

# INTELLECTUAL PROPERTY & ANTITRUST

## Portugal



# Intellectual Property & Antitrust

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into intellectual property law, the nexus between competition and IP rights, and consideration of industry standards; competition law, including such issues as interactions with copyright exhaustion or first sale doctrines; merger review; specific examples of competition law violations; remedies; economics and application of competition law; recent cases, remedies and sanctions; and other recent trends.

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## INTELLECTUAL PROPERTY

### Intellectual property law

Under what statutes, regulations or case law are intellectual property rights granted? Are there restrictions on how IP rights may be enforced, licensed or otherwise transferred? Do the rights exceed the minimum required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)?

Under Portuguese law, IP rights are statutory rights that are granted under the following legislation:

- the Industrial Property Code;
- the Code of Copyright and Related Rights;
- Decree Law No. 122/2000 (database rights); and
- Decree Law No. 252/94 (computer programs).

The above-mentioned legislation covers patents, trademarks, designs, utility models, logotypes, topographies of semiconductor products, trade secrets, appellations of origin and geographical indications, awards, copyright and related rights, and database rights.

In general terms, and by way of example, industrial property rights confer on their holder the following exclusive rights.

- Patents: to exploit the invention throughout Portugal. The patent also grants its holder the right to prevent any third party, without the holder's consent, from:
  - manufacturing, offering, stocking, placing on the market or using a product that is the subject matter of the patent, or importing or possessing it, for any of the purposes mentioned;
  - using the process that is the subject matter of the patent or, if the third party knows or should have known that the use of the process is prohibited without the consent of the holder of the patent, offering to use it; or
  - offering, stocking, placing on the market and using, importing or possessing for those purposes, products obtained directly by the process that is the subject matter of the patent.

Furthermore, the patent also grants the right to prevent any third party, without the consent of the patent holder, from offering or making available to any person who does not have the right to exploit the patented invention, the means of performing it with respect to an essential element of it, if the third party knows or should have known that such means are suitable and intended for such performance.

- Trademarks: to prevent third parties that do not have the holder's consent from using in the course of economic activities any identical or similar sign to the trademark used in relation to goods or services that are identical or similar to the goods or services for which the mark is registered, if there is a likelihood of confusion on the part of the public. Under the right mentioned above, the trademark holder may, among other things, prohibit third parties from:
  - affixing the sign to the goods or to the packaging of those goods;
  - offering the goods;
  - putting the goods on the market;
  - stocking the goods for the purposes under the sign;
  - offering or supplying services thereunder; and
  - importing or exporting the goods under the sign.
- Designs or models: to use the design and to prevent any third party from using it without the holder's consent.

The use covers, in particular, the manufacturing, offering, putting on the market, importing, exporting or use of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

Regarding the rules on appellations of origin and geographical indications, the registration confers the right to prevent:

- the use, by third parties, in the designation or appearance of a product, of any means that indicate that the product originated from a geographical location other than its real place of origin;
- use that constitutes an act of unlawful competition, within the meaning of article 10-bis of the Paris Convention for the Protection of Industrial Property, following the Stockholm revision, of 14 July 1967; and
- use by an unauthorised third party.

Copyright protection encompasses rights of a financial and personal nature (moral rights). In the case of the financial content of the rights, the holder is granted an exclusive right to the economic exploitation of the work. In other words, the author has the exclusive right to use and dispose of their work, or to authorise its use by a third party, in whole or in part. Moral rights are recognised in the author and amount to the right to claim the authorship over the work and to ensure its genuineness and integrity.

There are no IP rights that are granted under or originate from settled case law.

There are some restrictions on how the IP rights may be enforced, licensed or transferred, depending on the nature of the rights in question or the existence of consumer protection reasons.

In general terms, the rights exceed the minimum required by the TRIPs Agreement.

*Law stated - 28 October 2021*

## Responsible authorities

### Which authorities are responsible for granting, administering or enforcing IP rights?

The authorities responsible for granting, administering or enforcing IP rights include:

- the National Industrial Property Office (INPI), which is an administrative authority responsible for the promotion and protection of industrial property rights in Portugal (among other things, the INPI is responsible for granting and, in some cases, declaring the nullity of industrial property rights);
- the Portuguese Inspectorate General of Cultural Activities, which supervises, inspects and monitors copyrights and related rights, and deals with the registration of works and cultural content;
- the Authority for Food and Economic Security, which is responsible for bringing administrative offence proceedings in relation to industrial property rights; and
- the Intellectual Property Court, which is a specialised court with exclusive jurisdiction to decide on cases in which the cause of action relates to:
  - copyright and related rights;
  - industrial property;
  - annulment and nullity actions set out in the Industrial Property Code;
  - appeals against decisions of the INPI, which grant or refuse any industrial property rights or relate to the assignment;
  - licensing;
  - cancellation or any actions that otherwise modify or extinguish such rights; and

- proceedings relating to acts of unlawful competition in industrial property matters.

