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The International Comparative Legal Guide to:

Competition Litigation 2017

9th Edition

A practical cross-border insight into competition litigation work

Published by Global Legal Group, in association with CDR, with contributions from:

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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
Print Group
September 2016

ISBN 978-1-911367-14-7
ISSN 1757-2819

Strategic Partners

General Chapter:

Country Question and Answer Chapters:

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1 General

1.1 Please identify the scope of claims that may be brought in your jurisdiction for breach of competition law.

In Portugal, injunctions or claims can be brought before the courts by any person who has suffered due to anticompetitive practices, in breach either of the Portuguese Competition Act or the Treaty on the Functioning of the European Union (TFEU).

The scope of claims that may be brought before the Portuguese courts for infringing national or European competition rules cover: a) actions to obtain a declaration of nullity for any agreement that is opposed to national or European competition law; b) actions to obtain compensation for the damages suffered in consequence of a specific clause or practice considered to be anticompetitive; and c) actions to obtain interim relief before the court (and also before the Portuguese Competition Authority).

1.2 What is the legal basis for bringing an action for breach of competition law?

The legal basis for competition law claims in Portugal derives either from national law or directly from EU law.

The Portuguese Competition Act – Law 19/2012, of 8 May (hereinafter "PCA") – establishes the general competition legal framework concerning mergers, anticompetitive practices and abuse of dominant position.

Restrictive Agreements and Similar Practices

The PCA prohibits, in its article 9, agreements between undertakings, concerted practices and decisions by associations of undertakings which have as their purpose or effect the prevention, restriction or distortion of competition. Said agreements between undertakings may be legally binding agreements, informal agreements or simple arrangements between undertakings.

As regards concerted practices, they generally involve the fixing of market conditions and business actions taken in parallel, for instance through a sudden and simultaneous rise in prices for a given product.

Similarly to article 101 of the TFEU, the PCA also provides examples of restrictive practices:

a) Direct or indirect fixing of purchase or selling prices or of any other business conditions.

b) Limitation or control over production, distribution, technical development or investments.

c) Sharing of markets or sources of supply.

d) Application to trade partners of dissimilar conditions to equivalent transactions, therefore placing them at a disadvantage in the competition.

e) Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Abuse of a Dominant Position

The PCA prohibits, in its article 11, the abuse of a dominant position which is deemed to occur where an undertaking i) holds a dominant position in the relevant market, and ii) exploits it in an abusive manner.

According to the European Court of Justice's jurisprudence, a dominant position relates to a position of economic strength that enables an undertaking to prevent effective competition from being maintained in the relevant market by granting it the power to behave in a considerable extent regardless of its competitors, customers and consumers.

There shall be an individual or collective dominant position with regard to a given product or service if i) a company acts in a market in which it is not subject to significant competition, or ii) two or more companies behave in a concerted manner in a market in which they do not have significant competition or in which they prevail over others (joint dominance).

Similar to article 102 of the TFEU, the PCA also provides examples of restrictive practices:

a) Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.

b) Limiting production, markets or technical development to the prejudice of consumers.

c) Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

d) Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

e) Refusing access for another undertaking to a network or other essential facilities that it controls, against the appropriate payment, provided that such undertaking without it cannot act, for *de facto* or legal reasons, as a competitor of such undertaking in a dominant position in the upstream or downstream markets, except if the dominant undertaking evidences that such access is not reasonably possible for operational or other reasons.

The last example is innovative when comparing the wording of the national law with EU law provisions. However, in practice, the same understanding and practice is followed within the EU scheme.

Abuse of Economic Dependence

In addition to the abuse of a dominant position, the PCA also prohibits, in its article 12, the abuse of economic dependence, which intends to prevent the abuse by one or more undertakings of the economic dependence over a supplier or client that has no equivalent alternative, to the extent that such a practice affects the way the market or competition operates. An undertaking is deemed not to have an equivalent alternative when: a) the supply of the goods or services at issue, specifically at the point of distribution, is controlled by a restricted number of undertakings; and b) the undertaking cannot find identical conditions from other commercial partners within a reasonable time-scale. Among others, the following may be considered abusive: a) the adoption of any behaviour such as described for the abuse of a dominant position; and b) any unjustified break, total or partial, in established commercial relations, bearing in mind previous commercial relations, recognised practices in that particular economic activity and the contractual conditions that have been set down.

Other Types of Prohibited Conduct

Portuguese legislation also prohibits individual commercial practices regarding activities which do not *per se* have effects on competition.

Decree-Law 166/2013, of 27 December, establishes the legal regime applicable to the individual restrictive trade practices and is only applicable to undertakings established in national territory. Besides the mandatory rule of transparency in the policies of prices and other sales conditions through the imposition of price lists, this regime considers as restrictive trade practices (i) the application of discriminatory prices or sales conditions, (ii) the sale below the price of cost, (iii) the refusal of supply of goods or services, and (iv) abusive business practices.

