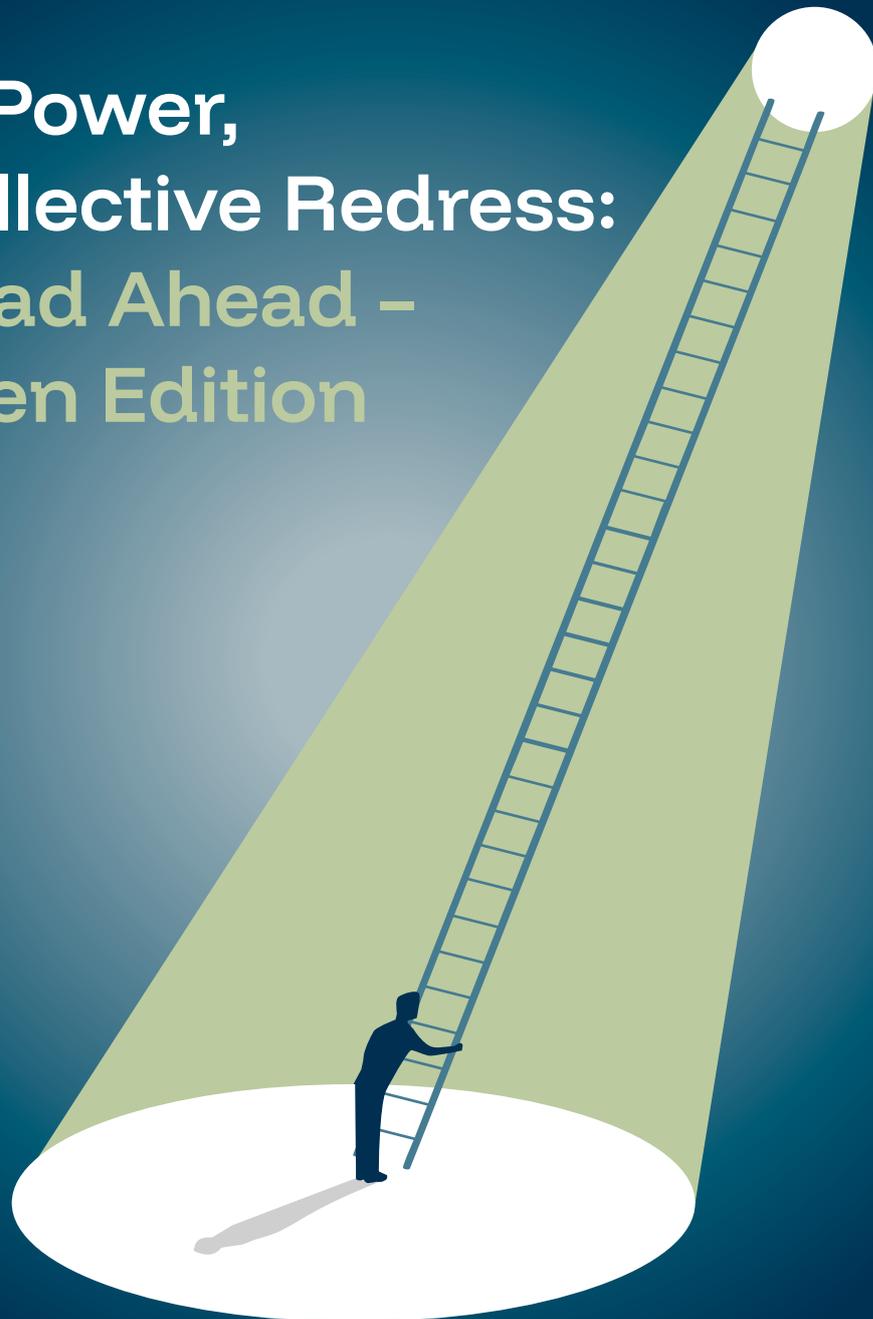




# MAGAZINE

Policy, Power,  
and Collective Redress:  
The Road Ahead –  
Next Gen Edition



# INTRODUCTION

*"The best way to predict the future is to create it"*

- Abraham Lincoln

As we begin another dynamic and fast-moving year in competition law and litigation, Issue 12 looks ahead to the developments shaping our field. From landmark judgments and evolving regulatory priorities to emerging trends set to influence the year ahead, this has been a period defined by policy shifts, novel theories of harm, and an increasingly global approach to litigation strategy - all of which our contributors explore with clarity and insight.

