

## INVESTIGATION

*Dawn raid—food retail sector—  
hub and spoke—price fixing  
cartel*

☞ Cartels; Coronavirus; Dawn  
raids; Food sales; National  
competition authorities;  
Pandemics; Portugal; Price  
fixing

### **Portuguese Competition Authority carries out its first dawn raids during the COVID-19 pandemic**

The Portuguese Competition Authority (“PCA”) is back in the trenches, having recently joined the group of European antitrust agencies that had already resumed their on-site inspection work following the outbreak of the coronavirus disease.

The competition watchdog announced on its website that it carried out dawn raids at the premises of companies located in the insular autonomous region of Madeira between 7 October and 13 October 2020. Unfortunately, no information on the safety measures adopted by the team of inspectors was provided by the PCA.

The undertaking(s) raided is/are reported to be active in the food-based retail sector. Since 2017, the PCA has opened several, currently ongoing, investigations into alleged hub and spoke cartels aimed at fixing prices charged by some of the largest supermarket chains active in the country.

**Cláudia Coutinho da Costa**  
*Vieira de Almeida*

**João Francisco Barreiros**  
*Vieira de Almeida*

## Portugal

### ANTI-COMPETITIVE PRACTICES

*Financial services sector—  
payment service providers—  
barriers to entry—protection of  
incumbent operators*

🔗 Anti-competitive practices;  
Financial services; National  
competition authorities; Payment  
services; Portugal

#### Portuguese Competition Authority reassesses existence of barriers to payment services providers

In a hearing in the Budget and Finance Committee of the Portuguese Parliament held on 14 October 2020, the President of the Board of the Portuguese Competition Authority (“PCA”), Margarida Matos Rosa, highlighted, *inter alia*, the work of the PCA in promoting a level-playing field for companies wishing to enter, or already active in, the financial sector in Portugal.

The PCA has been keeping a close eye on this sector since 2018, having: (i) published an Issues Paper entitled “Innovation and Competition in the Financial Sector in Portugal” on the activity of, and the barriers faced by, new companies providing technological services on the financial sector (notably, payment services and crowdfunding activities); and (ii) addressed recommendations to the government in the context of the transposition of the Payment Services Directive 2 (“PSD2”).<sup>1</sup>

The main criticisms concern the slow progress in establishing the groundwork for the innovative developments which are currently changing the dynamics of the financial services market, and the fact that the current national regulatory framework does not promote entry and expansion of fintechs. On the contrary: while competitive payment solutions rapidly pop up in other Member States, in Portugal the sector seems practically stagnated.

At the hearing, Margarida Matos Rosa announced that the PCA remained watchful, having recently submitted a questionnaire to new financial service providers, particularly those active in the provision of payment services. From the more than 80 replies received in the meantime—from companies active in the national market and companies *trying* to enter—the PCA preliminarily concluded that there are two main barriers to entry in this market:

1. Difficulty in accessing the settlement infrastructure system SICOI, managed by the Bank of Portugal and SIBS (which, in turn, is owned by some of the major banks in the country). New entrants are, therefore, dependent on the actions of incumbent operators.
2. Excessive dependence on the Multibanco scheme (for the payment of invoices, for instance). The payment of tax and energy invoices in Portugal from foreign accounts is not yet as simple and immediate as it should be.

President Margarida Matos Rosa concluded her initial statement at the hearing mentioning that, although it was understandable that the goal of financial stability would incentivise the protection of incumbent operators, the Portuguese legislator should be mindful of the benefits of an effective competition policy, because shielding incumbent banks from competition will not help them in the long term.

**Cláudia Coutinho da Costa**  
*Vieira de Almeida*

**João Francisco Barreiros**  
*Vieira de Almeida*

<sup>1</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, [2015] OJ L337/35, 23.12.2015.