Due to an important change introduced by Decree-Law 166/2013, the Authority for Food and Economic Safety (ASAE) has the exclusive competence to apply this legal framework. This national specialised administrative authority, in the context of food safety and economic surveillance, is the supervisory and investigative authority for all administrative offences. The decisions are the competence of the General Inspector of the ASAE and may be appealed to the ordinary courts.

Concerning the prohibition of application of discriminatory prices or sale conditions in relation to equivalent transactions, this regime underlines that if such practices are compliant with Competition Law (Law 19/2013, 8 May), the prohibition will not apply. Once the ASAE is the entity with exclusive jurisdiction to apply Decree-Law 166/2013 and not the competition law regime, if a conduct is sanctioned under the latter, only the PCA will have competence to analyse that behaviour.

1.3 Is the legal basis for competition law claims derived from international, national or regional law?

The Portuguese Constitution (article 52/3) grants to all citizens, alone or through association for the defence of relevant interests, the right to take a collective redress proceeding in cases and within the terms established by law, including the right of an injured party or parties to request damages compensation, which includes the breach of competition rules.

Depending on the specific case, the legal basis for competition law claims in Portugal is provided in the general rules of Portuguese civil law in connection with the specific provisions infringed: either the infringement of the national competition law provisions described above – articles 9, 11 and 12 of the PCA – or the infringement of articles 101 and 102 of the TFEU, which are directly applicable and enforceable in Portugal before both the Competition Authority and the courts.

In accordance with the Portuguese general rules of civil law, if someone suffers a loss as a result of an anticompetitive practice, i.e., as a consequence of the infringement of the above-mentioned national or EU law provisions, such person is entitled to ask for damages before the competent courts.

1.4 Are there specialist courts in your jurisdiction to which competition law cases are assigned?

Depending on the procedure at stake, different entities are considered competent, which can be summarised as follows:

Complaints Regarding Competition Law

As a preliminary note, it is important to highlight that pursuant to Portuguese law, violations of competition law are administrative offences. The complaints regarding competition law issues are presented before the Portuguese Competition Authority (PCA). If the PCA becomes aware of facts which may indicate the existence of an infringement of the national and EU competition law provisions, it starts the procedure aiming to identify the prohibited practices as well as their agents. The PCA may obtain such information under its own initiative and by its own means or through complaints presented to it by public bodies or natural or legal persons. Although the PCA has the power to impose fines of an administrative nature, it does not have judicial powers to evaluate damages for breach of competition law. At present, these actions can only be brought under the general regime of civil responsibility.

Appeals from the Portuguese Competition Authority's Decisions

The dispute of decisions or measures (when appealing is possible) taken by the PCA are brought before the Competition, Regulation and Supervision Court (*Tribunal da Concorrência, Regulação e Supervisão*, created by Law 46/2011, of 24 June). This appeal does not suspend the effects of the decisions, unless it is provided for, solely or cumulatively with other interim measures, explicitly in the interim measures duly handed down. The Competition, Regulation and Supervision Court has full jurisdiction in cases of appeals submitted against the PCA decisions imposing a fine or a periodic penalty payment, and can reduce or increase the amount of the fine or of the periodic penalty payment. The competent appellate court (*Tribunal da Relação*) hears the appeals lodged against the rulings and dispatches of the Competition, Regulation and Supervision Court. If the appeal previously referred to focus on an issue of law, the appeal will be brought directly to the Supreme Court. The decisions of the *Tribunal da Relação* can be brought to the Supreme Court but are strictly limited to issues of law, with no suspensive effect.

Private Enforcement of Competition Law

With regard to the private enforcement of competition law, currently, in Portugal, there are no specific statutory bases or specialised courts and therefore the local judicial courts are competent (specifically determined in accordance with specific procedural rules). The general principles governing liability for damages applied are no different from those that apply for competition-based damages actions. Therefore, the bases for appeal for damages follow the rules laid down in the Code of Civil Procedure (*Código de Processo Civil*). The judicial courts will hear claims for compensatory damages resulting from breach of competition rules and actions for a declaration of nullity of a contract on the same grounds.

1.5 Who has standing to bring an action for breach of competition law and what are the available mechanisms for multiple claimants? For instance, is there a possibility of collective claims, class actions, actions by representative bodies or any other form of public interest litigation? If collective claims or class actions are permitted, are these permitted on an "opt-in" or "opt-out" basis?

When any anticompetitive practice occurs – the infringement of articles 9, 11 or 12 of the PCA, and also the infringement of articles 101 or 102 of the TFEU – any affected person, natural or legal, is entitled to bring appropriate actions for damages before the competent courts under the terms of article 483 of the Portuguese Civil Code (PCC).

