

National Reports

Portugal

MERGER

Heating sector—merger notification—breach of standstill obligation—“gun-jumping”—Statement of Objections issued

& Merger notices; Mergers; Non-compliance; Portugal; Standstill periods

On 17 September 2019, the Portuguese Competition Authority (“PCA”) adopted a Statement of Objections (“SO”) accusing HCapital, SCA-SICAR (“HCapital”) for failure to notify a concentration in breach of Portuguese competition rules.

On 1 February 2019, HCapital, a private-equity firm, filed a notification regarding its acquisition of sole control over Solzaima-Equipamentos para Energias Renováveis, S.A. (“Solzaima”), a company active in the Portuguese market for the production of biomass heating equipment. The PCA adopted a non-opposition decision on 8 March 2019.

However, the concentration at stake had been implemented on 5 August 5, 2016, i.e. almost three years before it was notified to, and cleared by, the PCA. In the SO, the PCA has now provisionally found that the transaction was implemented in breach of the stand-still obligation provided for in Portuguese merger control rules (a so-called gun-jumping infringement).

This case is, presumably, one of the five investigations for possible gun-jumping infringements that the PCA announced it had in its hands during the year of 2018. To date, there were only two fining decisions adopted for infringement of the standstill obligation (both adopted following settlement proposals from the parties): (i) in June 2014, three undertakings (Farminveste 3-Gestão de Participações, SGPS, Lda, Jarminveste-Investimentos, Participações e Gestão, SA, and Associação Nacional de Farmácias) were fined in a total of €118,837.38 for failure to notify the acquisition of ParaRede/Glitt, a company active in the information technologies sector and (ii) in December 2017, Vallis Sustainable Investments I, Holding Sàrl and Vallis Capital Partners, SGPS, S.A. were fined in €38,500, for failure to notify the acquisition of sole control over 32 Senses’ network of dentalcare clinics.

The enforcement of the prior notification and standstill obligations—the violation of which is punishable in Portugal with a total fine of up to 10 per cent of the total turnover of the fined company—is one of the main focuses of the current board of the PCA.

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