Portugal

ANTI-COMPETITIVE AGREEMENTS

Banking sector—concerted practice—exchange of confidential information—leniency—infringement—record fine imposed

& Anti-competitive practices; Banking; Concerted practices; Information agreements; Leniency programmes; Portugal

On 9 September 2019, the Portuguese Competition Authority ("PCA") imposed a €225 million fine to 14 banks for the alleged concerted practice of exchange of sensitive commercial data for a period between 2002 and 2013. The banks involved are BBVA, BIC (previously BPN), BPI, BCP, BES, BANIF, Barclays, Caixa Geral de Depósitos, Caixa de Crédito Agrícola, Montepio, Santander, Banco Popular, Deutsche Bank, UCI and Abanca.

According to the PCA, the banks allegedly engaged in exchange of relevant and privileged information with the aim of obtaining strategic information on credit offers, thus eliminating competition in the market.

The case started in 2012 following a leniency application. The PCA then opened investigations and carried out dawn raids in the premises of 15 banks. In May 2015, the PCA issued a statement of objections ("SO").

The PCA has now fined 14 of the 15 banks originally charged in the SO (action against bank Abanca have was found to be time-barred). Full immunity was granted to the first leniency applicant and a 50 per cent reduction to the fine was granted to a second applicant.

This is the highest fine ever imposed by the PCA (€225 million) and coincides with the biggest fine ever imposed to a single undertaking. Thus, reactions to the decision started flaring up immediately after, with several banks publicly stating their intention to appeal before the Portuguese Competition, Regulation and Supervision Court.

Nuno Carrolo dos Santos
Vieira de Almeida

Diana Alfafar
Vieira de Almeida

Portugal

MERGER

Private healthcare services sector—possible significant impediments to effective competition—"failing firm" defence accepted—merger cleared

^ Failing firm defence; Hospitals; Mergers; Portugal; Private health industry

The Portuguese Competition Authority ("PCA") has adopted a clearance decision based on the "failing firm defence" on a merger in the private healthcare services sector.

Grupo Hospital Particular do Algarve ("HPA Group") acquired the sole control of Hospital São Gonçalo de Lagos (HSGL) in late 2017, failing to file the merger at that occasion. The PCA opened inquiry proceedings and the operation was later notified by HPA Group in November 2018. In May 2019, the PCA found that the acquisition of HSGL by HPA Group could give rise to possible significant impediments to effective competition in the affected markets and opened an in-depth investigation.

The PCA has now found that HSGL met the requirements of the "failing firm defence", since HSGL's situation could not be recovered through any restructuring efforts and the PCA concluded that there was no less anti-competitive alternative purchase and that, without its acquisition by HPA Group, HSGL assets would inevitably exit the market. This is the second time that the PCA has cleared a merger based on a "failing firm defence".

Nuno Carrolo dos Santos
Vieira de Almeida

Diana Alfafar
Vieira de Almeida