The common declaratory action is the most frequent mechanism pursued by claimants in order to protect judicial rulings that put an end to a conflict, acknowledge invoked rights and also serve as the basis of executive proceedings. It is, however, very exceptional for undertakings to decide to use common declaratory actions to get compensation for damages as a consequence of competition law infringements in Portugal.

Collective claims are possible under the terms of articles 30 and 31 of the PCC, provided that the cause of action is the same or connected/dependent on each other, and also when the analysis of the case depends mainly on the same facts or the interpretation and application of the same norms or of analogous contractual clauses.

Joint actions (*Apensação de acções*) are laid down in article 267 of the PCC, which provides that, if actions were proposed separately, by verifying whether the conditions for admissibility of joinder (*litisconsorcio*), coalition, opposition or counterclaim could be combined into a single process, the judge could order to join them, unless the joinder would become inconvenient due to the state of the proceedings or due to another special reason. Nevertheless, this occurs even when the cases are pending before different jurisdictions; each plaintiff ought to bring his own proceedings at the start.

Also, under Portuguese law, it is possible to bring a claim called a "popular action" (*acção popular*), a way of *supra*-individual access to justice, which is somewhat similar to the mechanisms of "class actions", "substituted actions" or "citizen suits" in other jurisdictions like the U.S. and the Anglo-Saxon system. Such judicial actions are ruled by Law 83/95 of 31 August, and may be brought by any citizen, association and/or foundation, and the Public Prosecutor (*Ministério Público*), which promotes the protection of the general interests described in the Portuguese Constitution (article 52/3) such as public health, environment, consumer products or safety, cultural heritage and public domain, in order to ask for compensation for the infringement of the respective provisions. Indeed, if the list of interests to be protected provided in the Portuguese Constitution and in the popular action regime is not complete, it can be argued that promoting effective competition on the market is one of the interests which legitimises the use of the popular action.

In Portugal, class actions are based on an opt-out mechanism of general application that will proceed through the court system. Any holder of the interests covered by the popular action who does not want to be entailed by the judgment may opt out. The claimant in these actions automatically represents by default all the holders of the similar interests at stake and the would-be group members do not need to be identified precisely in the initial petition. There is no need to name all the members of the popular action nor provide an exact formal proof of monetary claims for all possible group members. The judge is required to notify identified parties individually and unidentified parties through newspapers or public notices as expressly forecast in article 15 of Law 83/95. As this constitutes a less formal version of the general regime laid down in the Civil Code, it is not required to have the exact formal proof of monetary claims for all potential claimants, and it is not essential to name them all. The holders of the interests involved in the action will be publicly notified through a press announcement with the purpose of, within the term prescribed by the judge, deciding whether or not they accept representation in that action, or whether they decide to be excluded from the effects of the judicial decision. The silence equals acceptance of being part of the group. The final decision has *erga omnes* effects and the court will identify the terms of payment of compensation to be paid by the losing party. All members of the group will be bound and affected by this court verdict, with the exclusion of those who voluntarily self-excluded.

In sum, the plaintiff is granted standing as representative, acting in the defence of all those interested parties who do not decline such representation. The potentially affected persons who fall within the group definition will be deemed to be bound by the result of the popular action without it being mandatory to take any positive steps, unless they want to leave the group.

Because of the opt-out system, it is worth noting that the law recognises guarantees to the holders of the affected rights or interests. Namely, the Public Prosecutor has responsibility for protecting legality, and may replace the plaintiff in the case of withdrawal from the suit or transaction, or behaviour that is harmful to the interests at stake.

1.6 What jurisdictional factors will determine whether a court is entitled to take on a competition law claim?

The general procedural rules on action for damages, established in the Portuguese Civil Procedural Code, are also applicable to competition law actions for damages.

The International Competence of the Portuguese Courts

Portuguese courts will be considered competent whenever an EU or an International Instrument so determines, and besides that – and in summary under article 59 (international competence of the Portuguese courts), article 62 (requirements for considering the international competence of the Portuguese courts), and article 63 (exclusive competence of the Portuguese courts) of the Portuguese Civil Procedural Code – Portuguese courts will also be considered competent in the following cases:

a) The defendant, or one of the defendants, is domiciled in the Portuguese territory, unless it concerns legal proceedings on real property or personal rights on real property located in a foreign country. A corporation is considered domiciled in the Portuguese territory if it has its registered or effective office in Portugal or has a branch, agency, subsidiary or delegation in Portugal.

b) The legal proceedings should be initiated in Portugal, according to the Portuguese rules on territorial jurisdiction.

c) The cause of action or some of the facts related thereto were carried out in the Portuguese territory.

d) The claimed right may only become effective through legal proceedings initiated in Portugal, or if it is too burdensome for the plaintiff to initiate the legal proceedings abroad, provided that there is an important person or real link between the subject of litigation and the Portuguese legal system.

