

Competition & Antitrust - Portugal

Authority sends out warning against false and misleading statements

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Peugeot fined
Comment

Peugeot fined

In June 2015 the Competition Authority fined Peugeot Portugal €150,000 for providing false, inaccurate or incomplete information in response to a request from the authority in the context of an antitrust investigation that had started in March 2015.⁽¹⁾ This is the first time that the authority has imposed a penalty for such an offence, although in March 2015 it announced that it had issued a second statement of objections regarding the provision of false or misleading information in a transport case.

Regrettably, the authority's press release does not clarify whether the fine levied on Peugeot Portugal was due to false, inaccurate or incomplete information, or all three combined. This would be a relevant aspect for companies and the legal community to know, as the gravity of each of these practices does not seem equal.

Further, the authority has not confirmed which proceedings triggered the information request that led to the wrongful response given by Peugeot. However, it is possible that the case might relate to an antitrust investigation carried out into Peugeot Portugal in June 2013, which concluded in March 2015 with the imposition of commitments to deal with concerns of exclusionary vertical effects arising from the company's extended warranty policy for motor vehicles. According to the authority, Peugeot Portugal allegedly refused warranty coverage to Peugeot vehicle owners when they used independent repair centres outside of its authorised repairers' network for the maintenance of their vehicles. The authority's preliminary assessment found that Peugeot's extended warranty agreement made the activation of warranty conditional on the selection of a repair centre from Peugeot's network of authorised repairers. The authority accepted a number of commitments from Peugeot Portugal to change these restrictions (for further information please see "[Exclusionary vertical agreements: Competition Authority's first 'commitment' decisions](#)").

Comment

Failure to respond to a request from the authority through its sanctioning or supervisory powers, or the provision of false, inaccurate or incomplete information following such a request, is a serious breach of the obligations imposed on undertakings by the Competition Act. Offenders are subject to a fine of up to 1% of their turnover in the year immediately preceding the decision.

In this particular case, there is no readily available data that may help to determine the percentage of turnover that served as a basis for calculating the fine imposed. It is likely that the fine may have been reduced, as this is the first time that the authority has applied this type of penalty.

This case sets an important precedent for future proceedings – not only regarding antitrust proceedings, but also in the field of merger control and even market studies and enquires conducted by the Competition Agency. It illustrates that the authority is willing to make use of its punitive prerogatives whenever it feels that companies are intentionally or negligently obstructing an investigation.

However, this impetus needs to be carefully balanced against companies' rights of defence, in particular the right against self-incrimination.

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) or email (Inferreira@mlgts.pt). The [Morais Leitão Galvão Teles Soares da Silva & Associados](#) website can be accessed at www.mlgts.pt.

Endnote

(1) Press release 12/2015, June 22 2015.

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