*Law stated - 28 October 2021*

### **Proceedings to enforce IP rights**

What types of legal or administrative proceedings are available for enforcing IP rights? To the extent your jurisdiction has both legal and administrative enforcement options for IP rights, briefly describe their interrelationship, if any?

IP rights are principally enforced through legal proceedings, although administrative customs proceedings are also available in relation to IP rights.

Apart from the customary administrative proceedings available before the INPI to examine, grant, cancel and, in some cases, declare the nullity of industrial property rights, there are no administrative enforcement proceedings available before this institute.

Criminal proceedings may also be brought based on the infringement of IP rights, before criminal courts.

Civil enforcement of IP rights takes place before the Intellectual Property Court, which is a specialised court with its seat in Lisbon. There are two types of civil proceedings relating to IP rights that may be filed: preliminary injunctions and main actions. Although preliminary injunctions are functionally dependent on a main action, both types of proceedings can be brought in parallel over the same subject matter and may run separately from each other.

Special inhibitory actions relating to pharmaceutical patents and generic medicines are available under Law No. 62/2011 of 19 December 2011. While this law had originally established a mandatory arbitration system for resolving these disputes, significant changes were introduced by Decree Law No. 110/2018, which maintained the special enforcement system but abandoned the mandatory arbitration system. As such, these disputes are now resolved by the Intellectual Property Court or, upon agreement of the parties, by voluntary arbitration.

There are no specific enforcement options based on the amount at issue.

Administrative proceedings such as customs actions do not preclude the possibility of bringing civil or criminal proceedings.

*Law stated - 28 October 2021*

### **Remedies**

What remedies are available to a party whose IP rights have been infringed? Do these remedies vary depending on whether one utilises judicial or administrative review or enforcement?

Any party whose IP rights have been infringed has civil, criminal, and administrative offence remedies available to enforce its rights, as these remedies vary depending on the nature of the proceedings in question.

Regarding civil remedies, these include preliminary and permanent injunctions. In cases of negligent or wilful infringement, damages claims for infringement are also allowed.

The infringement of IP rights may also be criminally punishable with a penalty of imprisonment or the payment of a fine. Criminal proceedings relating to industrial property rights usually depend on the filing of a complaint by the offended party, whereas copyright offences are considered public crimes and are not dependent on the filing of a criminal complaint (except in the case of exclusive infringement of moral rights).

The violation of IP rights may also be punished as an administrative offence.



The seizure or destruction of infringing goods is an available remedy.

*Law stated - 28 October 2021*

### **Nexus between competition and IP rights**

Do any statutes, regulations or case law in your jurisdiction address the interplay between competition law and IP law?

Portuguese law does not contain any specific provision that addresses the interplay between competition law and IP law. However, the Portuguese Competition Authority (PCA) fined the National Association of Pharmacies (ANF) for abusing its dominant position by way of a margin squeeze of a competitor (IMS Health). IMS Health alleged that the price it was being charged for data collected from pharmacies (data owned by ANF and protected by IP rights) was abusive when compared to the price ANF charged its own downstream market study provider.

Generally, in cases where IP rights are relevant to the competitive assessment of conduct or a merger, the PCA will undertake a detailed analysis of how the IP rights could be used by the post-merger entity to impact competition.

*Law stated - 28 October 2021*

### **Patent cooperation treaties and other agreements**

Does your jurisdiction participate in any patent cooperation treaties or other similar agreements?

Yes, Portugal does participate in several patent cooperation treaties and other similar agreements. Examples include:

- the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement) of the World Trade Organization (WTO) (ratified by Decree No. 82-B/94 of 27 December of the President of the Republic);
- the WIPO Patent Cooperation Treaty (approved, through accession, by Decree No. 29/92 of 25 June);
- the Paris Convention for the Protection of Industrial Property (ratified by Decree No. 22/75 of 22 January);
- the European Patent Convention (ratified by Decree No. 126-A/2007 of 12 December of the President of the Republic); and
- the Agreement on a Unified Patent Court (ratified by Decree No. 90/2015 of 6 August of the President of the Republic).