The Internal Competence of the Portuguese Courts

The local competence of Portuguese courts is, in such cases, ruled by article 64 of the Portuguese Civil Procedural Code. In summary, for contractual liability actions, the court of the defendant's place of

residence is the competent court. It is possible for the claimant to choose the court of the place where the obligation should have taken place when the defendant is a legal person or if both the claimant and the defendant are domiciled in the metropolitan area of Lisbon or in the metropolitan area of Oporto. For extra-contractual liability actions (which include civil liability based on illicit facts), the court where the facts took place is considered the competent court.

1.7 Does your jurisdiction have a reputation for attracting claimants or, on the contrary, defendant applications to seize jurisdiction, and if so, why?

We consider that in terms of private enforcement, as well as in terms of public enforcement, Portugal does not have such a reputation. Popular action is not very widespread and has rarely been used in practice. The majority of the popular actions brought have been to protect consumers, environmental rights and public works or goods in the public domain. Moreover, given the Portuguese legal and judicial system, we do not identify a short-term tendency for this to occur.

Several idiosyncrasies of the Portuguese judicial system influence the total lack of actions for damages for infringement of competition rules. Some of those reasons are connected with the lack of cultural influence on this subject. Other reasons concern the long duration of the process and the general high costs related to it, the absence of certainty of the outcome (owing to aspects such as the lack of precedent and the passing-on defence), the complexity of distributing monetary awards, and the fact that the principal association (DECO) has few resources and represents merely its consumers. Also significant is the continuing need to improve the knowledge and experience of attorneys and also the need to increase the knowledge of judges on competition law, as well as to establish progress on the implementation of best practices. The initiatives promoted by the universities, by the Centre for Judicial Studies (CEJ) and by the Portuguese Competition Authority, which aim to provide information on the antitrust law regime, are of great value and provide national judges with intensive and thorough training through plenary sessions, workshops and conferences. Also, the implementation of the Directive on private damages is expected to represent a big step forward in the relaunch of initiatives and foster private antitrust enforcement in Portugal.

1.8 Is the judicial process adversarial or inquisitorial?

Appeals from the Portuguese Competition Authority's Decisions

The judicial process of appealing a decision issued by the Portuguese Competition Authority is inquisitorial.

Private Competition Litigation

The judicial process under the private enforcement of competition law, which occurs before the local judicial courts, is adversarial.

2 Interim Remedies

2.1 Are interim remedies available in competition law cases?

Under the terms of article 34 of the PCA, in the case the Competition Authority finds that a practice subject to proceedings is on the point of doing serious and irreparable harm to competition, or damage that would make competition difficult to reinstate, at any point in the proceedings it can issue an interim measure.

Regarding the private enforcement of competition law, in accordance with Portuguese procedural law, interim measures may also be ordered by the judicial courts when specific conditions are met. If someone demonstrates a justified fear that a third party may cause serious and difficult to repair damages to his right, he may request provisional or anticipated measures specifically appropriate to ensure the effectiveness of the threatened right (article 362 of the CPC).

2.2 What interim remedies are available and under what conditions will a court grant them?

The above-mentioned measures may involve the immediate suspension of the restrictive practice or any other temporary measures needed to restore competition or ensure the effectiveness of the final decision.

Such measures may be adopted by the Competition Authority on its own initiative or at the request of any interested party and remain in force until they are revoked, for a period no longer than 90 days, except if an extension for the same period is granted, duly substantiated, and the decision on the investigative phase shall be made within a maximum of 180 days.

If a market subject to sectoral regulation is at stake, the Portuguese Competition Authority requests the opinion of the respective regulator, who has five working days to issue an opinion if it so wishes.

In general, interim measures are ordered only after the parties concerned have been heard, except in urgent cases, where it is possible to immediately order an interim measure.

The Portuguese Competition Authority may only order interim measures in special cases, as said measures are restricted to circumstances where the damage at stake is imminent, serious and irreparable or very difficult to rectify. However, applications by the Portuguese Competition Authority for such interim remedies are, so far, very rare.

With regard to private enforcement and the application of such measures by the judicial courts, such application is also possible when the requirements are met, as provided in article 362 of the Portuguese Civil Procedural Code.

3 Final Remedies

3.1 Please identify the final remedies which may be available and describe in each case the tests which a court will apply in deciding whether to grant such a remedy.

Fines by the Portuguese Competition Authority

As a preliminary note, we would like to mention that pursuant to Portuguese law, offences to competition law are administrative offences. Accordingly, such offences are not prosecuted criminally *per se*.

The restrictive practices, better described in question 1.2 above, are administrative offences punishable by the Portuguese Competition Authority with a fine of up to 10 per cent of the involved undertaking's turnover in the previous year. In the case an infringement is attributable to an association of undertakings, the fine shall have regard to the aggregate annual turnover of the associated undertakings.

