COMPANHIA PORTUGUESA
DE RATING, S.A.

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CONSULTATION PAPER (CP43) ON CEBS'S ADVICE TO THE EUROPEAN COMMISSION ON THE NON-ELEGIBILITY OF ENTITIES PRODUCING ONLY CREDIT SCORES FOR ECAI RECOGNITION

On the mentioned consultation paper Companhia Portuguesa de Rating, S.A. (CPR) wishes to comment on a lateral issue considered a crucial one for insuring the adequate level playing field in the rating industry.

In paragraph 12 of the consultation paper CEBS proposes the following new draft for points 1 and 2 of Article 97 of Directive 2006/48/EC:

"1. An ECAI credit assessment may be used to determine the risk weight of a securitisation position in accordance with Article 96 only if the ECAI has been recognised as eligible by the competent authorities for this purpose (hereinafter 'an eligible ECAI').

2. The competent authorities shall recognise an ECAI as eligible for the purposes of paragraph 1 of this Article only if they are satisfied as to its compliance with the requirements laid down in Article 81 and that it has a demonstrated ability in the area of securitisation, which may be evidenced by a strong market acceptance."

It is public knowledge that the European Commission "believes the CRA market is too concentrated, and more competition and diversity would be positive" ("Improving EU supervision of Credit Rating Agencies – frequently asked questions" (MEMO/10/230 of 02/06/2010)).

It has also been frequently defended by multiple authorities around the world (including European ones) the crucial role (American) international CRAs had in the present economic and financial crisis, namely through the enormous mistakes they made in attributing credit ratings in the securitisation segment (both methodological ones and related to wrongly designed corporate governance rules that allowed undesired conflicts of interest).

How can, then, (European) competent authorities now pretend to close the rating industry market, benefiting precisely to these same (American) international CRA that so wrongly proceeded these last

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few years, limiting competition and eternalising incompetence on a justification of "ability" evidenced by "strong market acceptance"? There is no such thing as "ability" evidenced from the recent past behaviour of these CRAs, and market acceptance occurs just because there is precisely no alternative: there is an oligopoly that should be strongly fighted.

One has to understand that the present situation in the rating industry is the consequence of several decades of a closed market (by law) in the USA, where a few CRAs had the possibility to develop without any competition, with the results we just witnessed these last few years. The answer should, then, be also through a legislative channel: legal incentives to competition. We present below some examples of what could be done, namely through proposals in the reports the Commission should submit to the European Parliament under points 72 and 73 of the Regulation (CE) No. 1060/2009 on Credit Rating Agencies of 16 September 2009:

- legally establish a maximum market share of the European CRA market for any single CRA (let us say, 20 or 25%), in 3 or 5 years, this way obliging the biggest CRA to reduce their market share to smaller CRAs that would have to develop to fill in that gap;
- oblige CRAs not to rate an issuer for more than 3 or 5 years, imposing some kind of rotation of CRAs, with exceptions for smaller CRAs, creating incentives for the creation of new CRAs and for avoiding long standing relationships between issuers and CRA, that can cause conflicts of interest;
- oblige the use of at least one rating issued by an European CRA in any European legislation using ratings, defining European CRA as one that has the majority of its activity (or of their parent group, if part of a group) in the EU, this way helping develop local CRAs, that better know and understand European realities;
- create some kind of co participation for the cost of a rating issued by a European CRA to a European issuer (again defining European CRA as one that has the majority of its activity - or of their parent group, if part of a group - in the EU), this way also helping develop local CRA, that better know and understand European realities;
- create incentives to new independent international networks of local CRAs to compete with the existent (American) international CRAs.

For all of this, CPR proposes that point 2 of Article 97 of Directive 2006/48/EC should be reviewed to:

"2. The competent authorities shall recognise an ECAI as eligible for the purposes of paragraph 1 of this Article only if they are satisfied as to its compliance with the requirements laid down in Article 81."

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Kind regards,

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