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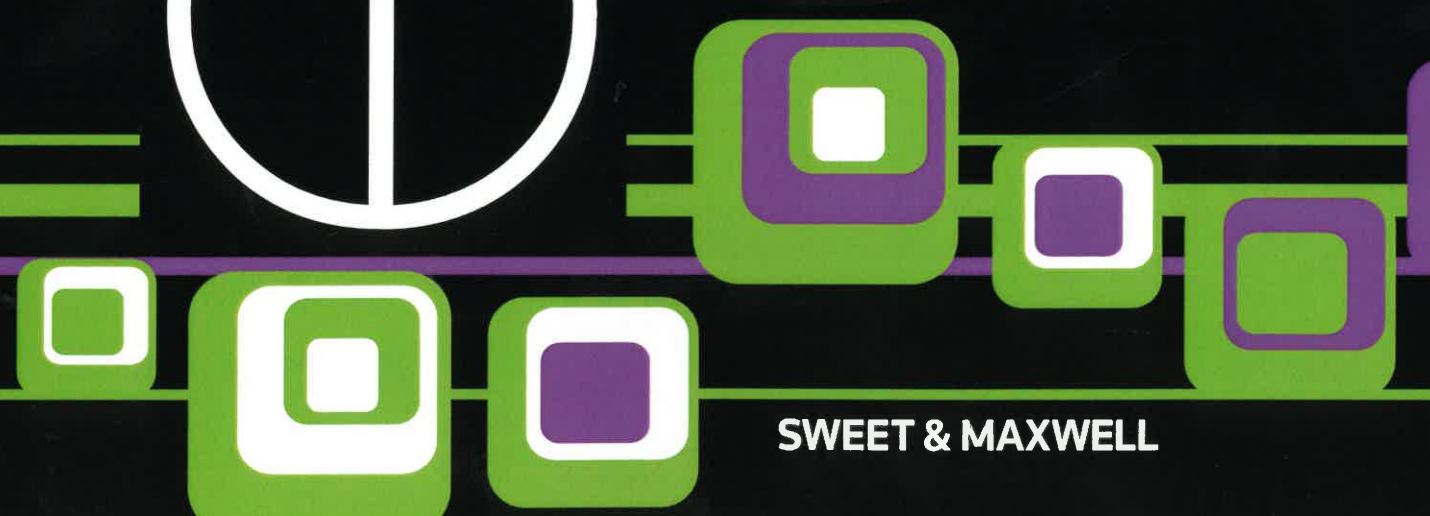


# EUROPEAN COMPETITION LAW REVIEW

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## Portugal

### PROCEDURE

*Motor vehicle warranty market—competition authority information request—incomplete information—infringement—fine—appeal dismissed*

☞ Extended warranties; Fines; Investigations; Motor vehicles; National competition authorities; Portugal; Provision of information

### Portugal—Court confirms fine on Ford Lusitana for providing incomplete information

On 13 October 2017, the Competition, Regulation and Supervision Court (TCRS) confirmed the Portuguese Competition Authority's (PCA) decision of 15 September 2015 imposing a €150,000 fine on Ford Lusitana SA (Ford Lusitana) for providing incomplete information to the PCA. In the context of a market supervision procedure raised against the restrictive extended motor vehicle warranty contracts, the PCA sent Ford Lusitana a request for information. Ford Lusitana replied with information and documentation regarding the warranties it provided. However, the PCA found out later that Ford Lusitana had failed to deliver documentation regarding certain of its warranty contracts. In April 2015, the PCA opened proceedings against Ford Lusitana for providing false, inaccurate or incomplete information, which culminated in a fine of €150,000. A similar fine was applied in the same year to Peugeot Portugal Automóveis SA, which was also found by the PCA to retain certain requested information. In appeal, the TCRS dismissed Ford Lusitana's arguments, confirming that the appellant had provided incomplete information in response to the request of the PCA, and considered that the company had acted with *dolus eventualis* and was aware of its illegal conduct.

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## Portugal

### PROCEDURE

*Leasing association—exchange of information—commitments offered—public consultation*

☞ Commitments; Consumer credit; Information agreements; Investigations; National competition authorities; Portugal; Trade associations

On 23 April 2015, the Portuguese Competition Authority (PCA) opened proceedings against ALF—Associação Portuguesa de Leasing, Factoring e Renting (ALF), a Portuguese association of specialised consumer credit providers, for an alleged infringement of competition rules. The PCA investigation revealed that ALF had directly promoted, within its associated members, the use of a system for the exchange of sensitive strategic information related to products and services in the markets for leasing, factoring and renting.

The type of information, its age, the level of disaggregation and the target of the exchanged information led the PCA to preliminarily conclude that the system institutionalised by ALF had likely promoted the reduction of uncertainty in the market, allowing participants to act in the possession of sensitive information of its competitors, as well as frequently monitor their strategic behaviour.

