Competition law enforcement in Portugal: Recent trends and future challenges

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Over the past four years, there has been a visible and significant step-change in the enforcement of competition law in Portugal. The clearest example of this new era in Portugal is what is, by most standards, the eye-watering levels of fines imposed by the Portuguese Competition Authority (PCA). At the time of writing, companies have been fined a total of nearly €1 billion since 2016, mostly for cartel infringements and information exchanges.

This is undoubtedly a result of work undertaken over a longer period—the decisions to adopt large fines by the PCA did not appear overnight. However, it is only when decisions are taken and, ultimately, appeals rejected or upheld that the fruits of that labour can be fully assessed.

In parallel, an even more recent phenomenon has taken hold: private enforcement by way of class actions. Together with the PCA's activist agenda, it is clear that competition law enforcement in Portugal is going through its liveliest stage to date.

The purpose of this article is to give an overview of the recent enforcement activity of the PCA and to attempt to provide some insight into how enforcement—both public and private—could develop in the coming years. We also present some suggestions on how the regime can be reformed.

The remainder of this article is structured as follows: Section A gives an overview of the initial period of competition law enforcement in Portugal; Section B describes enforcement activity since 2019; Section C sets out the PCA's record before the courts; Section D sets out recent private enforcement trends; and Section E provides some conclusions and recommendations for reform.

A. The initial period of competition law enforcement in Portugal

The first stage: 2003 and 2006

Modern competition law was introduced in Portugal in 2003. This was when the PCA was established and national legislation to support the European Union's (EU) modernisation programme was introduced. The purpose of this legislative package and the creation of the PCA was to introduce a broader culture of competition in Portugal.[1]

The PCA was a clear innovation in the Portuguese legal order: only with its introduction did Portugal gain a competition authority independent from government and the wider state. The PCA was given more resources than its predecessor agency in order to create a more dynamic domestic agency and to support the EU modernisation programme which gave it (and other NCAs) the power to apply the EU Competition Treaty provisions.

The next milestone was the introduction of a leniency programme in 2006 which, initially, was not as successful as anticipated:

> "Contrary to what took place in neighbouring Spain—where lawyers held vigil overnight prior to the entry into force of the new leniency regime to be ready to present leniency applications on behalf of their clients straight away—the Portuguese leniency programme proved not to be sufficiently attractive to lead to the detection of many cartels. Indeed, between 2006 and the end of 2013, only three cases where decided on the basis of the leniency regime in Portugal".[2]

Taking the level of fines as a proxy for the output of the PCA's enforcement work, in the first (nearly) decade of its existence, the PCA levied fines of €164.5 million. As demonstrated by the figure below, nearly half that amount was achieved in one year—2009.

It could be said, therefore, that, despite best intentions, the modern and dynamic competition regime that had been hoped for with the introduction of the PCA and the 2003 legislative package largely failed to materialise.

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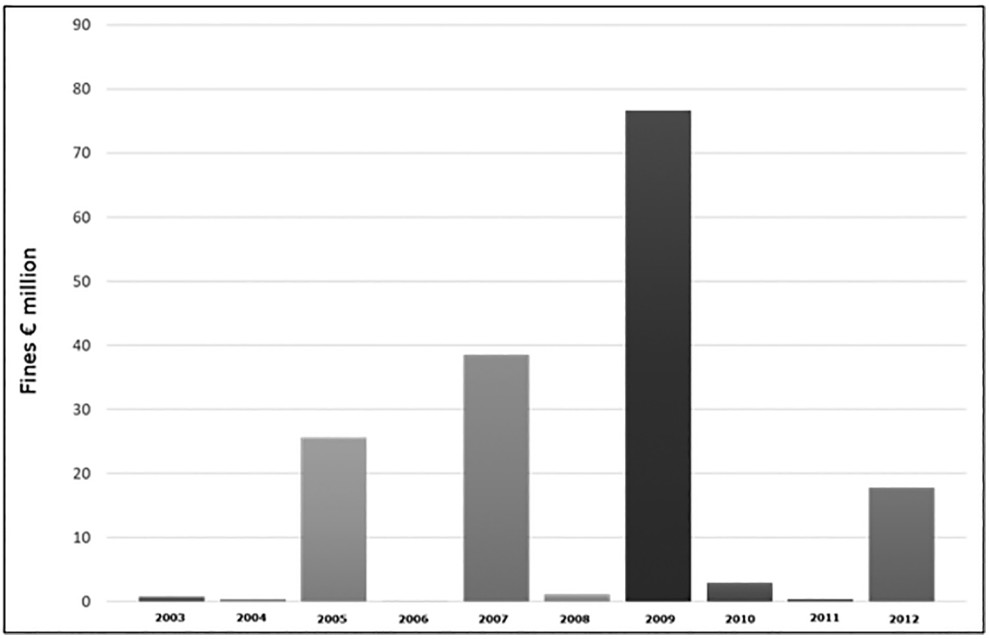
[1] See PDGL, Lei n.º 18/2003, de 11 de Junho Regime Jurídico da Concorrência*https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=140&tabela=leis&ficha=1&pagina=1*.