Fines are determined considering the following circumstances:

a) The seriousness of the infringement to the maintenance of effective competition in the Portuguese market.

b) The nature and size of the market affected.

c) The duration of the infringement.

d) The degree of involvement in the infringement by the party concerned in the case.

e) The advantages gained by the concerned party in the prohibited practices stemming from the infringement, when such advantages can be identified.

f) The behaviour of the concerned party in the process of eliminating the prohibited practices and repairing the damage caused to competition.

g) The economic situation of the concerned party.

h) Previous administrative offences by the concerned party involving an infringement of competition rules.

i) The level of cooperation with the Competition Authority throughout the proceedings.

Article 73/6 of the PCA provides that members of the board of directors of a legal person or equivalent entity, as well as those responsible for the management or supervision of the areas of activity where there has been an administrative offence, are also punishable with the same fine when acting in their name and in their collective interests or when, despite knowing or having the duty to know about an infringement committed, they did not adopt the appropriate measures to terminate it forthwith, unless they are liable to a more serious sanction through another legal provision.

In the case the Competition Authority considers that the undertakings concerned engaged in a serious infringement, it shall order the publication of the decision in the Official Gazette ("*Diário da República*") or in a Portuguese newspaper having national, regional or local circulation, depending on the relevant geographical market in which the prohibited practice produced its effects.

Also, the Portuguese Competition Authority can impose a ban on the rights of the undertakings involved to take part in procedures for contracts where the purpose is to offer typical services of public works contracts, public service concessions, leasing or acquisition of movable assets or the acquisition of services or procedures involving the award of licences or authorisations, in such cases where the practice that has led to an administrative offence punishable with a fine has occurred during or because of such procedures.

In addition, undertakings that fail to comply with a decision of the Authority imposing a penalty or ordering the application of certain measures also incur a compulsory periodic penalty payment which may amount to five per cent of the undertaking's average daily turnover in the previous year for each day of delay in the fulfilment of such decision.

The individual commercial practices referred to in question 1.2 above are also administrative offences punishable with fines. Under Decree-Law 166/2013, the application of the minimum and maximum amounts of fines are adjusted to the size of the undertakings infringing that Decree-Law, and depend on whether they are considered micro, small, medium or large undertakings (under the terms defined in Recommendation 2003/361/EC, of the European Commission, of 6 May 2003). The fines applied for the most serious restrictive trade practices (such as sales below costs) have been increased, and range from €5,000 to €2.5 million for administrative offences by large undertakings (the former regime set out a maximum fine of only €30,000). The maximum fine for micro businesses will be of €50,000. Decree-Law 166/2013 also foresees the possibility of the application of interim measures (ASAE can order immediate suspension of the practices that will likely cause serious and irreparable (or difficult to repair) damage to other undertakings and the application of periodic penalty payments, where the daily amount can range between €2,000 and €50,000).

Private Enforcement of Competition Law – Final Remedies by Judicial Court

If the requirements established in article 483 of the Portuguese Civil Code are met and when it is possible to provide evidence before a court and under the Portuguese Civil Procedural Law of: i) the occurrence of an infringement of a legal provision, i.e., the existence of an anticompetitive practice; ii) the occurrence of damages; and finally iii) the "causal link" between such infringement and the occurrence of such damages, then there are legal grounds for an action for damages.

The possible forms of compensation are "natural reconstitution" and monetary compensation (only in cases where the natural reconstitution is not feasible or effective or when it is excessively costly for the debtor).

Also, in accordance with Portuguese law, a declaration of nullity of any agreement or specific clause or practice considered to be anticompetitive – under either national laws or the TFEU – can be brought before a court. Under article 289 of the Portuguese Civil Code, such declaration of nullity has a retroactive effect and will imply the order to return everything that each party has provided under the terms of the annulled agreement, clause or practice, or the correspondent amount when such return is not feasible.

3.2 If damages are an available remedy, on what bases can a court determine the amount of the award? Are exemplary damages available? Are there any examples of damages being awarded by the courts in competition cases which are in the public domain? If so, please identify any notable examples and provide details of the amounts awarded.

As referred to above, actions for damages can be filed before a Portuguese court if the claimant is able to provide evidence that it has suffered damages as a result of anticompetitive practices (therefore they are easier to file after the final decision on a case) and the above-mentioned "causal link" between such infringement and the damages.

Under articles 562 and 566 of the Portuguese Civil Code, the forms of compensation possible are "natural reconstitution" and monetary compensation. Monetary compensation will only be ordered when the natural reconstitution is not possible or effective or when it is excessively costly for the debtor.

Also, under article 563 of the Portuguese Civil Code, the compensation that a court may grant will be strictly limited: the claimant is only able to claim damages to put him back in the position he would be in had the infringement not occurred (the so-called "causal link").

