

GETTING THE
DEAL THROUGH 

Cartel Regulation 2018

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Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

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First published 2001
Eighteenth edition
ISSN 1473-3420

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Portugal

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Legislation and institutions

1 Relevant legislation

What is the relevant legislation?

The Portuguese Constitution lists the following among the general principles of economic organisation and as primary duties of the state:

- ensuring the efficient functioning of the market to guarantee balanced competition between undertakings;
- opposing monopolistic forms of organisation;
- pursuing abuses of dominant position and other practices that may harm the general interest; and
- guaranteeing the protection of the interests and rights of the consumer.

The Constitution has evolved from the original 1976 version to reflect the various (if not somewhat conflicting) political, social and economic concerns of the legislature. That said, the principles referred to above, along with the recognition of private property, private enterprise and consumer protection, show that competition is seen as an essential element of the Portuguese economic system.

The Portuguese competition regime underwent significant reform in 2012 with the adoption of a new Competition Act, Law No. 19/2012 of 8 May (the Act), which superseded the previous regime put in place by Law No. 18/2003 of 11 June (the former Competition Act).

The Act largely follows the rules established at EU level, and addresses agreements between undertakings, decisions of associations of undertakings and undertakings' concerted practices (as well as the abuse of a dominant position, the abuse of economic dependence, concentrations and state aid). The Act also includes the leniency regime for immunity or reduction of fines imposed for breach of competition rules, which was formerly set forth in a separate statute (Law No. 39/2006 of 25 August).

Decree-Law No. 125/2014 of 18 August adopted and approved the new statutes of the Competition Authority (Autoridade da Concorrência – the AdC), superseding Decree-Law No. 10/2003 of 18 January, which created the AdC and approved its former statutes.

As regards appeals, Law No. 46/2011 of 24 June 2011 determined the creation of a specialised court to handle competition, regulation and supervision matters (the Specialised Court), which was established in the town of Santarém as of 30 March 2012. The new Specialised Court is now the exclusive first instance for review of all the decisions adopted by the AdC.

Also relevant are:

- Regulation No. 1/2013 of 3 January 2013, which sets out the leniency administrative procedure;
- the general regime on quasi-criminal minor offences (enacted by Decree Law No. 433/82 of 27 October 1982), which applies, on a subsidiary basis, to the administrative procedure on anticompetitive agreements, decisions and practices, and to the judicial review of sanctioning decisions;
- the Penal Code and the Criminal Procedure Code, both of which apply on a subsidiary basis to quasi-criminal minor offences by virtue of the general regime on quasi-criminal minor offences; and
- the Civil Code and the Civil Procedure Code regarding civil liability for anticompetitive infringements.

2 Relevant institutions

Which authority investigates cartel matters? Is there a separate prosecution authority? Are cartel matters adjudicated or determined by the enforcement agency, a separate tribunal or the courts?

Cartel matters are investigated and decided by the AdC. There is no separate prosecution authority.

According to its statutes the AdC is an independent administrative entity endowed with administrative and financial autonomy, management autonomy and organic functional and technical independence and with own assets. As per the statutes, the AdC's mission is the promotion and defence of competition in the public, private, cooperative and social sectors, in compliance with the principle of market economy and freedom of competition having in view the efficient functioning of the markets, the optimal allocation of resources and the interests of consumers.

The responsibilities of the AdC include:

- ensuring compliance with national and EU competition laws, regulations and decisions;
- implementing practices that may promote competition and develop a competition culture among economic operators and the public in general;
- establishing priority levels as regards matters which the AdC is called to assess, under the competition legal regime;
- releasing, notably among the economic operators, guidelines deemed relevant for the competition policy;
- following the activity of, and establishing cooperation links with, the EU institutions, national, foreign and international entities with responsibilities in the area of competition;
- promoting research in the area of competition law;
- contributing to the improvement of Portuguese legal regimes in all areas relevant to competition;
- carrying out the tasks conferred upon member states' administrative authorities by EU law in the field of competition; and
- ensuring the technical representation of the Portuguese state in EU or international institutions in competition policy matters, without prejudice to the powers of the Foreign Affairs Ministry.

The AdC is composed of two bodies: the Board of Directors and the Sole Supervisor, supported by the organisation required for the performance of the AdC's responsibilities, established in an internal regulation.

The Board of Directors is the highest body of the AdC and is responsible for the definition of the AdC's action and by the management of the AdC's services. The Board of Directors consists of a chair and up to three other members. A vice president may also be appointed as long as in total an odd number of members is maintained. The members are appointed by the Council of Ministers upon the proposal of the minister for economic affairs and pursuant to the hearing of the competent Parliament commission.

The Sole Supervisor is responsible for the control of the legal, regular and sound management of the AdC's assets and financial management, and also carries out an advisory role to the Board of Directors. The Sole Supervisor is a chartered accountant or a chartered accountancy firm appointed by joint decision of the ministers responsible for financial and economic affairs. The Sole Supervisor must be an auditor

registered with the Securities Market Commission or, if this is not adequate, a chartered accountant or a chartered accountancy firm member of the Chartered Accountants Chamber.

3 Changes

Have there been any recent changes, or proposals for change, to the regime?

Following a long-awaited reform of the competition regime, Law No. 19/2012 of 8 May superseded the previous regime put in place by Law No. 18/2003 of 11 June (see question 1). Pursuant to the Act, the current regime should be reviewed in accordance with the evolution of the EU competition regime. Meanwhile, Decree-Law No. 125/2014 of 18 August has enacted the AdC's statutes, superseding Decree-Law No. 10/2003 of 18 January.

4 Substantive law

What is the substantive law on cartels in the jurisdiction?

Article 9 of the Act, in line with article 101(1) of the Treaty on the Functioning of the European Union (TFEU), prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices, in whatever form, having as their object or effect to prevent, distort or restrict competition in the whole or part of the national market to a considerable extent. It then lists some of the behaviour that may be prohibited, including:

- directly or indirectly fixing purchase or sale prices or any other transaction conditions;
- limiting or controlling production, distribution, technical development or investments;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- making a condition of the signing of contracts the acceptance, by the other parties, of additional obligations that, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Cartels are likely to correspond to one or more of these situations. Furthermore, acts not listed under article 9 may naturally fall within its scope, provided that the conditions for its application are fulfilled.

Only significant restrictions of competition are relevant, excluding de minimis infringements.

The AdC has already interpreted article 9 of the Act in the sense that infringements the object of which is to prevent, distort or restrict competition (as opposed to infringements the effects of which are to prevent, distort or restrict competition) are infringements per se, insofar as they are prohibited because they represent a danger to competition whether or not they produce the effects that they potentiate (see, for instance, the AdC's decision in case 1/2011 regarding competitive restrictive practices in the production, processing and marketing of flexible polyurethane foam).

