

Kluwer Competition Law Blog

Competition law class actions in Portugal: first court-approved settlement

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On 20 September 2021, the Portuguese Competition Court approved a settlement between Ius Omnibus, a non-profit consumer protection association, and the National Association of Land Surveyors (ANT), in the context of a class action filed by Ius Omnibus intended to obtain compensation for the damages suffered by consumers as a result of ANT's allegedly anticompetitive behaviour. Under the settlement, ANT pledged to compensate all consumers represented in the class action in the amount of 5% of the gross price paid for the surveying services.

This is a substantial step in the application of the Portuguese [Class Action Act](#) to competition cases considering it is the first competition class action filed in Portugal that resulted in the effective compensation of consumers who suffered damages.

The infringement

On 17 February 2021, the Portuguese Competition Authority (PCA) fined ANT 50,000 euros for restricting competition in the market for the provision of surveying services for more than 16 years. The investigation revealed that ANT published on its website a rate card meant to align the prices charged by its members across the national territory. The rate card segmented prices according to the scale used in the topographic work and the area associated with the surveyors' activities, and it stipulated fixed hourly wages and minimum unit wages.

ANT engaged in a settlement procedure with the PCA pursuant to the [Portuguese Competition Act](#) acknowledged responsibility for the infringement and waived its right to challenge the fine or the underlying facts. In return, it benefited from a substantial reduction in the amount of the fine.

The Portuguese class action regime

According to Article 2 of the Class Action Act, class actions can be filed by citizens, associations or foundations whose purpose is the defence of certain interests (such as public health, environment, quality of life, consumer protection, cultural heritage and public domain), or local

authorities. These class actions are opt-out representative actions, meaning every person who shares the common interest at stake in the proceedings is automatically part of the action unless they actively exclude themselves.

The [Private Enforcement Act](#), which transposed [Directive 2014/104/UE](#) into the Portuguese legal system, extended the Class Action Act to actions for damages arising from infringements of competition law. These actions are typically based on previous decisions adopted by the European Commission (EC) or the PCA (follow-on actions). Accordingly, the burden of proof incumbent upon the claimants as to the existence of the infringement is significantly reduced.

The class action filed by Ius Omnibus

Following the PCA's settlement decision, Ius Omnibus filed on 12 July 2021 a follow-on class action against ANT before the Portuguese Competition Court pursuant to the Class Action Act and the Private Enforcement Act.

Ius Omnibus estimated an overcharge of at least 10% in the acquisition of surveying services by consumers due to ANT's anticompetitive behaviour and claimed compensation for all consumers who purchased these services in Portugal during the period of the infringement. Since the PCA's decision qualified the infringement as a 'restriction by object', this estimate was not based on any economic evidence. Ius Omnibus referred to the [EC Practical Guide – Quantifying Harm in Actions for Damages](#) to frame its quantification of damages. However, it did not draw any conclusions from the Practical Guide, simply concluding that an overcharge of at least 10% was reasonable.

Ius Omnibus and ANT swiftly settled the dispute. Under the settlement, ANT admitted to the infringement as defined in the PCA's settlement decision. It accepted to compensate all consumers who contracted, in their own name, surveying services in Portugal during the relevant period, in the amount of 5% of the gross price paid for the services. The rationale behind the amount of compensation agreed between the parties is not addressed in the consent order issued by the court.

What is yet to come

The association Ius Omnibus is not wasting time testing the waters regarding suing alleged infringers of competition law in Portugal: two 400 million euros class actions have been launched against Mastercard and the brewer Super Bock. Thus, the approval by the Portuguese Competition Court of the settlement is a significant step in private enforcement of competition law in Portugal. However, the real test will come when the parties do not reach an agreement, and the Portuguese Competition Court is called to rule on the existence and quantification of damages suffered by consumers as the result of anticompetitive behaviour. This will be a particularly challenging exercise for the court in follow-on actions when it comes to infringements qualified as 'restrictions by object', destitute of an assessment of anticompetitive effects on the market. The Competition Court is actually starting to taste the bitterness of the complex economic analysis required to award damages in the "truck cartel" cases.

Times ahead in Portugal, both for collective and individual private enforcement actions, look busy.

And worth following.

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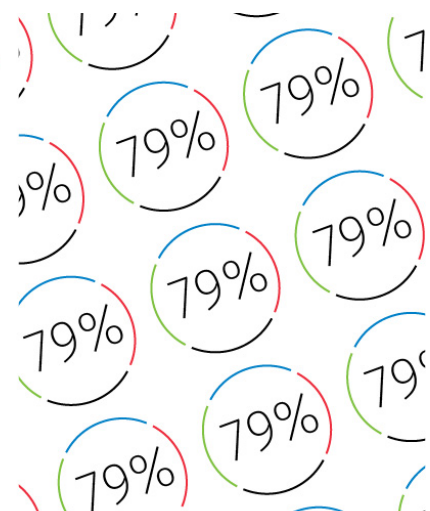
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