*Law stated - 28 October 2021*

### **Remedies for deceptive practices**

With respect to trademarks, do competition or consumer protection laws provide remedies for deceptive practices?

The Industrial Property Code defines unfair competition as any act of competition contrary to the rules and honest practices in any branch of economic activity. Such practices include acts that can create confusion with products and services of the competitors. General civil remedies are available, as are specific IP remedies (such as the prohibition on registering trademarks if it is recognised that unfair competition may occur).

Under consumer protection laws, Decree-Law No. 57/2008 of 26 March provides for civil liability if the consumer is harmed by a misleading commercial practice. It also provides for the right to seek an injunction for any person with a legitimate interest in opposing unfair commercial practices. These specific proceedings are provided for in Law No. 24/96 of 31 July.

The Advertising Code ( Decree Law No. 330/90 of 23 October) also provides for precautionary measures regarding unlawful comparative advertising with relation to trademarks.

In theory, competition law could also provide remedies for deceptive practices in cases where they have a restrictive effect on competition. However, we are not aware of such a case being brought in Portugal under the competition laws.

*Law stated - 28 October 2021*

### **Technological protection measures and digital rights management**

With respect to copyright protection, is WIPO protection of technological protection measures (TPMs) and digital rights management (DRM) enforced in your jurisdiction? Do statutes, regulation or case law limit the ability of manufacturers to incorporate TPM or DRM protection limiting the platforms on which content can be played? Has TPM or DRM protection been challenged under the competition laws?

Yes, these measures are enforced in Portugal.

The Code of Copyright and Related Rights places limitations on the protection of technological measures. These include a prohibition on applying such measures to works in the public domain, new editions of them and works published by public entities or under public funding.

Furthermore, the technological protection measures will not constitute an obstacle against the normal exercise of several free use actions listed in the Code of Copyright and Related Rights.

TRM or DRM protection has not been challenged under the competition rules.

*Law stated - 28 October 2021*

### **Industry standards**

What consideration has been given in statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards?

No specific consideration has been given in national statutes, regulation or case law to the impact of the adoption of proprietary technologies in industry standards.

*Law stated - 28 October 2021*

## **COMPETITION**

### **Competition legislation**

What statutes set out competition law?

Law No. 19/2012 of 8 May 2012 (the Competition Act) is the main piece of competition legislation in Portugal. The Competition Act contains provisions that relate to both restrictive agreements (ie, cartels, vertical restraints and other types of agreements between competitors) and provisions regarding merger control, namely the merger control thresholds. The Competition Act also incorporates the cartel leniency regime (which was previously set out in separate legislation).

The Competition Act further sets out the general rules regarding the Portuguese Competition Authority's (PCA) investigatory powers and the procedural steps of an antitrust or merger control investigation.

Other domestic legislation is also applicable on a subsidiary basis. The Administrative Procedural Code applies in certain cases to the PCA's investigations and the Procedural Code for Administrative Courts applies to the judicial review of the PCA's decisions. The Misdemeanours Act is applicable in instances where the PCA adopts a fine and where there is a judicial review of such fines.

Other relevant guidance of note that may be relevant in the IP context include the PCA's Guidelines regarding the economic analysis undertaken for horizontal mergers and the PCA's Mergers remedies guidelines .

*Law stated - 28 October 2021*

### **IP rights in competition legislation**

**Do the competition laws make specific mention of any IP rights?**

No specific reference is made to IP rights in the Competition Act and the PCA has not adopted any specific guidelines or any other type of working document regarding the application of competition law to IP rights.

*Law stated - 28 October 2021*

### **Review and investigation of competitive effects from exercise of IP rights**

**Which authorities may review or investigate the competitive effect of conduct related to exercise of IP rights?**

The PCA is the principal authority that reviews the competitive effect of conduct related to the exercise of IP rights. If the PCA adopts a decision that relates to a market that is subject to sector-specific regulation (eg, telecoms or energy), it must seek a non-binding opinion from that regulator. To that extent, other economic regulators may, in theory, influence any PCA decision (be it in the context of antitrust proceedings, a market study or a merger) that refers to the competitive effects of conduct related to the IP rights.

