

New competition authority powers used for first time - VdA



At the end of 2014, reinforced powers belonging to the Portuguese Competition Authority were applied for the first time in relation to two high profile cases. The first one concerned Sport TV Portugal and the broadcasting rights of sports events, mainly football. The second one involved Peugeot Portugal and related to warranties and independent repair shops.

A key element of the cases was antitrust procedures. Following the approval of the New Competition Act in 2012, one of the most significant novelties in antitrust procedures is the possibility of closing the file as a result of the acceptance by the authority of commitments submitted by the investigated companies.

By way of background, Portugal adopted a New Competition Act in 2012. The new Competition Act reinforced the investigation powers of the Portuguese Competition Authority (PCA) and sought to enhance both the enforcement and the advocacy of competition rules. In antitrust matters the new Competition Act created two novel instruments: settlement decisions and commitment decisions.

In April 2013, the PCA opened proceedings against Controlinveste Media, S.G.P.S, S.A., a leading holding company in the media sector, as well as against its subsidiary Sport TV Portugal, S.A., for alleged restricted practices in the market for broadcasting rights of football matches in the Portuguese football league. The authority concluded that some contractual conditions posed a significant market foreclosure risk, allegedly caused by the duration of the exclusivity provisions, first refusal rights and suspension clauses. The concerned companies proposed to reduce the duration of the exclusivity to three years and to waive first refusal rights for future contracts. As regarding on-going contracts, the parties proposed granting a termination right to football clubs in respect of the whole of the contracts or specifically in respect of first refusal rights and suspension clauses. The publication of these proposals marks the PCA's first public consultation on proposed commitments. There has been no final decision by the PCA thus far.

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In the second case the PCA opened proceedings against Peugeot Portugal-Automóveis, S.A. in June 2013. The investigation identified warranty extension contracts through which consumers were allegedly discouraged from using independent repair shops by equating recourse to independent repair shops with a termination of the warranty. Reportedly, these contracts would create a serious foreclosure risk in the independent repair shops market and consequently impair consumer's choice. The authority notified Peugeot Portugal to submit commitment proposals to curb the restrictive effects. The new contract would state that the subsistence of the warranty does not depend on the exclusive recourse to licenced repair shops. The published proposals were submitted to public consultation and at the time of writing the PCA had not yet adopted a final decision.

As is the case at EU level, commitment decisions raise the issue of (lack of) transparency and guidance. The benefits in terms of procedural swiftness are undeniable. However, there is both a public and a private interest in providing legal certainty to companies. Ensuring a fair outcome for all the stakeholders requires a delicate balancing exercise on the part of the Competition Authority.

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