[2] Moura e Silva, Miguel, "As Práticas Restritivas Da Concorrência Na Lei N.º 19/2012: Novos Desenvolvimentos (Restrictive Practices Under the Portuguese Competition Law No. 19/2012: New Developments)" (2014) 35 (137) *Revista do Ministério Público* 9, available at SSRN: *https://ssrn.com/abstract=2468752* (our translation).



PCA fines 2003–2012

The 2012 revision of the competition regime

The financial crisis had a major impact on the Portuguese economy and on Portuguese society in general. Portugal was one of the EU Member States that was bailed-out by the so-called "troika" of the European Union, the European Central Bank and the International Monetary Fund.[3]

As part of the bailout programme, a Memorandum of Understanding (the Memorandum) was entered into by the Portuguese State and the troika. The Memorandum included a series of provisions that sought to increase the competitiveness of the Portuguese economy. The introduction of new competition rules and procedures designed to strengthen the powers and effectiveness of the PCA—and of the competition regime more generally—formed part of this package of measures.

According to the Memorandum, the following reforms would need to be introduced to achieve these objectives, inter alia:

- the establishment of a specialised competition court;
- revision of the competition regime to ensure greater autonomy of the national competition rules from Administrative Law and Penal Procedural Law;
- new rules to allow the PCA to assess the relevance of complaints received; and
- a commitment to ensure that the PCA had sufficient financial resources to exercise its powers.[4]

Ultimately, a new law was passed—Law 19/2012 of 8 May 2012 (the 2012 amendments)—that replaced both the Competition Act of 2003 and the Leniency Act of 2006.

One of the key amendments—if not *the* key amendment—was the introduction of a power for the PCA to prioritise its enforcement decisions. Prior to the 2012 amendments, the PCA was obliged to investigate each alleged infringement of the competition rules that was brought to its attention. This, naturally, materially restricted its freedom to identify conduct that was most likely to represent an infringement and to allocate its resources efficiently.

Other powers that were introduced by the 2012 amendments were:

- the introduction of a settlement and commitments regime;
- the establishment of the Competition Court;
- reinforced investigative powers including the possibility for inspections of private premises; and
- a leniency regime which was harmonised with international best practices.

B. Upping the stakes: 2019 and beyond

The real step-change in antitrust enforcement in Portugal came about in 2019 when the PCA fined the so-called "banks cartel" a total of €225 million. This case related to the alleged exchange of competitively sensitive information between major national and international banks (14 in total).[5] The information exchanged between

[3] EC, *Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality 17 May 2011*, available at: *https://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf*.
[4] EC, *Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality 17 May 2011*, pp.34–35.
[5] In May 2022, the Competition Court held the facts in question had been proved. However, the court suspended proceedings to ask an urgent question to the Court of Justice of the European Union regarding the appropriate legal qualification that should be given to the conduct at issue.

the defendant banks related to the spreads applicable to certain credit products and the alleged infringement took place over a period of just over 10 years.[6]

To put this into context: the amount of the total fine—€225 million—was more than the total amount of all fines applied in Portugal between 2003 and 2016 (€190 million). Even taking into account the significant fine in the *EDP/Sonae* case in 2017 (of nearly €40 million), the fine in this case was nearly four and half times the total amount of fines adopted in the seven years prior. The size of the fine in this case—and the complexity of the case in question—was a clear sign of things to come.

