



Market Studies

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4th Arab Forum: Best practices in planning and conducting market studies

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Article 61 Portuguese Competition Act

Market studies and sector inquiries

1 – The AdC can carry out market studies and inquiries focusing on **economic sectors or types of agreement**, which may be deemed necessary for:

- a) Supervising and monitoring the markets;
- b) Verifying any circumstances that may indicate distortion or restriction of competition.

2 – The **conclusions (...) shall be published on the AdC's website**, and this can be preceded by a public consultation to be organised by the AdC.

3 – In those cases where the market studies and inquiries (...) relate to economic sectors regulated by a sectoral regulatory authority, the **conclusions should be preceded by a request for a nonbinding opinion from the relevant regulator (...)**.

4 – Should a non-binding opinion not be issued within the time limit set, this does not prevent the AdC from concluding the market study and inquiry (...).

5 – AdC can make a **request to undertakings or associations of undertakings or any other parties or bodies for all the information** that it considers relevant from the legal competition standpoint.

Triggers

Reasons to do a Market Study

- Perception that the sector might have competition bottlenecks (e.g., due to vertical integration)
- Perceived barriers to entry
- Perceived lack of competitive dynamics
- Concerns with potential infringements to competition law
- New markets/Innovation that raise questions concerning entry conditions and barriers to innovation

Market Studies at the AdC

Overview

- **Issues Paper on FinTech**
 - **& Follow-Up Sector Inquiry**
- **Market Study on Haemodialysis**
- **Digital Issues Paper**
 - **& Follow-Up Sector Inquiry**
- **Market Studies on Road Fuels Sector**
- **Sector Inquiry on Natural Gas**
- **Report on Road Passenger Transport (Taxis & new business models)**
- **Sector Inquiry on Bottled LPG**
- **Market Study on the Port Sector**

