



EU AND COMPETITION LAW

DECEMBER 2014

THE BPP JUDGMENT

On 12 December 2014, the General Court ruled on the action for annulment filed by Banco Privado Português, SA (hereinafter, “BPP”) and Massa Insolvente do Banco Privado Português, SA concerning a Commission decision dated 20 July 2010.

On 12 December 2014, the General Court ruled on the action for annulment filed by *Banco Privado Português, SA* (hereinafter, “BPP”) and *Massa Insolvente do Banco Privado Português, SA* concerning a Commission decision dated 20 July 2010¹. Said decision, upheld by the General Court, declared the State aid received by BPP incompatible with the internal market as from 5 December 2008 and thus ordered the Portuguese Republic to secure its recovery.

The abovementioned State aid consisted of a bank guarantee issued by the Portuguese State on a loan of € 450 million granted to BPP by a consortium of six Portuguese banks in order to rescue BPP from the serious liquidity issues it was facing at the time. This guarantee was granted in December 2008 for a period of 6 months and notified to the Commission. In March 2009, the Commission decided, as an emergency measure, not to raise objections to this bank guarantee. However, Portugal was required to submit a restructuring plan for BPP within six months (by 5 June 2009) and to notify the Commission of any extension of the bank guarantee’s duration.

The duration of the bank guarantee was indeed extended and allegedly the Commission was informed but never formally notified.

Portugal also purportedly failed to submit the required restructuring plan, which in the Commission’s view rendered the aid incompatible with the internal market since 6 June 2009. In the meantime, on 15 April 2010, the Bank of Portugal revoked BPP’s banking license, which led to its bankruptcy and to the enforcement of the bank guarantee by the bank consortium.

The General Court highlighted that the bank guarantee granted by Portugal to BPP conferred to the latter an advantage deriving from State resources since under normal market conditions BPP would not have been able to obtain a loan at such advantageous conditions. Also, the fact that BPP’s economic position was strengthened by this bank guarantee, allowing it to continue its activity, rendered this loan liable to affect trade between Member States. Furthermore, the General Court upheld the Commission’s view that the aid was to be recovered as from the date it had been granted (5 December 2008) and not only from the end of its provisional authorisation (5 June 2009).

Finally, the General Court asserted that this case was not comparable to that of *Banco Português de Negócios (BPN)* since in the latter case a restructuring plan had actually been submitted by the Portuguese authorities to the Commission, albeit late.

¹ Case T-487/11, *Banco Privado Português et al. v. Commission*.

This Informative Note is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Informative Note may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Ricardo Oliveira** (ricardo.oliveira@plmj.pt) or **Inês Melo Sampaio** (ines.melosampaio@plmj.pt).

Portuguese Law Firm of the Year
Chambers European Excellence Awards, 2009, 2012, 2014

Iberian Law Firm of the Year
The Lawyer European Awards, 2012

Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2011-2014