

To the  
Board of the  
Competition Authority  
Rua Laura Alves, nº 4, 7º  
1050-138 LISBOA

Empresa Diário de Notícias da Madeira, Lda (EDN, Lda.), single corporate person and Funchal Companies Registry number 511000235, with registered offices at Rua Dr. Fernão Ornelas, 56, 3º, 9054-514 Funchal, with share capital of € 32,422.00, hereby requests the Board to issue a pronouncement, in accordance with its powers under the Competition Authority's Statutes, namely those provided for in Article 17 e), as it considers that public aid has been granted which undermines competition, which request it makes on the following terms and grounds:

1. This denunciation is made by a media company, owner of the regional daily newspaper *Diário de Notícias - Madeira (DN)*, in which the majority shareholder is the Blandy Group, with a minority interest held by the Controlinveste Group. The share capital of € 32,422.00 is held as follows: Blandy SGPS, Lda - 19,453.20 and Controlinveste SGPS Lda. - € 12,968.80.
2. Empresa do Jornal da Madeira, Lda. (EJM, Lda.), single corporate person and Funchal Companies Registry number 511007205, with registered offices at Rua Dr. Fernão Ornelas, 35, 9054-514 Funchal, is a media company, owner of the regional daily newspaper *Jornal da Madeira (JM)*, with share capital of € 4,345,876.44, held as follows:

Autonomous Region of Madeira - € 4,344,878.84;

Seminário Maior de Nossa Senhor de Fátima - € 798.06;

Ernesto Fernandes de Freitas - € 49.88;

Manuel Teixeira Velosa - € 49.88;

José António Melvill de Araújo - € 49.88 and

Redeemed quota share - € 49,88.

3. The product in question is the “JM” (SIC 22120 Publishing of newspapers) and the relevant geographical scope is the Autonomous Region of Madeira (ARM).
4. The ARM is represented by the Regional Government of Madeira, in which the office of president is held by Dr. Alberto João Jardim, whose official residence is at Avenida do Infante n.º 1 (Quinta da Vigia) 9004-547, Funchal, and the media sector in the ARM is the responsibility of the Regional Department of Human Resources (*Secretaria Regional dos Recursos Humanos*), with head offices at Rua Alf. Veiga Pestana, nº 15, 9054-505, Funchal.
5. The complainant considers that public measures have been taken which distort competition, in the form of State aid - in this case from the ARM - to the said company (EJM, Lda.), which, for all relevant purposes, should be regarded as a public undertaking, in view of the operating subsidies received, the loan capital provided by shareholders and the channelling of institutional advertising to the company, and also in view of the fact that the “JM” has been converted into a general news periodical distributed free of charge (freesheet) with an increased print run and with advertising prices cut to commercially unsustainable levels.
6. Prior to 2 January 2008, the daily newspaper “JM”, owned by EJM, Lda., had a print run of approximately 5000 (the precise number is not known, as these figures have never been officially disclosed) and the price per copy was € 0.50.
7. Prior to 31 December 2007, the daily newspaper “DN” had an average daily print run of 15,922 copies, as confirmed by APCT - *Associação Portuguesa de Control de Tiragem* - and the price per copy was € 0.70.
8. As may be seen from the EJM, Lda.’s Management Reports for the Financial Years of 2006 and 2007, published in the “JM” on 30 June 2007 and 15 June 2008, in 2006 and 2007 the company EJM Lda. was technically bankrupt, with negative equity of - 24.9 and - 28.7 million euros, respectively, placing it in the situation provided for in Article 35 of the Companies Code (Docs. 1 and 2).

9. By taking figures also from Report no. 4/2007-FS/SRMTTC of the Madeira Regional Section of the Court of Auditors, we may trace the (negative) net results recorded by EJM, Lda. over four years, in thousands of euros:

2003	2004	2005	2006	2007
-3,372.95	-3,131.45	-3,495.64	- 4,171.99	-3,792.23

10. EJM, Lda recorded a debt to equity ratio of -93.3% in 2005, -94.5% in 2006 and -95.1% in 2007 (Doc. 3).

11. On the basis of the ARM Official Gazette (*Jornal Oficial*), we may point to the following annual aid to EJM, Lda. from the Madeira Regional Government:

Year - Value

1993 - 293,000,000\$00;

1994 - 443,700,000\$00;

1995 - 568,536,000\$00;

1996- 461,000,000\$00;

1997 - 300,000,000\$00;

1998 - 282,685,000\$00;

1999 - 449,120,000\$00;

2000 - 630,000,000\$00;

2001 - 530,000,000\$00;

2002 - 470,000,000\$00;

2003 - 2,000,000.00 €;

2004 - 1,200,000.00 €;

2005 - 2,000,000.00 €;

2006 - 3,600,000.00 €;

2007 - 3,100,000.00 €; and

2008 - 4,100,000.00 €.

