

Competition enforcement in Portugal – 2017 in review

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New Competition Authority president's first year Implementation of EU Directive on Antitrust Damages Actions

New Competition Authority president's first year

On November 28 2017 the new Competition Authority president completed her first full year in office with impressive results in several relevant areas of activity.

Since November 2016 the Competition Authority has adopted:

- six infringement procedure decisions;
- one commitment decision; and
- two fining decisions totalling €38.7 million (one of the highest annual amounts in the Competition Authority's history).

As regards investigations, the Competition Authority carried out search and seizure actions at 35 facilities belonging to 36 undertakings active in several different economic sectors.

Further, 52 mergers were notified and the Competition Authority adopted decisions in 55 merger procedures. Two mergers dealt with in 2017 were of particular note given the complexity of the issues arising therefrom.

The first was the merger relating to card payment services in which SIBS, a Portuguese company active in the electronic payment sector, aimed to buy the merchant acquiring services provided by Unicre (SIBS withdrew the notification of this merger after the Competition Authority adopted a draft decision prohibiting the operation).

The second was the acquisition of the Media Capital Group (one of Portugal's most important media groups) by the Altice Group (one of Portugal's leading telecoms companies). A decision is still pending and this proposed merger has raised several interesting and complex competition issues.

In the context of studies and market monitoring, the Competition Authority issued 11 opinions, the most notable of which were in the energy (electricity, natural gas and liquefied petroleum gas) and telecoms sectors. It also carried out three studies into the passenger transportation, liquefied petroleum gas and natural gas sectors.

In addition to the above, the Competition Authority recently signed a protocol with the relevant public agencies, pursuant to which it will have direct and permanent access to all public procurement procedures and respective platforms. The Competition Authority aims to increase its efficiency in the detection of collusion in public procurement procedures, which is one of its main priorities.

Overall, it has been a busy and successful year for the Competition Authority and its new president.

Implementation of EU Directive on Antitrust Damages Actions

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The transposition of the EU Directive on Antitrust Damages Actions (2014/104/EC) into national law – which should have been completed by December 2016 – appears to be close to completion.

The first-draft legislative project for transposing the directive was prepared by the Competition Authority and made available on June 22 2016.

In July 2017 the opposition Social Democratic Party submitted a second proposed project to Parliament, which was similar to that prepared by the Competition Authority, but it was not approved. However, on October 19 2017 the government prepared a new bill, which is now pending before Parliament.

As a result, it seems likely that 2018 will start with the approval of a new legal framework for the private enforcement of competition law in Portugal, which should mean a number of relevant developments in the national competition arena.

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