

Portugal

ANTI-COMPETITIVE PRACTICES

Railway maintenance—alleged cartel-public tenders—fines imposed—bar from future procurement

^ Anti-competitive practices; Cartels; Collusive tendering; Fines; Portugal; Public procurement; Railways; Remedies

On 4 March 2020, the Portuguese Competition Authority (“PCA¹”) has imposed a total of €1.8 Million fines against Fergrupo - Construções e Técnicas Ferroviárias, SA (“Fergrupo”) and Somafel - Engenharia e Obras Ferroviárias (“Somafel”)—as well as one director of each company—both operating on the market of railway maintenance (“Decision”).

The PCA considered that the abovementioned entities were allegedly involved in a cartel which presumably co-ordinated their participation in public tenders launched by Infraestruturas de Portugal (the public company responsible for ensuring railway maintenance in Portugal) in 2014 and 2015.

The referred putative cartel also involved three other companies: Futrifer - Indústrias Ferroviárias, SA, Mota-Engil - Engenharia e Construção, SA and Sacyr Neopol SA. These three companies have settled with the PCA in 2018 and 2019, and have been levied fines totalling €1.6 million.

The Decision is noteworthy on the one hand, because it is a so called “hybrid” settlement decision, which poses additional challenges to Competition Authorities after the ECJ ruling on ICAP and the General Court ruling on the Pometon case.

On the other hand, for the first time, the PCA has applied an accessory sanction banning Fergrupo and Somafel (i.e., the companies which have not settled), for a period of two years, from future tenders having as their object the purchase of maintenance services for track equipment on the national rail network.

It is interesting to note that, based on public information, such debarment sanction does not seem to have been applied to any of the companies involved in same alleged cartel which have previously settled with the PCA. It would be interesting to understand the reasons why the PCA has decided to apply the debarment exclusively to the companies which have not settled.

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MERGER

Transportation sector-procurement concerns—sector regulator—Phase II investigation opened

^ Investigations; Mergers; National competition authorities; Passenger transport; Portugal; Public procurement

On February 26 the Portuguese Competition Authority (“PCA”) announced that it would open an in-depth investigation regarding the acquisition by Transdev Group of Grupo Fundão (including ATF - Auto Transportes do Fundão, SA, Joaquim Martins da Fonseca, Ida. as well as public service concessions currently held by the companies Transerramar - Viagens e Turismo, Lda. and Auto Transportes do Fundão, SA).

The companies involved in the transaction operate on the market of public passenger transport services by road. According to the PCA, due to the parties’ geographical footprint in the Intermunicipal Community of Beira Baixa, Beiras and Serra da Estrela and Coimbra, the PCA is wary that they may be in a prime position for future tender procedures in this specific market

and that the merger may result in the effective elimination of competition. Considering the above, the PCA requested the opinion of the Authority for Mobility and Transport, the Portuguese Regulator for this sector.

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