This issue would not be possible without the expertise and generosity of our corporate partners and authors. We thank them for sharing their time, analysis, and perspectives. We hope you enjoy the first edition of 2026 and find it both useful and insightful as you prepare for the challenges and opportunities of the year to come.

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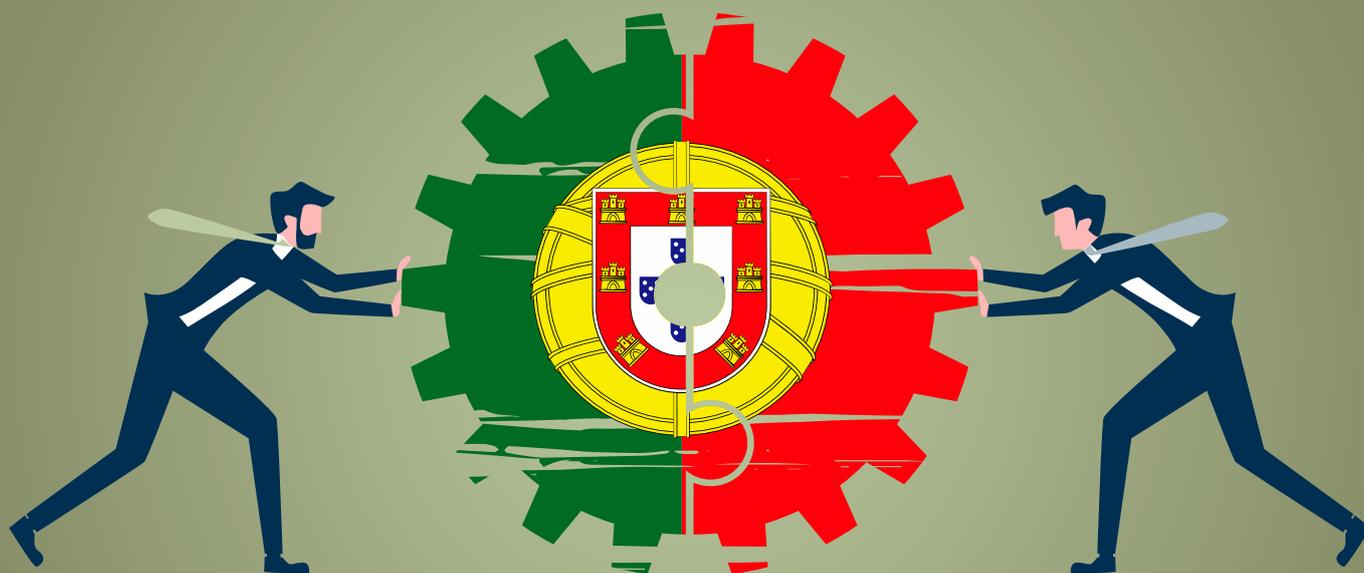
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# PORTUGUESE MERGER CONTROL



## FOREIGN JOINT VENTURES AND LOCAL NEXUS

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### Introduction

According to the 2005 OECD Recommendation on Merger Review<sup>1</sup>, countries should “[a]ssert jurisdiction only over those mergers that have an appropriate nexus with their jurisdiction”. As per the ICN Recommended Practices for Merger Notification and Review Procedures, that the nexus “should be based on activities within the jurisdiction, as measured by reference to the activities of at least two parties to the transaction and/or of the acquired business in the local territory”.<sup>2</sup> Moreover, “in transactions involving more than two parties, application of the “each of at least two parties” threshold should be adapted to the type of transaction to ensure that notification is required only when the transaction has a material nexus to the reviewing jurisdiction. An important example is the formation of a joint venture. Even if two or more of the parties forming the

joint venture have significant activities in the jurisdiction, the proposed joint venture transaction is unlikely to have a material nexus to the jurisdiction unless the proposed joint venture will have significant assets in or sales in or into the reviewing jurisdiction.”<sup>3</sup>

