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Competition & Antitrust - Portugal

Competition Authority announces top priorities for 2015

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Introduction

In line with its top priorities for 2014, the Competition Authority handled several complex merger files over the past year and generally obtained judicial confirmation of its decisions in antitrust cases.⁽¹⁾

In this context, the authority has now announced its top priorities for 2015,⁽²⁾ based on the following strategic objectives:

- protecting and promoting competition in the Portuguese economy;
- consolidating the authority's presence in international competition forums;
- improving the authority's personnel and infrastructure efficiency;
- diversifying available internal resources and optimising their use; and
- ensuring prompt and sound decisions.

In order to implement these strategic objectives, the authority established the following operational objectives:

- increasing the detection, investigation and punishment of anti-competitive conduct;
- ensuring effective and faster control of mergers;
- reducing time periods for evaluations and investigations;
- implementing improvements in the treatment and follow-up of complaints; and
- promoting transparency in relationships with stakeholders.

The authority's strategic and operational objectives fall within three sets of priorities – penalising powers, supervisory powers and competition advocacy.

Penalising powers

As in 2014, prosecution of cartels – regardless of the form of anti-competitive conduct, relevant markets or the size of the participants – is a top priority for 2015. The authority intends to pay particularly close attention to restrictive agreements in the context of public procurement by monitoring the relevant databases and increasing cooperation with other public authorities. Further, the authority plans to provide contracting authorities with the necessary tools to identify situations that may give rise to competition restrictions, including through the development of guidelines on the interaction of competition law with public procurement.

Another priority for 2015 is the promotion of the leniency regime. The authority considers that promotion of the regime should begin following the adoption of decisions in pending investigations by issuing fines with the aim of deterring future antitrust breaches. In this regard, the authority has stated that it will make regular use of its investigatory powers (in particular, search and seizure) as a privileged means of obtaining evidence when confronted with *prima facie* evidence of competition restrictions, particularly following complaints.

In addition to the recourse to complaints and leniency applications, the authority intends to reinforce its capacity to detect competition infringements *ex officio* through the development of indicators related to the structure of certain markets and the behaviour of companies active in such markets.

Detection of vertical restraints, enhancement of cooperation with the Spanish Competition Authority (in the context of market integration within the Iberian peninsula) and promotion of settlements are also envisaged as important priorities for 2015.

Supervisory powers

In the context of merger control, the authority will focus on improving assessment and reducing investigation times in complex procedures in order to anticipate identification and discussion of possible competition concerns, thus facilitating discussion of eventual commitments at an earlier phase of the procedure.

The authority also intends to continue developing market studies and inquiries according to the relevant economic sector (eg, telecoms and energy) and type of agreement, with the aim of identifying possible competition constraints which, although not constituting infringements, might negatively affect consumers or the competitiveness of the Portuguese economy.

In line with these priorities for the exercise of penalising powers, the public procurement sector will be subject to particular scrutiny.

Competition advocacy

This set of priorities is aimed at promoting a competition culture in Portugal. The authority intends to increase interaction between the government (as legislator, regulator and purchaser of goods and services), the legal and academic communities, the media and consumers.

The authority also aims to reinforce transparency in its activities by promoting access to its decisions and the relevant jurisprudence in competition cases.

The authority has also established the evaluation of public policy as a priority for 2015, with the intention of identifying and contributing to reductions in unnecessary restrictions to competition, thus reducing costs for companies and promoting a more favourable environment for competition.

Comment

As in 2014, the authority has established ambitious priorities for 2015. Considering the results achieved last year, it is expected to be particularly active in detecting, investigating and penalising potential competition infringements.

The authority's implementation of a policy to increase public awareness of its activities and promote competition in Portugal, in addition to deeper cooperation with other public authorities and leniency applications, may be an important means of achieving the proposed goals for 2015 and detecting further infringements.

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Endnotes

⁽¹⁾ Highlights include the following developments:

- The Constitutional Court rejected the appeal of the Bar of Chartered Accountants, upholding the authority's decision to open up the market of official training for chartered accountants.
- The Lisbon Court of Appeal confirmed the authority's decision in a case regarding a pricing agreement between cleaning services companies in the context of public tenders.
- The Competition Court confirmed the authority's decision imposing penalties for abuse of dominant position on sports television channels in the market for restricted-access channels with premium sports content.
- The Constitutional Court rejected a judicial application from the Portuguese Association of Car Park Companies arising from a condemnatory decision of the authority.
- The Competition Court partially confirmed the authority's decision in the printers' cartel case.
- The Lisbon Court of Appeal confirmed the authority's decision penalising a dairy product distributor for anti-competitive conduct in the national market for the distribution of dairy products in the hotel, restaurant and café sector.

(2) Announced on December 30 2014, available at www.concorrencia.pt.

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