

Competition - Portugal

Fine of €2 million imposed on association of car park companies

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

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On January 19 2011 the Competition Authority fined the National Association of Car Park Companies nearly €2 million for allegedly engaging in anti-competitive activity in the management and provision of car parking facilities.

According to the information available, the infraction dates back to 2006, when the government approved Legislative Decree 81/2006 and thereby established conditions for the use of parking lots and zones. Among other things, the legislative decree determined the pricing for parking facilities. Article 12(1) states that for short-stay parking (ie, up to 24 hours), the tariff structure must be divided into increments of no more than 15 minutes and a customer need pay only for the fraction of a period that he or she uses.

The authority opened proceedings on its own initiative following publication of the legislative decree and statements by representatives of companies in the sector that raised suspicions of anti-competitive behaviour. During the course of the investigation, the authority concluded that the association had recommended that its members adapt their tariff structures to the new legal regime. According to the authority, the association told its members that pricing by 15-minute increments would result in a drop in revenue. Therefore, the association allegedly recommended the introduction of an entrance fee. Customers would pay this fixed fee to enter the parking lot; the fee would be added to the first charge for parking time and all prices would be increased by 2.5%. Alternatively, the association suggested that its members raise their prices by 15%.

The authority found that several members of the association changed their prices in line with the association's recommendations, which therefore - in the authority's view - contributed to an alignment or increase in prices.

The association was thus penalised for adopting a decision whose object or effect was to restrict competition. Under the Competition Act (18/2003), a fine imposed on an association of undertakings may not exceed 10% of the aggregate annual turnover of the undertakings that participated in the infringement. The aggregate turnover of the companies in 2006 was just under €58 million; the fine represented around 3.5% of that amount.

Although the penalty was imposed on the association, the act provides that members of an association of undertakings that is fined are jointly responsible for payment of the fine.

This is believed to be the authority's first infringement decision of 2011. Although the authority has previously penalised anti-competitive decisions by associations of undertakings, this is the first penalty imposed in this sector. The decision may be appealed to the competent commercial court, which will suspend the authority's order until it rules on the case.

*For further information on this topic please contact Luís do Nascimento Ferreira at **Morais Leitão Galvão Teles Soares da Silva & Associados** by telephone (+351 21 381 7400), fax (+351 21 381 7499) or email (lnferreira@mlgts.pt).*

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Author

Luís Do Nascimento Ferreira

