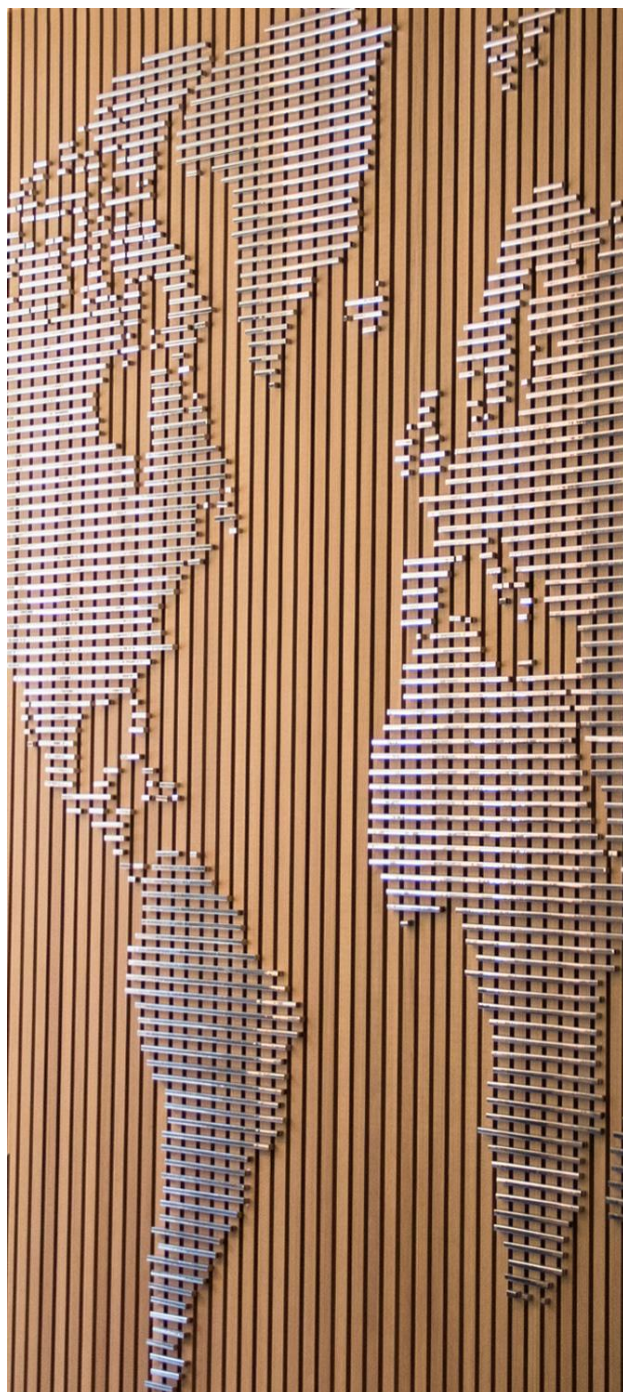

European and Competition Law

Legal Flash | Portugal

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Portuguese Competition Authority fines MEO €84 million for cartel in the mobile and fixed telecommunications markets

The Portuguese Competition Authority (“PCA”) imposed on the telecommunications operator, MEO, a fine of €84 million, the highest amount the PCA has ever imposed on a single undertaking (surpassing the €48 million fine imposed on EDP in September 2019).

According to the PCA’s press release dated December 03, 2020, MEO participated in a cartel with NOWO for price fixing and market sharing, lasting, at least, between January and November 2018.

The proceedings were based on a leniency application by NOWO, granting it full immunity from paying fines for being the first (and only) undertaking to blow the whistle.

The decision addresses an anti-competitive agreement, which prevented NOWO from (i) making mobile communications services available outside the geographical areas where it provided fixed services, and (ii) offering services below a certain price. It also required NOWO to raise prices and reduce the quality of its services in the fixed and mobile services package offers, all in exchange for better conditions for the mobile virtual network operator contract it entered into with MEO.

The PCA concluded that the agreement resulted in a price increase, a reduction in quality and a limitation of the geographic availability of NOWO’s services, harming consumers in the whole Portuguese territory.

Based on PCA’s recent activity, it is clear that detecting and sanctioning cartels, particularly in key sectors such as telecommunications, continues to be one of its top priorities.



Portuguese Competition Authority carries out dawn raids in Madeira

From October 7 to 13, 2020, the Portuguese Competition Authority (“PCA”) carried out dawn raids in commercial establishments in Madeira to gather evidence of concerted action in the food retail distribution industry. To protect the interests of the investigation, the PCA declared the legal secrecy of the procedure.

Since 2017, several antitrust proceedings have been opened, and search and seize actions have taken place in this sector, for alleged violations of the Portuguese Competition Act.

The first major investigation ended with the conviction of Super Bock Bebidas, S.A. in 2019. The company, a member of its board of directors and a senior manager were found guilty of resale price maintenance, for which they were fined over €24 million in total.¹

In 2019, the same company was also accused of hub and spoke cartel practices with several food retailers. These proceedings are still pending with the PCA.

It is also becoming increasingly common for individual members of boards of directors and senior management of the companies involved in antitrust cases to be convicted.

