

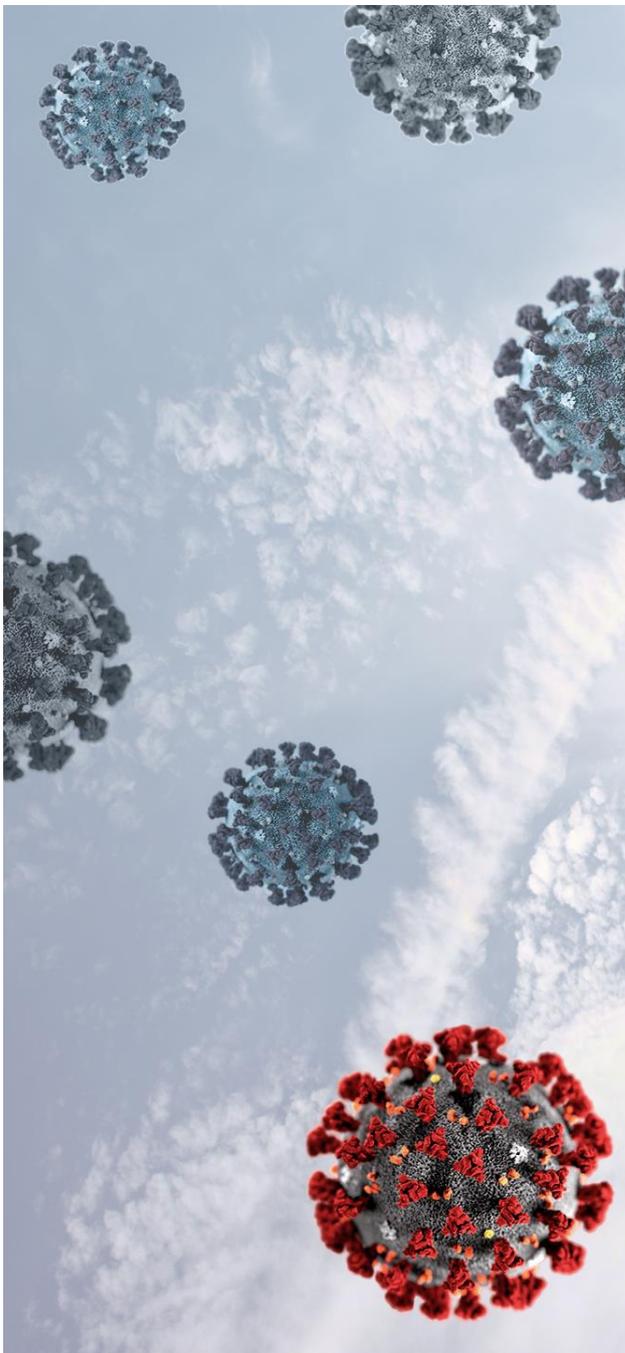
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# COVID-19: Competition regulation

Newsletter | Portugal

March 30, 2020

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## Competition law in the context of the pandemic caused by COVID-19

- The Portuguese Competition Authority (the “AdC”) remains alert to anti-competitive practices that exploit the current situation caused by the Covid-19 pandemic
- COVID-19: State Aid and competition issues
- The Portuguese Competition Authority (the “AdC”) accepts the phased payment of a fine invoking the pandemic situation



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## I. The Portuguese Competition Authority (the “AdC”) remains alert to anti-competitive practices that exploit the current situation caused by the Covid-19 pandemic

In a statement dated March 16, 2020, the AdC announced that it will remain particularly vigilant in its mission to detect possible abuses or anti-competitive practices that exploit the current situation, damaging people and the economy, e.g., in terms of price combination or market sharing.

The AdC warns that adopting practices that restrict competition in the current difficult context will make the situation worse for households and the economy. Therefore, suppliers, distributors, resellers in any sector of the economy, including goods and services needed for health protection, household and business supplies, or community life, should adopt responsible commercial behavior at all levels of the supply chain, including in e-commerce.

The AdC has also announced that it is in constant liaison with sector regulators and public authorities, to proactively detect competition problems that may aggravate today’s crisis situation.

The AdC reminds everybody that any person or company can electronically report suspicious anti-competitive practices by using the AdC’s Whistleblower Portal.

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## II. Covid-19: State aid and competition issues

### What are the State aid rules in the current Covid-19 context?

It should first be emphasized that companies must ensure that public support granted to them by the State complies with EU State aid rules.

If the European Commission (“EC” or “Commission”) decides that a particular State aid is incompatible with the internal market, the companies that benefited from it will be subject to repayment of all the support they receive, plus interest. This means that regardless of the economic and financial support packages that the State may decide to grant them, companies (and the State itself) must make sure that they are properly granted in compliance with EU rules.



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To address the effects of COVID-19 on the national economies, the Commission has relaxed the current State aid rules so that Member States can ensure companies' liquidity and access to finance to enable them to recover from the current situation.

