

## MARKET INVESTIGATION

*Hemodialysis care sector—  
significant entry barriers—  
specific recommendations*

↳ Barriers to entry; Blood; Medical treatment; National competition authorities; Portugal; Sector inquiries

### **You shall not pass: the Portuguese Competition Authority (“PCA”) identifies entry barriers in the hemodialysis care sector and issues recommendations**

Following an analysis of the hemodialysis care sector in Portugal, the PCA found significant barriers to the opening of new facilities.

Some of the barriers identified are the following: (i) legal uncertainty in the National Health System private contracting framework; (ii) multiplication of long-lasting licensing procedures; and (iii) fragmented regulatory rules.

On top of that, the PCA pointed out a high level of concentration in this sector. Private clinics NephroCare, Diaverum, DaVita and B. Braun operate 81% of the facilities and treat 88% of the patients. Such high concentration can further reduce the incentives to compete in terms of both quality and proximity.

In order to eliminate entry barriers and ultimately improve the welfare of patients, the PCA addressed a set of seven recommendations to the Portuguese Government, amongst which are: (i) prompt publication of the standard clauses for hemodialysis sector; (ii) establishment of a one-stop portal for both licensing and convention procedures; (iii) introduction of a comparative system with indicators of the quality of facilities; and (iv) embedding the principle of technology neutrality in the best practice guidelines for hemodialysis.

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## Portugal

### ANTI-COMPETITIVE PRACTICES

*Investigation—telecommunications sector—cartel—territorial restrictions and price fixing—fine—leniency*

☞ Cartels; Fines; Leniency programmes; Market sharing; Mobile telephony; Portugal; Price fixing

#### Portuguese competition watchdog sanctions MEO for an alleged cartel with NOWO

On 3 December 2020, the Portuguese Competition Authority (“PCA”) announced it had imposed a €84 million fine on MEO, a telecommunications operator, for allegedly entering into a cartel for market sharing and price fixing of mobile services with NOWO.

According to publicly available information, the companies agreed that NOWO would not make mobile services available outside its footprint—i.e., the geographic areas covered by its fixed communications network. Furthermore, the competition watchdog took the view that NOWO agreed with MEO not to provide mobile offers up to five euros and to increase prices and reduce the quality of bundled offers of fixed and mobile telecommunication services.

According to the PCA, the alleged cartel was in force for 11 months, from the beginning of January until the end of November 2018. The competition watchdog had previously argued, in the Statement of Objections (“SO”), that the cartel had been in force between 2017 and 2018, having thus reduced the duration of the alleged practice.

Because the procedure was opened by the PCA in November 2018, following NOWO’s leniency application, NOWO benefited from a fine exemption. This decision is subject to appeal to the Competition, Regulation and Supervision Court. MEO has already publicly expressed its intention to do so.

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## Portugal

### ANTI-COMPETITIVE PRACTICES

*Investigation—infraction decisions—food, drink and personal care retail sectors—hub and spoke agreements—anti-competitive pricing practices*

☞ Food industry; Hub and spoke practices; Portugal; Price fixing; Retail trade

#### Hub-and-spoke in the spotlight: the retail sector taken to task

By the end of 2020, the Portuguese Competition Authority (“PCA”) had shaken up the retail sector by adopting two Statement of Objections (“SOs”) and two infringement decisions against a number of large food retail chains and suppliers for price fixing hub-and-spoke practices.

On 24 November 2020, the PCA adopted a SO against the food retailers Continente, Pingo Doce and Auchan, as well as Active Brands, an alcoholic beverages supplier, for alleged price collusion in the alcoholic beverages market.

Two weeks later, on 2 December 2020, the competition watchdog delivered a SO to the same three abovementioned retailers and Baidersdorf, a supplier of cosmetic and personal care products, for similar alleged conduct.

Finally, just before Christmas, on 21 December 2020, the PCA imposed two infringement decisions on six food retailers, two drinks suppliers, a board member and a director for alleged hub-and-spoke conduct. The fines totalled about €304 million euro.

The first infringement decision concerned practices between Continente, Pingo Doce, Auchan and Intermarché, as well as Sociedade Central de Cervejas, a supplier of alcoholic and non-alcoholic drinks. In the second decision, the PCA sanctioned the same group of retailers, Lidl, Cooplecnorte and the spirit drinks supplier Primedrinks.

In all of these four cases, the PCA takes the view that the companies engaged in hub-and-spoke practices between 2008/2007 and 2017, whereby retailers came into contact with the same supplier—respectively, Active Brands, Baidersdorf, Sociedade Central de Cervejas or Primedrinks—to align the retail prices for several products, thus restricting price competition between retailers.

These cases follow a wider investigation by the PCA into the retail sector since 2017. On 21 March 2019, the PCA had issued three SOs against six large food retailers and three suppliers of alcoholic and non-alcoholic beverages for alleged hub-and-spoke practices (first set of hub-and-spoke cases). Two of these SOs led to the aforementioned infringement decisions. Recently, on 24 June 2020, the competition watchdog had sent a SO to three food retailers and to a supplier of pre-packaged bread and cake for the same practices. And 10 days later, the PCA issued another SO for hub-and-spoke practices to six food retailers and two alcoholic and non-alcoholic beverages’ suppliers (second set of hub-and-spoke cases).

Furthermore, the PCA claims to be conducting more than a dozen investigations in this sector. Therefore, further developments should be expected in the near future.

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## Portugal

### ANTI-COMPETITIVE PRACTICES

*Investigation—land surveying market—decision by association of undertakings—price coordination*

☞ Portugal; Price fixing; Professional bodies; Surveyors

#### **Decisions of Associations of undertakings under the spotlight once again: the PCA issues a Statement of Objections against the National Association of Land Surveyors**

On 11 November 2020, the PCA issued a SO against the National Association of Land Surveyors (“NALS”) for allegedly fixing prices in the services of land surveying market.

The PCA found that the NALS adopted and published on its website a price schedule which provided detailed criteria for determining fees for land surveying services (e.g., by area covered and hours worked), together with minimum fees. The PCA takes the view that the NALS intended to standardise the prices practised by its the members (729 members which provide, inter alia, surveying services to civil construction and public works in Portugal). The investigation was opened in May 2020 following a complaint.

The PCA has been attentive to competition law infringements committed by associations of undertakings, having imposed, on 20 October 2020, a €3.6 million fine against APAP (*Associação Portuguesa de Agências de Publicidade, Comunicação e Marketing*) for allegedly restricting competition in advertising services.

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