## Portugal

### ANTI-COMPETITIVE PRACTICES

*Advertising sector—trade associations—procurement practices—stipulating maximum number of bidders—fine*

☞ Advertising industry; Anti-competitive practices; Fines; Portugal; Public procurement; Tenders; Trade associations

#### Portuguese Antitrust agency concludes probe into associations of advertisers and advertising agencies

On 20 October 2020, the Portuguese Competition Authority (“PCA”) adopted a final decision into the alleged anti-competitive practices of two Portuguese business associations: the association of advertisers APAN (“*Associação Portuguesa de Anunciantes*”) and the association of advertising agencies APAP (“*Associação Portuguesa de Agências de Publicidade, Comunicação e Marketing*”). One of them was fined, while the other walked away unscathed.

The investigation was opened in 2018, following a complaint. In September of the same year, the premises of both associations were raided by the PCA.

On 17 July 2019, the competition watchdog issued a Statement of Objections accusing both associations of preventing free participation in procurement tenders. Under the initial theory of harm, both associations had approved and recommended the 2009 “Guide for Good Practices in Advertising Procurement”, according to which associated members should limit procurement bids to a maximum of four advertising agencies.

More than a year after making the allegation, the PCA adopted a final decision fining APAP €3.6 million for approving a “Commitment” setting a maximum number of bidders per tender and monitoring its implementation, by issuing warnings to associates and pushing for the boycott of tenders involving more than the stipulated number of bidders. This behaviour lasted at least three and a half years. Additionally, the final decision imposes the immediate revocation of the rules in question and orders APAP to refrain from interfering in procurement tenders by, e.g., urging its associated members not to participate, or to withdraw, from non-compliant tenders.

The charges against APAN were dropped, as the PCA did not find sufficient evidence that the advertisers’ association had been involved in the endorsement of the “Commitment”. This is one of the very few cases where the PCA has decided to close an investigation against an entity after it had formally accused it of competition wrongdoing.

APAP represents more than 30 corporate communications agencies, which together achieved an annual turnover of €177 million. Under the decision, APAP’s board members are jointly and severally responsible for payment of the fine.

Undertakings should carefully assess any dubious practices carried out in the context of associations to which they belong, since enforcement of competition law within the context of business associations has been one of the priorities of the current Board of the PCA. Since 2017, the Portuguese agency has undertaken four investigations into alleged collusive behaviour adopted by trade associations, in the following sectors: advertising, driving schools, specialised credit and leasing, factoring and renting.

**Cláudia Coutinho da Costa**  
*Vieira de Almeida*

**João Francisco Barreiros**  
*Vieira de Almeida*

## Portugal

### MERGER

*Phase II in-depth investigation—ceramic tile sector—risk of input foreclosure—risk of barriers to competition concerning indispensable input materials*

☞ Ceramics; Investigations; Mergers; Portugal

### **Merger review of Pigments Spain/Ferro Assets transaction enters Phase II**

On 15 October 2020, the Portuguese Competition Authority (“PCA”) announced that it had decided to open an in-depth investigation into concentration Ccent. 16/2020—*Pigments Spain/Ativos Ferro*.

The concentration, filed with the PCA on 8 May 2020, consists of the proposed acquisition of sole control by Pigments Spain, S.L. over undertakings and assets currently owned by Ferro Corporation which is active in the provision of coatings to the ceramic industry (Ferro Assets).

The acquirer is a Spanish company, part of the Esmalglass-Itaca-Fritta group, which is mainly active in the provision of coating solutions used in ceramic tiles. The group is active in Portugal through its subsidiary Esmalglass Portugal S.A.

Ferro Assets are active worldwide, mainly in the development, manufacture and supply of ceramic tile coatings. The Portuguese assets being acquired belong to the Ferro Corporation’s subsidiary Ferro—Indústrias Químicas, Lda.

The PCA’s Phase I market investigation indicated that the entity resulting from the transaction may have the ability and incentive to adopt input foreclosure strategies, i.e. worsening its sales’ conditions, such as on price, quality and variety. This could create significant barriers to competition, specifically in the production and supply of enamels, enameled paints and digital paints, which seem to be indispensable inputs to the ceramic floor and tile industry.

A Phase II investigation means more time—60 more business days—for the competition enforcer to carry out an exhaustive probe into the effects of the concentration in the Portuguese market and to adopt a final decision.

**Cláudia Coutinho da Costa**  
Vieira de Almeida

**João Francisco Barreiros**  
Vieira de Almeida