Experience Sharing 1

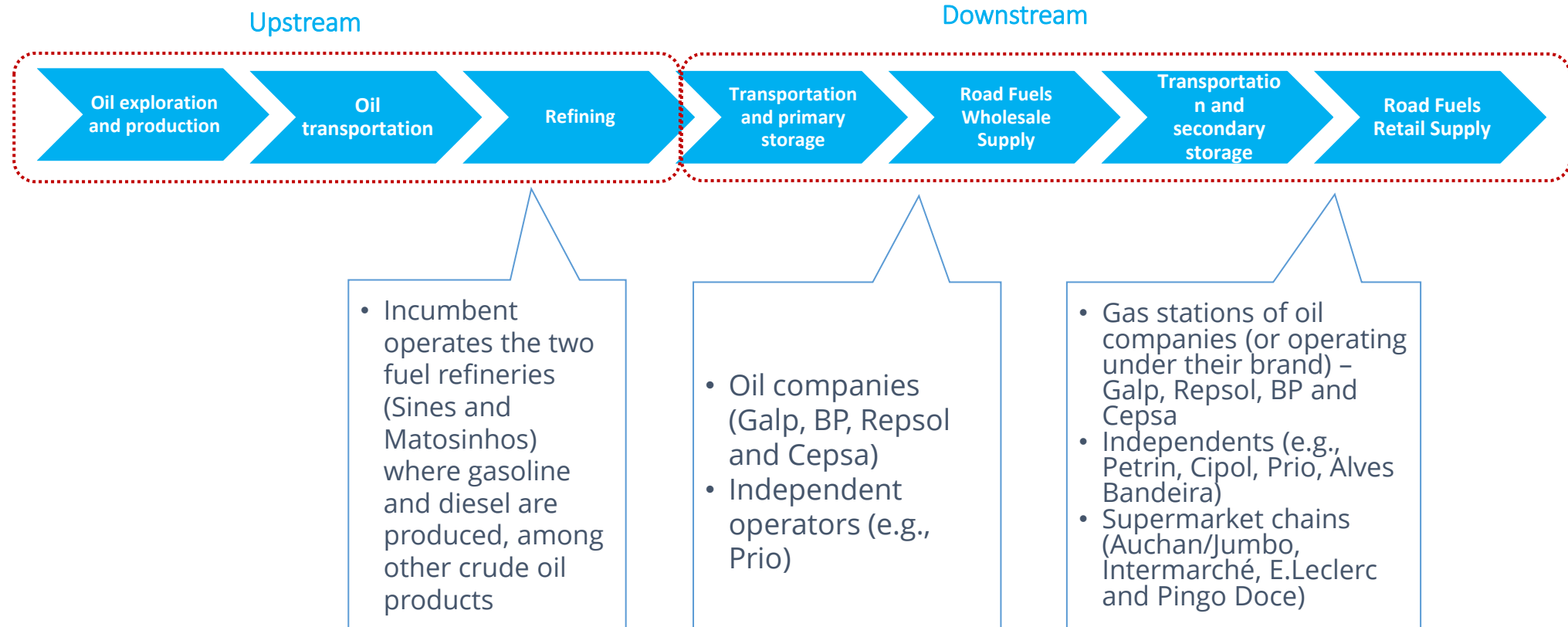
AdC's Market Studies on Road Fuels

Road Fuels

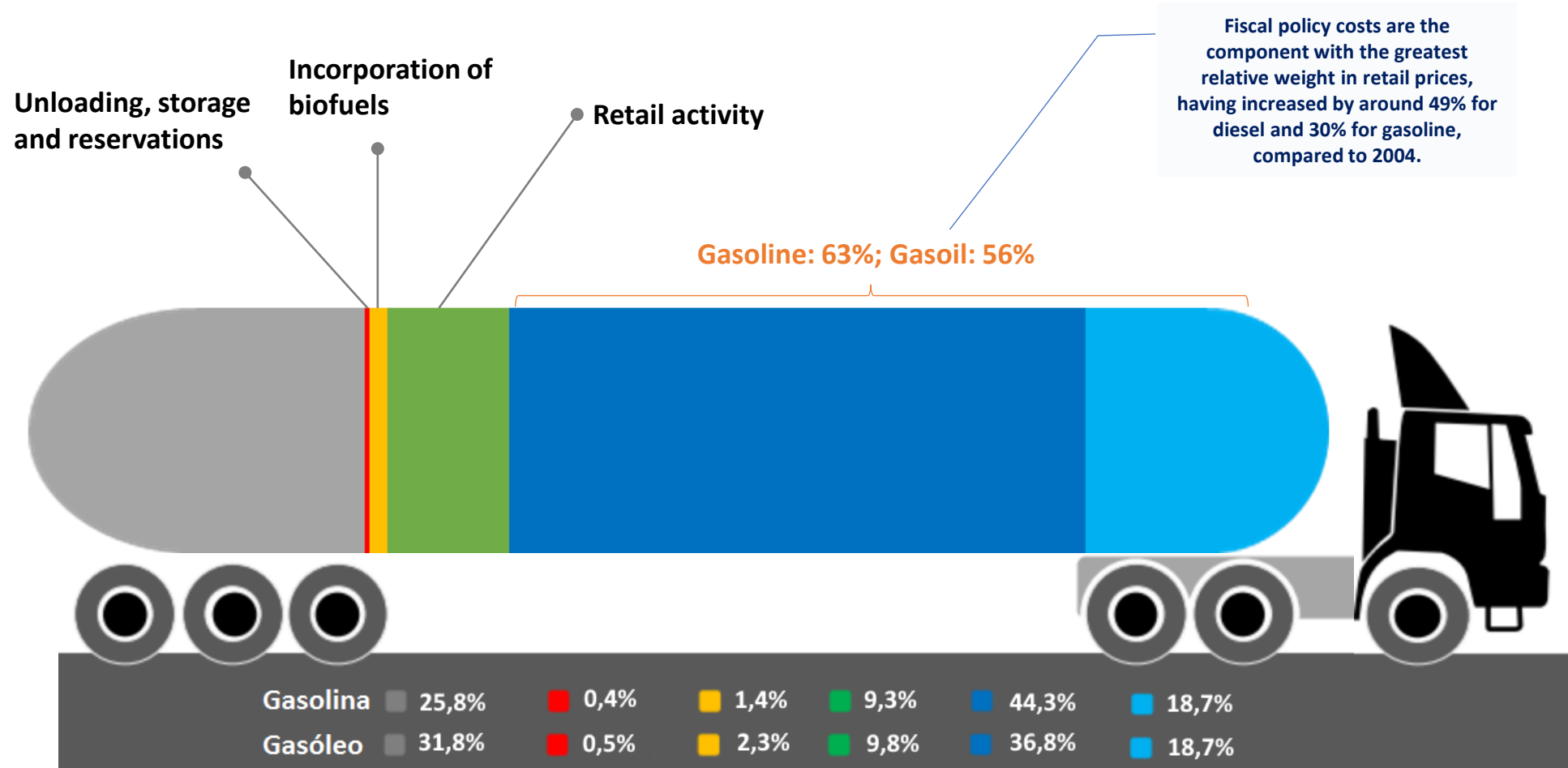
Timeline and Overview

- Since 2004, the AdC has played a very active role in the fuel sector, with various opinions and studies, including:
 - Report on the fuel market in Portugal (June 2008)
 - In-depth analysis of the liquid fuel and bottled gas sectors in Portugal (March 2009)
 - Analysis of the impact of introducing comparative fuel price panels on motorways (July 2012)
- On January 4, 2017, the AdC received a communication from the Secretary of State for Energy (SEE) requesting an analysis of gross margins as well as possible market failures in the sector
- The AdC received a new communication from the SEE on February 23, 2017, requesting a study with an assessment of competition problems in the fuel market.
- In June 2018, the AdC published another report

- In Portugal there is no oil production - all oil is imported
- The sector encompasses refining, storage, transportation, distribution and sale to the public at fueling stations.



Road Fuels Sector



Road Fuels

Brief overview of the multitude of analysis developed

- Assessed concentration and competitive conditions along the whole value-chain
- Assessed main liquid fuel logistics infrastructures and relevant developments over the years
- Estimated the rockets and feather phenomenon
- Assessed the impact of laws and legislation introduced in the sector
- Assessed the evolution of prices, before and after taxes
- Assessed margins: gross and net
- Analysed sub-concessions of highway stations and barriers to entry