Infringements to article 9 of the Act constitute quasi-criminal minor offences and are punished as either intentional (cases where undertakings act intentionally and aware of the unlawfulness of their conduct) or negligent (violation of duties of care) behaviours (see articles 67 and 68 of the Act).

Application of the law and jurisdictional reach

5 Industry-specific provisions

Are there any industry-specific infringements? Are there any industry-specific defences or antitrust exemptions? Is there a defence or exemption for government-sanctioned activity or regulated conduct?

Under the Act, undertakings legally charged with the management of services of general economic interest or that benefit from legal monopolies are subject to competition provisions, as long as the application of these rules does not impede, in law or in fact, the fulfilment of their mission.

According to article 10(1) of the Act, agreements, decisions and practices prohibited under article 9 may be considered justified,

provided that they contribute to improving the production or distribution of goods and services or to promoting technical or economic development. Similarly, to the provisions of article 101(3) TFEU, this exemption will only apply when, cumulatively, they:

- allow the consumers of those goods and services a fair share of the resulting benefit;
- do not impose on the undertakings concerned any restrictions that are not indispensable for attaining these objectives; and
- do not afford such undertakings the possibility of eliminating competition in a substantial part of the product or service market in question.

Undertakings that invoke the above justification bear the burden of proof of the aforesaid conditions.

Agreements, decisions or practices are also deemed justified when, though not affecting trade between member states, they satisfy the remaining application requirements of a block exemption regulation adopted under article 101(3) TFEU. This benefit may be withdrawn by the AdC if the behaviour covered leads to effects incompatible with the provisions of article 10(1) of the Act.

As far as regulated sectors are concerned, the AdC's responsibilities are to be carried out in cooperation with the corresponding regulatory authorities. The Act establishes a mutual information obligation regarding possible anticompetitive behaviour in those sectors (see question 9) establishing the terms of their reciprocal cooperation.

6 Application of the law

Does the law apply to individuals or corporations or both?

The notion of 'undertaking' adopted in the Act is very broad and in line with EU case law. It covers any entity exercising an economic activity that involves the supply of goods and services in a particular market, irrespective of its legal status or the way it is financed. Groups of undertakings are treated as a single undertaking where they make up an economic unit or maintain ties of interdependence or subordination among themselves. See question 18 regarding the liability of individuals.

7 Extraterritoriality

Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what jurisdictional basis?

The Act applies to restrictive practices occurring in Portugal or that may have an effect within it.

8 Export cartels

Is there an exemption or defence for conduct that only affects customers or other parties outside the jurisdiction?

No.

Investigations

9 Steps in an investigation

What are the typical steps in an investigation?

Proceedings regarding infringements of article 9 of the Act, as well as infringements of article 101 TFEU that the AdC initiates or in which it is called to intervene, are governed by the Act and, on a subsidiary basis, by the quasi-criminal minor offences regime (see question 1). The most relevant steps are as follows.

Inquiry

Initiating an inquiry: principle of opportunity

Under the Act, the AdC may initiate an inquiry ex officio or upon a complaint. In this respect, it should be noted that the Act has adopted the principle of opportunity, pursuant to which, in exercising its powers, the AdC shall be subject to the criteria of public interest in the promotion and defence of competition, and on the basis of such criteria it may grant different degrees of priority in handling the matters it is called to assess. In deciding whether proceedings for infringement of competition rules shall be initiated, the AdC shall take into account:

- the competition policy priorities;
- the elements of fact and of law that are submitted to the AdC;

- the seriousness of the possible infringement;
- the likelihood of proving the existence of the infringement; and
- the scope of the investigation activity required to perform the mission of ensuring compliance with national and EU competition rules.

The AdC has meanwhile adopted the guidelines on the priorities in exercising sanctioning powers and on the investigation in proceedings regarding competition restrictive practices.

As regards processing of complaints, the AdC shall register all complaints received and initiate the corresponding proceedings. However, if on the basis of the information available the AdC considers that there are no sufficient grounds for acting, it shall inform the complainant granting a delay of no less than 10 working days to submit observations. If such observations are submitted by the complainant within the prescribed deadline but the AdC does not change its position, declaring that the complaint has no grounds or should not be granted priority, such decision may be appealed to the Specialised Court (see question 16). Conversely, in the absence of the timely submission of the observations, the case is closed.

Scope

Within the framework of the inquiry, the AdC shall carry out all the investigation actions required to establish the existence of an infringement and of the corresponding infringers, and to collect evidence.

Settlement proceedings

During the inquiry phase, the AdC may fix a deadline to the concerned undertaking of no less than 10 working days to express in writing its intention of participating in discussions with the AdC aiming at a possible submission of a settlement proposal. During the inquiry phase, the concerned undertaking may also submit in writing to the AdC its intention of initiating the said discussions.

A concerned undertaking participating in settlement discussions shall be informed, 10 working days before the start of such discussions, of the facts that are attributed to it, of the evidence supporting the application of a sanction and of the limits of the fine.

At the end of the discussions, the AdC notifies the concerned undertaking to submit a settlement proposal within a deadline of no less than 10 working days. The AdC may either reject the proposal (a decision that cannot be appealed) or accept it. In this latter case, the AdC shall prepare the draft settlement document, which it notifies to the concerned undertaking. The concerned undertaking shall, within a deadline of no less than 10 working days prescribed by the AdC, confirm that the draft settlement document reflects the settlement proposal. In the absence of such confirmation:

- the draft settlement document becomes ineffective;
- the infringement proceedings shall continue; and
- the settlement proposal is deemed revoked and cannot be used as evidence against any undertaking involved in the settlement proceedings.

The draft settlement document is converted into a definitive sanctioning decision upon the above confirmation by the concerned undertaking and upon payment of the applied fine. Facts included in the decision can no longer be used in other infringement proceedings and the facts confessed by the concerned undertaking cannot be rebutted in an appeal. Furthermore, a reduction of fine granted in leniency proceedings is added to the reduction granted in the settlement proceedings.

Closure with conditions

The AdC may also accept commitments offered by a concerned undertaking that are likely to eliminate the effects on competition of the practices under scrutiny, closing the case with conditions attached aimed at guaranteeing compliance with the commitments offered. Before approving a decision to close the case with conditions attached, the AdC shall publish on its website and in two major national newspapers, at the expense of the concerned undertaking, a summary of the case, fixing a deadline of no less than 20 working days for submission of observations by interested third parties. The AdC may, within two years, reopen the case closed with conditions attached if:

- a substantial change in the facts on which the decision was grounded has occurred;

- the conditions attached to the decision are not complied with; or
- the closure decision was grounded on false, inaccurate or incomplete information.

