

Competition & Antitrust - Portugal

Exclusionary vertical agreements: Competition Authority's first 'commitment' decisions

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados**

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Author

Pedro De Gouveia e Melo



Introduction

In December 2014 the Competition Authority launched its first public consultations on 'commitment' decisions in two vertical restraints cases regarding football broadcasting rights (*Controlinveste*) and warranty for motor vehicles (*Peugeot Portugal*).⁽¹⁾ In *Controlinveste* the Competition Authority is still reviewing comments received further to the public consultation; however, on March 23 2015 the Competition Authority announced that it had made binding the commitments offered by Peugeot Portugal.

In a commitment decision the Competition Authority closes an investigation without finding infringement, further to the submission of commitments by the defendant company addressing the competition concerns identified. Portuguese competition law has provided for such commitment decisions since 2012 (in terms broadly similar to Article 9 of EU Regulation 1/2003).

Football media rights: *Controlinveste*

In April 2013 the Competition Authority opened an investigation against companies of the Controlinveste Media Group (CIM Group), including PPTV, Olivedesportos, Sport TV Portugal and Sportinveste Multimedia, for alleged restrictive practices in the sale of broadcasting, media and advertising rights relating to the games of the First and Second National Football Leagues.

CIM Group, though PPTV, entered into agreements with all first and second league football clubs in Portugal for the acquisition of the broadcasting and media rights for most of their national league games. In its preliminary assessment the Competition Authority found that the agreements between the football clubs and CIM Group raised market foreclosure concerns due to the following factors:

- Exclusivity period – contracts were awarded on an exclusive basis, and their duration may have prevented the entry of competitors into the market.
- Pre-emption rights – the football clubs granted PPTV a right of first refusal in negotiating new contracts, allowing the extension of the contractual relationship.
- Suspension mechanism – if a club was downgraded to a lower league, the contract would be suspended, resuming its effects when the club returned to the higher league. In practice, this also extended the duration of the contracts.

In November 2014 CIM Group responded to the Competition Authority's concerns by submitting a number of amendments to the contractual model governing the transfer of television and multimedia broadcasting rights for games and advertising rights in stadiums for the First and Second National Football Leagues. The commitment package comprised the following:

- For future contracts with First and Second National Football League clubs, CIM Group undertook not to include:
 - exclusivity clauses lasting more than three years;
 - clauses conferring a right of first refusal relating to football seasons subsequent to the expiry of the agreement; or
 - suspension clauses that extend the duration of the contract beyond the three-year term.
- For existing contracts, CIM Group undertakes to:
 - provide football clubs with the right to terminate the contracts currently in force – without any penalty or compensation – with effect from the end of the 2015-2016 season, provided they do so before November 30 2015;

- renounce the right of first refusal; and
- grant football clubs the right to revoke suspension clauses.

Motor vehicle repair warranty: Peugeot Portugal

The Competition Authority initiated an investigation into Peugeot Portugal in June 2013 after it became aware that the company allegedly refused warranty coverage to Peugeot vehicle owners when they used independent repair centres outside its authorised repairers' network for the maintenance of their vehicles.

The Competition Authority's preliminary assessment found that Peugeot's extended warranty agreement made the activation of the warranty conditional on the selection of a repair centre within the Peugeot network of authorised repairers.

In order to address the concerns raised by the Competition Authority, Peugeot presented the following commitments:

- All contracts (in particular the Peugeot service contract), manuals and other documents relating to motor vehicles sold after January 1 2015 should make clear that the warranty granted by Peugeot was not conditioned on the use of the official Peugeot repair centres. Where the client opted for an independent repairer, that client should show to Peugeot that the carmaker's technical specifications were duly respected (by way of an invoice or other control document issued by the repairer).
- Peugeot committed to publicise this amendment to all official Peugeot dealers and repair centres and to send a revised extended warranty agreement to all clients, dealers and repair centres, within a short deadline.

On March 23 2015 the Competition Authority issued a press statement announcing it had made binding the commitments submitted by Peugeot, since it concluded, further to the public consultation, that the commitments were able to eliminate the potential harmful effects to competition and consumer interests.

Comment

Commitment decisions are advantageous both for the Competition Authority and for companies under investigation. The Competition Authority's concerns may be addressed by the remedies proposed by the parties, and procedural efficiencies may be obtained through a quick closure of the case. The investigated parties benefit from the closure of the investigation without the finding of an infringement and the imposition of fines.

Under the Competition Act commitment decisions may be adopted before or after the notification of a statement of objections, although the Competition Authority, like the European Commission, encourages companies to submit commitment proposals as early as possible in cases where commitments are appropriate to eliminate the authority's competition concerns. In the two cases above, commitments were presented in the investigative phase of the procedure and therefore the authority issued only a preliminary assessment of the facts.

The area of vertical restraints has been highlighted in recent years in the enforcement priorities document published annually by the Competition Authority.

The Competition Authority has previously closed several investigations after informally proposing to the parties the submission of undertakings to address competition concerns, especially in the case of vertical agreements with exclusivity clauses with potential foreclosure effects. However, such commitments were not published before the closure decision was adopted, and in several instances were not made public until many months later, when the Competition Authority's annual report was eventually published, sometimes with significant delay.

The commitment procedure, modelled after that of EU Regulation 1/2003, reinforces the procedure's transparency by requiring the Competition Authority to open a public consultation before closing the case, which must include the publication of a non-confidential version of the commitments and allow comments to be lodged within a deadline of no less than 20 working days. The Competition Authority must also publish the responses to the public consultation on its website – although it has yet to do so for *Peugeot*.

The deadline for comments has passed in *Controlinveste*. Developments in this case are therefore expected soon.

For further information on this topic please contact [Pedro De Gouveia e Melo](#) at *Morais Leitão Galvão Teles Soares da Silva & Associados* by telephone (+351 21 381 7400) or email (pgmelo@mlgts.pt). The *Morais Leitão Galvão Teles Soares da Silva & Associados* website can be accessed at www.mlgts.pt.

Endnote

(1) See Press Statements 15/2014 (December 17 2014) in Case *PRC* 2013/2, and 17/2014 (December 30 2014) in Case *PRC* 2013/5.

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