- Issued 4 packages of recommendations aimed at mitigating competition concerns

Road Fuels

4th package of measures

- The 4th Package of Measures recommended by the AdC for the road liquid fuels sector is based on **4 aspects**:
- Promoting **access to logistical infrastructure**
- Promotion of **conditions of competition by the market in sub-concessions for the operation of service stations on motorways**
- Promoting **transparency that benefits consumers**
- Promotion of **analysis of the competitive impact of public policies**

Experience Sharing 2

FinTech

1. AdC's work on FinTech & Competition

2018

AdC's FinTech
Issues Paper

2020

FinTech sector
Sector Inquiry

2021

AdC's
Recommendations
Follow-up and
Inquiry Results

- **In 2018 the AdC** gathered input from several financial sector stakeholders and **assessed market entry conditions for FinTechs** mainly focusing on retail payment services and crowdfunding
- In its FinTech Issues Paper, the **AdC identified risks to competition within the evolving financial sector and put forward recommendations** to mitigate barriers to entry and expansion.
- **In 2020 the AdC launched a questionnaire to FinTech operators** to collect their views on recent market developments and the persistence of barriers to entry and expansion.
- **The AdC found that obstacles to the development of competition and innovation persist** in the sector and that the full implementation of most of the measures recommended by the AdC is still pending.
- From the interaction with FinTech operators, resulted indicia of a possible restrictive practice which led to **the opening of a procedure in Nov/2020 for a possible abuse of a dominant position of tying.**