Decision

The inquiry must be concluded within a maximum deadline of 18 months. However, if such deadline cannot be met, the Council of the AdC (the AdC's decision-making body) shall inform the concerned undertaking of that fact, indicating the period required for the completion of the inquiry. Upon completion of the inquiry, the AdC may:

- start the investigation phase notifying the concerned undertaking of the statement of objections, when the AdC concludes that, on the basis of the findings, there is a reasonable possibility of adoption of a sanctioning decision;
- close the case when the findings do not allow for the conclusion that there is a reasonable possibility of adoption of a sanctioning decision;
- put an end to the proceedings adopting a sanctioning decision within settlement proceedings; or
- close the file with conditions attached, under the terms referred to above.

If the inquiry has been initiated following a complaint and the AdC considers, on the basis of the findings, that there is no reasonable possibility of adoption of a sanctioning decision, the AdC informs the complainant thereof, fixing a deadline of no less than 10 working days for the submission of observations. If such observations are submitted and the AdC's position remains unchanged, the latter shall adopt an express closure decision, which may be appealed to the Specialised Court (see question 16).

Investigation

Scope

In the statement of objections, the AdC shall fix to the concerned undertaking a deadline of no less than 20 working days to submit written observations on the matters that may be relevant to the decision and on the evidence gathered, and to request complementary evidence it may deem convenient. In the observations submitted, the concerned undertaking may request an oral hearing. Upon reasoned decision, the AdC may refuse to undertake additional action with regard to complementary evidence if it considers that the request has mere delaying purposes. The AdC may also carry out additional collection of evidence, even after the submission of the written observations by the concerned undertaking and its oral hearing. In this latter case, the AdC shall notify the concerned undertaking of the evidence gathered, fixing a deadline of no less than 10 working days for submission of observations. Furthermore, whenever the new evidence substantially changes the facts initially attributed to the concerned undertaking, the AdC shall issue a new statement of objections, the above applying *mutatis mutandis*. Pursuant to the Act, the AdC has adopted guidelines on the investigations and procedural steps.

Settlement proceedings

In its observations regarding the statement of objections, the concerned undertaking may also submit a settlement proposal, in which case the proceedings shall be suspended for a period established by the AdC that cannot exceed 30 working days. The remaining steps of the settlement proceedings are largely similar to those indicated above in respect of the submission of a settlement proposal during the inquiry phase.

Closure with conditions

During the investigation phase, the AdC may also close the case with conditions attached, under the same terms as those referred to above.

Decision

The investigation must be concluded within a maximum deadline of 12 months from the notification of the statement of objections. However, if such deadline cannot be met, the Council of the AdC shall inform the concerned undertaking thereof, indicating the period required for the completion of the investigation. Upon completion of the investigation, the AdC may:

- declare the existence of a restrictive practice and, if applicable, consider such practice justified under article 10 of the Act;
- adopt a sanctioning decision within settlement proceedings;
- close the case with conditions attached, under the terms referred to above; or
- close the case without conditions.

Decisions declaring the existence of a restrictive practice may include the admonition or the application of fines and other sanctions set in the Act and, if required, the imposition of behavioural or structural remedies indispensable to put an end to the restrictive practice or to the effects thereof. Structural remedies may only be imposed in the absence of a behavioural remedy equally effective, or, if such remedy exists, it is more costly to the concerned undertaking than the structural remedy.

Interim measures

The AdC may, at any time during the proceedings, order the suspension of a restrictive practice or impose other interim measures required to restore competition, or indispensable to the effectiveness of the final decision to be adopted, if the findings indicate that the practice in question is about to cause a serious damage that is irreparable or difficult to repair. The interim measures may be adopted by the AdC ex officio or upon request by any interested party, and shall be effective until they are revoked and for a period of up to 90 days, extendable for equal periods within the time limits of the proceedings. Imposition of interim measures is subject to a prior hearing of the concerned undertaking, except if such hearing puts at risk the effectiveness of the measures, in which case the concerned undertaking is heard after the measure is adopted. Whenever a market subject to sectoral regulation is concerned, the opinion of the corresponding sectoral regulator shall be requested.

Liaison with sectoral regulators

Whenever the infringement occurs in a sector subject to specific regulation, the AdC shall immediately inform the corresponding regulatory authority so that the latter may submit observations. Furthermore, prior to the adoption of the final decision, the AdC shall obtain a prior opinion from the relevant regulatory authority, except in the case of a decision of closure of the case without conditions. Likewise, when a sectoral regulatory authority assesses a practice that may amount to a violation of competition rules, it shall immediately inform the AdC. In this latter case, the sectoral authority, before issuing a final decision, shall submit a draft thereof to the AdC to obtain its opinion.

10 Investigative powers of the authorities

What investigative powers do the authorities have? Is court approval required to invoke these powers?

The Act enhanced the extensive powers of investigation already granted to the AdC by the former Competition Act. Under the Act, in investigating restrictive practices the AdC may, notably:

- question the concerned undertaking and other persons involved, personally or through their legal representatives, and request from them documents and other data deemed convenient or necessary to clarify the facts;
- question any other persons, personally or through their legal representatives, whose statements are considered relevant, and request from them documents and other data;
- carry out searches, examine, collect and seize extracts from accounting records or other documentation at the premises, land or transportation means of the undertakings or associations of undertakings (this action requires a decision from the competent judicial authority, issued upon an AdC's substantiated application);
- during the period strictly required for the foregoing measures, seal the premises and locations of the undertakings or associations of undertakings where accounting records or other documentation, as well as supporting equipment, may be found or are likely to be found (this action requires a decision from the competent judicial authority, issued upon an AdC's substantiated application); or
- request from any public administration services, including police authorities, the assistance that may be required for the performance of the AdC's functions.

In addition, in the case of a grounded suspicion that, in the domicile of shareholders, board members or employees, or other workforce of undertakings or associations of undertakings, evidence of infringements to article 9 of the Act or to article 101 TFEU may be found, the AdC may, upon decision by the competent judge issued upon an AdC's substantiated application, carry out searches in such domiciles. A search in an inhabited house, or in a locked part thereof, may only be carried out from 7am to 9pm, otherwise being null and void. Searches in the office of an attorney-at-law or doctor may only be carried out in the presence of a judge, who shall previously inform the chair of the local attorneys' bar or doctors' association, as applicable, so that he or she, or a delegate thereof, may be present. These rules apply, mutatis mutandis, to searches elsewhere, including vehicles of shareholders, board members or employees or other workforce of undertakings or associations of undertakings.