The Portuguese merger control regime provides in Article 37(1) of Law No. 19/2012 (Portuguese Competition Law, PCL) for three alternative mandatory notification thresholds: (i) a pure domestic turnover threshold (requiring that all undertakings concerned generate more than € 100 million in Portugal and each of at least two of them individually more than € 5 million); (ii) a pure domestic market share threshold (requiring that the transaction leads to an acquisition, creation or reinforcement of a market share of 50% or more in Portugal); and (iii) a mixed threshold (acquisition, creation or reinforcement of a market share of 30% or more in Portugal, if each of at

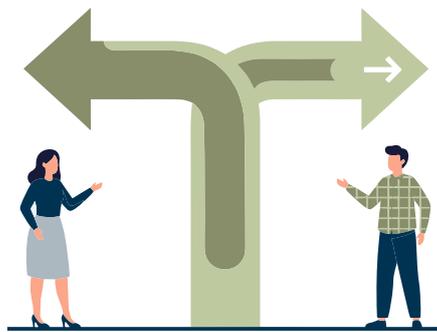
least two of the undertakings concerned individually generate more than € 5 million in Portugal). In addition, Article 2(2) PCL determines that “(...) this law shall apply to (...) mergers between undertakings which take place in the national territory or have or may have effects therein.”

In the case of the creation of a joint venture (acquisition by two or more undertakings of joint control over another undertaking), if the revenues of the acquirer groups (qualifying as “undertakings concerned”) meet the domestic turnover threshold, such transactions would have to be notified to the Portuguese Competition Authority (PCA) even if the joint venture does not have and is not likely to have any activity in Portugal, unless Article 2(2) PCL were to exclude them from the ambit of Portuguese merger control, for not being liable to produce any effects in Portugal. The PCA had to decide this question in three recent cases.

1 OECD Council, Recommendation on Merger Review, 23 March 2005, Recital II.6.

2 ICN Recommended Practices for Merger Notification and Review Procedures, Working Group Comments September 2002, June 2003 and May 2017, Recital II. C. Comment 1.

3 Idem, Comment 3.



## PCA Decisions

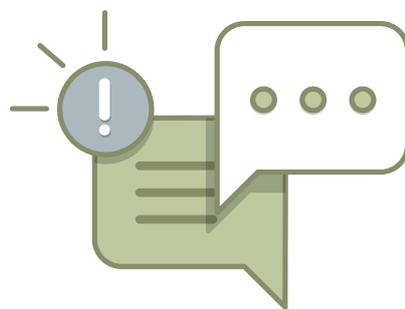
The first decision concerned the acquisition by Teak and Tangor, two separate Portugal-based groups with investments across different industries, of joint control of the Italian Vetrerie Riunite group (manufacturer of glass doors for washing and drying machines).<sup>4</sup> The PCA concluded that the transaction was notifiable, since the domestic turnover generated by Teak and Tangor met the pure turnover threshold (considered by the PCA to evidence that the transaction may have an effect in Portugal within the meaning of Article 2(2) PCL, thereby establishing the required local nexus). This was possible only insofar as the PCA attributed to each of Teak and Tangor 50% of the turnover achieved in Portugal by two other groups, which, in the PCA's assessment, were jointly controlled, on a de facto basis by them: BA Glass, a manufacturer of glass packaging for food and beverages and Cerealis, active in the manufacture of cereal products. The local nexus was established despite the fact that Vetrerie Riunite did not and was not likely to have any presence or activities in Portugal (a fact deemed by the PCA to be "neutral" in this context) and that neither Teak nor Tangor had any activity (direct or indirect) in Portugal bearing any horizontal or vertical relationship with the activity of the target (Vetrerie).