The general principle underlying compensation is the recovery of the situation that would exist should the infringement not have occurred. As such, it is determined by article 564 of the Portuguese Civil Code that the duty to indemnify includes not only the damage, but also the benefits that the plaintiff failed to obtain as a result of the damage. It is also established by the same article that, in setting the respective compensation, the court may consider future damages, provided they are predictable; if these damages are not determinable, the determination of the relevant compensation will be delayed for a later decision.

This notwithstanding, there is no case law in Portugal regarding actions for damages in competition cases.

Portuguese law does not set a concept of exemplary damages.

There has been at least one civil popular action aimed at enforcing, *inter alia*, competition law, which was used to represent all the clients of an undertaking, but the issue was decided without applying competition law. In this case (*DECO v. Portugal Telecom (PT)*), relating to damages suffered by clients of PT due to a violation of legal obligations, the Supreme Court has confirmed that the popular action, in general, designed for the compensation of mass damages, falls within the scope of the popular action regime, under the category of homogenous individual interests. In practice, this case was successful, but on a basis that had nothing to do with competition law. Nevertheless, implicitly, the Supreme Court confirmed that the popular action regime may be used in antitrust private enforcement cases, once competition law was referred as one of the arguments put forward by the applicant and the acceptability of this claim was not challenged. With the exception of this case, there has never been a collective redress or consumer protection case, or a judgment in a proper follow-on case.

The first popular action case, in Portugal, to compensate consumers for infringements of competition law occurred recently in March 2015, before the Lisbon Judicial Court (case n. 7074/15.8T8LSB). The Portuguese Competition Observatory, a non-profit association of academics, filed a mass damages claim against Sport TV (which held the monopoly in the provision of paid premium sports channels in Portugal), asking to be compensated for all consumers harmed by the anticompetitive behaviour of Sport TV between January 2005 and June 2013. This action aims to compensate over 600,000 clients for damages resulting from anticompetitive practices, and also to compensate those who were excluded from the benefit of these channels due to the inflation of prices and all Portuguese pay-TV subscribers (over three million persons) who suffered from a decrease of competition in this market as a consequence of improved transparency and reduced incentive to competition arising from the practices of the company jointly controlled by the pay-TV market leader. This action to some extent follows an abuse of dominance decision by the PCA, confirmed by the courts.

3.3 Are fines imposed by competition authorities and/or any redress scheme already offered to those harmed by the infringement taken into account by the court when calculating the award?

There are no legal provisions that oblige the court to take into account fines imposed by the competition authorities or by the European Commission, and there is also no redress scheme offered to those harmed by the infringement taken into account by the court when calculating the award.

The court must evaluate all the elements provided by the material evidence and not only the amount of a previous administrative fine. In its verdict, the court is required to specify the terms of payment of the compensation payable by the losing party, not only the global award for the violation of interests of holders not individually identified, but also the award calculated under the general terms of the Civil Code for the holders of identified interests. Besides, in practice, the court in a collective proceeding has the flexibility to grant non-monetary damages, although Law 83/95 does not explicitly allow a judge to order indirect compensation. There has been case law (see question 3.2 above) where a telecoms operator (PT) has been ordered to offer free calls to affected consumers rather than payments.

4 Evidence

4.1 What is the standard of proof?

Litigation on the Competition Authority Decisions/Actions

Within the Portuguese Competition Authority proceedings, all the facts legally relevant in proving the existence or non-existence of an infringement, identifying whether the actions are punishable or not, determining the punishment that can be applied and setting the amount of the fine that can be imposed, are able to serve as evidence except for the ones prohibited by law.

However, it is important to stress that competition litigation strictly follows the criminal procedural rules and therefore the standard of proof lies essentially with the firm conviction of the judge, based on the evidence presented, always having in mind the so-called "principle of the material truth". Also, in this kind of proceeding, there are some important principles that must be followed, such as the "*in dubiu pro reu*" principle and the defendant's right to remain silent. As such, and also related to the same principles, the judge must only condemn when there is no reasonable doubt; if there is reasonable doubt, the defendant should be discharged of all the accusations.

Private Competition Litigation

With regard to Portuguese private enforcement of competition law cases, the standard of proof of the relevant facts is also based on the freedom of the judge to decide, according to his prudent conviction and experience, unless a legal assumption is foreseen or a certain formality is required in order for the fact to be considered proved (article 655 of the Portuguese Civil Procedural Code). This rule is particularly relevant regarding testimonial evidence, which is the most usual form of evidence admitted.

Concerning this issue, the Coimbra Court of Appeal ("*Tribunal da Relação de Coimbra*"), in a decision issued on 12 October 2010 (Case 155/2002.C1), decided that: "*The assessment of evidence shall be resolved with the creation of judgments, in the creation of logical reasoning, judgments and reasoning that emerge in the spirit of the Judge, according to the experience obtained and accumulated in his mind according to the psychological procedures that govern the exercise of his intellectual activity and, therefore, according to the rules of experience and logic*."

