

In its press release concerning the proceedings, the PCA took an opportunity to highlight the crucial importance of making a timely notification, prior to implementation, of any applicable transaction, in order to prevent restrictions of competition and therefore to foster the efficient and competitive functioning of markets in Portugal.

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ANTI-COMPETITIVE PRACTICES

*Non-compete agreement—energy sector—appeal against infringement decision and fine—
infringement upheld but fine reduced*

☞ Competition agreements; Electricity supply; Fines; Market sharing; Portugal

Portuguese Competition Authority's ("PCA") infringement decision against EDP/Sonae's non-compete agreement upheld by court, albeit with a fine reduction

On 30 September 2020, the Competition, Regulation and Supervision court ("TCRS") upheld the PCA's decision, dated 4 May 2017, to penalise Portuguese conglomerates EDP and SONAE for having entered into a non-compete agreement.

In its 2017 decision, the PCA found that, within the framework of a 2012 commercial partnership between EDP Group, primarily active in the energy sector, and Sonae Group, primarily active in retail distribution, the groups had further committed not to enter one another's markets, having notably bound Sonae not to enter the electricity retail supply market in mainland Portugal for at least two years. The PCA fined both groups an aggregate amount of €38.3 million (€28.7 million on EDP and €9.6 million on Sonae), which was appealed to the TCRS.

In its judgment, the TCRS confirmed the existence of the agreement and the involvement of the parent companies of both groups, EDP Energia and Sonae MC SGPS, in the infringement. The court has, however, reduced the fines by 10 per cent, to an aggregate sum of €34.4 million, reportedly due to the benefits the 2012 EDP/Sonae partnership had provided consumers at the time.

Sonae Group has reportedly already expressed its intention to appeal the TCRS's judgment to the Lisbon Court of Appeals.

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