

# Competition Authority proposes closing resale price maintenance investigation

May 05 2016 | Contributed by [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

[Introduction](#)  
[Investigation](#)  
[Commitments](#)  
[Comment](#)

## Introduction

The Competition Authority recently proposed closing an investigation into alleged resale price maintenance practices by DIA Portugal Supermercados Lda, a discount retail group operating in Portugal under the name Minipreço, after it proposed commitments clarifying that its franchisees are free to set their resale prices and that it only recommends resale prices or defines maximum resale prices.

This is the first time that the authority has proposed using the 'commitments' procedure, which is modelled on the mechanism established in Article 9 of EU Regulation 1/2003 in the context of a case involving resale price maintenance.

## Investigation

The investigation began on April 3 2014. The Competition Authority analysed all franchise agreements, delivered a questionnaire to DIA Portugal's approximately 300 franchisees and carried out inquiries and inspections in several locations. The investigation resulted in concerns regarding whether the prices set by DIA Portugal in the context of the franchise agreements were fixed resale prices, which are forbidden under EU and Portuguese competition law.

## Commitments

Following the investigation, on March 15 2016 DIA Portugal offered a set of commitments to address the competition concerns that the Competition Authority had raised. DIA proposed:

- sending a circular letter to all of its franchisees clarifying that it only recommends resale prices or defines maximum resale prices and that franchisees are free to adopt lower prices, including altering the resale prices set by DIA in each outlet's point-of-sale system; and
- displaying a copy of the circular letter permanently on the internal website.

DIA Portugal also pledged that all new franchise agreements will include no clauses that limit the ability of franchisees to determine resale prices autonomously other than those respecting maximum resale prices. It also agreed to send the Competition Authority copies of new agreements for monitoring purposes in the next two years.

The authority submitted the commitments to public consultation on March 22 2016, which under the Competition Act means that it reached the preliminary conclusion that the commitments address the competition concerns identified in the investigation and allow the authority to close proceedings without imposing a fine.

## AUTHORS

[Pedro De Gouveia e Melo](#)



[Miguel Cortes Martins](#)



## Comment

The public consultation ended on April 20 2016 and the Competition Authority is therefore expected to issue a decision in the coming weeks. If no negative comments have been received from third parties (which has often happened in previous commitment cases), the authority is likely to make the commitments binding and close the case.

This case demonstrates that, whenever possible, the authority prefers to close investigations through commitments rather than go through the full administrative procedure of imposing penalties and the court appeals that often follow.

Until now, all commitment decisions that the Competition Authority had adopted involved non-price-related vertical restrictions, most of them removing exclusivity or non-compete provisions that foreclosed competition in the relevant markets. Extending this flexible approach to cases involving resale price maintenance may have the effect of incentivising companies to conform their pricing policies to the requirements of competition law. However, resale price-fixing remains an extreme restraint under EU and Portuguese competition law and it is doubtful that this decision suggests a more lenient approach will be followed in more clear-cut resale price maintenance cases.

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

---

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).