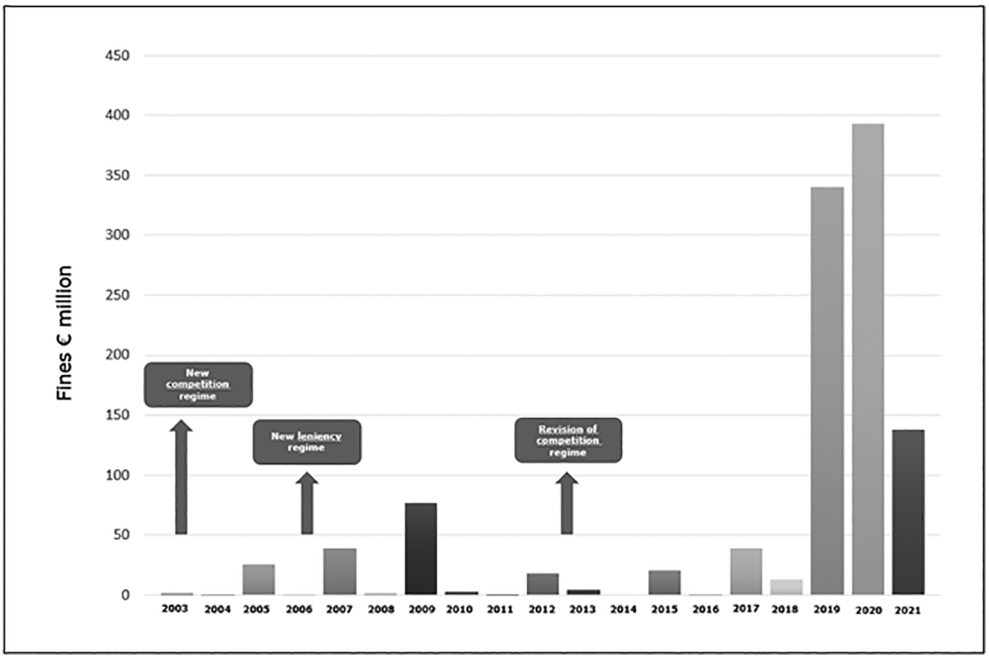
Indeed, in the past three years, the following additional decisions of note have been adopted by the PCA:

- a €24 million fine applied for re-sale price maintenance by one of Portugal's largest brewers, Super Bock (2019);[7]
- a total of €54 million in fines applied to domestic and international insurance companies for agreeing on the commercial terms to be presented to their customers (2019);[8]
- a €48 million fine for an abuse of dominant position by the electricity incumbent, EDP, related to its conduct in the provision of supply in the secondary electricity market (2019);[9]
- fines totalling €304 million on six supermarket chains and two drinks manufacturers for indirectly setting prices of those brands, via so-called hub-and-spoke[10] arrangements (2020);[11]
- a total of €84 million on two telecommunications companies for price fixing and market sharing (2020);[12]
- further fines totalling €137.8 million levied on supermarkets and certain suppliers, also part of the PCA's overarching hub-and-spoke investigation in this sector (2021).[13]

Given the PCA's track-record pre-2019, each of these decisions would have been significant in and of themselves. Taken together, they are even more significant and demonstrate the PCA's new enforcement agenda. Two points should be made in this context.

First, the most obvious point to make is that the total size of these fines dwarfs the fines that have been historically imposed by the PCA, as demonstrated in the figure below. The total fines adopted in the context of the PCA's hub-and-spoke investigations to date total nearly €350 million, an amount that would be noteworthy even for an authority accustomed to handing down large fines, e.g. the European Commission.