*Law stated - 28 October 2021*

### **Competition-related remedies for private parties**

**Can a private party recover for competition-related damages caused by the exercise, licensing or transfer of IP rights?**

A private party can recover for competition-related damages caused by the exercise, licensing or transfer of IP rights, provided it demonstrates that it suffered harm as a result of the unlawful exercise of IP rights.

*Law stated - 28 October 2021*

### **Competition guidelines**

**Have the competition authorities, or any other authority, issued guidelines or other statements regarding the overlap of competition law and IP?**

No.

*Law stated - 28 October 2021*

### Exemptions from competition law

Are there aspects or uses of IP rights that are specifically exempt from the application of competition law?

No.

*Law stated - 28 October 2021*

### Copyright exhaustion

Does your jurisdiction have a doctrine of, or akin to, 'copyright exhaustion' (EU) or 'first sale' (US)? If so, how does that doctrine interact with competition laws?

Yes, Portuguese law provides for copyright exhaustion. From a competition law standpoint, the general rules that prohibit the extension of IP rights beyond their temporal scope would apply, as would rules that prohibit certain limitations on the resale of goods after an initial sale (eg, resale price maintenance or other unjustifiable restrictions on sales outside the scope of limited exemptions provided by law).

*Law stated - 28 October 2021*

### Import control

To what extent can an IP rights holder prevent 'grey-market' or unauthorised importation or distribution of its products?

Under Portuguese law, an IP rights holder may prevent any third parties from importing and distributing its products inside the European Economic Area (EEA) without its consent.

*Law stated - 28 October 2021*

### Jurisdictional interaction between competition laws and IP rights

Are there authorities with exclusive jurisdiction over IP-related or competition-related matters? For example, are there circumstances in which a competition claim might be transferred to an IP court to satisfy subject matter jurisdiction? Are there circumstances where the resolution of an IP dispute will be handled by a court of general jurisdiction?

The Intellectual Property Court (TPI) has jurisdiction over matters concerning, among other things, proceedings relating to industrial property rights, copyright and related rights, and to actions concerning unfair competition.

The Competition, Regulation and Supervision Court is responsible for matters relating to the appeal, review and enforcement of decisions of the PCA, and of administrative entities with regulatory and supervisory functions.

There are no circumstances where a competition claim can be transferred to an IP court.

In the case of an appeal against the decisions of the TPI, the resolution of an IP dispute will be handled by a court of general jurisdiction.

*Law stated - 28 October 2021*

## MERGER REVIEW

### **Powers of competition authority**

Does the competition authority have the same authority with respect to reviewing mergers involving IP rights as it does with respect to any other merger?

The Portuguese Competition Authority (PCA) has the same authority with respect to reviewing mergers involving IP rights as it does in any other type of merger.

*Law stated - 28 October 2021*

### **Analysis of the competitive impact of a merger involving IP rights**

Does the competition authority's analysis of the competitive impact of a merger involving IP rights differ from a traditional analysis in which IP rights are not involved? If so, how?

The PCA will adapt its analysis of a merger to the markets in question and the competitive dynamics of those markets. Accordingly, in cases where IP rights are relevant to the competitive assessment of a merger, the PCA will undertake a detailed analysis of how the IP rights could be used by the post-merger entity to impact competition.

For example, in paragraph 2.6.24 the PCA's Guidelines regarding the economic analysis undertaken for horizontal mergers, it is noted that 'IP rights and trade secrets can also give rise to barriers to entry or expansion if they allow an undertaking to protect its market power regarding a certain product or production process. An undertaking may, for example, develop a strategic deployment of its IP rights, preventing or hampering the supply of products by competitors.'

*Law stated - 28 October 2021*

### **Challenge of a merger**

In what circumstances might the competition authority challenge a merger involving the transfer or concentration of IP rights? Does this differ from the circumstances in which the competition authority might challenge a merger in which IP rights were not a focus?

The PCA will challenge a merger that involves the transfer or concentration of IP rights as it would challenge any other merger that gives rise to a significant impediment of effective competition in all or part of the domestic market, namely through the creation or reinforcement of a dominant position (article 41(5) of the Competition Act).

*Law stated - 28 October 2021*

### **Remedies to address the competitive effects of mergers involving IP**

What remedies are available to address competitive effects generated by a merger when those effects revolve around the transfer of IP rights?

The PCA's Guidelines on Merger Remedies (the Remedies Guidelines) make specific reference to IP rights as a potential remedy in mergers that give rise to a significant impediment of effective competition in all or part of the domestic market.

