

## MERGER

*Gun-jumping—statement of objections issued*

↳ Acquisitions; Gun-jumping; Portugal; Statements of objections

### **Portuguese Competition Authority issues a Statement of Objections against a Fidelidade group company for “gun-jumping”**

On 22 September 2020, the Portuguese Competition Authority (“PCA”) issued a statement of objections against Fidelidade—Sociedade Gestora de Organismos de Investimento Imobiliário, S.A. (“Fidelidade SGOII”), a company in the Portuguese financial and insurance group Fidelidade, for failure to notify in due time its acquisition of sole control over Fundo de Investimento Imobiliário Fechado Saudeinveste (“Fundo Saudeinveste”).

Under the Portuguese Competition Act, merger operations above certain turnover and/or market share thresholds are subject to mandatory prior notification to the PCA and cannot be implemented before tacit or express clearance.

In the case at hand, Fidelidade SGOII had acquired sole control over Fundo Saudeinveste on 1 October 2018, but only filed its merger notification with the PCA on 21 February 2019 pursuant to an untimely request for prior assessment of the concentration submitted on 26 November 2018.

After the PCA took the view, on 5 July 2019, that, in the light of the elements gathered up to that moment, the operation was likely to restrict competition, Fidelidade SGOII ultimately withdrew from the transaction, having restored the management of Fundo Saudeinveste to the previous managing party.

Following the PCA’s statement of objections on 22 September, Fidelidade SGOII will have at least 20 working days to exercise its defence rights.

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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## Portugal

### 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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## Portugal

### MERGER

*Prohibition—phase II in-depth investigation—road transport sector—impact on consumers and procurers—barrier to third party entry—merger blocked*

☞ Acquisitions; Passenger transport; Portugal; Road passenger transport operators

#### **Portuguese Competition Authority (“PCA”) blocks Fundão Group/Transdev Group merger**

On 6 October 2020, the PCA prohibited the acquisition of Fundão Group by Transdev Group, both active in public passenger road transport services, on the grounds that the merger was likely to eliminate competition in public passenger road transport services in central Portugal.

Following a phase II in-depth investigation, initiated on 26 February 2020, the PCA came to the conclusion that the acquisition of Fundão Group by Rodoviária da Beira Interior, a Transdev Group company, would likely result in the elimination of competition in future tender procedures for the provision of public passenger road transportation services in several districts in central Portugal, with harm to both consumers and procurers of transport services in a market that is currently in the process of liberalisation. In the PCA’s view, not only would Fundão Group and Transdev Group no longer compete with one another, but the merged entity would also be in a position to limit entry to third-party operators.

As legally required, the PCA requested the (non-binding) opinion of the sector-specific regulator, Authority for Mobility and Transport, which raised serious concerns regarding the proposed merger. In its investigation, the PCA also heard stakeholders, notably the municipalities affected, which likewise expressed concerns about the outcome of the merger.

The notifying parties did not submit any commitments capable of overcoming the competition concerns raised by the PCA and the proposed merger was therefore blocked.

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