We wish to stress that according to the published reports and accounts for 2006 and 2007, the figures for these years are 4,092,000.00 € and 3,800,000.00 €, respectively.

12. In order to explain more fully the reality of the relationship between the ARM and EJM, Lda., we transcribe below a number of excerpts from Report no. 20/2006-FS/SRMTC of the Madeira Regional Section of the Court of Auditors, which is attached (Doc. no. 4 of 91 pages - may be consulted online at [www.tcontas.pt](http://www.tcontas.pt)):

*- In 2005, the financial flows from the Direct Regional Administrative Authorities to media organizations totalled 6.1 million euros, 65.1% of which took the form of shareholder loans to Empresa Jornal da Madeira, Lda., whilst 32% of this amount was channelled to the purchase of advertising;*

*- Empresa Jornal da Madeira, Lda. was the main recipient of the transfers made, which totalled 4.6 million euros (74.9%), followed by the company Fólio-Comunicação Global, Lda., with approximately 238.9 thousand euros (3.9%);*

*- The documents examined allow us to assume, in certain situations, that the payments made for the purchase of advertising services were made as a form of assigning financial aid to the service providers;*

*- It is found that 83% of the transfers made by Regional Department of the Economy to media organizations were channelled to a single entity, EJM, Lda.,*

*which thereby benefited from a volume of finance significantly greater than that disbursed on any other entity in the sector. In contrast, the financial flows to Empresa Diário de Notícias, Lda., which ranks in second position with regard to receipt of funds in this context, represent 4.1% of the total financial flow.*

13. In addition to the shareholder loans and subsidies from which EJM, Lda. benefited, the State (ARM) aid distorting competition has also taken the form of the channelling of institutional advertising, by both the ARM Government itself and institutions connected to the Administrative Authorities, which has been published almost exclusively in the “JM”.
14. By way of example, and with reference only to 2007 and 2008, institutional advertising space contracted by the ARM Government from the “JM” occupied respectively 234.25 and 216 pages of the newspaper, as compared to 9.75 and 18 pages of the “DN”, owned by the company making this denunciation.
15. In terms of market figures, the “JM” apparently received amounts in the order of € 335,500.00 from the ARM, whilst the “DN” received € 30,077.00; in other words, the former newspaper received much more than ten times more than the latter.
16. Finally, it should be noted that the published accounts for 2006 show that EJM, Lda. had debts to the State of € 614,708.00 at 31.12.2006 and of € 417,356.16 in the previous year. At the same time, EJM, Lda. recorded staff costs in 2006 of € 2,700,515.28, as compared to € 2,679,788.26 in the previous year, meaning that there was practically no increase in these costs. It is therefore legitimate to enquire why EJM, Lda.’s debts to the State grew by 47%. According to EJM’s published accounts for 2007, it had debts to the State of € 133,383.27 at 31.12.2007, with staff costs of € 2,728,680.32. The only possible explanation appears to be that EJM, Lda. has outstanding debts to the State (ARM), in 2005 and 2006, in respect of taxes and social security contributions - which in addition to being unlawful amounts to another form of discriminatory aid from the State (in this case the ARM) to EJM, Lda.. In addition, if such outstanding debts exist, this circumstance, although legally barring EJM, Lda. from supplying advertising space to the ARM, appears not to have prevented this

from happening, in manifest breach of the terms of Articles 33, 38 and 39 of Decree-Law 197/99, of 8 June.

17. The accounts published in show that EJM Lda. had debts to the State of 133,383.27 € with staff costs of 2,728,680.42 €, although no explanation is proffered for such a significant reduction in the company's debt to the State (in this case ARM).
18. Despite all these systematic distortions of competition, the "JM" continued to accumulate the losses referred to above, and there is nothing to suggest that they will not continue to mount up with the latest measures.
19. In turn, the "DN", despite all the distortions to competition of which it has been the victim, has continued with a print run of 15,922, surviving thanks not only to its readership but also to the commercial advertising it has been able to attract.
20. In view of this situation and with the clear intention of putting the "DN", an independent media organ, out of business, the Government of the ARM decided that the "JM", which is 99.97% owned by the ARM, would be distributed free of charge whilst retaining its features as a 48-page general newspaper, published on Saturdays (with a colour supplement) and Sundays, reaffirming in essence what the Editor of the newspaper wrote: "*that it would be a freesheet, but different from all other freesheets*", no doubt, in the view of the company making this denunciation, because it will have to be supported *ad infinitum* by the public purse (Doc. no. 5).
21. At the same time, the print run of the "JM", which was approximately 5000 copies per day, was increased to 15,000 copies, placed at the disposal of its possible readers in many different places, including in public authority buildings in the broad sense - hospitals and health centres, schools, citizens' shops, municipal markets, municipal council offices, the lobbies of registries, notaries and courts, and at countless locations on the roads into Funchal, where the "JM" is handed to the drivers of the thousands of cars which enter the city of Funchal each day (Doc. 6).

