4.1.2003, p. 1.

- (30) As regards the alleged breach of Portugal's right to a prior hearing, it should be noted that the Commission's request for information was sent along with a copy of the complaint and all its annexes received by the Commission on 19 October 2011. The request of Portugal for the missing annexes was only received by the Commission on 6 January 2012. The Commission received the complete set of annexes from the complainant on 13 January 2012 and forwarded it to Portugal on the same day. The Portuguese Permanent Representation received all the annexes on 18 January 2012, but the Portuguese authorities claim that the annexes were received in Lisbon only on 27 January. In any case, Portugal did not request a further extension of the deadline for its reply. The Commission followed the rules laid down in the Procedural regulation, in particular Article 10 thereof. For these reasons, the Commission rejects the existence of an alleged breach of Portugal's right to a prior hearing.

### **3.1 Existence of aid within the meaning of Article 107(1) of the TFEU**

- (31) According to Article 107 (1) TFEU, "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*".
- (32) In view of the submissions of the Portuguese authorities, the Commission will first examine whether any aid to Jornal da Madeira is liable to affect trade between Member States. Only insofar as the criterion is met could the public funding of EJM (provided all other conditions of Article 107 (1) TFEU are met) constitute State aid.

### **3.2 Effect on intra-EU trade**

- (33) In order to be considered as State aid under European Union rules and caught by the prohibition of Article 107 (1) TFEU, the use of State resources to support an undertaking must affect trade between Member States.
- (34) For this purpose, according to settled case-law, it is not necessary to demonstrate that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition.<sup>8</sup> It is also settled case-law with regard to this condition that, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-EU trade, the latter must be regarded as influenced by that aid.<sup>9</sup>
- (35) In this case, the Commission has gathered information from both the complainant and the Portuguese authorities. Both parties have made substantial submissions regarding the market conditions in Madeira and on the scope for effective or potential trade between Member States. On the basis of this information, the Commission has found as follows.

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<sup>8</sup> Case C-372/97 Italy v Commission, paragraph 44 and case C-66/02 Italy v Commission, paragraph 111.

<sup>9</sup> Case C-66/02 Italy v Commission, paragraphs 115 and 117.

- (36) The Commission has considered the potential effect of the measures on intra-EU trade in the following services markets: newspaper publishing, broadcasting and advertising.
- (37) EJM pursues its media (publishing and broadcasting) and advertising business operations exclusively in the region of Madeira. Jornal da Madeira is published only in Portuguese and its contents are focussed predominantly on matters of local interest. The newspaper is distributed exclusively to the population resident in the Madeira archipelago, and there is no distribution agreement for anywhere else in the EU. In 2010, as in previous years, the number of daily newspapers dispatched outside Portugal was two copies per day.
- (38) The website [www.jornaldamadeira.pt](http://www.jornaldamadeira.pt) has an on-line version of Jornal da Madeira. There is no page by page view of the traditional paper format (except for the first page), and no electronic subscription for receiving news daily. The website is solely in Portuguese and, as is the case with the printed version of the Jornal, the content is predominantly focussed on matters of local interest.
- (39) In view of the specialised content of the Jornal da Madeira, the fact that it is published only in Portuguese and that its distribution is limited to the Madeira region, the Commission considers that the financial support granted to EJM is not liable to enhance that undertaking's ability to compete with other news media, be it in print or online, in other Member States.<sup>10</sup> The same goes for EJM's potential to compete with broadcasters in other Member States: although Radio Jornal da Madeira can be heard in other Member States over the Internet, the fact that it is broadcasting in Portuguese and targeted at a local audience means that its target audience is limited to the Madeira region or, at most, to Portugal.
- (40) Moreover, it should be underlined that given the heavy losses accumulated by EJM over the years, it is not plausible that the financial support provided by the Region will be used by EJM to expand its activities outside the local market of Madeira.
- (41) In view of Jornal da Madeira's local profile, any advantage granted to EJM by the Region is also not liable to have an appreciable effect on the ability of the Jornal da Madeira to attract advertising revenue that would otherwise have been available to competitors (newsprint or broadcasters) in other Member States. In addition, the Commission notes that advertising revenue of the Jornal da Madeira is extremely modest (see recital 27 above) such that the effect of the financial support on the advertising market would in any event be negligible.
- (42) Further, the financial support provided to EJM is not liable to prevent operators from other Member States from establishing themselves on the Portuguese market. The effect of the financial measures in this respect will most probably concern only the region of Madeira. The Commission has found no positive evidence of investments from other Member States in the market for newsprint and broadcasting in Madeira (and indeed none of the complainant's shareholders is established outside Portugal). This can be explained by Madeira's geographical location and the very small size of the market.,

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<sup>10</sup> Case N 458/04 State aid to Editorial Andaluza Holding, SL, paragraph 8.

- (43) Therefore, even if the measure is liable to strengthen the position of its beneficiary on the local market, it is not liable to affect trade between Member States within the meaning of Article 107(1) TFEU.

#### **4. DECISION**

- (44) In light of the foregoing assessment, the Commission accordingly finds that the measure described in the complaint does not constitute State aid within the meaning of Article 107(1) TFEU.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request within that deadline, it will be deemed that you agree to the disclosure to third parties and to the publication of the full text of the letter in the binding language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Joaquín ALMUNIA  
Vice-president