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Competition - Portugal

Outgoing Competition Council Reviews its Activities

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The Portuguese Competition Council was created by Decree-Law 422/83. This law authorized the council to establish procedures in relation to restrictive competition practices and to conduct administrative reviews of the decisions of the Directorate General for Commerce and Competition. Among other things, the directorate general was empowered:

- to identify practices which could breach competition law;
- to institute the proper legal procedures; and
- to implement the appropriate procedures with respect to concentrations subject to notification.

In March 2003, 20 years after its establishment, the Competition Council was abolished and replaced by the new Portuguese Competition Authority, which has assumed the substantive and procedural legal powers of the council and those of the former directorate general which relate to competition issues. In its final annual report the council published an overview of its activities over the last two decades.

The report points out what the council considers to have been the three main weaknesses of the national competition legal system in the last 20 years, prior to the establishment of the new Competition Authority and the adoption of the new Competition Act in June 2003.

The first weakness was the absence of a competition culture, mainly in commercial and political spheres, coupled with the lack of competition law courses in the curricula of Portuguese law schools at the time.

The second weakness concerned the council's institutional powers. The council did not formally have the necessary institutional independence from the government. The government had the power to nominate and reappoint the members of the council, while the minister of trade and competition had the final say on merger control.

Finally, the report criticizes the low budget which the council had to work with for a long time, a direct result of the absence of a competition culture at national level.

Notwithstanding the above, the report concludes that overall the activities of the Competition Council went a long way towards establishing the foundations for a competition culture in Portugal. In the face of these limitations, the council not only managed to answer problems in a correct and accurate manner, but also helped to foster a new understanding of competition issues, which were practically unknown in Portugal until the 1980s.

The report summarizes the council's activities in the last 10 years as follows.

Procedures	<ul style="list-style-type: none"> • initiated - 297 • concluded - 169
Decisions	<ul style="list-style-type: none"> • guilty - 78 • archived due to voluntary payment - 38 • dismissed - 43
Misdemeanours	<ul style="list-style-type: none"> • application of discriminatory prices/conditions of sale - 11 • absence of price lists and conditions of sale - 14 • below-cost selling - 595 • refusal to sell goods or services - 20 • abusive pre-agreement practices - 1
Value of fines	<ul style="list-style-type: none"> • applied - €1.69 million • voluntary payment - € 205,025 • total - €1.9 million

When creating the new Competition Authority and adopting the new Competition Act, the Portuguese authorities gave due consideration to the flaws in the previous system highlighted by the report. The new legislation affords the Competition Authority the necessary autonomy from the government and allocates better financial and technical resources in what is clearly an important step towards guaranteeing the independence and effectiveness of the Competition Authority.

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