Seizure of documents must be authorised, ordered or confirmed by a decision of the judicial authority. Seizure of documents in the office of an attorney-at-law or doctor, which are subject to professional secrecy, is not permitted unless such documents are the object or an element of the infringement, otherwise being null and void. Seizure of documents in a credit institution, which are subject to banking secrecy, is carried out by the competent judge when there are grounded reasons to believe that such documents are related to the infringement or are of great interest to establish the facts.

International cooperation

11 Inter-agency cooperation

Is there cooperation with authorities in other jurisdictions? If so, what is the legal basis for, and extent of, cooperation?

Following the decentralisation carried out under Council Regulation No. 1/2003, cooperation between national competition authorities, including the AdC and the European Commission, takes place in the framework of the European Competition Network. Besides such cooperation, the AdC is also a member of the ECA (European Competition Authorities Association). Furthermore, at a multilateral level, the AdC cooperates within international organisations, including the OECD and the UNCTAD. The AdC also participates in multilateral cooperation networks, such as the International Competition Network (ICN), the Portuguese Speaking Countries Competition Network and the Iberian-American Competition Network. At a bilateral level, the AdC cooperates through technical cooperation protocols and projects of mutual interest with other competition authorities (Brazil, China, Mozambique, Singapore, Spain, Turkey, France and Austria). According to the last Activity Report available, in 2015 the AdC participated in 45 European and international meetings. In the same report the AdC underlines the cooperation with the Spanish competition authority and the organisation of the seventh edition of the Iberian Competition Forum, held in Lisbon in October 2015. In 2017, the AdC hosted the ICN annual conference, which took place in Oporto, from 10 to 12 May. This event is organised every year by one of the ICN member countries, was held for the first time in Portugal and was attended, according to the AdC information releases, by about 600 participants coming from over 100 jurisdictions and international organisations (notably OECD, European Commission, World Bank, UNCTAD and private practitioners), including the European Commissioner for Competition, Margrethe Vestager.

Furthermore, under Council Regulation No. 1/2003, the following EU competences were taken up by the AdC at the national level:

- the investigation of infringements of articles 101 and 102 TFEU;
- the withdrawal of the application of EU block exemption regulations to acts leading to effects incompatible with article 101(3) TFEU within the national territory, or in a section of it presenting all the characteristics of a separate geographical market;
- the rejection of infringement claims or the suspension of procedures when the alleged infringement is being investigated by the European Commission or another member state's competition authority;
- assistance with the European Commission's inspections of undertakings or associations of undertakings within the national territory; and
- inspections or other investigative measures in the national territory, applying the respective national legislation, on behalf of another member state's competition authority or on request from

the European Commission, to determine the existence of a violation of articles 101 or 102 TFEU.

12 Interplay between jurisdictions

Which jurisdictions have significant interplay with your jurisdiction in cross-border cases? If so, how does this affect the investigation, prosecution and penalising of cartel activity in cross-border cases in your jurisdiction?

See question 11 as regards the interplay between the Portuguese and the EU jurisdictions. According to the AdC's public records, within the framework of Council Regulation No. 1/2003, in 2004 one case was referred to the AdC within the European Competition Network (see the AdC's 2004 Activity Report, page 25).

Cartel proceedings

13 Decisions

How is a cartel proceeding adjudicated or determined?

See question 9.

14 Burden of proof

Which party has the burden of proof? What is the level of proof required?

The burden of proof concerning accusations of anticompetitive behaviour rests with the AdC. However, exemptions such as those mentioned in question 5 must be proved by the alleging parties. As regards the level of proof at the end of the enquiry phase (see question 9), the decision to start the investigation phase is taken on the basis of a balance of probabilities; conversely, taking into account criminal procedure principles, such as the *in dubio pro reo* principle, which apply to quasi-criminal minor offences by virtue of the general regime on quasi-criminal minor offences (see question 1), the level of proof required for the final decision is the procedural certainty that without any reasonable doubt is formed by the decision maker.

15 Circumstantial evidence

Can an infringement be established by using circumstantial evidence without direct evidence of the actual agreement?

Pursuant to article 31(4) of the Act, the evidence will be assessed in accordance with the rules of experience and the free opinion of the AdC. In its guidelines for the investigation of cases relating to the application of articles 9, 11 and 12 of the Act and 101 and 102 TFEU, the AdC underlines such legal principles and invokes the rules of experience connected with social and economic relations that are the subject of the competition rules. According to the AdC, such rules of experience allow account to be taken of the specific aspects resulting from the nature and context of the practices in question, in particular the difficulty of obtaining direct evidence in relation to certain infringements, such as concerted practices, and the need to consider circumstantial evidence.

16 Appeal process

What is the appeal process?

As stated above, Law No. 46/2011 of 24 June determined the creation of the Specialised Court to handle competition, regulation and supervision matters, as of 30 March 2012. The new Specialised Court is now the exclusive first instance for review of all the decisions adopted by the AdC.

Under the current regime, the AdC's sanctioning decisions (typically involving anticompetitive agreements, decisions and practices, abuses of economic power and infringements of the merger control rules) may be appealed to the Specialised Court under the rules established in the Act and, on a subsidiary basis, under the quasi-criminal minor offences regime. The appeal shall not suspend the effects of the AdC's decision, except for decisions that impose structural remedies as established in the Act. Appeals that refer to decisions applying fines or other penalties may suspend the enforcement of such decisions only if the party concerned requests it on the basis of the allegation that the enforcement of the decision may cause it considerable harm and if such party offers a guarantee, and provided such guarantee is submitted

within the time limit set by the court. The Specialised Court shall have full jurisdiction in the case of appeals lodged against decisions imposing a fine or a periodic penalty payment, and can reduce or increase the corresponding amounts.

As regards an appeal of the AdC's final decision condemning the concerned undertaking, it must be lodged within a non-extendable deadline of 30 working days. During a (also non-extendable) deadline of 30 working days, the AdC shall forward the file to the public prosecutor. The AdC may attach to the file written conclusions, together with elements or information it deems relevant for the Court's decision, and shall also indicate and submit the relevant evidence. The AdC shall further be given the opportunity to bring to the hearing any elements deemed relevant for the decision and to have a representative participating in such hearing. Although the Court may in certain cases decide by means of a court order without prior hearing, the AdC, the public prosecutor or the concerned undertaking may oppose such decision. The Court's final decision, as well as all decisions other than routine decisions that do not involve the refusal or the recognition of any right, must be notified to the AdC. The withdrawal of the case by the public prosecutor depends on the AdC's agreement. The AdC has standing to autonomously appeal from the Court's decisions (other than routine decisions).

Appeals of decisions of the Specialised Court that may be appealed are filed with the Appellate Court of Lisbon as a court of last resort.