In general, the PCA's approach to remedies that involve IP rights will follow that of the European Commission. As such,

the three general principles that any remedy must meet to be acceptable are as follows.

- The remedy must be effective. To assess whether this is the case, the following considerations are taken into account: the necessity of the remedy; the ability of the remedy to address the competition concern at issue; the ability to monitor the remedy; and the necessary duration of the remedy. In accordance with EU practice, only remedies that guarantee a high degree of certainty for each of these factors will be considered by the PCA.
- The remedy must be efficient. To meet this criterion, the remedy must be the most cost-effective means by which to address the identified concern.
- The remedy must be proportionate. The remedy must adequately address the identified concern in a proportionate manner (ie, not go beyond what is necessary to remedy the issues at stake).

The principal way that an IP right can act as a remedy is through the disposal of an IP right or a package of IP rights upon which the PCA's concerns are based (ie, where the IP rights allow for post-merger foreclosure by the merged entity or through the licensing of IP rights to a third party or competitor to ensure that competition is maintained post-merger). In this respect, the Remedies Guidelines state that, for a remedy to be effective in these circumstances, the divested or licensed IP rights must be sufficient in themselves or as a package to allow for market entry or to reinforce the market position of competitors (para 76).

Examples referred to by the Remedies Guidelines include the transfer or the licensing of technology or of a trademark – whichever is the most proportionate in the case at hand. Such licensing has taken place in the past as part of a broader package of remedies required for the clearance of a merger.

It should be noted, however, that the Remedies Guidelines clearly state that the PCA prefers a 'straightforward' sale of a business rather than the transfer or sale of IP rights to address its concerns. The Remedies Guidelines refer to the European Commission's guidance on remedies in this respect.

*Law stated - 28 October 2021*

## **SPECIFIC COMPETITION LAW VIOLATIONS**

### **Conspiracy**

Can the exercise, licensing or transfer of IP rights create price-fixing or conspiracy liability?

In principle, the exercise, licensing or transfer of IP rights could create price-fixing or conspiracy liability under Portuguese competition law. However, we are not aware of a case of this kind having been brought in the past.

*Law stated - 28 October 2021*

### **Scrutiny of settlement agreements**

How would a settlement agreement terminating an IP infringement dispute be scrutinised from a competition perspective? What are the key factors informing such an analysis?

We are not aware of any case under domestic law where a settlement agreement of this type has been analysed from a competition law perspective. We would expect the Portuguese Competition Authority (PCA) or a national court to scrutinise settlement agreements, terminating an IP infringement per the general practice of the European Commission and the EU Courts. Accordingly, a settlement agreement that, for example, prevents the entry of generic competition following the expiry of a patent would carry a material risk of being unlawful and be analysed according to the principles set out by the Court of Justice of the European Union in its *Lundbeck* judgment.

### **Reverse payment patent settlements**

How have the competition laws been applied to reverse payment patent settlements in your jurisdiction?

We are not aware of any case under domestic law where a reverse payment patent settlement has been analysed from a competition law perspective. We would expect that the PCA or a national court (or both) would review such a case in accordance with the general principles under EU law.

Law stated - 28 October 2021

### **(Resale) price maintenance**

Can the exercise, licensing, or transfer of IP rights create liability under (resale) price maintenance statutes or case law?

In principle, the exercise, licensing or transfer of IP rights could create liability under the rules prohibiting re-sale price maintenance (RPM) under Portuguese competition law. RPM liability under Portuguese law is treated in the same manner as under EU law. We are not aware, however, of a case of this kind having been brought in the past.

Law stated - 28 October 2021

### **Exclusive dealing, tying and leveraging**

Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to exclusive dealing, tying and leveraging?

In principle, the exercise, licensing or transfer of IP rights could create liability under the rules regarding exclusive dealing, tying and leveraging under Portuguese competition law. Under Portuguese law, such practices would be treated in the same manner as under EU law. We are not aware, however, of any case of relating to such practices as they concern IP rights being brought in the past.

Law stated - 28 October 2021

### **Abuse of dominance**

Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to monopolisation or abuse of dominance?

The exercise, licensing or transfer of IP rights can create liability under Portuguese competition law. An example of this was the case brought against the National Association of Pharmacies (ANF) by the PCA in 2015. In that case, the PCA accused the ANF of abusing its dominant position in the markets for pharmaceutical sales data and market studies by way of a margin squeeze.