22. Although the Management of EJM, Lda. declared publicly on 18 April 2008 that the changes have been made merely with a view to “*streamlining and optimising costs*” and that “*this measure was taken, moreover, on the basis of a business study conducted by a leading consultancy firm, which found that a freesheet was the ideal format for keeping the company in the market*”, it is also obvious that it is only possible to maintain its financial structure due to very considerable support provided by its shareholder, the ARM, through the Regional Government (we attach press release from the Management of EJM, Lda. - Doc. 7).
23. It is quite clear that the measures taken and maintained by the Government of the ARM clearly undermine the free working of the market, distorting competition and the relations between the public undertaking publishing the “JM” and the private company making this denunciation, and also increasing the volume of State aid (in this case, from the ARM) to EJM, Lda..
24. The situation degenerated with the measures taken as from 2008 - the freesheet format and dumping in the advertising prices - given that no private company could hope to have the same capital resources as the State (in this case, ARM) at its disposal, which resources are clearly being used to favour the public undertaking which publishes the “JM” in its competition relations with the private company publishing the “DN”, in such a way as to jeopardise the survival of the latter company with all the negative economic and social consequences this would entail, considering that it employs a workforce of approximately 120.
25. We should stress that, at the same time, the “JM” started to sell commercial advertising for prices whose exact value is not known but which are undoubtedly far lower than those normally charged, thereby diverting commercial advertising which would otherwise be placed in the “DN”.
26. EDN, Lda. has been contacted by a number of advertisers who have reported the prices and discounts offered by EJM, Lda., amounting to discounts and terms which may be described as dumping, and proceedings have been brought against the “JM” on these grounds before the relevant authorities (Doc. 8 - pages 1 & 2).

27. By way of illustration, the deaths notices which were previously published free of charge in the “JM”, now cost the token price of 10.00 € when, in accordance with the respective tariff, each advertisement should cost more than 100.00 €.
28. The company making this denunciation is regularly informed by its clients that EJM, Lda. has adopted a strategy of contacting each of these clients with the argument that, from since the “JM” became a freesheet, it has the same print run and the prices are incomparably lower than those charged by the “DN” in line with the normal workings of the market in the ARM.
29. The same company has even been informed by some of its clients that, for the same advertising space, they pay EJM, Lda. in one year less than what they pay EDN, Lda. in a single month!
30. It is quite clear, and the Competition Authority will have no difficulty in confirming, that the company making this denunciation is at a clear competitive disadvantage in relation to the public undertaking in question.
31. The effect of the aid and practices described above has been to reduce the revenues of EDN, Lda. as a result of a reduction in sales of the “DN” (down in 2008 by approximately 167,000) and in the advertising sold by the same newspaper which, at this moment, more than a year after the “JM” relaunched itself as a freesheet, point to the “DN” becoming economically unviable in the medium term, considering that, at 31 December 2008, EDN Lda. recorded a decline in Services Rendered (Advertising Sales) of € 243,076.76, with the corresponding impact on the company’s results.
32. In response to the creation, at the start of 2008, of the situation described above, which is in clear breach of competition law, the directors of the company making this denunciation contacted directly the Regional Government of Madeira, impressing upon it the seriousness of the situation in which the “DN” found itself and the need to reassert legality and fair competition.
33. Their aim was to find a way round the serious situation in which the “DN” found itself, without recourse to legal proceedings, which are inevitably lengthy.