The duration of the appeal proceedings depends on the complexity of the cases and of the concerned courts' workload. It may nevertheless last longer than 12 months.

Sanctions

17 Criminal sanctions

What, if any, criminal sanctions are there for cartel activity?

The application of general criminal law can only derive from behaviour also corresponding to a penal offence (fraud, extortion, disturbance of public auction or tender, etc), since there are no criminal sanctions for competition law offences. Cartel activity *per se* is considered a quasi-criminal minor offence.

18 Civil and administrative sanctions

What civil or administrative sanctions are there for cartel activity?

In relation to sanctions for quasi-criminal minor offences, under the Act, fines can be imposed of up to 10 per cent of the corresponding turnover in the year immediately preceding that of the final decision adopted by the AdC, for each of the infringing undertakings, or, in the case of associations of undertakings, of the aggregated turnover of the associated undertakings:

- for infringements of article 9 of the Act or article 101 TFEU;
- for non-compliance with the conditions attached to the decision of closing the case at the end of the investigation phase (see question 9);
- for non-compliance with the behavioural or structural remedies imposed by the AdC (see question 9); or
- for non-compliance with a decision ordering interim measures.

In cases where any of these infringements is carried out by individuals held responsible under the Act (see below), the applicable fine cannot exceed 10 per cent of the corresponding remuneration in the last full year in which the infringement took place.

In addition, refusal to provide information or the provision of false, inaccurate or incomplete information, or non-cooperation with the AdC, are subject to fines of up to 1 per cent of the corresponding turnover in the year immediately preceding that of the final decision adopted by the AdC for each of the infringing undertakings, or, in the case of associations of undertakings, of the aggregated turnover of the associated undertakings. In cases where any of these infringements is carried out by individuals held responsible under the Act (see below), the applicable fine ranges from 10 to 50 'account units' (each account unit currently amounting to €102).

Furthermore, the absence of a complainant, of a witness or of an expert to a duly notified procedural act is punishable with a fine ranging from two to 10 account units.

Multiple infringements are punished with a fine, the maximum limit of which is the sum of the fines applicable to each infringement. However, the total fine cannot exceed double of the higher limit of the fines applicable to the infringements in question.

Additionally, should the infringement be considered sufficiently serious, the AdC can impose, as ancillary sanctions:

- the publication, at the offender's expense, of an extract of the sanctioning decision in the official gazette of Portugal and in a Portuguese newspaper with national, regional or local coverage, depending on the relevant geographical market; or
- in cases of competition law infringements carried out during, or due to, public procurement proceedings, the prohibition, for a maximum of two years, from participating in proceedings for entering into public works contracts, for concessions of public works or public services, for the lease or acquisition of goods or services by the state, or for the granting of public licences or authorisations.

The AdC may further impose periodic penalty payments of up to 5 per cent of the average daily turnover in Portugal in the year immediately preceding that of the final decision, per day of delay counted from the date established in the notification, where the undertakings do not comply with an AdC decision imposing a sanction or ordering the adoption of certain measures.

Individuals, legal persons (regardless of the regularity of their incorporation), companies and associations without legal personality may be held liable for offences under the Act.

Legal persons and equivalent entities are liable when the acts are carried out:

- on their behalf, on their account by persons holding leading positions (eg, the members of the corporate bodies and representatives of the legal entity); or
- by individuals acting under the authority of such persons by virtue of the violation of surveillance or control duties. Merger, demerger or transformation of the legal entity does not extinguish its liability.

The members of the board of directors of the legal entities, as well as the individuals responsible for the direction or surveillance of the area of activity in which an infringement is carried out, are also liable when:

- holding leading positions, they act on behalf or on the account of the legal entity; or
- knowing, or having the obligation to know, the infringement, they do not adopt the measures required to put an end to it, unless a more serious sanction may be imposed by other legal provision.

Undertakings, whose representatives were, at the time of the infringement, members of the directive bodies of an association that is subject to a fine or a periodic penalty payment, are jointly and severally responsible for paying the fine, unless they have expressed in writing their opposition to the infringement.

In relation to civil sanctions, anticompetitive agreements, decisions and practices are considered null and void (except where they are considered justified; see question 5), and civil liability may also arise for the damage caused (see question 22).

The calculation of the above-mentioned fines must follow the mandatory criteria established in the Act (see question 19). In addition, on 20 December 2012, the AdC published guidelines regarding the methodology to be used in the application of fines. In drafting these guidelines, the AdC took into consideration the European Commission's guidelines on the method of setting fines imposed pursuant to article 23(2) (a) of Regulation No. 1/2003. The AdC's guidelines only apply to cases in which the inquiry phase (see question 9) was initiated after the Act came into force. Furthermore, the AdC states in the guidelines that they are not aimed at allowing for the prior calculation of the actual fines to be applied but rather at providing information necessary for the understanding of the methodology followed by the AdC in fixing such fines.

According to the AdC's public decision record, which appears on the AdC's website and only includes definitive decisions (ie, decisions that either were not subject to judicial review, or were subject to appeal and the final judicial decision has already been adopted), and in cases where the AdC has determined that an infringement occurred, the AdC has imposed fines except in those cases where it has exempted the concerned undertakings from the fines pursuant to the application of the leniency regime.

19 Guidelines for sanction levels

Do fining or sentencing principles or guidelines exist? If yes, are they binding on the adjudicator? If no, how are penalty levels normally established? What are the main aggravating and mitigating factors that are considered?

Under the Act, the following circumstances may be considered relevant for setting the amount of the fines:

- the seriousness of the infringement in terms of affecting effective competition in the Portuguese market;
- the nature and size of the market affected by the infringement;
- the duration of the infringement;
- the level of participation in the infringement by the concerned undertakings;
- the advantages that the offending concerned undertakings have enjoyed as a result of the infringement, if possible to determine;
- the behaviour of the concerned undertakings in putting an end to the restrictive practices and in repairing the damages caused to competition;
- the economic situation of the concerned undertakings;
- records of previous competition infringements carried out by the concerned undertakings; and
- cooperation with the AdC until the close of the administrative proceedings.

Consideration of the above circumstances is mandatory for the AdC. However, the absence of a hierarchy and the consideration of circumstances not listed above leave room for discretion.

Furthermore, as stated above, on 20 December 2012 the AdC published guidelines regarding the methodology to be used in the application of fines (see question 18).

20 Debarment

Is debarment from government procurement procedures automatic, available as a discretionary sanction, or not available in response to cartel infringements? If so, who is the decision-making authority and what is the usual time period?

