

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – Portugal

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This overview covers the main developments in competition law and policy in Portugal in the course of 2022.

Legislative and institutional developments

The [Portuguese Competition Act](#) and the [bylaws](#) of the Portuguese Competition Authority (PCA) were subject to significant amendments in 2022. Those amendments were approved by [Law no. 17/2022, of 17 August](#), which transposed the so-called [ECN+ Directive](#) (Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018, which aims to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market).

The most significant changes introduced in the Competition Act are the following:

- The parent companies are now liable for antitrust infringements committed by their subsidiaries;
- The calculation of fines is now based on the worldwide annual turnover of an undertaking and not just based on national turnover;
- The members of an association of undertakings are joint and several liable for the payment of a fine imposed on the association;
- Differences in the treatment of business secrets in antitrust proceedings;
- Explicit acknowledgement of the principle of opportunity in the establishment by the PCA of priorities in the handling of complaints;
- Suspensory effect of appeals and lodging of security; and
- New time limits for appeals and statute of limitation.

For more details on the amendments to the Competition Act, find our review [here](#).

[Law no. 93/2021, of 20 December](#) also came into force in 2022, establishing the general regime for the protection of whistle-blowers who report breaches of European Union law. This law transposed the [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019](#).

The [Best Practices Guide on Gun-Jumping](#) is also worth mentioning, which was published by the

PCA in December 2022 with the aim to educate undertakings about the practices that could constitute infringements of competition law in the context of mergers, such as the implementation of a merger (contractually or in practice) prior to a clearance decision from the PCA and the exchange of sensitive commercial information.

Finally, the mandate of the current President of the PCA, Margarida Matos Rosa has terminated, and her successor has been announced: Nuno Cunha Rodrigues, a law professor at Lisbon University who will be the first lawyer taking the helm at the PCA since all previous presidents were economists.

Decisional practice

Antitrust

Hub & spoke cases in the retail food distribution sector

Maintaining a trend that dates back to 2020, the PCA applied hefty fines to supermarket chains and food & beverage suppliers in four new cases, taking the total amount of fines applied in this trend of hub & spoke cases to 670 million euros. In 2022, the PCA adopted decisions against [Sumol+Compal](#), [Unilever](#), [Beiersdorf Portuguesa](#) and [Active Brands](#) (supplier side) as well as against Auchan, Lidl, Modelo Continente, Pingo Doce and Intermarché (retail side). The fines amount to 237 million euros. The appeals against the decisions in two of these cases started at the Competition Court, both involving beer producers who appealed against the fining decisions by the PCA.

No-poach agreements

In April 2022, the PCA sanctioned for the first time in Portugal an anti-competitive practice in the labour market. At stake were the Portuguese Professional Football League and 31 clubs participating in the 2019/2020 edition of the First and Second Leagues, which allegedly entered into an agreement preventing the recruitment by the clubs of players who unilaterally terminated their employment contract with one of the clubs invoking grounds related to the Covid-19 pandemic. The PCA applied a total of 11,3 million euros in fines.

Cartels

The healthcare sector was particularly targeted as regards cartel investigations. Particularly relevant is a decision against the Portuguese Association of Private Hospital Care and the main private healthcare services providers in Portugal (CUF, Grupo Trofa Saúde, Lusíadas and Luz Saúde). At stake, alleged coordination was promoted through the association during negotiations of price lists with public insurer ADSE between 2014 and 2019. The PCA applied fines totalling 191 million euros. Suppliers of teleradiology services to public hospitals were also investigated by the PCA. Two of the suppliers settled: ITM upon the payment of a fine of 202,000 euros and Campos Costa upon the payment of a fine of 5 million euros. Three other suppliers (Affidea, Lifefocus and

Lifeplus) decided not to settle and received statements of objections in November 2022.

Other investigations were carried out concerning [suppliers of healthcare materials](#) and [laboratories](#). Aside from the healthcare sector, investigations were carried out with respect to the [supply of extra-high voltage cables](#), [security services](#) and [publishing services](#).

