



EUROPEAN COMPETITION LAW REVIEW

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SWEET & MAXWELL

In sum, the District Court holds that, given the provided evidence, it cannot be concluded that KPN had a dominant position on the (presumed) market for VISP services.

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ANTI-COMPETITIVE AGREEMENT

Driving schools—Price-fixing—Infringement Decision—Fine

☞ Anti-competitive practices; Driving licences; Fines; National competition authorities; Portugal; Price fixing

PCA fines the Portuguese Driving Schools Association

On 28 September, the Portuguese Competition Authority (PCA) adopted a decision imposing fines on the Portuguese Association of Driving Schools (APEC) and its President, in the total amount of €413,776.71 for fixing a minimum price on driving licences. The decision follows the adoption, in last July, of a statement of objections for allegedly preventing, restricting or distorting competition in the market for driving schools.

The PCA held that the conduct of setting minimum prices significantly harmed competition in the market for driving schools in the areas of Greater Lisbon and Setúbal. The conduct was implemented by approximately 170 schools, reinforcing entry barriers and preventing members from setting more competitive prices, depriving the consumer of a wider choice and of the ability to negotiate prices. The President of APEC was found to have committed an infringement for being aware of this practice and for not taking action to prevent or end it.

The case was originated by consumer complaints, triggering the PCA to carry out dawn raids in January, from which it obtained substantiating evidence. The decision is now subject to appeal to the Portuguese Competition, Regulation and Supervision Court.

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ANTI-COMPETITIVE AGREEMENT

Consumer credit providers—Information exchanges—commitments—consultation

☞ Anti-competitive practices; Commitments; Consumer credit; Data sharing; National competition authorities; Portugal; Trade associations

Portugal – ASFAC offers commitments to PCA to minimise potential anti-competitive effects of information exchange system

On 13 September, the Portuguese Competition Authority (PCA) announced that the Portuguese Association of specialised consumer credit providers (ASFAC) offered a set of commitments aimed at responding to competition concerns previously raised by the PCA on the exchange of sensitive information. In April 2015, the PCA opened proceedings against ASFAC and 37 of its associated members for the alleged infringement of competition rules. The investigation that followed revealed the existence of a system for the exchange of information related to products and services in the markets for leasing, ALD, credit, revolving and stock, organised by ASFAC and involving associated companies. The PCA considered that the system could have a restrictive effect on competition, by reducing uncertainty in the market.

In order to have the case closed ASFAC submitted the following commitments:

1. obligation not to disclose to its members individualised data less than three months old in the framework of the institutionalised system for the exchange of information;
2. provision of full access to such data not only to the associated companies, but also to non-member companies which request it in order to preparing for market entry;
3. disclosure of monthly reports on the Association's website containing aggregated and non-individualised information; and
4. informing the associated undertakings of the approval of amendments to the information exchange system in line with these commitments.

The PCA is expected to adopt a final decision after a public consultation period of 20 working days in order to take into account the comments presented by interested third parties.

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Spain

ABUSE OF A DOMINANT POSITION

Spare parts—telecommunications support—margin squeeze—Infringement decision—fine imposed

☞ Abuse of dominant position;
Fines; Mobile telephones;
National competition authorities;
Spain; Spare parts and accessories;
Telecommunications operators

The National Markets and Competition Commission (NMCC) has imposed a fine of €1.74 million on Nokia Solutions and Networks Spain, S.L. (Nokia).

The NMCC considered that Nokia abused of its dominant position by engaging in *margin squeeze practices* when the State-owned railway manager Administrador de Infraestructuras Ferroviarias (ADIF) tendered the maintenance services for the GSM-R (Global System for Mobile Communications – Railway) telecommunications network.

The Decision is a result of a complaint filed by Kapsch Carriercom España, S.L.U. (Kapsch), Nokia's competitor in this market.

Nokia abused its dominant position in the wholesale markets for the support and supply of spare parts for the maintenance of Nokia GSM-R mobile telecommunications equipments. Nokia offered wholesale and retail prices that prevented competitors from competing in the retail market for the maintenance of GSM-R mobile telecommunications facilities in Spain. As a result, Nokia was the only company to compete in the ADIF tender since *Kapsch informed ADIF of its decision to withdraw from the tender* because it was unable to provide a competitive offer, among other reasons, due to the high price of Nokia's technical assistance. As a result, *ADIF awarded the contract to Nokia* in December 2014.

The NMCC says that Nokia's conduct caused the exclusion of its rival and that competition was harmed in the ADIF tender, which probably influenced the final price paid by ADIF.

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BOOK REVIEWS

- The EU Merger Regulation: Substantive Issues, 5th edn
Alastair Lindsay and Alison Berridge

NEWS SECTION

