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Competition - Portugal

Competition Authority off to a flying start in 2014

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Chartered accountants

Lactogal

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Comment

The Competition Authority has experienced a positive start to 2014, with the Competition, Regulation and Supervision Court confirming four of its antitrust decisions on appeal during the first semester.

Chartered accountants

On January 7 2014 the Lisbon Court of Appeal confirmed the authority's 2010 decision which found that the Portuguese Association of Chartered Accountants (OTOC) had restricted competition by adopting a regulation requiring compulsory training for chartered accountants. The authority had concluded that the regulation introduced "artificial compartmentalisation of the training market" and imposed a fine of €229,000 on the OTOC, which was later reduced to €90,000 by the first-instance court.

The appeal court's judgment followed a preliminary ruling of the European Court of Justice in February 2013, which confirmed the authority's interpretation by considering that the adoption of a regulation by a professional organisation such as the OTOC constitutes a decision of an association of undertakings within the meaning of Article 101 of the Treaty on the Functioning of the European Union. The OTOC is to appeal to the Constitutional Court.

Lactogal

In 2012 the Competition Authority imposed a fine of €341,000 on dairy product distributor Lactogal for entering into vertical agreements with 55 distributors which imposed minimum resale prices and defined profit margins. The authority considered that these agreements constituted a restriction of competition by object on the market for the distribution of dairy products in the hotel, restaurant and cafe sector. The decision was fully confirmed by the first-instance court and has now been upheld by the Lisbon Court of Appeal in a final and binding decision of January 29 2014.

Printers' cartel

On March 7 2014 the Competition, Regulation and Supervision Court confirmed the Competition Authority's December 2012 decision to fine several printing firms for cartel practices – involving price fixing and customer sharing in the national market for business forms – between 2001 and 2010.

However, the appellants were partially successful, in that the court agreed that the new Competition Act (Law 19/2012) was the more favourable legal regime for the defendants and thus reduced the fines imposed on both the cartel members and the directors of the companies involved.

ANEPE

The Constitutional Court recently denied an appeal submitted by the National Association of Car Parking Companies (ANEPE) seeking a declaration of invalidity of a 2010 Competition Authority decision, due to lack of grounds (Judgment 285/2014, March 25 2014). The authority had found ANEPE guilty of restricting competition by recommending to its members a specific price increase in parking tariffs for customers. The authority imposed a fine of €1.9 million, which was subsequently reduced to €969,000 by the first-instance court.

Sport TV

On June 4 2014 the Competition, Regulation and Supervision Court confirmed a further Competition Authority decision fining premium sports channel operator Sport TV for abuse of dominance in the market of pay television restricted access channels with premium sports content (for further details please see "Sale terms of pay television sport channel lead to fine"). The authority had imposed a €3.7 million fine on Sport TV in 2013 for allegedly applying a discriminatory pricing model in its contracts with pay television operators for the distribution of its sports channels. The first-instance court upheld the authority's decision, although the fine was significantly reduced to €2.7 million.

This judgment may still be appealed to the Lisbon Court of Appeal and therefore is not yet final.

Comment

These various judgments constitute relevant wins for the Competition Authority. While in previous years the authority has struggled somewhat at appellate stage, with the courts frequently overturning its antitrust decisions, these verdicts seem to indicate that the authority is moving towards a more solid and consistent practice on antitrust decisions, and towards a more effective defence of its own decisions in the context of judicial appeals.

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