[6] See PCA press release of 9 September 2019 (in Portuguese) available at: *http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_201917.aspx*.
[7] See PCA press release of 25 July 2019 (in Portuguese) available at: *http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_201915.aspx*.
[8] See PCA press release of 1 August 2019 (in Portuguese) available at: *http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_201916.aspx*.
[9] See PCA press release of 18 September 2019 (in Portuguese) available at: *http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_201919.aspx*.
[10] A "hub-and-spoke" arrangement can be characterised as "any number of vertical exchanges or agreements between economic actors at one level of the supply chain (the spokes), and a common trading partner on another level of the chain (the hub), leading to an indirect exchange of information and some form of collusion between the spokes. In the extreme, this indirect exchange can achieve the same negative market outcomes as a hardcore price fixing cartel, without the horizontal competitors ever having exchanged information directly." OECD, "Roundtable on Hub-and-Spoke Arrangements—Background Note by the Secretariat" (December 2019), p.5, available at: *https://one.oecd.org/document/DAF/COMP(2019)14/en/pdf*.
[11] See PCA press release of 21 December 2020 (in Portuguese) available at: *http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_202022.aspx*.
[12] See PCA press release of 21 December 2020 (in Portuguese).
[13] See PCA press releases of 21 December 2020.



PCA fines 2003-2021

Second, in pursuing a more ambitious enforcement agenda, the PCA has decided to take greater risks. This is demonstrated through the adoption of novel theories of harm that, at least on paper, are harder to prove to the requisite standard. This applies in particular to the PCA's interpretation of what constitutes a hub-and-spoke infringement.

Hub-and-spoke cases have traditionally been hard to prove given each of the elements that must be present to demonstrate the existence of such an infringement:

> "The main hurdle that all agencies need to overcome is to prove *how two or more exchanges between vertical actors in a supply chain that individually could be perfectly legal can be linked in a way to establish an indirect horizontal collusion*. In order to hold all vertically and horizontally related parties liable for an infringement, *there needs to be a proven awareness if not intent of a passing on of competitively sensitive information for the purpose of market co-ordination. A firm cannot be fined for a conduct of other actors that it could not foresee, and at least implicitly consented to*." (emphasis added)[14]

The practical challenge of proving these elements in court has been shown in practice, notably in United Kingdom (UK) proceedings.[15]

The PCA nevertheless appears confident that it is not required to demonstrate awareness to the degree referred to above. Instead, it has used the notion of a "concerted practice" as the legal basis for its approach, as noted in its submissions to the OECD.[16] The legal test used by the PCA does not, therefore, reflect practice in the UK and United States (US), i.e. the two jurisdictions where hub-and-spoke infringements have been prosecuted and debated most widely.

Indeed, in the Note the PCA submitted to the OECD regarding hub-and-spoke arrangements, it states that: "[I]n a hub-and-spoke arrangement each retailer is aware, or could reasonably have foreseen, that a similar interaction with the supplier is occurring in parallel in relation to the competitor retailers. This originates the common understanding necessary for the coordination"[17] and that "[t]he proof of a concerted practice comprehends, therefore, a focus on the common (or shared) interest of the colluding undertakings, which encompasses the reduction of the uncertainty as to their future competitive conduct".[18]

The extent to which the notion of a concerted practice can be used to overcome what has traditionally been considered a key aspect of a hub-and-spoke infringement—subjective intent—will undoubtedly be a key aspect of the appeals of the current and future PCA hub-and-spoke decisions. This brings us to an assessment of the PCA's record before the judiciary.

[14] OECD, "Roundtable on Hub-and-Spoke Arrangements—Background Note by the Secretariat" (December 2019), p.3.
[15] OECD, "Roundtable on Hub-and-Spoke Arrangements—Background Note by the Secretariat" (December 2019) "(…) in order to establish a link between vertical exchanges that are presumptively legal individually, the case law in the UK has established a three-pronged so called "A-B-C-Test" and asks for the proof of actual exchanges of information together with the underlying motivations and intentions. It requires in particular the proof of the parties' state of mind (be it actual knowledge or reasonable foreseeability) about the information being transferred to influence competitors' pricing intentions, which can be inferred from the facts of the case and the analysis of the circumstances in which the exchanges occurred".
[16] OECD, "Roundtable on Hub-and-Spoke Arrangements—Note by Portugal".
[17] OECD, "Roundtable on Hub-and-Spoke Arrangements—Note by Portugal", para.48.
[18] OECD, "Roundtable on Hub-and-Spoke Arrangements—Note by Portugal", para.50.