34. When contacted, the Regional Government of Madeira expressed its willingness to put an end to the situation of discrimination in question.
35. Unfortunately, despite this promise from the Government, the measures adopted, as from late July 2008 through to the present, reveal no real intention to reinstate legality, and have been woefully insufficient or almost meaningless. It is therefore necessary to submit this complaint.
36. The Madeira Regional Government's measures in this respect consisted merely of:
  - a) Printing a figure of € 0.10 on the masthead of the "JM", so that it is formally no longer a freesheet, but in practice no price is charged, and indeed no arrangements whatsoever have been made for payment at the places where the newspapers are made available;
  - b) The print run of the "JM" has been cut to 6,500 during the week and 9,000 on Sundays, according to information supplied by the Regional Government itself, which cannot be confirmed;
  - c) Nearly all institutional advertising has been kept in the "JM" and the public subsidies referred to above have been continued for the "JM", not to mention that the EJM management continues to charge prices for commercial advertising which amount to dumping.
37. According to the "JM" of 18 March 2009, the daily print run of the newspaper is sold in its entirety to "Sodisnasa - Sociedade de Transportes e Distribuição, SA", the distributor company, which places it at the disposal of the public, free of charge, at the places referred to above (Doc. 9 - pages 1 & 2).
38. This distributor company, Sodisnasa, SA, has registered offices at Caminho da Ladeira, n.º 114, parish of Santo António, 9000-338 Funchal, and is managed by Miguel João Subidet de Freitas and Maria Idalina Martins de Barros Rijo; the company's shareholders are unknown, but it is legitimate to conclude that the ARM continues to finance the free distribution of the "JM", now through the expedient of involving this company (Doc. 10 of 4 pages).

39. Obviously, this has prolonged, and indeed exacerbated, the situation created by the Madeira Regional Government, which situation amounts to a serious and unlawful distortion of competition and results in the financial asphyxiation of company making this denunciation, driving the “DN” out of business.
40. Finally, and although these are side issues not contained within the direct scope of the Competition Authority’s powers, we cannot fail to point out and consider the fact that the product in question, the “JM”, although 99.97% owned by the State (in this case, the ARM), has an Editorial Statute which defines it as “*a Daily Newspaper with a Christian standpoint, open to healthy ideological pluralism, in faithfulness to the Gospel and in the love of Truth, with a view to full human realization...*” whilst it serves as a mouthpiece for the President of the Government of the ARM, the Government itself and leading figures of the political party (PSD-M) which supports it, revealing a total lack of independence of political power, and instead being directly and visibly subordinate to such power, meaning that it is a pure fallacy to seek to justify that the “JM” should be maintained on the grounds that have sometimes been proclaimed, in other words, for the sake of alleged pluralism in news reporting:
- a) In the first place, because it is the actual existence of a government-influenced and government-subsidised daily newspaper that prevents the existence of other private media publications - we may cite the case of the “*Notícias da Madeira*”; and
  - b) Secondly, because, at this moment, the “JM”, with the direct subsidies and support for its operations as described above, will inevitably drive the “DN” out of business, when it is the “DN” that truly assures pluralism in news reporting and opinion articles, as promoted by its editorial policy which opens the pages of the newspaper to different currents of opinion, without being in thrall to the regional political establishment.
41. In addition to the fact that the President of the Regional Government contributes a full-page opinion piece in the “JM”, normally twice a week, we may also point to the following facts which demonstrate this subordination:

- a) With extremely rare exceptions, all the contributors to the comment pages of the “JM” are associated with the PSD-M;
- b) For several days last year, the motion tabled at the PSD-M Conference by the President of the ARM Government and of the party was published in full on the comment pages of the “JM”;
- c) The addresses delivered by the President of the ARM Government at official opening ceremonies are often published in full on the comment pages of the “JM” the next day;
- d) The recent publication of two articles by the President of the ARM Government, one which had been published in the newspaper of the PSD-M, under the title “Madeira Livre” (*“Free Madeira”*), and another in which he presents 41 measures to combat the crisis, which he had read out in full at the official inauguration of an educational establishment (Docs. 11 and 12 pp. 1, 2 and 3);
- e) Publication of a right-of-reply piece by the company making this denunciation after expiry of the relevant time limit, accompanied by a response piece (exercising a self-proclaimed right of defence) from the President of the PSD-M and the ARM which, in addition to being unlawful under the rules on the right of reply, sought to conceal the very substantial government funding of the “JM” and to inculcate in public opinion the idea that the denouncing company had taken acted abusively in seeking to reinstate legality in the media sector in the ARM (Doc. 13);
- f) The Executive Summary of the 2007 Oversight Report of the Press and Broadcasting Regulatory Authority made the following reference to the *“Jornal da Madeira”*: *“More than half of the articles in the Jornal da Madeira are ascribed to a single source, mostly pertaining to regional politics. This is also the area from which it draws most of its sources on politics and most of its contributors, especially, members of the Regional Government, regional authorities and the PSD. As a publicly owned newspaper, it is obliged to ensure that its pages reflect greater diversity and a wider range of subject matters, sources and contributors.”*

42. In addition to all this, of a seriousness which needs no further comment, we should point out that:

- a) Four years ago, the ARM Government cancelled all subscriptions to the “DN”, which had totalled around 400, for schools, old people’s homes, hospitals, government departments and other bodies;
- b) At official opening ceremonies and, in his capacity as President of the PSD-M, at political rallies, the President of the ARM Government has appealed in vehement tones to advertisers and business people not to advertise in the “DN”;
- c) The President of the Government of the ARM has systematically denigrated in public the shareholders, editors, journalists and staff of the “DN”, going so far as to threaten the newspaper with compulsory purchase in view of its independent and impartial editorial line, open to all currents of opinion (Doc. 14, pp. 1 and 2).

