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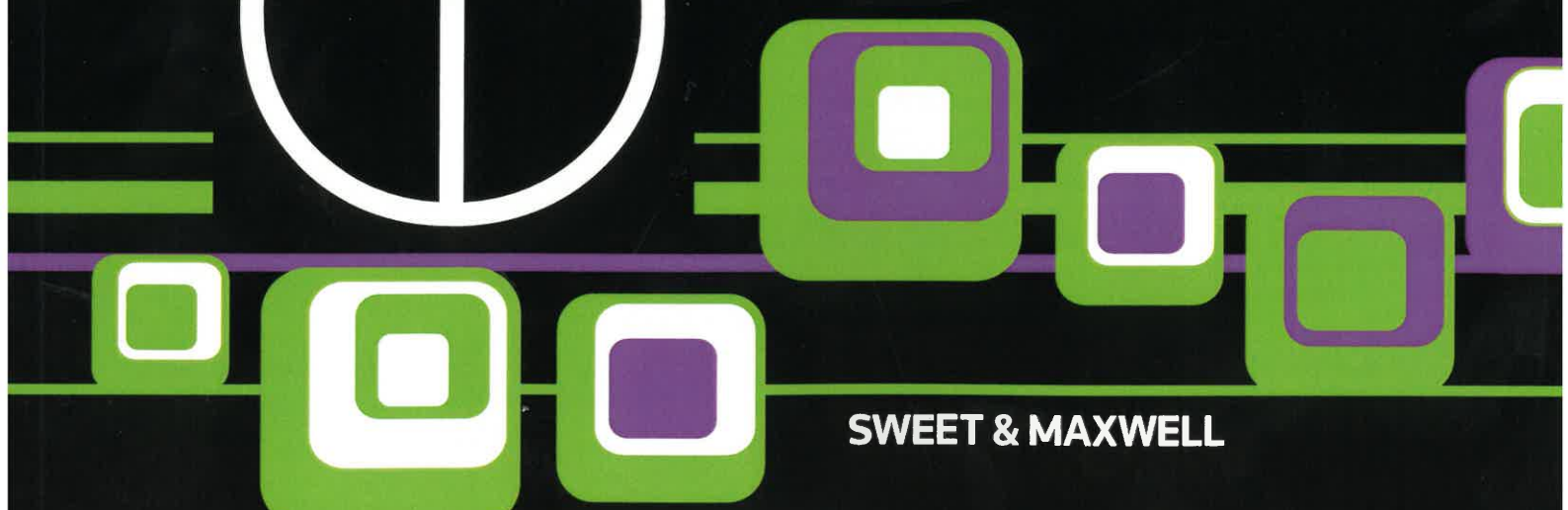


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of collective dominance). Thirdly, the application of the 2017 Act is going to be quite fact-specific in practice with cases turning on their specific facts so it should not be seen as a panacea for all situations. Finally, as it is an exception to a general rule, one can anticipate that it will be construed narrowly.

The 2017 Act is somewhat unfortunate in that it is carving out particular groups of people from the application of competition law. It seems unfortunate that primary legislation was enacted just to deal with three very narrow categories of persons, namely, actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists. While it might be extended to others, this is a very narrow exception. The use of primary legislation to protect particular categories of persons from competition law should be done in the most exceptional of circumstances and it is difficult to see a broader policy reason why actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists deserve such protection and exemption. The fact that the “Door of Exemption from Competition Law” has been opened may prove significant in the future to more than just those who are currently passing through this new doorway.

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MERGER

Failure to notify reportable transaction—dental clinics—settlement—financial penalty imposed

☞ Dental services; Fines; Merger notices; Mitigation; Non-compliance; Portugal

On 27 December 2017, the Portuguese Competition Authority (PCA) fined Vallis Sustainable Investments I, Holding S.à.r.l. and Vallis Capital Partners, SGPS, S.A. for failure to notify a merger to the PCA subject to prior notification.

According to the Portuguese Competition Act, mergers that meet certain criteria are subject to prior notification to the PCA and cannot be implemented without the notification and the respective clearance decision. In the present case, the group acquired sole control of a network of dentalcare clinics and did not file the transaction before the PCA.

The parties introduced a settlement submission during the proceedings, took full responsibility for the facts of the case and agreed to not bring a court action. The PCA took into consideration that the parties reported the infringement, subsequently notified the merger voluntarily and suspended therefrom all voting rights on the target. In addition, the parties engaged in full co-operation with the investigation, which concluded that the merger did not stand to create any competition concerns or tangible benefits to the parties.

A penalty of €38,500 has been imposed on the group.

This is the second time that the PCA has imposed fines on firms for failing to notify a merger subject to prior notification. On 26 June 2014, the PCA fined three undertakings (Farminveste 3 - Gestão de Participações, SGPS, Lda., Farminveste - Investimentos, Participações e Gestão, S.A., and Associação Nacional de Farmácias) for having implemented a concentration pertaining to the acquisition of control of ParaRede/Glantt, before filing it before the PCA. Also in this case the parties introduced a settlement submission during the proceedings, benefiting from a reduction of the fine.

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GENERAL

*Policy Priorities Published—
digital economy—bid-rigging—
listing of priority sectors*

☞ Collusive tendering;
Competition policy; Information
technology; National competition
authorities; Portugal; Public
procurement

On 29 December 2017, the Portuguese Competition Authority (PCA) made public its Competition Policy Priorities for the year of 2018. Marking its 15th year of existence, the PCA renews its commitment to strengthening the detection and sanctioning of restrictive practices and fostering compliance with competition law in the main sectors of the Portuguese economy. In 2018, the PCA will seek to intensify transparency towards the public in order to better communicate how increased competition benefits the consumer.

The PCA highlights that it will continue to prioritise the strengthening of the ability to detect cartels and, on merger control, will focus on swiftness and efficiency to avoid imposing unnecessary burdens on businesses and compromising the efficient functioning of competition in the national territory.

This new year should equally bring a digital focus, as the PCA intends to strengthen its investigative capacity in the digital environment by focusing on promoting competition in sectors undergoing digital innovation. The PCA will thus be attentive to new practices which may lead to the exclusion of competitors and contribute to raise awareness of technological market barriers that can prevent the entry of new competitors or distort competition.

The PCA equally expects to facilitate and accelerate the investigation of detection of bid-rigging in public procurement *ex officio*, following the entry into force of the new Portuguese Code of Public Contracts. As of 1 January 2018, the PCA will have direct access to all information available on the platforms related to public procurement procedures, including the Public Works Observatory (Observatório das Obras Públicas).

The PCA establishes and publishes its annual competition policy priorities without any sectoral reference regarding the exercise of its sanctioning powers. In the exercise of its regulatory and supervisory powers, the PCA will analyse and monitor key sectors of the Portuguese economy and assess the impact of public policies on competition to subsequently provide opinions and recommendations that foster competition in the market. The PCA has established the following economic sectors as priority: Banking, Financial Markets and Insurance, Telecommunications & Media, Energy & Fuels, Health & Pharmaceuticals, Education, Distribution & Food, Environment and Waste Management, Liberal Professions, Transport & Infrastructures and Construction.

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- European Competition Law Annual 2013: Effective and Legitimate Enforcement of Competition Law
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