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Competition - Portugal

Competition Authority Examines Notary Services Sector

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Introduction

Proposed Measures

Comment

Introduction

Between 1945 and 2004 the public sector held a monopoly on notary services in Portugal. The sector was privatized in 2004, underpinning fundamental changes to the national notary system. Following the European Commission guidelines and the Organization for Economic Cooperation and Development's recommendations concerning the regulation of professional services in general, the Competition Authority sent recommendations to the government on reforming the legal framework applicable to notary services and introducing greater competition in the sector.

In 2004 the government adopted Decree-Law 26/2004, which reformed the notarial system and approved the privatization of notary services. The government's aim was to:

- allow other private and public professionals to provide services which were formerly provided exclusively by notaries;
- simplify notarial acts and their registration; and
- promote greater efficiency and a higher quality of service.

This new system continued to provide for wide and thorough regulatory intervention in respect of access to and provision of notary services.

Proposed Measures

At the end of 2007 the authority adopted Recommendation 1/2007, taking into account questions of legal status that apply to the performance of notarial activities, particularly the restrictions on access to the profession. The recommendation proposes several measures which the authority considers adequate to eliminate unjustified national competition restraints in the market.

The authority recommends removing:

- the *numerus clausus* (ie, the cap on the number of individuals admitted to the profession), as this constitutes a serious barrier to entry for new professionals;
- limits on the number of notaries in a municipality;
- licensing requirements for opening a notary's office;
- the prohibition on cooperation between notaries; and
- rules preventing a single notary from operating more than one office.

Furthermore, the authority notes that advertising is a fundamental instrument in promoting competition and suggests that notaries should be permitted to advertise their services.

The authority has suggested that these measures be adopted as part of a gradual and ongoing legislative process.

Comment

The authority's recommendation aims to increase competition in this sector, and the measures can be

seen as beneficial for consumers, as their aim is to increase the quality of notary services and to lower their cost. However, prudence will be needed in implementing the recommended changes, as one of the key elements of notary services is to provide legal certainty to the parties that use them.

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