According to the PCA’s press release, in the retail sector, *“the PCA carried out dawn raids in facilities of 44 entities, during 2017, and the results were incorporated in 16 antitrust cases, more than 10 of which in this sector”*.²

¹ http://concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201915.aspx?lst=1&Cat=2019.

² http://concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201902.aspx?lst=1&Cat=2019.



European Commission accuses Amazon of abuse of dominant position, distorting the e-commerce market

On November 10, 2020, the European Commission (“EC”) accused Amazon of violating competition rules for abuse of dominant position, a serious infringement that violates article 102 of the Treaty on the Functioning of the European Union (“TFUE”), also contained in the Antitrust Regulation.³

The investigation began following an EC e-commerce market survey in 2015. In 2019, the institution opened an in-depth investigation to assess Amazon’s use of sensitive data. Now, the EC is formally accusing the platform of two practices that could distort competition.

In the first allegation, the EC claims that Amazon uses its users’ private data for its own benefit, thereby avoiding “*normal risks of competition*” and asserting “*its dominance*” in the e-commerce market in France and Germany, the two biggest Economies in the European Union (“EU”).

The EC highlights Amazon’s dual activity: (i) it sells its own products directly through its website as a retailer in the *e-commerce* market; and (ii) it provides a *marketplace* to independent sellers where they can sell their products to consumers (often SMEs). Consequently, the platform’s users are also its competitors.

Preliminary findings from the Brussels investigation claim that Amazon was able to combine data from over 800,000 individual sellers active in the EU in real time, covering more than one billion different products, enabling the company to draw precise and targeted conclusions from those algorithms. According to the EC, e-commerce purchases in the EU almost doubled, from 375 billion in 2015, to 720 billion in 2020.

The EC opened another investigation into whether Amazon was artificially favoring its own retail offerings and the retail offerings of sellers using its logistics and delivery services, to the detriment of other sellers.

Specifically, the EC intends to investigate whether subscription to Amazon Prime leads to preferential treatment of the platform’s retail business or the sellers using Amazon’s branded logistics and delivery services. The EC also intends to investigate the criteria Amazon sets for selecting the winner of its “Buy Box.”

The EC will now carry out an exhaustive investigation, and a potential fine of up to 10% of Amazon’s turnover may be at stake but adopting a formal accusation does not prejudge its outcome.

³ Council Regulation 1/2003.



Amazon reacted immediately to the EC's preliminary statements, claiming that it will *"make every effort to ensure that the EC has a precise understanding of the facts."*

In today's digital economy, both investigations reflect crucial competition concerns. In late October, proceedings were initiated in the United States against Google for abuse of dominant position, and similar actions against Apple and Facebook are expected.

In this context, the EC is expected to announce new legislation to better regulate online platforms, mainly by updating its e-commerce directive created approximately two decades ago⁴ and the Vertical Block Exemption Regulation (Commission Regulation N.330/2010).

⁴ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>.



Portuguese Competition Authority accuses Portuguese Association of Topographers of restricting competition by price setting

The Portuguese Competition Authority (“PCA”) accused the Portuguese Association of Topographers (“ANT”) of restricting competition in the topography services market by price fixing.

The PCA opened the case in May 2020 following a complaint. The subsequent investigation revealed that ANT had had a fee schedule on its website since November 2003, which it had approved and disclosed, with the alleged intent of promoting a standardization of the prices of surveyors’ activity.

As they can influence the autonomous definition of companies’ trade policy, price decisions and recommendations adopted by business associations may amount to competition law infringements.

ANT has 729 members carrying out this activity, which is essential to civil construction, public works and other sectors throughout Portugal, so it has a significant presence in that market.

The adoption of a statement of objections does not determine the result of the investigation. The defendant may now exercise its hearing and defense rights.

In the context of this allegation, the PCA has been increasingly watchful of associations of undertakings and their members. It has published the “Guide for Business Associations – With Competition Everyone Wins,” which is available on its website for general information purposes.⁵

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http://www.concorrenca.pt/vPT/Praticas_Proibidas/Praticas_Restritivas_da_Concorrenca/Documents/Guia%20para%20Associa%C3%A7%C3%B5es%20de%20Empresas.pdf



Portuguese Competition Authority accuses supermarket retail chains and a wine, spirits and olive oil distributor of price fixing

The Portuguese Competition Authority (“PCA”) accused three retail distribution chains, and Active Brands (part of the Gestvinus/João Portugal Ramos economic group), a distributor of wines, spirits and olive oil, for price fixing in the food retail market, between 2008 and 2017.

The charges also address a director of Active Brands.

The PCA concluded that there were signs of a “hub and spoke” cartel, in which supermarket chains used their commercial relationship with a supplier to agree on retail prices, in this case for wines, spirits and olive oil.

This is yet another hub and spoke cartel case in the Portuguese food retail market, which adds to this year’s proceedings involving Bimbo Donuts, Sumol-Compal and another distributor of wines and spirits, as well as three other cases, where the PCA issued statements of objections in 2019.

The PCA reported that it has more than 10 ongoing investigations in the large food distribution sector, some of which are still subject to legal secrecy.

The adoption of a statement of objections does not determine the result of the investigation. The defendants may now exercise their hearing and defense rights.



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