As stated in question 18, in the case of competition law infringements carried out during, or due to, public procurement proceedings, the AdC can impose, as an ancillary sanction, a prohibition, for a maximum of two years, from participating in proceedings for entering into public works contracts, for concessions of public works or public services, for the lease or acquisition of goods or services by the state, or for the granting of public licences or authorisations.

21 Parallel proceedings

Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?

As stated above (see questions 17 and 18) cartel activity per se is considered a quasi-criminal minor offence and does not involve the application of criminal sanctions, without prejudice to the application of general criminal law if the behaviour in question also corresponds to a specific criminal offence.

Private rights of action

22 Private damage claims

Are private damage claims available for direct and indirect purchasers? What level of damages and cost awards can be recovered?

Third-party claims for damages are dealt with under the general principles and provisions applicable to civil liability as provided for in the Civil Code. The standard liability requirements are the existence of an illicit act (the anticompetitive behaviour), injury to the claimant and a causal link between the two. The purpose of this liability is merely to repair damage (ie, to restore the situation that would have existed if the event that determines the need for the reparation had not occurred). The amount of compensation shall be measured by the difference

between the actual patrimonial situation of the damaged party and the patrimonial situation of such party that would exist if the damage had not taken place. This includes not only the amount of the damage caused by the illicit conduct, but also interest and the amount of any benefits that the damaged party could not obtain due to the illicit action. Predictable future damage shall be taken into account for this purpose. Undeterminable future damage, on the contrary, shall be the object of a subsequent procedure and decision.

Any injured party has individual standing.

In the case of indirect purchasers' claims, passing-on shall be taken into account in determining the actual damages that may be claimed.

Legislation enacting the EU Directive on Antitrust Damages Actions (Directive 2014/104/EU), should have been enacted by 27 December 2016 but has not yet occurred, although draft legislation has meanwhile been subject to public discussion. Such legislation is expected to be enacted before the end of 2017 and will bring about substantial changes in the general framework referred to above.

23 Class actions

Are class actions possible? If yes, what is the process for such cases? If not, what is the scope for representative or group actions and what is the process for such cases?

Class actions, whereby individual litigants or associations may, under certain conditions, sue in representation of injured parties, are provided for in Law No. 83/95 of 31 August and article 31 of the Code of Civil Procedure, and may, in principle, be applicable to competition law injuries. The process is governed by ordinary civil procedure rules. From the public records and from our experience, class actions are not a very popular and frequently chosen course of action in Portugal, only one case involving competition law being reported in 2015, with no further details thereon being publicly available.

Cooperating parties

24 Immunity

Is there an immunity programme? If yes, what are the basic elements of the programme? What is the importance of being 'first in' to cooperate?

The Act establishes the leniency rules in article 75 et seq. In addition, as stated above (see question 1) the AdC has adopted Regulation No. 1/2013 of 3 January 2013, which sets out the leniency administrative procedure.

Under the Act, the AdC can grant immunity or reduction of fines in procedures for quasi-criminal minor offences that concern agreements and concerted practices between competitors prohibited by article 9 of the Act and (where applicable) article 101 TFEU, which are aimed at coordinating the competitive behaviour of the undertakings or at influencing relevant competitive conditions.

To obtain full immunity, an applicant must:

- be the first undertaking to inform the AdC of its participation in an agreement or a concerted practice, as long as it provides information and evidence that, in the AdC's discretion, enables the latter:
 - to substantiate a request for searches or seizure of data, provided that the AdC, at the time the information and evidence are submitted, does not have sufficient elements to perform such acts; or
 - to establish the existence of an infringement, provided that, at that moment, the AdC does not have sufficient evidence of the infringement available;
- cooperate fully and continuously with the AdC from the moment of the initial request by:
 - providing all data and evidence already obtained or to be obtained in the future;
 - responding immediately to any request for information;
 - avoiding acts that may endanger the investigation; and
 - not informing the other participants in the concerted practice;
- put an end to its participation in the infringement before it provides the AdC the information and evidence, except as reasonably required, in the AdC's opinion, to preserve the investigation effectiveness; and
- not have coerced other undertakings to participate in the breach.

The information and evidence to be provided must contain complete and precise information on:

- the agreement or concerted practice;
- the undertakings involved, including the objectives, activity and way of operation;
- the product or service concerned; and
- the geographical scope, the duration and the manner in which the breach has been carried out.

25 Subsequent cooperating parties

Is there a formal partial leniency programme for parties that cooperate after an immunity application has been made? If yes, what are the basic elements of the programme? If not, to what extent can subsequent cooperating parties expect to receive favourable treatment?

As stated above, under the leniency rules set forth in the Act, the AdC can grant immunity or reduction of fines.

The AdC shall grant a reduction of fines to undertakings which, not being eligible to immunity, submit information and evidence that adds significant value to those already in the possession of the AdC and provided the conditions are met regarding cooperation with the AdC and putting an end to the infringement (see question 24).

26 Going in second

What is the significance of being the second cooperating party? Is there an 'immunity plus' or 'amnesty plus' option?

As regards full immunity, as noted above, only the first undertaking to provide information and evidence may obtain full immunity from fines.

Concerning the reduction of the fine, the corresponding level of reduction is determined by the AdC as follows:

- a reduction from 30 to 50 per cent granted to the first undertaking that provides information and evidence;
- a reduction from 20 to 30 per cent granted to the second undertaking that provides information and evidence; or
- a reduction of up to 20 per cent granted to the subsequent undertakings that provide information and evidence.

In fixing the fine, the AdC shall take into account the order of submission of the information and evidence, as well as their added value for the investigation. If a leniency application is submitted after the notification of the statement of objections (see question 9) the above reduction limits are reduced by half. There is currently no 'immunity plus' or 'amnesty plus' option.

27 Approaching the authorities

Are there deadlines for initiating or completing an application for immunity or partial leniency? Are markers available and what are the time limits and conditions applicable to them?

See questions 24, 25 and 32.

28 Cooperation

What is the nature, level and timing of cooperation that is required or expected from an immunity applicant? Is there any difference in the requirements or expectations for subsequent cooperating parties?

See questions 24 and 25.

29 Confidentiality

What confidentiality protection is afforded to the immunity applicant? Is the same level of confidentiality protection applicable to subsequent cooperating parties? What information will become public during the proceedings and when?

The AdC shall classify as confidential the leniency application as well as the documents and information provided by the applicant.

Update and trends

Investigative action

Following the appointment of a new chairperson of the Board of Directors, the AdC announced an intensification of its investigative activity, in line with its priorities set for 2017.

In fact, the AdC intensified its investigative activity in the first six months of 2017, carrying out dawn raids on 27 entities, mainly in the retail and large retail sectors, as well as on insurance companies, driving schools and river-cruise entities.