The PCA reconfirmed this understanding in a case which concerned the creation of SAS "Repenser la ville", a joint venture for urban renewal projects in France, by Caisse des Dépôts et Consignations (CDC), a French public undertaking with activities, inter alia, in Portugal (e.g., public transport, postal services, personal insurance), and Frey, a French company group active, including in Portugal, in the development of open-air shopping centres.<sup>5</sup> In that case, similarly

to the above, not only did the joint venture not (and was not likely to) have any presence or activities in Portugal, but there was also no horizontal or vertical relationship between the activities of the joint venture outside of Portugal and the activities of its parent companies in Portugal.

The third case involved acquisition by Proximus, a Belgium-based telecommunications and information technology services provider, active also in Portugal, and AGI, a company of the Belgium-based Ageas Group, provider of insurances and healthcare services, including in Portugal, of joint control of Doktr, a Belgium-based company providing medical teleconsultation services in Belgium.<sup>6</sup> Again, the PCA considered the meeting of the pure turnover threshold by Proximus and AGI to be sufficient to confirm the notifiability of the transaction and to be irrelevant in this context the fact that the joint venture did not and was not likely to have any presence or activities in Portugal.

In all three cases, the PCA cleared the transaction in the simplified procedure, concluding that it was not liable to have any effects on competition in Portugal.



## Comment

The interpretation adopted by the PCA departs from OECD and ICN recommendations, requires it to use its scarce resources (inefficiently) for the analysis of transactions that cannot (or are at least very unlikely to) have any effect on competition in Portugal and imposes unnecessary costs (including time and financial resources, e.g. for the payment of a filing fee between 7.500 and 25.000€) on notifying parties (while the European Commission follows the same approach as the PCA<sup>7</sup>, notifications to it are at least not subject to a filing fee).

It would therefore appear to be more adequate to interpret the pure domestic turnover threshold in Article 37(1) in light of Article 2(2) PCL, in the sense of considering the threshold not to be met in case of the creation of a foreign joint venture without any presence or activities in Portugal, at least where there is no horizontal or vertical relationship between the activities of the joint venture outside of Portugal and the activities of its parent companies in Portugal (in which case the transaction cannot have any impact on competition even if the geographic scope of the markets concerned is wider than national). Other competition authorities have adopted a similar approach, for example the German Competition Authority.<sup>8</sup> Another option could be to interpret the pure turnover threshold in the sense that one of the undertakings concerned with individual domestic turnover in excess of € 5 million must be the joint venture, as potentially problematic foreign joint ventures would still be caught by the mixed and pure market share thresholds.

However, until the notification thresholds or their interpretation by the PCA are revised, transaction parties should abide by the current decision practice to avoid violating the notification and standstill obligations of the Portuguese merger control regime (which are proactively enforced by the PCA, including by screening market information for notifiable transactions) and the payment of a potentially significant fine.



4 Decision of the PCA dated 06.12.2023 in case Ccent. 66/2023 - Teak\*Tangor/VOV.

5 Decision of the PCA dated 27.02.2024 in case Ccent. 10/2024 - CDC\*FAP / SAS.

6 Decision of the PCA in case Ccent. 70/2025 - Proximus\*AGI\*NHF / Doktr, 17.09.2025.

7 Commission Notice on a simplified treatment for certain concentrations, OJEU 2023 C 160/1, recital 5.(a): "Two or more undertakings acquire joint control of a joint venture, provided that the joint venture has no current or expected turnover within the territory of the European Economic Area (EEA), and the undertakings concerned have not planned to transfer any assets within the EEA to the joint venture at the time of notification".

8 German Competition Authority, Guidance on domestic effect in merger control, 2014.