Accordingly, on 19 March 2020, the Commission adopted a new Temporary Framework to enable EU Member States to take all necessary measures to support their economy during the Covid-19 pandemic (the "Temporary Framework").

This Temporary Framework will run until the end of this year (unless extended) and provides five types of aid that may be granted by Member States:

- I. Direct grants or tax breaks of up to € 800,000 per company, to help it meet urgent liquidity needs;
- II. State guarantees for loans taken out by undertakings with banks, in particular to cover their immediate operating and investment needs;
- III. Public loans to companies with subsidized interest rates;
- IV. Safeguards for banks that channel State aid into the real economy;
- V. Export credit insurance in short-term transactions.

The Temporary Framework has supplemented other possibilities that Member States have taken to mitigate the socio-economic impact of COVID-19.

A reference should be made, for example, to the "Communication on a coordinated economic response to the COVID-19 outbreak," adopted by the Commission on March 13. This Communication clarified that Member States may introduce generally applicable measures to help companies (e.g., tax deferrals or reduced labor subsidies in all sectors) or award compensation to companies for damages suffered and directly caused by the coronavirus outbreak.

These measures that are of a general and non-selective nature are not covered by the State aid rules. On the contrary, measures addressed individually to large companies or to specific categories of companies or sectors may have to go through the Commission's analysis (although from the outset they may not raise doubts as to their necessity and compatibility).

### **What has been the Commission's role, and what kind of measures have already been taken?**

Before approval of this new Temporary Framework, on March 12 the Commission had already authorized Denmark's State aid for about €12,000,000 to compensate for damages incurred by companies organizing events with more than 1,000 participants and events targeting people at risk (e.g., elderly or vulnerable people). This compatibility decision



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was taken only 24 hours after the aid was notified, and the Commission justified the approval as damages arising from an exceptional event, in accordance with the general scheme laid down in article 107(2)(b) of the Treaty on the Functioning of the European Union. Therefore, Member States are not released from notifying the Commission of any State aid they may grant, but the Commission is particularly quick and flexible in analyzing and responding to such cases.

Under the Temporary Framework, the Commission has already approved company support measures by Italy, Denmark, Germany, France and Portugal.

In the case of Portugal, the Commission considered four guarantee programs for small and medium-sized enterprises (PMEs) and for mid-caps affected by the Covid-19 outbreak, operating in the following sectors, to be in conformity with EU State aid rules:

- I. Tourism
- II. Restaurants (and other similar activities)
- III. Mining and manufacturing industry
- IV. Travel agencies, tourist animation, event organization (and similar activities)

These four programs, with a total budget of € 3 billion, aim to limit the risks associated with granting credits to ensure that companies that are seriously affected by the economic impact of this outbreak have sufficient liquidity to preserve jobs and pursue their business.

The Commission considered that these measures are in line with the conditions laid down in the Temporary Framework, in particular by covering guarantees for operating loans with a limited maturity and size (the risk assumed by the State is a maximum of 90%), and by providing a minimum remuneration and safeguards to ensure that the aid is actually channeled by the banks to the beneficiaries that actually need it.

### What about merger control?

In Portugal, notifying the Competition Authority (AdC) of a merger is in full operation through the electronic portal SNEOC, so mergers continue to be filed and are still subject to analysis.

However, in the case of notifiable transactions with a European dimension, the Commission has discouraged companies from submitting merger notifications for the time being, although this possibility is still available where postponement is not possible.

The Commission justifies this request by its current difficulty collecting information from third parties, in particular from customers, competitors and suppliers, and by the limited



access the Commission's services have to the available databases since a remote working regime has been in place since March 16.

To cope with these difficulties, the Commission and the national competition authorities could and should make wider use of the possibility provided in their respective competition laws to derogate from the standstill obligation for simplified transactions, without horizontal or vertical overlaps, or even for any transactions that clearly do not raise competition problems. The derogation from the stand still obligation would not prevent merger control from functioning fully, and it would allow for the immediate implementation of some transactions at a critical stage for the economy.

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### **III. The Portuguese Competition Authority (the “AdC”) accepts phased payment of a fine invoking the pandemic situation**

The AdC announced on March 19, 2020, that it has fined Hospital Particular do Algarve, S.A. €155,000 for having carried out a concentration without prior notification to the AdC, relating to the acquisition of sole control of Hospital S. Gonçalo de Lagos, S.A.

We will come back to this decision in due course, but we would like to highlight in this newsletter, where we are focusing on topics related to COVID-19, that, in this specific case, AdC accepted the phased payment of the fine, to avoid any impact on the health services provided by the company at a time when Portugal is facing a pandemic.



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our taskforce by email [TFcoronavirusPT@cuatrecasas.com](mailto:TFcoronavirusPT@cuatrecasas.com) or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

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