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Competition - Portugal

Divestiture Trustees: A Soft Drinks Merger with a Strong Aftertaste

Contributed by [Morais Leitão Galvão Teles Soares da Silva & Associados](#)

October 16 2008

Market Definition

Remedies

Divestiture Trustee

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This model was first used in Portugal in *Sonaecom/PT*. At the time, doubts were raised about the compatibility of the divestiture trustee's role with Portuguese law, as some experts held that a mandate contract cannot be established exclusively in the interests of a third party. However, these doubts were unfounded, since the entrusted entity must exercise its duty in the interests of both the authority and the notifying party. The authority has since used divestiture trustees frequently in cases where structural remedies involve the divestiture of a business, such as *BCP/BPI*, *Sonae/Carrefour*, and *Pingo Doce/Plus*.

A Faster Process?

The authority's decision is being acclaimed as the fastest second-phase decision ever issued in Portugal - only six months elapsed between notification and the adoption of the final decision.

However, equally complex decisions which also involved the adoption of structural remedies have been decided more quickly because the parties managed to avoid entering the second phase. For example, in *Sonae/Carrefour* and *Pingo Doce/Plus* the authority adopted first-phase approvals with structural remedies in under six months.

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Endnotes

(1) Press release 14/2008.

(2) Case 22/2008.

(3) *CGD/Sumolis/Compal* (70/2005).

(4) Hotels, restaurants and catering.

(5) *The Coca-Cola Company/Carlsberg AS* (M 833) and *Coca-Cola Amalgamated Beverages GB* (M 794).

(6) See the commission's notice on acceptable remedies under EU Regulations 139/2004 and 802/2004.

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