New online complaints portal

In June 2017 the AdC launched a new online complaints portal, which is now available to assist the public in reporting anticompetitive practices such as cartels. This new complaints portal is available on the AdC's website at www.concorrenca.pt. It provides a simple way for anyone who know about anticompetitive practices to report them and ensures anonymity for any complainant.

Sentencing decisions

In May 2017, the AdC imposed fines in the aggregate amount of €38.3 million on companies in the groups EDP and Sonae for having

entered into an anticompetitive agreement within the partnership created for the commercial campaign 'Plano EDP Continente' in 2012. The infringement concerns the agreement whereby Sonae and EDP agreed not to compete in the electricity distribution sector in mainland Portugal for a period of two years. The case originated from consumer complaints, and the practice occurred in the context of the liberalisation of the distribution of electricity and natural gas in Portugal, a particularly key moment for competition in the sector.

In September 2017, the AdC fined the Portuguese Driving Schools Association (APEC) and its president for fixing a minimum price for obtaining driving licences. The alleged conduct harmed competition in the market of driving schools in the Greater Lisbon and Setúbal areas. Following a complaint, on 17 January 2017, the AdC carried out dawn raids related to this case and obtained the evidence that substantiated the decision. Reportedly, the fixing of minimum prices started on 28 September 2016 and was to be applied by about 170 driving schools in the area where the association operates. The President of the association was also found to have committed an infringement for having known about the practice and for taking no action to prevent it or put an end to it.

For the purpose of preparing the observations in response to the statement of objections, a concerned undertaking shall be granted access to the leniency application and to the related documents and information by the AdC. However, the concerned undertaking shall not be allowed to make copies of such elements unless authorised by the leniency applicant. Third parties' access to the leniency application and to the related documents and information shall require the leniency applicant's consent.

The concerned undertaking shall not be granted access to copies of its oral statements and third parties shall have no access to them.

The above rules apply to both full (immunity) and partial (reduction of fines) leniency.

30 Settlements

Does the investigating or prosecuting authority have the ability to enter into a plea bargain, settlement or other binding resolution with a party to resolve liability and penalty for alleged cartel activity? What, if any, judicial or other oversight applies to such settlements?

Under the Portuguese leniency regime, the AdC is not granted the power to enter into arrangements such as plea bargains. Settlements are permitted under the terms described above, and a reduction in fine granted in leniency proceedings is added to the reduction granted in the settlement proceedings (see question 9). In its most recent cartel decisions, the AdC, in determining the amount of the fines, took into account the cooperation of the companies during the investigation through the use of both the leniency regime and the settlement proceedings. The facts confessed by a concerned undertaking in a settlement procedure cannot be subject to judicial review for the purposes of any appeal.

31 Corporate defendant and employees

When immunity or partial leniency is granted to a corporate defendant, how will its current and former employees be treated?

Individuals and employees of an undertaking who are responsible for the direction or surveillance of the area of activity in which an infringement occurred, may be granted immunity or reduction of fines if they fully and continuously cooperate with the AdC, even if they have not requested such benefits.

32 Dealing with the enforcement agency

What are the practical steps for an immunity applicant or subsequent cooperating party in dealing with the enforcement agency?

As stated above, Regulation No. 1/2013 sets out the leniency administrative procedure.

Under Regulation No. 1/2013, a leniency request is made by means of an application addressed to the AdC and must include:

- the object of the application, specifying whether it is a request for immunity or for a reduction in fine, or both;
- the identification of the applicant, the capacity in which the application is filed (ie, a company or the members of its board of directors or equivalent entities, or the individuals responsible for management or supervision of the sector of activity concerned in the infringement) and the corresponding contacts. In the case of legal entities, the information shall include the identification of the current members of the board of directors as well as of the members of such board during the duration of the infringement;
- detailed information on the alleged cartel;
- the identification and contact details of the undertakings involved in the alleged cartel, as well as of the current members of their boards of directors and of the members of such boards during the duration of the infringement;
- identification of other jurisdictions where a leniency application has been filed in respect of the same infringement; and
- other information deemed relevant for the request for immunity or reduction of the fine.

Together with the leniency application, the applicant shall submit all the evidence in its possession or under its control.

The leniency application must be submitted at the AdC's head office by any means, notably:

- fax (+351 217902 093);
- mail addressed to the AdC's head office;
- email sent to the address clemencia@concorrenca.pt with an electronic signature; or
- hand delivery, notably in a meeting with the AdC's services in charge of the investigation.

Submission of a written application can be replaced by oral statements made in a meeting with the AdC's services in charge of the investigation. Such statements shall be accompanied by all the evidence in the possession of or under the control of the applicant. The statements shall be recorded in the AdC's head office with an indication of their time and date. Within the time frame established by the AdC, the applicant confirms the technical accuracy of the recording and, if necessary, corrects the statements. In the absence of any comment from the applicant, the recording is considered approved by the applicant. The transcription of the statements must be complete and accurate and shall be signed by the applicant.

The request for immunity or reduction of fine shall be deemed made on the date and at the time of its receipt at the AdC's head office. The AdC shall provide a document confirming receipt of the application and the date and hour of its submission.

In special cases and upon reasoned request, the AdC may accept a simplified leniency application if the applicant has filed, or is filing, a leniency application with the European Commission and the

Commission is in the situation provided for in the Commission Notice on cooperation within the network of competition authorities (2004/C 101/03). The application shall, in these cases, be made in Portuguese or English according to the form attached to Regulation No. 1/2013 or by oral statements. The AdC shall provide a document confirming the receipt of the simplified application and the date and hour of its submission. If the AdC starts an investigation of the infringement, it shall request that the applicant completes the application within a time frame of no less than 15 days, which, if applicable, shall include a Portuguese translation of a simplified application filed in English. If the application is not completed or the Portuguese translation is not filed within the established deadline, the application shall be refused. If an application is filed only for the purposes of immunity and this latter is no longer available (see question 25), the AdC shall inform the applicant that the application may be withdrawn or completed for the purposes of reduction of the fine. If the applicant completes the application within the established deadline, the request shall be deemed to have been made on the date and hour the application was initially filed.

Upon receipt of a written or oral application for immunity or reduction of fine, the AdC may, on its own initiative or upon reasoned request, grant a marker to the applicant establishing a period of no less than 15 days for the completion of the application by the applicant. To benefit from the marker, the applicant must indicate in the application:

- its name and address;
- information on the alleged cartel, and on the products, services and territory affected;
- an estimate of the duration of the alleged cartel;
- whether other applications for immunity or reduction of fines have been filed or are planned to be filed with other competition authorities regarding the alleged cartel; and
- the justification for the marker.

