



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

Competition - Portugal

New Competition Authority Commences Operations

Contributed by [Morais Leitão, J Galvão Teles & Associados](#)

April 03 2003

Important amendments to Portugal's competition law framework aim to increase the competitiveness of the Portuguese economy. The changes concern both substantial and procedural aspects of the applicable legislation on the one hand, and the organizational structure of the enforcement agencies on the other. While Parliament is still to vote on the amendments to the Competition Act, the legislation on the structure and operational rules of the new enforcement agency is already in force.

The new Competition Authority was created by Decree-Law 10/2003 and is responsible for the enforcement not only of competition law, but also of the statutes prohibiting individual restrictive practices (eg, refusal to sell and below-cost selling). The enforcement of competition law was previously carried out by the Directorate General for Trade and Competition pursuant to Decree-Laws 370/93 and 371/93, and by the Competition Council, which has now been disbanded.

Thus, from now on, both the investigation and decision stages of infringement procedures will be overseen by the Competition Authority. This is also the case for the appraisal and final decision stages of concentrations which have been notified. In cases of general interest to the national economy, the notifying parties may appeal against a decision prohibiting a concentration to the minister for trade. This provision is based on the text of the German Competition Act and is expected to be of an exceptional nature.

The decisions of both the Competition Authority and the minister for trade may be appealed before the competent court, Lisbon's Tribunal of Commerce.

The Competition Authority's independence from the Ministry of Economy is significant. This implies that the authority will enjoy asset and financial independence, and will have specific rules of procedure for the nomination of the members of its council and their incompatibilities and conflicts of interest. This independence aims to strengthen the 'competition culture' in Portugal.

The new Competition Authority will also have jurisdiction to enforce competition rules in all sectors of activity, and will intensify its cooperation with the regulatory authorities of different sectors (eg, energy and telecommunications).

In this context, a transitional period for the restructuring of the competition agencies – which started on February 24 2003 and ended on March 24 2003 - was provided for in Decree-Law 10/2003. From the beginning of this transitional period, all cases that were pending before the Directorate General for Trade and Competition were sent to the new Competition Authority, along with all prior notifications of concentrations, complaints lodged, communications and similar documents that were submitted to the directorate general.

With regards to the time limits within which the new Competition Authority must issue decisions, a

distinction is made between (i) cases and notifications of concentrations that were already pending with the directorate general before the transitional period began, and (ii) all documents which the directorate general received during the transitional period, but before the new authority commenced operations. For notifications of concentrations already pending before the transitional period began, a final decision on the merger must be issued within either 60 or 30 days of the date on which the Competition Authority was considered to fulfil all conditions necessary to perform its duties, depending on whether the concentration is at the first or second stage of review.

Meanwhile, all notifications of concentrations, complaints, communications and other documents received by the directorate general during the transitional period were immediately forwarded to the new authority. The timeframe within which decisions or authorizations must be issued began to run from the date on which the new authority was considered to fulfil all conditions necessary to perform its duties.

Until legislation is introduced which establishes new procedural rules on the assessment of notifications of concentrations, the Competition Authority will have the maximum period of 60 days from the date of receipt of the notification to issue a final decision. Failure to issue any decision within this timeframe amounts to a tacit authorization. This new timeframe for the adoption of such decisions is a positive development, since previously it could take up to 90 days for a decision on a concentration to be issued, a delay which was further compounded by the fact that these timeframes are calculated in working days.

The new Competition Authority commenced operations on March 24 2003. The members of the board have been formally nominated, and arguably represent different but complementary approaches to the enforcement of competition policy. The president is Professor Abel Mateus, while the two other members, Ms Teresa Moreira and Mr Lopes Rodrigues, are former directors general in the fields of economic international relations and industry, respectively. Several officials from the Directorate General for Trade and Competition are now part of the new authority's staff, although no member from the Competition Council has joined the new authority.

For further information on this topic please contact [Carlos Botelho Moniz](#) or [Margarida Rosado da Fonseca](#) at [Morais Leitão, J Galvão Teles & Associados](#) by telephone (+351 21 381 7400) or by fax (+351 21 381 7499) or by email (cmoniz@mlgt.pt or margarida.rfonseca@mlgt.pt).

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](#)