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COMPETITION ENFORCEMENT IN PORTUGAL IN 2018: SOME CHECKS AND A BALANCE (AND TRENDS FOR 2019)

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Similarly to 2017, 2018 was a busy year for the Portuguese Competition Authority (PCA). The PCA adopted two settlement decisions, one relating to a cartel in railway maintenance and another in the insurance sector. The companies (and a manager) involved paid fines totaling EUR 12.37 million. The PCA also carried out dawn raids in four investigations and issued four sets of statements of objections (concerning on-trade beer distribution and electricity supply apart from railway maintenance and insurance).

Settlements are a growing trend among enforcers as they promote efficiency in their activities, allowing them (and the companies involved) to close cases swiftly. However, this reduces the accountability and public scrutiny of the decisions and may lead to over-enforcement of competition policies. This is a trend to watch in 2019.

In the field of mergers, the PCA decided to open in-depth investigations in two merger cases – Altice/Media Capital and Rubis/Repsol Assets. In the first case, Altice decided to withdraw its merger filing and the latter case was cleared subject to commitments.

The Altice/Media Capital case is notable for being the first merger in Portugal to propose a concentration between a leading telecommunications company and a leading TV company. Although the filing was withdrawn by Altice, members of the PCA's team assumed, in an article published in CPI Antitrust Chronicle , that the proposed merger would most likely result in partial input foreclosure, through higher carriage fees, which would cause a significant increase in content acquisition costs, hampering Altice's rivals' ability to be effective competitors in the provision of pay-TV services and ultimately leading to higher consumer prices and/or decreased service quality. Therefore, such effects would most likely have been sufficient, in the opinion of the case handlers, to justify a decision by the PCA prohibiting the merger.

Such a challenge of a non-horizontal merger is not common. The Altice/Media Capital case shows that the PCA is ready to challenge this type of cases (specially in media/tech industries), which may be more frequent in the future, due to the interest in vertically integrating important inputs and distribution chains. This is our second trend to follow in 2019.

The PCA also published its study on Innovation and Competition in Financial Services (FinTech). The emergence of new technologies in the financial sector and the entry into force of the 2015 EU Directive on payment services (Second Payment Services Directive – PSD2) are expected to affect the banking and insurance industries and may create tension between traditional and new players. The PCA's study is relevant in this context, as it identifies some issues at an early stage of this market's development: market foreclosure by the

[1] Alípio Codinha, Mariana Costa, Marta Ribeiro and Pedro Marques, "Input Foreclosure in Telecoms/Media Vertical Mergers: The Meo/GMC Case", *in* CPI Antitrust Chronicle, August 2018, available in https://www.competitionpolicyinternational.com/wp-content/uploads/2018/08/CPI-Codinha-Costa-Ribeiro-Marques.pdf.

incumbent banks by hindering FinTech entrants' access to key inputs, notably client account data and settlement and clearing infrastructures, as well as several particularities of the Portuguese retail payment systems that are, according to PCA, likely to entail added difficulties for FinTech entrants.

Further to the implementation of the PSD2 Directive in Portugal, the PCA also advocates for the adoption of a regulatory framework that allows FinTech and InsurTech to test innovative products, services and business models in a live market environment, while safeguarding the interest of consumers and preserving system. This will certainly be another trend to follow in 2019.

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