C. The PCA's court record

The relative success or failure of a competition agency's enforcement record will in large part depend on how its decisions withstand judicial scrutiny. Using the UK as a comparator, it has been said that the scrutiny of the UK Competition Appeal Tribunal was one of the key reasons the Competition and Markets Authority (CMA) has historically had relatively low levels of antitrust enforcement decisions and fines.[19]

In contrast, the PCA has not faced the same level of scrutiny. In general, the Portuguese Competition Court (the Competition Court) has upheld the PCA's infringement decisions and, in cases where there have been fine reductions, these have been rare, albeit in some cases significant.[20]

Despite there being examples of the Competition Court lowering fines, in the past five years each of the PCA's decisions regarding the existence of an infringement/infringements have all been confirmed by the Competition Court and by the *Tribunal da Relação* (the Court of Appeal to whom parties can appeal matters of law resulting from a Competition Court judgment). This is, by any measure, an impressive track record for which there may be a number of explanations.

The first is that the PCA has—thus far—prioritised the "right" type of cases at the administrative stage, i.e. cases where the evidence is strong and the type of conduct at issue falls into the well-established categories of infringements at both the national and EU level.

In particular, each of the cases where the Competition Court has judicially reviewed the PCA's infringement decisions in the past five years relates to horizontal conduct, namely price fixing and customer allocation (the *Envelopes* cartel),[21] the fixing of minimum prices for driving licences (the *Driving Schools* case) and market sharing (the *EDP/Sonae* market sharing case).[22]

The second explanation for the PCA's relative success is that the Competition Court has accepted the PCA's interpretation of elements of its infringement decisions that could be considered to stretch certain established legal concepts.

For example, in *EDP/Sonae*, the PCA fined EDP and Sonae a total of €38.3 million for a two-year non-compete clause in an agreement. The agreement in question related to an arrangement between EDP (an electricity provider) and Sonae (a large domestic conglomerate owner of a major supermarket chain) whereby EDP's customers could spend vouchers at certain Sonae retail outlets. This agreement contained a non-compete clause under which EDP agreed not to enter the retail markets Sonae was present in and Sonae made the same commitment regarding the electricity market.

The PCA concluded that Sonae was a potential competitor to EDP because in 2002—and following the liberalisation of the electricity market—Sonae entered (via a joint venture (JV) with Endesa) the retail electricity market in Portugal.[23] Ultimately, Sonae exited the market in 2008.[24] The PCA's decision was upheld by the Portuguese Competition Court in September 2020. A review of the PCA's decision indicates that Sonae's entry in 2002 into the electricity market and its subsequent exit in 2008 was the key evidence used by the PCA to conclude Sonae was a potential competitor to EDP when it entered the EDP/Sonae agreement in 2014.[25]

In other words, the PCA does not appear to have relied on any contemporaneous internal documents—i.e. direct evidence—related to the negotiations surrounding the EDP/Sonae agreement of either party to substantiate its conclusion that Sonae was a potential competitor to EDP.[26]

Nor does it appear to have based this conclusion on concrete plans or on inferences from internal documents regarding potential entry by Sonae into the electricity market in the short- to medium-term.

[19] CMA, "Letter from Andrew Tyrie to the Secretary of State for Business, Energy and Industrial Strategy" (February 2019): "One explanation for the lower fines imposed for competition law infringements in the UK is the approach taken by the CAT to the CMA's fining decisions. In the vast majority of cases, the CAT has lowered the CMA's (and formerly the OFT's) fines on appeal, in some cases by over 80 per cent. For those that have broken competition law, appealing against the CMA's fining decision appears to be a one-way bet", p.39, available at: *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781151/Letter_from_Andrew_Tyrie_to_the_Secretary_of_State_BEIS.pdf*.

[20] For example, in the *Driving Schools* case, the Competition Court reduced the fine by 50% because the effects of the infringement were found to have lasted three months rather than a year as well as due to the more limited geographic impact of the conduct at issue.

[21] Proc. 36/17.2YUSTR, TCRS (2017-05-25). See *https://www.concorrencia.pt/sites/default/files/processos/contencioso/TCRS-2017-05-25-IDF_2016_3-PRC_2011_10.pdf*.

