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## Competition - Portugal

### Rules on Individual Exemptions

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Following the creation of a new Competition Authority by Decree-Law 10/2003<sup>(1)</sup> and the adoption of a new Competition Act (18/2003),<sup>(2)</sup> the new Portuguese enforcement agency intends to create greater legal certainty by approving a new procedural regulation on the individual exemption of agreements between undertakings and decisions of associations of undertakings. It has posted the proposed regulation on its website and is seeking public comments on the draft legislation. If approved, the proposed regulation will revoke Ministerial Order 1097/93.

Under the proposed new regime, any undertaking or association of undertakings can request that the Competition Authority conduct a prior assessment in relation to an agreement or decision, with the aim of obtaining a declaration which confirms whether the agreement or decision is compatible with the relevant provisions of the Competition Act.

The proposed regulation will not apply where the agreement or decision referred for prior assessment is subject to the application of Article 81 of the EC Treaty.

According to the proposed regulation, a fee will apply for the assessment ranging from €7,500 to €25,000, depending on the turnover of the companies involved. The assessment procedure will only commence once the notifying parties have paid the requisite fee.

The Competition Authority will publish the request for assessment of the notified agreement or decision in two national newspapers at the expense of the notifying parties, so that third parties can present their observations. The period within which such observations must be submitted is determined by the Competition Authority, and in any event cannot be less than 30 days.

During the assessment procedure the notifying parties and other private or public entities may be required to provide additional information or documents to the Competition Authority.

Upon concluding the assessment procedure, the Competition Authority may declare that:

- the agreement or decision is not prohibited by Article 4 of the Portuguese Competition Act (which contains provisions equivalent to those of Article 81(1) of the EC Treaty);
- the agreement or decision is prohibited by Article 4 but is nonetheless justifiable in light of Article 5(1) of the act (which contains provisions equivalent to those of Article 81(3) of the EC Treaty); or
- the agreement or decision is prohibited by Article 4 of the act and cannot be justified on the basis of Article 5(1).

Individual exemptions will be granted for a maximum period of five years, and may involve the

imposition of conditions and obligations on the notifying parties.

The authority will adopt its final decision after hearing the notifying parties and any third parties which have presented observations during the procedure.

Once 90 days have elapsed since the submission of the agreement or decision for assessment, the notifying parties may request that it be considered provisionally valid. A decision on the interim validity of the agreement or decision must be issued within 10 days of receipt of the request.

A summary of Competition Authority decisions will be published on the authority's website.

Finally, the Competition Authority has reflected procedures adopted at the European level by attaching to the proposed regulation a form for the submission of the application.

*For further information on this topic please contact [Carlos Botelho Moniz](#) or [Eduardo Maia Cadete](#) at [Morais Leitão Galvão Teles Soares da Silva & Associados](#) by telephone (+351 21 381 7400) or by fax (+351 21 381 7499) or by email ([cmoniz@mlgt.pt](mailto:cmoniz@mlgt.pt) or [maiacadete@mlgt.pt](mailto:maiacadete@mlgt.pt)).*

## Endnotes

(1) Published in the *Diário da República* (the Portuguese *Official Journal*) on January 18 2003, No 15, pp251-259.

(2) Published in the *Diário da República* on June 11 2003, No 134, pp3450-3461.

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