
European and Competition Law

Legal Flash | Portugal

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**Portuguese Competition Authority
fines EDP Produção €48 million for
abusing dominant position**



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On September 18, 2019, the Portuguese Competition Authority (“AdC”) fined EDP– Gestão da Produção de Energia, S.A. (“EDP Produção”) €48 million for abusing its dominant position.

The decision concerns the market of secondary reserve services, or “teleregulation,” in mainland Portugal. Teleregulation is a service that balances the production and consumption of electricity, ensuring consumers have the electricity they need at any given time.

According to the AdC, EDP Produção limited the offer from its generating units subject to the CMEC regime (Costs of Maintenance for Contractual Balance), benefiting from higher prices and public compensations in the market. The AdC notes that EDP Produção carried out this practice for five years.

The Portuguese government created the CMEC regime in the context of energy market liberation to compensate generating plants for terminating Energy Acquisition Contracts (“CAE”) early.

The AdC considers that EDP Produção, as the main supplier of teleregulation, and the main operator with teleregulation capacity, has abused its dominant position, influencing the price formation in the market and ultimately harming consumers.

The AdC considers this behavior a serious restriction of competition, which is prohibited under article 11 of Act 19/2012 (“Competition Act” or “LdC”) and article 102 of the Treaty on the Functioning of the European Union.

Regarding the fine, the LdC foresees a maximum of 10% of the group’s turnover in the previous financial year, and the AdC considered other criteria, such as the nature, duration and seriousness of the offence, as well as the collaboration of EDP Produção during the proceedings.

EDP Produção may now file an appeal with the Portuguese *Tribunal da Concorrência, Regulação e Supervisão*.



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