43. We should stress that these characteristics of the “DN” were expressly acknowledged by the former President of the Republic, Dr. Jorge Sampaio, shortly before leaving office, when he publicly drew attention to the important contribution made by the “DN” to promoting and defending democracy in Madeira in significantly difficult circumstances, and indeed in the country as a whole.

44. These are the facts which, in the view of the company making this denunciation, urgently require the Competition Authority to take a stance, in view of the following provisions of the law:

- a) The Portuguese Constitution - Article 38.4:

*“The State shall guarantee the freedom and independence of the mass media from political and economic powers; it shall impose the principle of speciality upon companies that own general information media; it shall treat and support those companies in a non-discriminatory manner and shall prevent their concentration, in particular through multiple or interlocking financial interests”.*

- b) The Portuguese Constitution - Article 99 a) and c):

*“The objectives of the policy for commerce are as follows:*

- a) Healthy competition amongst those in trade;*
- b) ...;*
- c) Opposition to speculative activities and restrictive trade practices;”*

c) Treaty of Rome - Article 87:

*“Save as otherwise provided in this Treaty, 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 common market”.*

d) Competition Law - Article 13

*“State Aid*

*1 - The aid granted to undertakings by a state or any other public body must not significantly restrict or affect competition in the whole or in part of the market.*

*2 - At the request of any interested party, the Authority may scrutinize any aid or aid project and formulate such recommendations for the Government as it deems necessary to eliminate the negative effects on competition of such aid.*

*3 - For the purposes of this article, compensatory payments made by the state in return for the provision of a public service, whatever the form of such payments, shall not be considered aid”.*

e) Press Law - Article 4

*“1 - With a view to assuring the possibility of expression and comparison of different currents of opinion, the State shall organize a system of non-discriminatory incentives to support the press, based on general and objective criteria, to be laid down in specific legislation.*

...

*3 - Media or news companies shall be subject to the general rules on the defence and promotion of competition, namely with regard to prohibited practices, in particular abuse of dominate position and merger control”.*

45. The company making this denunciation is aware that the economic and financial situation in Madeira, the country as a whole and internationally is not easy for companies, and the managers of EDN Lda accept and have always accepted their responsibility to manage the company in any circumstances, but however correct or careful the measures taken, they will be of avail when the main competitor - “JM” - has no need to obey the rules of a free market, and when this competitor is able to set any price for its product without regard to the need for sound management and the rules of healthy competition.
46. If appropriate measures are not taken, with the degree of urgency required, to bring an end to the intolerable situation described above, created by breach of the legal provisions cited above, the freedom of speech, pluralism in news reporting and competition in the press in the ARM will all be in jeopardy.
47. In addition, in all likelihood, EDN Lda will be unable to avoid laying off its work force in the near future, with nefarious economic and social consequences, for which the Regional Government of Madeira - representing the ARM, owner of 99.97% of the share capital of the “JM” - will be primarily responsible.

On which terms, we request the Competition Authority to take a clear, firm and urgent stance so as to put an end to the unsustainable situation described above of distortion of competition and violation of fundamental rights which undermines, to an extremely serious degree, the free working of the market and the freedom of expression and news reporting in the Autonomous Region of Madeira.

Attached: fourteen documents, detailed above

Funchal, 7 April 2008.

The Management,

(Michael John Blandy)

(José Bettencourt da Câmara)

Cc:

- The President of the Republic;
- The Minister for Parliamentary Affairs;
- The Leaders of the PS, PSD, PCP, CDS-PP, BE and Partido dos Verdes Parliamentary Groups at the Assembly of the Republic;
- The President of the European Commission (Portuguese and English versions);
- The European Competition Commissioner (Portuguese and English versions);
- The Groups of Portuguese MEPs;
- The President of the Regional Government of the ARM;
- The Regional Secretary of Human Resources, ARM;
- The Leaders of the Parliamentary Groups and Single Members of parties with a seat at the ARM Legislative Assembly;
- The Press and Broadcasting Regulatory Authority;
- The Portuguese Press Association;
- WAN - World Association of Newspapers (Portuguese and English versions); and
- The Media.