RPM

Farmodiética, a wholesale distributor of food supplements and healthy foods, was sanctioned for resale price maintenance of its products in Portugal between 2015 and 2022. The company fixed the resale prices charged by its independent distributors through direct and indirect means, for implementing a monitoring system and for creating incentives for the implementation of such fixed prices. The company settled upon the payment of a fine of 1,2 million euros.

Mergers

In 2022, merger control activity picked up again. The PCA rendered 60 merger decisions: 52 clearance decisions, 1 clearance decision subject to commitments, 4 decisions of inapplicability of the Competition Act and 3 decisions closing the proceedings after the withdrawal of the notification. The most active industries in terms of merger transactions were the extractive and manufacturing industries (12 decisions), followed by the supply and food industries (10 decisions) and transport & infrastructures (7 decisions).

Outdoor advertising market

Following the submission of commitments by French operator [JC Decaux](#), the PCA decided to drop its objections and clear the award of the outdoor advertising concession in Lisbon. The concession grants one single company (JC Decaux) the right to operate outdoor advertising in Lisbon for 15 years. Lisbon is considered the most valuable outdoor market in the country and a must-have factor in any national outdoor strategy.

The main commitments submitted by JC Decaux consisted of the disposal of 40% of the main batch of positions by means of a sub-concession agreement with third-party operator MOP and the disposal of seven double-sided digital displays by means of a sub-concession agreement with a competitor.

Gun Jumping

The PCA sanctioned [Santa Casa da Misericórdia de Lisboa](#), a religious charity founded in the 15th century, with a fine of 2,5 million euros for implementing a concentration operation without prior notification to the PCA. The merger consisted of the acquisition of sole control over CVP – Sociedade de Gestão Hospitalar, S.A., the management company of the Red Cross Hospital in

Lisbon. The operation was implemented in December 2020 and only notified the PCA, after completion, in May 2021.

Private Enforcement

As of 2021, the main cluster of private enforcement cases currently pending at the Competition Court consist of follow-on actions drawn from the 2016 and 2017 European Commission decisions in the so-called “trucks cartel”. In 2022 the Court delivered its judgement in two cases and in both ruled in favour of the claimants.

The main findings of the Court in these two cases concern (subject to appeal) the existence of an overcharge that the Court quantified at 15%, the lack of evidence to support the thesis of the passing-on of the overcharge to the end-costumer and the calculation of the interests from the date of the acquisition of the trucks. Throughout 2022 a number of other cases concerning the “trucks cartel” were subject to trial and additional judgements are therefore expected in 2023.

State Aid

In 2022 the European Commission adopted 22 compatibility state aid decisions in respect of Portugal, some of them still bear the marks of the COVID-19 pandemic and others were aimed at mitigating the effects of the war in Ukraine.

Six of these decisions concern COVID-19-related restructuring funds, which mostly focused on [labour incentives for outlying regions](#) and support to [companies in outlying regions](#). Five decisions concern the gas market and aim at [controlling the effects of war on the prices of fossil fuels](#). Four decisions allow generic [support to outlying regions](#) such as the Azores and Madeira and the remaining decisions allowed target the promotion of a [greener industry](#) and [innovation](#).

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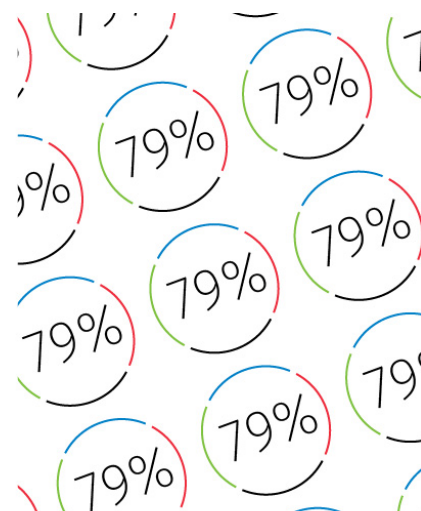
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This entry was posted on Wednesday, March 8th, 2023 at 9:00 am and is filed under [Competition Law 2022](#), [Competition policy](#), [Competition proceedings](#), [Portugal](#), [Private enforcement](#)

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