

## Competition - Portugal

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### Fast track for effective competition law judicial enforcement

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Since the approval of the Competition Act (18/2003) and the creation of a new independent national Competition Authority in 2003, economic agents and consumers have become increasingly aware of the competition law regime, which is now recognised as a powerful tool to break up monopolies, enhance market liberalisation, fight cartels and prevent consumer harm.

The weakness of effective competition law enforcement – notably in antitrust cases – is the length of time it can take a court to reach a final decision. At first instance, all competition cases are heard by the Lisbon Commercial Court, which is usually overloaded with urgent pending cases (including insolvency proceedings and a vast number of interim measures procedures on patent litigation).

Aware of the need to expedite judicial decisions in competition litigation and the need to lighten the Lisbon Commercial Court's caseload, the government has recently instituted the Specialised Court for Competition, Regulation and Supervision.

<sup>(1)</sup>

This specialised court has national jurisdiction and is competent to review decisions in misdemeanours and administrative procedures adopted by the Competition Authority, the Central Bank, the Securities Market Commission, the Media Regulator, the Insurance and Pension Funds Supervisory Authority and all other administrative authorities with regulatory and supervisory functions.

In terms of competition cases, the court is competent to deal with the appeal, review and execution of all decisions and any other measures adopted by the Competition Authority in misdemeanour proceedings (ie, antitrust cases) and administrative procedures (mostly merger cases).

The court will start functioning once its premises have been established, which is expected to occur before the end of 2011.

The centralisation of judicial competence and functions in competition law matters by the authorities in the Specialised Court for Competition, Regulation and Supervision takes into account the complexity of competition cases and the need for specialised knowledge in this field on the judiciary's part. This is particularly the case for intricate antitrust infringement cases and administrative procedures associated with merger reviews, which can involve detailed economic analysis.

The creation of the court should be accompanied by measures aimed at providing its judges with all necessary tools to exercise their judicial function soundly in such a complex field of law, including permanent assistance and support from expert advisers (eg, economists and researchers). The introduction of a specialised chamber in the court dealing exclusively with competition law would be a positive step.

Overall, the establishment of the Specialised Court for Competition, Regulation and Supervision should lead to an improvement in the quality of judicial decisions in the field of competition law, more uniform and predictable jurisprudence and more timely administration of justice.

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#### Endnotes

<sup>(1)</sup> Law 46/2011.

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