In response to these concerns, ALF presented a set of commitments destined at reducing the strategic value and the restrictive potential of the information exchange, namely:

- non-disclosure of individualised data with an age of less than six months to its members;
- provision of access to such data to associated companies not participating in the collection and submission of information after a period of three months from the disclosure of information to associated companies participating in the information exchange system, and through ALF's website;

- provision of access to such data to any potential new entrants who wish to analyse their entry into any of the sectors of activity in which ALF members are active, after a period of six months from disclosure of information to the members participating in the information exchange system; and
- amending the “Manual of Procedures of the Statistic System of ALF” in line with commitments above, and its publication on ALF’s official website, followed by the reporting of the approval of these amendments to the associated undertakings.

Following the mandatory public consultation regarding this set of commitments, a final decision will be adopted by the PCA. Pursuant to the Portuguese Competition Act, if the PCA considers that the offered commitments are sufficient to likely eliminate the negative effects of the investigated practice on competition, then it will adopt a decision making the commitments binding on ALF.

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## Portugal

### GENERAL

*Supply of natural gas—sector inquiry—barriers to entry and expansion identified—recommendations*

Barriers to entry; Competition law; Co-operation; Gas supply; National competition authorities; Natural gas; Portugal; Spain

On 25 October 2017, the Portuguese Competition Authority (PCA) published a non-confidential version of its sector inquiry report on the supply of natural gas to industrial consumers. In its report, the PCA identifies several barriers to entry and expansion which may be hindering the performance and competitiveness of the supply of natural gas to Portuguese industries (in which it represents an important share of the cost structure):

- High degree of concentration, with two main operators accounting for more than 70% of the market: Galp, the historic importer of natural gas in Portugal, which is still the market leader, followed by EDP. The PCA also found that between 2010 and 2016, natural gas prices paid by Portuguese industries were consistently amongst the highest of the 28 Member States of the EU.
- Considerable constraint to efficiency resulting from the lack of integration between the Portuguese and the Spanish markets, the double application of transmission network access tariff in the cross-border trade between the two countries and the high access costs to the Liquefied Natural Gas (LNG) terminal in Sines faced by small operators.
- General increase in network access costs, as well as an increase in import costs, in 2013/2014, which coincided with the strengthening of trading activity of the historic importer.

The PCA therefore concluded that the combined effect of these bottlenecks restricted the ability of retailers to import natural gas through pipeline at competitive prices and limited the use of the Sines LNG Terminal, thereby affecting the competitiveness and performance of the Portuguese Natural Gas System and the final prices paid by industrial clients.

As such, the PCA recommends:

- the strengthening of intergovernmental co-operation between Portugal and Spain, so as to implement high-level measures capable of granting the extension of the Iberian Natural Gas

Market to Portugal, as well as to eliminate the double application of transmission network access tariffs in cross-border trade between Portugal and Spain; and

- the adoption of measures by ERSE, the Energy Services Regulator, in order to foster the use of the LNG Terminal in Sines by small-scale operators, such as (a) the adoption of market-based LNG auctions with a dedicated delivery point at the Sines LNG Terminal, granting small-scale competitors the opportunity to acquire LNG at competitive conditions, and (b) measures designed to allow the exchange of natural gas between different delivery points of the National Gas System (swaps between locations), namely between the Sines LNG Terminal and the interconnection with Spain through the pipeline at Campo Maior, providing smaller competitors with more options regarding the destination for the LNG received at the Sines Terminal.

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## Spain

### ABUSE OF A DOMINANT POSITION

*Pharmaceutical marketing data—exclusivity—most favoured client clauses—alleged abusive behaviour—commitments decision*

☞ Abuse of dominant position; Commitments; Information agreements; Most favoured customer clauses; National competition authorities; Pharmaceutical industry; Spain

On 13 July 2017, the Spanish Competition Authority (NMCC) closed the TFEU art.102 and Competition Act art.2 proceedings related to the supply of pharmaceutical marketing data to IMS Health (IMS) by means of a commitments decision.

The NMCC initiated the investigation, as a result of the complaint lodged by Health Market Research España (HmR) against IMS for abuse of dominant position by establishing a network of data supply agreements containing a number of provisions having an effect akin to exclusive supply. The data supply agreement contained most favoured client clauses under which IMS was to be afforded at least similar terms and economic conditions as those granted to other information companies to which the data supplier (distribution wholesaler) supplied the pharmaceutical marketing information, or similar terms as those afforded internally to its relevant business unit in case the distribution wholesaler itself competed with IMS. The agreements also overcompensated pharmacies that supplied IMS exclusively and also overcompensated (although to a lesser degree) if that exclusive supply was breached in favour of (only) a single competitor of IMS.

The NMCC agreed to close the case with the following commitments aiming at limiting IMS's contractual freedom in connection with the purchase of data:

- IMS gives up the contractual provisions of most favoured client. In practice, this means that wholesalers are now allowed to give IMS' competitors (such as HmR) better contractual conditions than those afforded to IMS.
- IMS gives up the contractual provision of anticipated termination by means of which IMS may terminate the data supply agreement in case the wholesaler decides to sell the pharmaceutical data to third parties or decides to compete with IMS itself.
- IMS commits not to increase the established percentages of reduction of price paid for the pharmaceutical marketing data (40% in case a wholesaler supplies its data to one operator

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- Advocate General Wahl's Opinion in *Intel Corporation Inc. v European Commission*: blurred lines and false dilemmas?  
*Sheryl Khoo*

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