



APR. 20

EU AND COMPETITION LAW

News - Competition law and policy

4th quarter 2019

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PORTUGAL

I. Portuguese Competition Authority

Portuguese Competition Authority conducts dawn raids in the private surveillance sector

On 18 November 2019, the Portuguese Competition Authority (PCA) announced that it had carried out dawn raids at five companies operating in the private surveillance sector, based on suspicions of alleged anti-competitive practices.

The PCA, having ordered the case be subject to secrecy, only made it known that the dawn raids took place in the district of Lisbon and that the case was opened in the context of the campaign to Fight Bid Rigging in Public Procurement.

Portuguese Competition Authority issues recommendations on loyalty in Telecom Services

On 9 December 2019, the Portuguese Competition Authority (PCA) issued a Report on Loyalty in Telecom Services, having identified vulnerabilities in terms of competition in this sector, which are expressed in higher prices compared to those charged in the European Union, low consumer mobility between companies and a high number of consumer complaints.

In the PCA's opinion, the current loyalty policies, with minimum contractual periods and charges for consumers wishing to terminate contracts before the loyalty period, lead to less competition and, consequently, higher prices and lower quality and innovation.

Based on this analysis, the PCA presented a set of eight recommendations addressed to the legislature and to the sector regulator. Among these, we can highlight the narrowing of the possibilities of implementing a new loyalty period and the increase of information to be provided to customers before contracting.

Portuguese Competition Authority accuses MEO and NOWO of collusive practices

On 20 December 2019, the Portuguese Competition Authority (PCA) sent a Statement of Objections accusing MEO and NOWO of alleged collusive practices to share the market and fix prices for mobile communications services.

According to the PCA, the alleged practices described, which took place in 2017 and 2018, resulted in both price increases and reduced quality of services, as well as in restrictions on the geographical availability of services, thus harming consumers.

The PCA began the proceedings in 2018 under a leniency programme started by one of the companies, which now can exercise their rights to be heard.

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issued a Report on
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Portuguese Competition Authority communicates its priorities for 2020

On 26 December 2019, the Portuguese Competition Authority (PCA) issued a press release outlining the list of priorities to 2020.

According to the PCA, the focus of its activities continues to be on detecting, investigating and punishing practices (with emphasis on cartels) that distort the functioning of markets that have the greatest relevance to society. Accordingly, following the study carried out by the PCA on the use of algorithms and big data, a task force will be created dedicated to combating infringements of competition through this type of instruments. In addition, the PCA mentioned in this press release that it wants to continue raising the awareness of companies and public entities of the importance of transparency and respect for competition rules in public tenders.

Regarding merger control, the PCA maintains its priority of its decisions being swift, rigorous and effective.

"In 2019, the Portuguese Competition Authority applied fines totalling EUR 340.5 million in seven sanctioning decisions."

Portuguese Competition Authority approves the acquisition of Grupo Media Capital by Cofina

On 30 December 2019, the Portuguese Competition Authority (PCA) decided not to oppose the concentration whereby Cofina SGPS, SA would acquire sole control of Grupo Media Capital, SGPS, SA.

Although the PCA considered that the merged entity would have significant positions in several markets (for example, in the pay-TV access channel market, the resulting company would become the leading operator), the PCA reported that these positions existed before the transaction. Furthermore, the structural changes in these markets resulting from the merger would be small and the PCA argued that these markets are not highly concentrated.

Despite the authorisation by the PCA, in March 2020, Cofina SGPS, SA confirmed to the Portuguese Securities Commission the withdrawal of this operation.

Portuguese Competition Authority presents its overall results for 2019

The Portuguese Competition Authority (PCA) reported that in 2019 it had applied fines totalling EUR 340.5 million in seven sanctioning decisions in the banking, railway maintenance, insurance, energy, and food retail, sectors. In 2019, the PCA carried out dawn raids in three cases and issued five statements of objections.

Regarding merger control, the PCA conducted two Phase II reviews and opened six investigations for alleged gun jumping.

Finally, it should be noted that the PCA has published a study on digital ecosystems, as well as twenty-five opinions on various sectors.

