

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