In general terms, all the forms of evidence are admitted regardless of the party that brings the evidence to the proceedings (article 515 of the Portuguese Civil Procedural Code) and therefore one party can benefit from evidence brought by the counterparty to the proceedings. Both parties are required to cooperate with the court in order to find the material truth in accordance with article 519 of the Portuguese Civil Procedural Code. If any doubt regarding the facts or the burden of proof subsists, the court should decide against the party that benefits from the evidence of the fact as provided by article 516 of the Portuguese Civil Procedural Code.

4.2 Who bears the evidential burden of proof?

In all Portuguese private law, in principle, the burden of proof lies with the claimant.

In accordance with article 342 of the Portuguese Civil Code, which establishes the general principle on this matter, one who claims a right must adduce proof about the facts that form the grounds for the alleged right. Therefore, in private competition litigation, the burden of proof lies with the claimant, the person who alleges the damages caused by the infringement of competition rules.

4.3 Do evidential presumptions play an important role in damages claims, including any presumptions of loss in cartel cases that have been applied in your jurisdiction?

In Portugal, there are no evidential presumptions relevant to competition-based actions for damages. Unlike the EU Damages Directive, there is no rebuttable presumption that cartel infringements result in harm, and so the general rules on civil liability are applicable in damages claims (article 483 CC). Any person having suffered harm as a consequence of an unlawful conduct has the right to be rewarded for that harm. Accordingly, damages grounded on a breach of competition law shall be awarded if all the requirements for liability are met.

Civil procedure rules on evidence are applicable, such as the acceptance of all means of proof not forbidden by law, the principle of the rules of experience and free conviction of the judge, or the rules on standard of proof. As a common principle, the court shall take into account all the elements of proof presented to prove both the defendant's claims and the damages suffered (testimonial proof, written documents, legal and technical opinions, foreign decisions regarding private rights testimonies, presumptions) unless the evidence has not been subject to a contradictory hearing with the party to whom it is opposed. Therefore, a final decision of the Competition Authority can be presented before the court as evidence, among others, of the fact that an infringement of competition law has occurred. Also, for both contractual and extra-contractual damages actions, the plaintiff will have to prove the defendant's unlawful conduct and its fault or negligence in committing the infringement of competition law (article 483 of the Civil Code), but it cannot be stated that the breach of competition law is equivalent to a presumption that the fault element is fulfilled.

In a popular action, the judge is responsible for the collection of evidence and is not bound by the initiative of the parties (article 17 of the Popular Action Act).

4.4 Are there limitations on the forms of evidence which may be put forward by either side? Is expert evidence accepted by the courts?

In competition law, as in general civil litigation, all the forms of evidence are, in principle, admitted unless the evidence is obtained by infringing the law.

Documentary evidence (article 423 of the Code of Civil Procedure) can be presented until the end of the trial. However, if it is done after the delivery of the initial petition, the court may condemn the party to the payment of a penalty in case the document could be delivered with the petition that initiates the proceedings. In cases where the law establishes that a fact must be proved through documentary evidence, it cannot be proved through any other form of evidence, namely through testimonial evidence.

Testimonial evidence (article 495 of the Code of Civil Procedure) is one of the most important and usual forms of evidence foreseen. The authors cannot offer more than 10 witnesses for proof of the action fundamentals. The same limitation applies to defendants who have a single defence.

Expert evidence (article 467 of the Code of Civil Procedure) is also accepted by the court. The court can indicate a single expert, if both parties agree on the expert to be indicated. The parties are able to request, or the court is able to itself determine, based on the complexity of the case, an expert opinion to be issued by a group of three experts. If an agreement is not possible, two experts are to be indicated by the parties (one for each) and a third expert is designated by the court. If the issue is particularly complex, the court might officially request the realisation of the proof by a group of three experts. Moreover, the law entitles each party to present before the court any expert evidence considered relevant.

The probative value of the evidence is always subject to free assessment by the judge.

4.5 What are the rules on disclosure? What, if any, documents can be obtained: (i) before proceedings have begun; (ii) during proceedings from the other party; and (iii) from third parties (including competition authorities)?

In Portugal, the access to administrative documents is generally governed by Law 46/2007, of 24 August (as amended by the Decree Law 214-G/2015, 2 October). Said law also implements EU Directive 2003/98/EC concerning the re-use of public sector documents.

The above-referenced law establishes, as a general rule, the principle of free access to the administrative documents, which includes the right to consult, reproduce and obtain information concerning the existence and content of said documents (article 5). The access to administrative documents can be denied by the Portuguese Authorities if the documents are preparatory to an administrative decision or included in a procedure which is not yet finished, until the issuing of the decision, the archiving of the procedure or until one year after it is elaborated (article 6).