[22] Proc. 322/17.1YUSTR, TCRS (2020-09-30). See *https://www.concorrencia.pt/sites/default/files/processos/contencioso/TCRS-2020-09-30-IDF_2017_1-PRC_2014_5.pdf*.

[23] Proc. 322/17.1YUSTR, TCRS (2020-09-30) paras 294 et seq. The non-confidential decision also notes some investments made by the Sonae parent and holding companies in certain upstream electricity markets. See paras 303 et seq.

[24] Proc. 322/17.1YUSTR, TCRS (2020-09-30).

[25] Proc. 322/17.1YUSTR, TCRS (2020-09-30).

[26] Note we have only had access to the non-confidential version of this decision which, as per customary practice in these types of proceedings, redacts documents and information that is confidential. This may include, inter alia, entire documents or excerpts from internal documents.

Nonetheless, the Competition Court upheld the existence of potential competition on this case,[27] despite the existence of recent EU case law that defines the notion of potential competition to a higher standard:

> "In order to assess whether an undertaking *that is not present in a market* is a potential competitor of one or more other undertakings that are already present in that market, it must be determined whether there are *real and concrete possibilities* of the former joining that market and competing with one or more of the latter" (emphasis added).[28]

The third reason is the hypothesis that domestic courts are more likely to confirm the PCA's decisions is the existence of judicial deference.[29] In other words, it may be that domestic courts are not likely to second-guess a specialist regulator's appraisal of the relevant facts and their designation as demonstrating the existence of a competition infringement. This theory cannot be ruled out, especially given that the judges that conduct the first instance review on appeal are generalist judges.

The extent to which such deference will remain (to the extent that it exists in the first place) will undoubtedly become clearer once the courts begin to review cases where the PCA has adopted decisions with more novel theories of harm, for example the hub-and-spoke cases referred to above. And the manner in which judicial scrutiny is exercised may change as generalist judges become more comfortable in applying and interpreting competition law.

D. Private enforcement: the emergence of class actions

Increased private enforcement of competition law has been a trend across the EU over the past decade. Portugal is no exception in that respect, albeit only in recent years. For example, there is ongoing follow-on litigation from the Commission's trucks cartel decision[30] currently before the Competition Court.

Of particular note, however, has been the recent emergence of class actions of various types, seeking compensation both on a follow-on and stand-alone basis and involving both national and multinational defendants. The first two class actions of this type were brought in December 2020 by a self-proclaimed consumer association, Ius Omnibus, against Mastercard (in connection with alleged infringements related to Mastercard's historic Central Acquiring Rule and its International Interchange Fee) and national brewer, Super Bock (a follow-on action from the PCA's decision that fined Super Bock for re-sale price maintenance (RPM)).[31] Both actions sought very significant damages awards—€400 million in each case.

Ius Omnibus has since brought a number of further actions, namely against car manufacturers for allegedly using devices to evade emissions requirements,[32] against Apple for alleged harm caused to consumers resulting from alleged misleading statements regarding the iPhone's resistance to liquids,[33] and a follow-on class action against EDP in connection with the PCA's infringement decision that found EDP abused its dominant position in the provision of supply in the secondary electricity market.[34]

The use of class actions in Portugal for the private enforcement of competition law is novel and it remains to be seen the extent to which certain threshold issues—such as whether the class action regime provided for by domestic law allows such claims or whether it is legal to finance these claims through litigation funding—are accommodated by national law. It is unquestionable, however, that, together with the PCA's more robust recent enforcement record, these cases have dramatically changed the competition law landscape in Portugal.

E. Concluding remarks and some recommendations for reforms

The new era of competition enforcement seeks to benefit the Portuguese economy which has, over the last two decades, lost competitiveness when compared to other EU Member States of a similar size. Greater competition is seen, understandably, as a tool to address that lost competitiveness.

This does not mean that the current system of enforcement of the competition laws is perfect. There is, in our view, room for improvement to make the regime more robust and predictable—two key drivers in attracting investment.

