



[Newsletters](#) | [Law Directory](#) | [Deals](#) | [News](#) | [Conferences](#) | [My ILO](#) | [Home](#)

Competition - Portugal

Oil Company Agreement on Consolidation of Statistical Data is Illegal

Contributed by [Morais Leitão Galvão Teles Soares da Silva & Associados](#)

September 23 2004

[Agreement](#)
[Analysis](#)
[Decision](#)

On April 4 2004 the Portuguese Competition Authority issued a decision on whether an agreement between several oil companies on the consolidation of statistical information was compatible with Portuguese competition law.⁽¹⁾

Agreement

The agreement was concluded within the framework of the Portuguese Association of Oil Companies (APETRO).⁽²⁾ It aimed to allow APETRO to collect from its members, and periodically aggregate for statistical purposes, data on monthly sale volumes of about 20 oil products sold by those companies. The data collected would then be made available to the member companies on a regular basis in the form of monthly global maps, and an annual global map would also be produced by the end of the each year. The system was conceived as a means to support management planning by providing regular statistical updates on the development of this economic sector.

APETRO requested the Competition Authority to issue a declaration stating that the agreement was compatible with the competition rules or, alternatively, to issue an exemption decision.

Analysis

Agreement's legality

According to the applicable legislation,⁽³⁾ a declaration of the inapplicability of Article 4 of the Competition Act⁽⁴⁾ will be issued when restrictive practices may be justified. Article 5 provides that this will only be the case where, in spite of restricting competition, the practices fulfil the following criteria:

- They help to improve the production or distribution of goods or services, or to promote technical or economic development;
- They grant consumers of such goods or services a fair share of the ensuing benefits;
- They do not impose restrictions which are not indispensable to achieving these objectives; and
- They do not allow for the elimination of competition in respect of a substantial part of the relevant market.

'Justified practice' argument

APETRO claimed that the agreement aimed to ensure in advance that all member companies had in-depth and up-to-date knowledge of the development of the global market for oil products, in terms of monthly sales volumes both in continental Portugal and in the autonomous regions of Madeira and Azores. It thus argued that the agreement would play a critical role in the management of short-term requirements and the definition of marketing strategies.

However, the Competition Authority ruled that as this is a standard product market where standard techniques are also applied, the knowledge of monthly sales volumes of each member company would in no way contribute to improving production or promoting technical or economic development. In fact, in light of prices and the oligopolistic structure of the relevant market, as well as the nature of the agreement, the common policy adopted by companies operating in the market cast doubt on the benefits of such an agreement.

In its assessment, the authority specifically considered the oligopolistic nature of the oil sector. This is a highly concentrated market, with:

- negligible competition between the companies which signed up to the agreement (95% of the market);
- largely homogeneous products;
- a high degree of transparency as far as pricing is concerned;
- a moderate growth rate;
- low technological investment; and
- largely identical degrees of vertical integration of the companies involved.

Further, the authority did not find the restrictions imposed to be inevitable or indispensable to achieve the stated aims.

Finally, the Competition Authority held that it appeared, in light of the main characteristics of the economic sector under analysis, that the collection of such statistical information could afford companies an opportunity to eliminate competition in the national market or a substantial part thereof. According to the authority, the exchange of such information could favour collusion and consequently the elimination of competition in a substantial part of the market. Further, the recent liberalization of prices within the sector suggested that all practices that could compromise competition on the market should be eliminated.

Decision

Based on this reasoning, the Competition Authority found that the agreement did not fulfil all the criteria required to be considered as a beneficial agreement; thus, there were no grounds on which to accept it.

As such, the agreement was considered illegal since it was prohibited under Article 4 of the Competition Act and did not meet the exemption criteria set out in Article 5.

For further information on this topic please contact [Carlos Botelho Moniz](mailto:cmoriz@mlgt.pt) or [Filipa Calado Lopes](mailto:fclopes@mlgt.pt) at Moraes Leitão Galvão Teles Soares da Silva & Associados by telephone (+351 21 381 7400) or by fax (+351 21 381 7499) or by email (cmoriz@mlgt.pt or fclopes@mlgt.pt).

Endnotes

(1) The Competition Authority was created by Decree-Law 10/2003 and inherited the exemption requests submitted to the former Competition Council in accordance with Article 8(1) of Decree-Law 10/2003. This agreement was, in this sense, notified to the former Competition Council, which is now obsolete.

(2) APETRO's members are AGIP Portugal - Combustíveis, SA; BP Portuguesa, SA; CEPESA Portuguesa Petróleos, SA; ESSO Portuguesa, Lda; Petróleos de Portugal, PETROGAL, SA; REPSOL Portugal, Petróleos e Derivados, Lda; SHELL Portuguesa, Lda; and TOTAL Fina Elf Portugal - Companhia de Petróleos, SA.

(3) *Portaria* 1097/93, published in the *Official Gazette* on October 29 1993, still in force in accordance with Article 59(3) of the Competition Act.

(4) Law 18/2003, published in the *Official Gazette* on June 11 2003.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).



[Advanced Search](#)

[Updates by this firm](#)

[Updates for this jurisdiction](#)

[Updates for this work area](#)

[Newsletters](#) | [Law Directory](#) | [Deals](#) | [News](#) | [Conferences](#) | [My ILO](#) | [Home](#)



OFFICIAL ONLINE MEDIA PARTNER TO THE INTERNATIONAL BAR ASSOCIATION
&
AN INTERNATIONAL ONLINE MEDIA PARTNER TO THE ASSOCIATION OF CORPORATE COUNSEL



[Disclaimer](#) [Privacy Policy](#) © [Copyright](#) 1997-2006 [Globe Business Publishing](#) Ltd