If the applicant completes the application within the established deadline, the request shall be deemed to have been made on the date and hour the application was initially filed. If the application is not completed, the application shall be refused. Following an analysis of the application, the AdC shall notify the applicant if it considers that the requirements for immunity are not met, in which case the applicant may, within 10 days of such notification, withdraw the application or request the AdC that this latter is considered for the purposes of reduction of the fine.

As regards an application for reduction of a fine, if the AdC considers, on a preliminary basis, that the information and evidence submitted by the applicant adds significant value to that already in its possession, it shall inform the applicant of its intention to grant a reduction of the fine, indicating the level of the applicable reduction. The aforementioned rules governing the application for immunity or reduction of fine apply. If the AdC considers, on a preliminary basis, that the information and evidence submitted by the applicant does not add significant value to those already in its possession, it shall notify the applicant, in which case this latter may, within 10 days of such notification, withdraw the application. (See also question 25.)

Immunity or reduction of fines shall only be granted if all the requirements set forth in the Act are fulfilled (see questions 24 and 25). The final decision on immunity or reduction of fines shall be taken in the final decision of the proceedings adopted by the AdC at the end of the investigation (see question 9).

33 Policy assessments and reviews

Are there any ongoing or anticipated assessments or reviews of the immunity/leniency regime?

As stated, Law No. 19/2012 superseded Law No. 18/2003, the previous competition statute, and, in respect of leniency, Law No. 39/2006. Pursuant to the Act, the current regime, including in respect of leniency provisions, should be reviewed in accordance with the evolution of the EU competition regime (see question 3).

Defending a case

34 Disclosure

What information or evidence is disclosed to a defendant by the enforcement authorities?

The defendant can request the consultation of the case file and obtain, at his or her own expense, any extracts, copies or certificates. Nevertheless, the AdC can refuse access to the file until the notification of the statement of objections in cases where the proceedings are subject to secrecy and whenever it considers that such access may harm the investigation. The AdC shall have due care for the legitimate interests of the undertakings, or associations of undertakings, or of other entities, relating to non-disclosure of their business secrets. In order to respond to the statement of objections, the defendant may also have access to the application for immunity from the fine or reduction of the fine, and to the documents and information submitted for the purpose of immunity or reduction, though no copy can be made unless authorised by the applicant.

35 Representing employees

May counsel represent employees under investigation in addition to the corporation that employs them? When should a present or past employee be advised to obtain independent legal advice?

Employees can be interviewed or requested to provide information or documents relevant to an investigation by the AdC. In such cases, joint representation of a corporation and employees by the same counsel may constitute a conflict of interest under article 99 of the Portuguese Bar Association Legal Regime.

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36 Multiple corporate defendants**May counsel represent multiple corporate defendants? Does it depend on whether they are affiliated?**

The representation by counsel of multiple corporate defendants may be acceptable to the extent it does not raise any conflicts of interest (see question 35).

37 Payment of penalties and legal costs**May a corporation pay the legal penalties imposed on its employees and their legal costs?**

In principle, nothing seems to prevent a corporation from voluntarily paying the costs or penalties (or both) imposed on its employees, or from reimbursing employees for such costs or penalties.

38 Taxes**Are fines or other penalties tax-deductible? Are private damages awards tax-deductible?**

Fines, or other penalties and private damages awards are not tax-deductible.

39 International double jeopardy**Do the sanctions imposed on corporations or individuals take into account any penalties imposed in other jurisdictions?****In private damage claims, is overlapping liability for damages in other jurisdictions taken into account?**

The *ne bis in idem* principle, which is essentially the equivalent of the double jeopardy principle, applies in the framework of quasi-criminal minor offences and therefore applies to cartel infringements (see question 1). However, in applying the principle, the AdC shall take into account whether the infringement previously sanctioned is the same as that subject to its assessment, in terms of both the specific behaviour in question and the territory where it occurred or had effect.

As regards liability for private damage claims, the overlapping liability for damages shall be taken into account, notably in the determination of the actual amount of damages that may be claimed before the Portuguese jurisdiction (see question 22).

40 Getting the fine down**What is the optimal way in which to get the fine down?****Does a pre-existing compliance programme, or compliance initiatives undertaken after the investigation has commenced, affect the level of the fine?**

See questions 9 (in respect of the settlement proceedings and of the closure of the case with conditions attached) and 24 to 32 (on the leniency regime). In addition, the behaviour of the undertaking concerned in putting an end to the restrictive practices and in repairing the damage caused to competition may be taken into account in the determination of the amount of the fine, under the framework described in question 19. We are not aware of any decisions in which the AdC has explicitly taken into account the pre-existence or the commencement of compliance programmes in determining the level of the fine.

Getting the Deal Through

Acquisition Finance	Enforcement of Foreign Judgments	Pharmaceutical Antitrust
Advertising & Marketing	Environment & Climate Regulation	Ports & Terminals
Agribusiness	Equity Derivatives	Private Antitrust Litigation
Air Transport	Executive Compensation & Employee Benefits	Private Banking & Wealth Management
Anti-Corruption Regulation	Financial Services Litigation	Private Client
Anti-Money Laundering	Fintech	Private Equity
Appeals	Foreign Investment Review	Private M&A
Arbitration	Franchise	Product Liability
Asset Recovery	Fund Management	Product Recall
Automotive	Gas Regulation	Project Finance
Aviation Finance & Leasing	Government Investigations	Public-Private Partnerships
Aviation Liability	Healthcare Enforcement & Litigation	Public Procurement
Banking Regulation	High-Yield Debt	Real Estate
Class Actions	Initial Public Offerings	Real Estate M&A
Cloud Computing	Insurance & Reinsurance	Renewable Energy
Commercial Contracts	Insurance Litigation	Restructuring & Insolvency
Competition Compliance	Intellectual Property & Antitrust	Right of Publicity
Complex Commercial Litigation	Investment Treaty Arbitration	Risk & Compliance Management
Construction	Islamic Finance & Markets	Securities Finance
Copyright	Joint Ventures	Securities Litigation
Corporate Governance	Labour & Employment	Shareholder Activism & Engagement
Corporate Immigration	Legal Privilege & Professional Secrecy	Ship Finance
Cybersecurity	Licensing	Shipbuilding
Data Protection & Privacy	Life Sciences	Shipping
Debt Capital Markets	Loans & Secured Financing	State Aid
Dispute Resolution	Mediation	Structured Finance & Securitisation
Distribution & Agency	Merger Control	Tax Controversy
Domains & Domain Names	Mergers & Acquisitions	Tax on Inbound Investment
Dominance	Mining	Telecoms & Media
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Cartel Regulation
ISSN 1473-3420



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