In particular:

- The current statutory deadline to respond to a statement of objections is a minimum of 20 working and the statutory deadline to respond to an infringement decision is 30 working days. The deadline to respond to a judgment of the Competition Court is a

[27] Proc. 322/17.1YUSTR, TCRS (2020-09-30).
[28] CJEU judgment in *Generics (UK) Ltd v Competition and Markets Authority* (C-307/18) EU:C:2020:52; [2020] 4 C.M.L.R. 14 at [36]. In the same vein, see CJEU judgment in *H Lundbeck A/S v European Commission* (C-591/16 P) EU:C:2021:243; [2021] 5 C.M.L.R. 2 at [54] and CJEU judgment in *Delimitis v Henninger Brau AG* (C-234/89) EU:C:1991:91; [1992] 5 C.M.L.R. 210 at [21].
[29] The theory of "judicial deference" can be described in the following terms: "the Court must undertake a comprehensive review of the examination carried out by the Commission, *unless that examination entails a complex economic assessment, in which case review by the Court is confined to ascertaining that there has been no misuse of powers, that the rules on procedure and on the statement of reasons have been complied with, that the facts have been accurately stated and that there has been no manifest error of assessment of those facts*" (emphasis added), *GlaxoSmithKline Services v Commission* (T-168/01) EU:T:2006:265; [2006] 5 C.M.L.R. 29 at [57].
[30] Commission Decision of 19.7.2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (the Treaty) and Article 53 of the EEA Agreement (AT.39824—*Trucks*) C(2016) 4673 final, *https://ec.europa.eu/competition/antitrust/cases/dec_docs/39824/39824_8750_4.pdf*.
[31] See Ius Omnibus cases homepage: *https://iusomnibus.eu/cases/*.
[32] See Ius Omnibus, "Ius Omnibus v Stellantis/Fiat Chrysler Automobiles", *https://iusomnibus.eu/ius-omnibus-v-stellantis-fiat-chrysler-automobiles/* and Ius Omnibus, "Ius Omnibus v Daimler/Mercedes-Benz", *https://iusomnibus.eu/ius-omnibus-v-daimler-mercedes-benz/*.
[33] See Ius Omnibus, "Ius Omnibus v Apple", *https://iusomnibus.eu/ius-omnibus-v-apple/*.
[34] See Ius Omnibus, "Ius Omnibus v EDP", *https://iusomnibus.eu/ius-omnibus-v-edp/*.

mere 10 days (not working days). Given that the PCA's decisions often number several hundred pages—and can sometimes reach nearly 1,000 pages—this is manifestly insufficient for the proper exercise of parties' rights of defence.

- The Competition Court is currently composed of only three judges. Given the current workload of the court and the expected increase in the number of appeals that result from the PCA's greater output—together with the emergence of private damages claims and class actions—this number needs to increase significantly and quickly. This is necessary not only to prevent a backlog of cases, but also to ensure more effective judicial scrutiny.
- At present only one judge is assigned per appeal. Again, given the complexity of the cases at issue—and the volume of materials that are part of an appeals process—this number should be increased to ensure greater rigor and to expedite the court's work.
- The role of the Public Prosecutor during the court proceedings should be reviewed. At present, both the PCA and the Public Prosecutor seek to uphold the PCA's decisions during court proceedings. It is not clear why the PCA requires such assistance—it has its own legal department with experienced and talented individuals. The existence of this "two against one" dynamic is not, in our view, necessary given the expertise of the PCA. The PCA should be confident in standing behind its decisions in court independently. The fact that this dynamic also undermines the perception of a level playing field at the most critical stage of review of an infringement decision is also unhelpful to the regime's credibility.
- At present, only the Competition Court can assess matters of fact and law arising from an infringement decision. This power should be extended to the Court of Appeal—that currently only reviews matters of law—given the very large fines that are currently being applied and that often turn on specific facts.

There are, undoubtedly, further reforms that could be proposed to improve the system. However, we consider that the introduction of these amendments would strengthen and bring greater credibility to the enforcement of competition law in Portugal at this critical juncture in the regime's evolution.

The emergence of a new era of competition law enforcement in Portugal is to be welcomed. The long-term success of this new chapter of the Portuguese competition regime must, however, find an equitable balance between greater enforcement and the ability for those subject to such enforcement to fully exercise their rights of defence. Otherwise, the long-term success of competition enforcement in Portugal could be at risk.