

THE NEW SPECIALIZED COURT FOR COMPETITION, REGULATION AND SUPERVISION

PUBLIC LAW

On June 24th, the Law no. 46/2011 was published, thus creating **the specialized court for competition, regulation and supervision** and the specialized court for intellectual property. However, **these courts are still dependent on effective installation. The law does not provide for a date or deadline to that effect, nor does it state the location of these courts** (although Santarém has been mentioned as a possible location by the XVII Government, the truth is that the law is silent on this matter).

The new courts were created to **lighten the heavy load of cases and reduce the number of disputes in the courts** and **ensure a high degree of specialization of judges** on issues considered to be of particular complexity and involving legal interests of supra-national impact, as well as to promote **uniformity of jurisprudence** in these matters (according to the explanatory memorandum of the this law presented by the XVIII Government).

In this sense, Law no. 46/2011 makes amendments to the **Law of Organization and Functioning of Courts** (LOFTJ) – both Law no. 3/99, of 13 January (LOFTJ 1999), which is still applicable in the majority of the country, and Law no. 52/2008, of 28 August (LOFTJ 2008), currently applicable only to the pilot-counties, but that will be in force in the entire national territory in the future (in the limit until September 2014).

In LOFTJ of 1999 there were changes to the list of the existing specialized courts, having been added the two new types of courts. As for LOFTJ of 2008, which already foresees the existence of specialized courts for intellectual property, there was only need to add the specialized courts for competition, regulation and supervision.

With regard to the **substantive jurisdiction**, it is foreseen (both in LOFTJ of 1999 and in LOFTJ of 2008) that the court for competition, regulation and supervision will

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have jurisdiction in matters relating to appeal, revision and enforcement **of decisions, orders and other measures issued in the proceedings of administrative offenses** by the administrative bodies with independent regulatory and supervisory functions and, in particular, the following:

- (i) Competition Authority;
- (ii) Bank of Portugal;
- (iii) Securities Market Committee;
- (iv) Regulatory Authority for the Media;
- (v) Insurance Institute of Portugal.

Besides the jurisdiction on the proceedings of administrative offenses, the court will also (but only) have jurisdiction in matters relating to appeal, review and execution of (i) **decisions of the Competition Authority issued in the administrative procedures referred to in the competition law**, as well as the **ministerial decision of authorization of a merger prohibited by a decision of the Competition Authority** under Article 34 of the Decree-Law no. 10/2003, of 18 January (the trial of these issues, and only these, shall be processed as a special administrative action) and (ii) all other decisions of the Competition Authority legally subject to appeal, pursuant the competition law.

Bearing this in mind, one can say that we are witnessing the creation of a **court with expertise in competition**, on the one hand, and **in litigation against the sanctions imposed by regulatory bodies**, on the other side. This means that, despite the designation given by the law, this court has a limited jurisdiction in the areas of supervision and regulation; as to the competition area, the court benefits from a broader jurisdiction, although it still not covers all the competition litigation.

In order to ensure the coherence of the legal system as a whole, **Law no. 46/2011 also alters the legislation in various sectors** by determining the jurisdiction of the specialized court for competition, regulation and supervision over the above mentioned matters, which were attributed up until now to other courts (including the commercial courts, the Lower Criminal Court of Lisbon and the Judicial Court of the County of Lisbon). These sectors legislation include namely the competition law, the electronic communications law, the securities code, the legal regime of credit institutions and financial companies and the legal framework for insurance mediation and reinsurance.

Competence limited to the areas of supervision and regulation; on competition matters, the competence of the Court is wider

In what regards the extension of **territorial jurisdiction** of the new court, **some questions remain**. In fact, whereas the announcement made by the XVIII Government

*Doubts about the extension
of the territorial competence
of the new Court*

was to create a single court with jurisdiction over the entire national territory, (as such reflected the initial version of the law), the fact is that this option was not clearly foreseen in Law no. 46/2011. On the contrary: **the law refers to the creation of several courts attached to the county courts**, which may lead to a dissemination of the treatment given by the courts to competition and administrative offense matters. This clearly differs from the regime originally announced by the XVIII Government and may perhaps represent a risk factor for the achievement of the objectives which governed the creation of this specialized court.

With respect to the higher courts, Law no. 46/2011 introduces changes in LOFTJ (both in LOFTJ of 1999 and in LOFTJ of 2008) to enable the creation, in the **second instance courts**, and where the volume or complexity of the service so requires, of a **section of the competition, regulation and supervision**, which decides the appeals of the rulings rendered by the first instance courts legally subject to appeal under the law. Also in an effort to specialization, it is established that these matters are distributed always at the same civil section of the **Supreme Court**.

The amendments and additions introduced by Law no. 46/2011 related to the specialized court for competition, supervision and regulation, **will only enter into force with the installation of this court** (see Article 20, paragraph 2). The question is how this provision will be interpreted if not one but several courts are effectively created.

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