2. Main Barriers to entry

Strategic and regulatory barriers

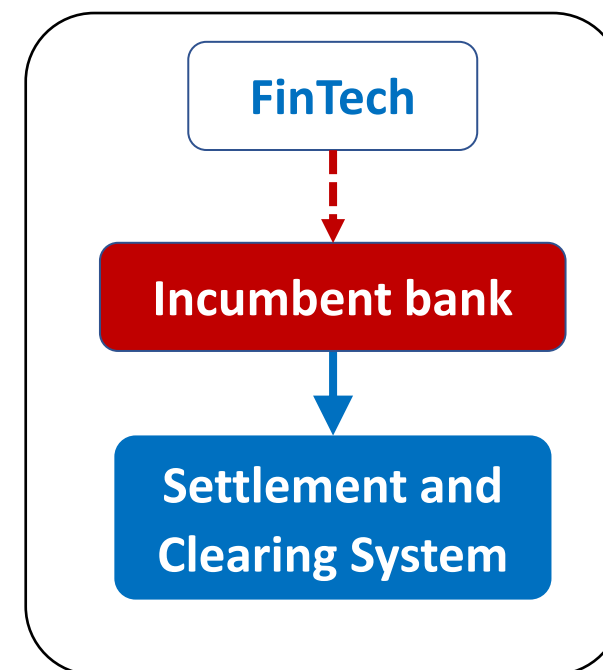
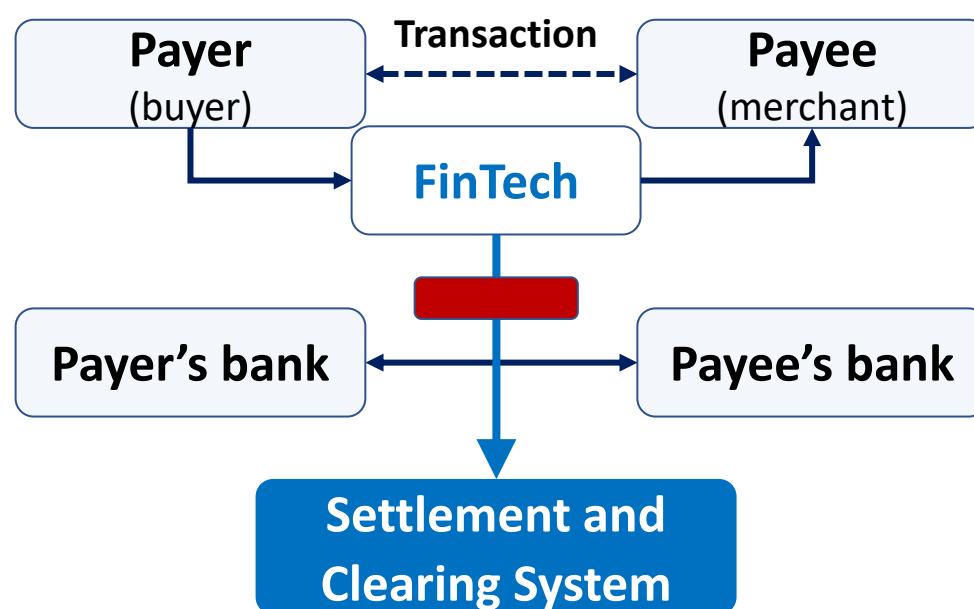
- Barriers to innovation and entry arising from the **regulatory framework applicable to the provision of financial services based on new technologies.**
- PSD2 is embedded with principles of openness and competition, but there are risks of delay and difficulties in implementing it (e.g., banks delaying the access to client account data).
- **Market foreclosure risk:** FinTech players depend on incumbents (banks) to access essential inputs. Banks have the **ability and the incentive to foreclose** new entrants as they will be direct competitors for some products/services.

Foreclosure risk is reinforced by specific characteristics of the Portuguese financial sector. Banks are shareholders of SIBS, a group that acts as a direct competitor of FinTechs and simultaneously manages/centralizes access to key inputs.

2. Infrastructure as a key input

- Due to regulatory requirements most **FinTechs must establish a relationship with the bank** as if they were a client in order to gain access to the clearing and settlement system. (**risk of foreclosure**).
- **Inherent conflicting interests** are at play: FinTech operators are at the same time clients and competitors of banks.