EUROPEAN UNION

I. Courts

Court of Justice confirms European Commission's decision on dawn raids

On 17 October 2019, the Court of Justice of the European Union (CJEU) confirmed the decision of the General Court (GC), stating that the European Commission (EC), when carrying out a dawn raid on the premises of an ethanol-producing company (Alcogroup), do not have to take precautionary measures concerning documents covered by professional secrecy.

That company appealed against the GC's decision to the CJEU, seeking annulment of the EC's decisions to carry out dawn raids and to proceed with the investigations. According to Alcogroup, the EC obtained, through that second dawn raid, documents intended to prepare the defence of the company in another case opened before the EC, documents in respect of which a doubt was raised whether the EC had read them.

However, the CJEU found the application inadmissible, holding that the EC would always be prohibited from breaching the confidentiality of those documents, adding that there is no rule obliging the EC, in cases of a second dawn raid, to take precautionary measures to protect professional secrecy.

"The European Commission imposed interim measures on Broadcom in an investigation for alleged abuse of a dominant position. It was the first time in eighteen years that this regime had been used."

Court of Justice confirms European Commission's decision on the power cables cartel

On 19 December 2019, the Court of Justice of the European Union (CJEU) confirmed previous decisions of the General Court (GC) and the European Commission (EC), holding that the EC did not impose an excessive fine on certain companies allegedly participating in a cartel in the production of underground and submarine power cables.

At the heart of the matter was an allegation by Fujikura, Furukawa Electric and Viscas of unequal treatment vis-à-vis the European companies, which were also alleged to have participated, and more intensely, in the cartel. This allegation was grounded on the fact that the fine calculation should have been based on the European Economic Area sales and not on their worldwide turnover.

The CJEU held, however, that the EC had duly considered the difference in cartel participation when calculating the fine to be imposed on European undertakings. This differentiation was made by increasing the fine of the European undertakings by 2% compared to the one that was imposed on Asian undertakings (19% vs 17%), thus respecting the principle of equal treatment. The CJEU also said that if only the turnover of the Asian companies in the European Economic Area was taken into account, the amount of the fine to be imposed would be residual and therefore unable to sanction the infringement correctly.

II. European Commission

European Commission imposes interim measures for the first time in 18 years

On 16 October 2019, the European Commission (EC) imposed interim measures on Broadcom in an investigation for alleged abuse of a dominant position. It was the first time in eighteen years that this regime had been used and the first time since Regulation 1/2003 entered into force.

Among these interim measures now applied, one highlight is the prohibition on the use of exclusivity agreements or the granting of discounts or preferential treatment on condition of exclusivity. In the EC's view, the imposition of these measures was urgent, as if Broadcom could continue to make use of these clauses, competition in this market could suffer severe and irreversible damage with the exit or marginalisation of competitors.

These measures will remain in place for three years or until the EC adopts a final decision in the investigation process. The company lodged an appeal against this decision on 23 December 2019.

European Commission opens an investigation into a purchase agreement in the retail sector

On 4 November 2019, the European Commission (EC) announced that it had opened an investigation into the purchase agreement concluded between two French retail groups, Casino Guichard-Perrachon and Les Mousquetaires.

In the EC's view, through this joint venture created at the end of 2014, these two groups may have engaged in anti-competitive behaviour, such as coordinating the development of shop networks and pricing policy, thus going beyond the objective of the purchase agreement.

In addition, the EC noted that there had been some changes in this sector, such as the conclusion of more agreements of this type, which have increased the risk of collusion between competitors.

"In the European Commission's view, these retail companies may have gone beyond the objective of the purchasing agreement."

European Commission opens preliminary investigations into Google and Facebook

In December 2019, it became public knowledge that the European Commission (EC) had opened two preliminary investigations into Google and Facebook to investigate possible infringements committed by these companies by collecting, processing and monetising data from their users for advertising purposes. As part of this investigation, the EC sent out questionnaires to these two companies.

Furthermore, through this investigation, the EC is seeking to find out whether the companies used their dominant position to prevent their competitors from obtaining data from their users. ■