

The impact of Portugal's first leniency convictions

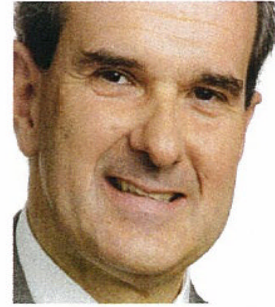
The Portuguese Competition Authority in December 2009 imposed fines totalling €14.7m on five catering companies for allegedly operating a price-fixing cartel in the operation and management of catering services at canteens, refectories and corporate restaurants. This is the first leniency case to reach conclusion, with the companies involved – Trivalor, Eurest, Uniself, ICA/Nordigal and Sodexo – receiving individual fines between €6.8m and €357,000.

According to available information, the companies entered into a nationwide agreement, which lasted from 1998 to 2007, to fix prices on procurement bids, implementing a 'system guaranteeing that each would retain its customers' through a 'right of first refusal' given to the incumbent company," says Carlos Botelho Moniz, Head of the EU and Competition Law Department at Morais Leitão Galvão Teles Soares da Silva & Associados. The Authority also condemned the defendants for carrying out a prohibited exchange of sensitive information with the effect of restricting competition in the market. This is the first known case where the 2006 Leniency Statute was applied. "The information suggests that it was

initiated in response to a complaint submitted by a (present or former) manager of one of the participants, Eurest. It can also be inferred that the application was made on a personal basis and not on behalf of the company, as the applicant received full immunity while Eurest received the second highest individual fine."

This is also the first time individuals were fined by the Competition Authority (fines totalled €20,000), says Botelho Moniz. "The Authority stated that its main objective when imposing fines on the managers of four out of the five companies involved was to emphasise that companies should be operated according to competition law, and that managers should actively prevent company conduct infringing the law."

This suggests that in the future competition law rules may be more vigorously enforced on individuals, but it also now opens the door to private damages claims, he believes. "The Authority's decision may now be appealed, but regardless of the judicial appeals, those clients harmed by the alleged cartel – hospitals, schools, prisons and petrol station operators – may assess the possibility to sue the infringing companies for damages as a result of the illegal conduct."



Carlos Botelho Moniz

La Autoridad de la Competencia portuguesa impuso en diciembre las primeras multas al amparo de las normas de Clemencia del año 2006, pero el caso es significativo también por la sanción impuesta a las empresas y sus administradores abriendo las puerta a demandas por daños y perjuicios dice Carlos Botelho Moniz, de Morais Leitão en Lisboa.