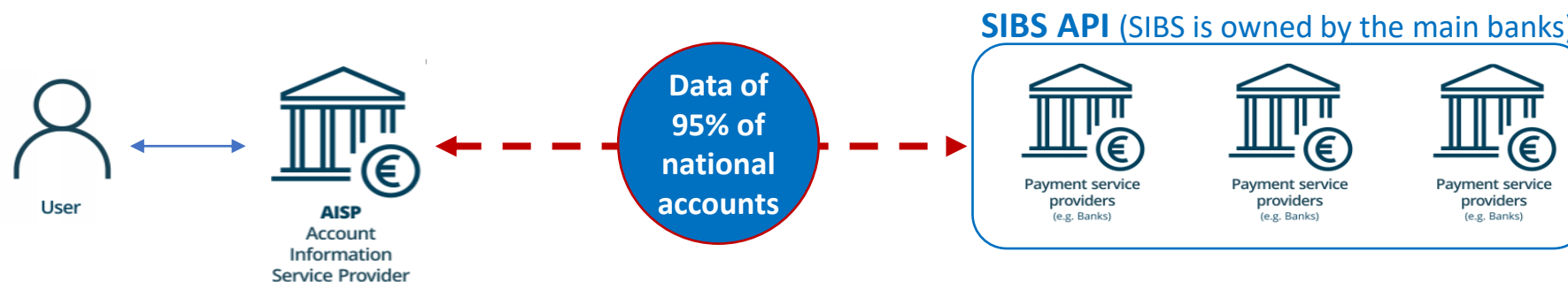
Example: FinTech at the end-to-end side of the retail payment system



2. Account data as a key input

- Many FinTechs are third-party providers under PSD2 providing services to their clients making use of account data made available via an open API by credit institutions.
- While PSD2 requires that banks grant TPP access to client data upon client consent, setting up regulation and standards for data portability encompasses challenges.
- **Risk of foreclosure** : the inputs new providers need are in the possession banks that compete with them in some services.
- **Incumbents banks** may be able to affect technical conditions under which third parties access data and its quality.
- **Incumbents can exploit consumer inertia by creating unnecessary hurdles in the customer journey** for giving consent (e.g., displaying unnecessary security warnings or windows) curtailing coverage of data provided; among others

Example: Account information services and payment initiation services



3. Survey



139

Questionnaires sent



88

Responses received



70

Responses from firms that provide services in PT

Universe & Insights (examples)

- We covered a representative and meaningful pool of FinTech operators in size, footprint, business model, etc
- The AdC received answers from 88 companies, 18 of which operate outside Portugal
- Of the 37 companies providing payment services in Portugal (within the scope of PSD2), **12 requested access to APIs**
- **9 companies indicated having access to data** and, of those, 6 indicated having used that access to provide services.

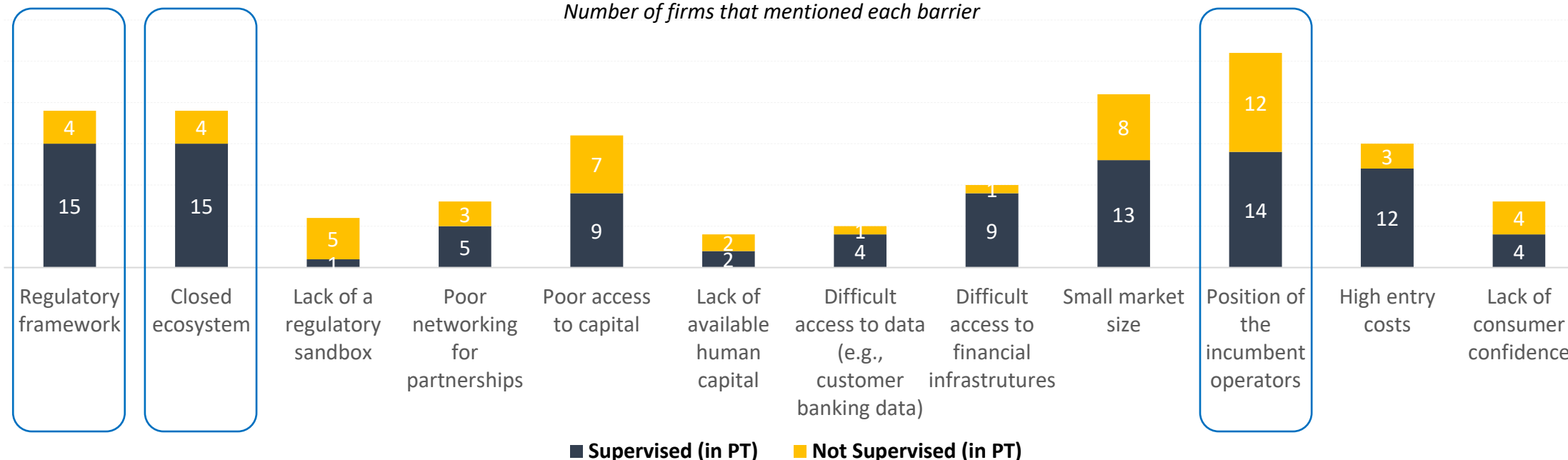
3. Survey

Considering the (70) operators providing services in Portugal:

- 19% (13) indicated that are **not subject to any barriers** to entry or expansion in Portugal.
- 74% (52) perceive the existence of **entry barriers** in the market
- 64% (45) refer to the **position of incumbent** operators and the existence of a **closed ecosystem** as barriers to entry

Key barriers to entry and expansions identified by firms providing services in PT

Number of firms that mentioned each barrier

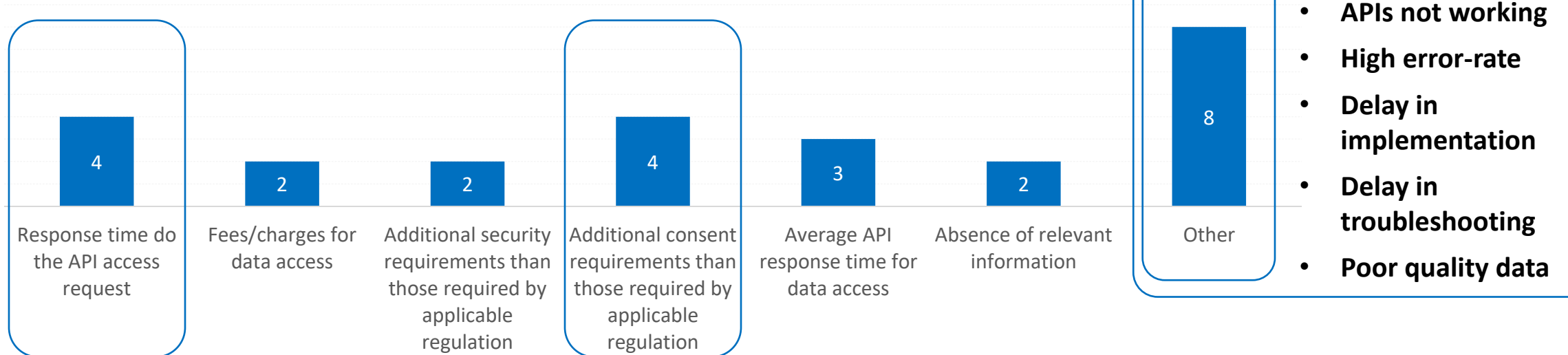


3. Survey

- The survey allowed the AdC to understand what are the most relevant barriers to accessing banking data perceived by FinTech operators (both in PT and in other countries).

Key barriers to accessing banking data identified by firms that have already requested access in Portugal

Number of firms that mentioned each barrier



4. Recommendations

- **Swift Regulatory response** and swift transposition of PSD2
- **Proportional regulation**, adjusted to the risks associated with the activity of FinTech players
- Introduction of a **Regulatory Sandbox**
- The AdC recommended that **secondary regulation should account for aspects that may favour foreclosure strategies** and hamper competition by newcomers (E.g., Guia bolso investigation in Brazil).

Need to ensure effective FinTech's access to SICOI (via direct access or regulated indirect access)

Ensure banks have no scope to create obstacles to access to customers' banking data or consent

Ensure no obstacles such as:

- Low API performance
- Hurdles in the user experience
- Complexity in authentication flows
- Low-quality (or missing) data



- Reduce FinTechs' dependency from incumbents to access **key inputs**
- Mitigate **risk of foreclosure** by incumbents

- **Promote technological neutrality in public procurement**
- **Survey showed that most AdC's recommendations is still pending and relevant**

Key takeaways

1. **Not a one-shot issue:** follow up on developments; on recommendations and degree of implementation
2. **Can assist in detecting competition problems** that need addressing:
 - **Competition bottlenecks** that can be tackled through recommendations
 - **Anticompetitive behaviour** that may warrant enforcement
 - Barriers to entry & innovation that stem from the legal and regulatory framework
3. **Key to collect stakeholders' view**
4. **Public consultations are a best practice** and may improve the goodness of fit of conclusions & recommendations
5. **Knowledge collected through market studies can input into other areas** of competition policy

Thank you!



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