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Dominant abuse – from a standing start



A clear trend in recent years has been a growing emphasis by Portugal's Competition Authority (Autoridade da Concorrência – AdC) on alleged abuses of dominant undertakings, says Miguel Gorjão-Henriques, competition partner at Sérvulo & Associados, albeit from a virtual standing start.

"Historically, and despite Portugal entering the European Community in 1986, Portuguese industry and commerce have not been particularly sensitive to a competition culture or good competition practices, and this has been little helped by a relative lack of prosecutions by the authorities."

The most evident exception, he notes, has been in the telecoms sector where the incumbent, Portugal Telecom, has been subject to serious pressure.

"Generally speaking however, in small countries such as Portugal, companies continue to rely on the narrowness of the relevant markets at stake to grant them effective immunity. But this transmits the erroneous idea that any behaviour is legitimate even though it involves the risk of eliminating the competition and being detrimental to consumers."

Recent months have though seen the AdC concentrate more of its efforts towards restrictive practices in those sectors with an obvious inflationary impact, he says – for example, food distribution and consumption –

while other sectors remain under constant scrutiny, notably the banking, telecoms, construction, and now pharmaceutical industry.

"This is clearly a result of the inquiry currently being conducted by the European Commission, but also governmental pressures aimed at reducing the budgetary impact of medicines because of the differences in prices between the Portuguese and other European markets."

The advice he offers to clients is always to ensure that they operate strictly within competition guidelines, and he senses now a growing willingness by companies to evaluate their own compliance as well as to assess the behaviour of competitors.

"In a time of crisis this is even more urgent and, of course, difficult, for there is the need to carefully ascertain whether a specific behaviour could be objectively justified and correspond to the defence of legitimate commercial interests," he says.

In any event, companies need to appreciate the consequences of a prosecution which could prove disastrous. "Not only because of the scale of the fines involved – up to 10% of global turnover – but also because of the significant resources needed to defend any procedure, and of course the negative impact on consumers, competitors, and the liability resulting from misconduct."



Miguel Gorjão-Henriques

En los últimos años, se está percibiendo una tendencia hacia la actividad por parte de la Autoridad de la competencia portuguesa en temas vinculados al abuso de mercado dominante, apunta Miguel Gorjão-Henriques, de Sérvulo & Associados. Las empresas deben, por lo tanto, ser conscientes de las directrices de este campo y además, tener una visión amplia de las operaciones que acaecen en el mercado en el que trabajan.