



EU AND COMPETITION LAW | DISPUTE RESOLUTION

Annual Overview – Portuguese Competition Law Enforcement

This alert memo provides an overview on the current competition enforcement landscape in Portugal. The Portuguese Competition Authority (PCA) had another very active year and there were significant developments with respect to private enforcement as well.

1. The most activist period of the PCA's existence has resulted in record fines.

During the term of the current PCA executive, there has been a significant uptick in the PCA's enforcement output. The headline figure – total fines – is in the region of **over €1.5bn since 2016**. More than **€1bn of that amount related to fining decisions since 2019**. In relation to the PCA's broad hub-and-spoke investigation alone (nine infringement decisions adopted since 2020), fines have totaled €681 million. The court appeal stage of these cases began in October 2022, and we should see developments in 2023. Portugal **appears to be the EU Member State with the greatest hub and spoke enforcement record to date**. It will be interesting to see how and to what extent the PCA decisions withstand court scrutiny and whether the Competition Court seeks help from the EU Courts in the interpretation of the law in this area.

2. Current enforcement priorities – cartels, digital economy and labour markets.

The immediate enforcement focus of the PCA will, in our view, continue to be on the detection of cartels (in particular those that relate to public procurement) and pursuing cases that have a labour market element to them. Regarding cartel detection/enforcement, in 2022 **the PCA received 8 leniency applications**. The PCA also has a long-standing objective of the enforcement of the competition rules in digital markets. To date, there has been little activity on this front, although this may change in 2023.

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3. Merger control – renewed focus on gun-jumping.

In 2022, the PCA received 62 merger notifications. One case was referred to Phase 2 near the end of 2022, but there were **no prohibitions in 2022 and only one case where commitments were required (at Phase 1)**. The main point of interest is the increased focus on gun-jumping. In 2022, the PCA adopted its highest ever gun-jumping fine (€2.5 million – previously, the highest fine had been €300k) and conducted five gun-jumping investigations. In December 2022, the PCA adopted [Gun Jumping Guidelines](#) that **focus on integration planning and the exchange of information during due diligence**. This is likely an area where the PCA will seek more information from merging parties during the review process. Aside from that, the PCA continues to **clear non-problematic transactions relatively swiftly – in some cases in as little as 3/4 weeks** (the Phase I review period is 30 working days).

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4. Private enforcement – new plaintiffs and interest from the international plaintiff bar.

The key development in 2021 was the emergence of competition class actions. In 2022, a number of additional class actions were brought by the consumer association that has been the most active in this respect (Ius Omnibus). **New plaintiffs have also emerged, with the assistance of Hausfeld**. Portugal is a jurisdiction **that has caught the attention of the international class action plaintiff bar and litigation funders**, so we expect more developments on this front in 2023. Last year also marked **the first three follow-on judgments in the Trucks litigation** (two of which resulted in the award of the total damages being claimed; one of which failed due to the application of the statute of limitations).

5. New Competition Act.

The amendments to the Portuguese Competition Act that incorporate the ECN+ Directive entered into force in September 2022. The key takeaways are that, as a result of these amendments: (i) the PCA **has (even) greater scope to impose higher fines**; (ii) there is an **extended deadline to appeal PCA infringement decisions** (60 days instead of 30); and (iii) the **suspension of the statute of limitations** during the appeal period in competition proceedings is contemplated, amongst other points of interest. An additional point to note is that the PCA is increasing its e-discovery capabilities.

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6. New PCA board.

The current President of the PCA – Margarida Matos Rosa – **ended her 6-year term in December 2022**. The current President has been one of the key drivers of the PCA's recent activist agenda. Her successor has been named as **Nuno Cunha Rodrigues**. Prof. Cunha Rodrigues is an academic and his appointment was confirmed by Parliament on 1 February 2023. In his declarations before Parliament, Prof. Cunha Rodrigues indicated that, under his leadership, the PCA will dedicate resources to a number of key areas:

- a) **The investigation of potential crisis cartels** resulting from recent global trends such as the COVID-19 pandemic and inflationary pressures.
- b) On potential instances of **bid-rigging of public tenders**.
- c) On transactions with a **gun-jumping or killer acquisition angle**.
- d) On the application of the competition rules to **digital markets**.
- e) On the **development of the PCA's capabilities** to detect anti-competitive conduct.

We expect that 2023 will continue to be busy across all fronts. Please get in touch if you have any questions regarding any of the points covered in this memo or if you have any questions regarding Portuguese competition law. ■