The case was based on a complaint brought by IMS Health that alleged that the price it was being charged for data collected from pharmacies was abusive when compared to the price ANF charged its own downstream market study provider. The access to upstream data (protected by IP rights owned by ANF) related to pharmacy sales was one of the key elements considered by the PCA as forming part of the ANF's abuse of dominance in this case, despite the fact

that the licences in question were non-exclusive.

*Law stated - 28 October 2021*

### **Refusal to deal and essential facilities**

Can the exercise, licensing, or transfer of IP rights create liability under statutes or case law relating to refusal to deal and refusal to grant access to essential facilities?

In principle, the exercise, licensing or transfer of IP rights could create liability under the rules relating to the refusal to deal and refusal to grant access to essential facilities under Portuguese competition law. Such liability under Portuguese law is treated in the same manner as under EU law. We are not aware, however, of a case of this kind having been brought in the past.

*Law stated - 28 October 2021*

## **REMEDIES**

### **Remedies for violations of competition law involving IP**

What sanctions or remedies can the competition authorities or courts impose for violations of competition law involving IP?

The general rules on sanctions apply for violations of competition law involving IP are as follows.

- The Portuguese Competition Authority (PCA) can impose a fine of up to 10 per cent of the company's local turnover in the preceding financial year. The PCA can also impose behavioural or structural measures to end the prohibited practices or their effects. For example, it can require the company found to have infringed the law to sell its assets to remedy the infringement or to adapt its commercial behaviour and contracts for the same purpose – this could, in theory, include compulsory licensing or divestitures of IP rights. We are not aware, however, of any such remedies being imposed in the past.
- The board members and any individuals responsible for the management or supervision of the areas of the business involved in any infringement can be sanctioned with a fine of up to 10 per cent of the individual's annual salary. In these cases, the PCA must show that the individual in question knew or ought to have known of the illegality of the conduct at issue and did not take any measures to bring it to an end.
- As a matter of law, any agreement or practice that is found to have breached Portuguese competition law is null and void.

*Law stated - 28 October 2021*

### **Competition law remedies specific to IP**

Do special remedies exist under your competition laws that are specific to IP matters?

No.

*Law stated - 28 October 2021*



## ECONOMICS AND APPLICATION OF COMPETITION LAW

### Economics

What role has competition economics played in the application of competition law in cases involving IP rights?

The competitive effects of IP rights have not been subject to a great deal of analysis in Portugal. However, we expect that competition economics will play a role in any future cases of this type, given that the Portuguese Competition Authority (PCA) has a dedicated team of economists, and competition economics has been used by the PCA in other cases. The same is true of any future private litigation of this type – competition economics has been used in, for example, competition class actions. Accordingly, we expect competition economics to play a role in any private litigation of competition law cases involving IP rights.

*Law stated - 28 October 2021*

## RECENT CASES AND SANCTIONS

### Recent cases

Have there been any recent high-profile cases dealing with the intersection of competition law and IP rights?

No.

*Law stated - 28 October 2021*

### Remedies and sanctions

What competition remedies or sanctions have been imposed in the IP context?

The Portuguese Competition Authority imposed a fine of €10.3 million on the National Association of Pharmacies (ANF) for abusing its dominant position by way of a margin squeeze of a competitor (IMS Health). IMS Health alleged that the price it was being charged for data collected from pharmacies (data owned by ANF) was abusive when compared to the price ANF charged its own downstream market study provider. The fine was reduced by the Court of Appeal to €815,000 for reasons unrelated to the main conduct at issue.

*Law stated - 28 October 2021*

## UPDATE AND TRENDS











### Key developments

Are there any emerging trends or hot topics in the law of IP and antitrust policy? Have changes occurred recently or are changes expected in the near future that will have an impact on the application of competition law to IP rights?

One of the Portuguese Competition Authority's (PCA) stated priorities for 2021 is the enforcement of competition law in the digital sector. Due to the nature of this sector, future enforcement by the PCA may include cases where IP rights are part of or are central to the theories of harm upon which it bases its decisions.



## Jurisdictions

	<b>Germany</b>	Meissner Bolte
	<b>India</b>	Chadha & Chadha Intellectual Property Law Firm
	<b>Indonesia</b>	SSEK Legal Consultants
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Kazakhstan</b>	Baker McKenzie
	<b>Mexico</b>	Calderón & De La Sierra
	<b>Portugal</b>	PLMJ
	<b>Turkey</b>	ACTECON
	<b>United Kingdom</b>	Arnold & Porter
	<b>USA</b>	Crowell & Moring LLP