In order for a third person to have access to nominative documents, the presentation of a written authorisation issued by the person to whom the information concerns is mandatory, unless the third person claims the existence of a direct, personal and legitimate interest sufficiently relevant according to the proportionality principle. The same rule is applied if the administrative documents contain commercial or industrial secrets, or information concerning the internal life of a company (article 6). The nominative documents can only be used for the purpose evoked when the request was presented; otherwise, the user may be liable for any damages caused.

Moreover, the court or any party is entitled to request to the counterparty (or to any public or private entity) the delivery of documents, information or even technical opinions if such delivery is important to the clarification of the material truth. If the entity or the party fails to deliver the requested documents, the court will be able to charge a fine.

4.6 Can witnesses be forced to appear? To what extent, if any, is cross-examination of witnesses possible?

If the witness is enrolled and fails to appear before the court without providing adequate justification, the judge can, under the terms established by article 508 of the Portuguese Civil Procedural Code, order the attendance of the witness in court, under custody, without prejudice of application of a fine for missing the court session.

It is also possible for the judge to call a person to the proceeding as a witness, without the person being presented as a witness by the parties, if during the proceedings there are reasons to consider that such person knows important facts for the accurate decision of the case.

Article 523 of the Portuguese Civil Procedural Code sets out the regime for the cross-examination of witnesses. In summary, the witness is questioned about the facts that were presented by the

party that presented the witness. The other party's lawyer may also question the witness, and the judge is also entitled to request any clarification needed from the witness.

4.7 Does an infringement decision by a national or international competition authority, or an authority from another country, have probative value as to liability and enable claimants to pursue follow-on claims for damages in the courts?

Under article 84 of the PCA, the interested party is entitled to appeal at the Competition, Regulation and Supervision Court against the decisions issued by the Portuguese Competition Authority on administrative proceedings. Once the decision is issued by the Competition, Regulation and Supervision Court, the interested party is entitled to appeal to the competent Portuguese Appeal Court.

When a decision is final (an appeal is no longer possible or the time for appeal has elapsed), the facts considered proven by the decision cannot be challenged in the judicial procedure for damages, which means that the decision issued has positive value in what concerns the facts related to the infringement.

Therefore, in the action for damages brought before the judicial court, the interested party will only have to prove that the infringement leads to the damages, the existence of a "causal link" between the infringement and the damages and also the amount of the damages.

Under the terms of article 16 of EU Regulation (CE) 1/2003 of 16 December, national courts cannot issue a decision contradicting facts already analysed and proved within a decision by the European Commission.

4.8 How would courts deal with issues of commercial confidentiality that may arise in competition proceedings?

As a general rule, both parties benefit from full access to the documents and to the petitions delivered to the court, unless the procedure is covered by the law of judicial secrecy. Several court decisions were issued stating that the information protected by the commercial confidentiality rules or by IP rights should be confidential and the evidence produced in the court should be restricted to the facts directly regarding the issue at stake, excluding any additional information (decision issued by the North of Portugal's Appeal Court ("*Tribunal Central Administrativo Norte*") of 23 October 2008 – case 03487 –A/92).

Therefore, even though the courts are bound to protect the information concerning commercial confidentiality, within the judicial proceeding the confidential information will be available to both parties if it is considered essential to the disclosure of the truth, and any third party can have full access to it once the decision is published.

According to the PCA, during prosecution proceedings, the Competition Authority 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 (article 30). Nevertheless, in order to demonstrate that there has been an infringement of the competition provisions set out in the PCA or EU law, the Portuguese Competition Authority is entitled to use as evidence information classified as confidential, for reasons of business secrecy (article 31).

The disclosure of a company's commercial documents can only be performed when the person to whom the documents belong has a legitimate interest or liability in the issue that causes the disclosure request. The documents shall be analysed in the premises of the owner of the documents and the information obtained must be restricted to specific issues related to the issue at stake.

4.9 Is there provision for the national competition authority in your jurisdiction (and/or the European Commission, in EU Member States) to express its views or analysis in relation to the case? If so, how common is it for the competition authority (or European Commission) to do so?

In Portugal, there are no such specific provisions relating to private competition litigation, so the general civil procedural rules are applicable in those cases.

Therefore, the Portuguese Competition Authority can only express its views or analysis in relation to a judicial case if it is called to the proceeding under the usual forms admitted under the Portuguese Civil Procedural Law, better described above in question 4.3, especially if it is designated as an expert.

Since there are no specific rules in the PCA or in the Portuguese Procedural Civil Code, and there is no significant case law in Portugal regarding actions for damages in competition cases, this possibility was only analysed theoretically.

5 Justification / Defences

5.1 Is a defence of justification/public interest available?

Similarly to what is provided by article 101/3 TFEU, in accordance with article 10 of the PCA, any restrictive practice under the terms of article 9 (agreements between undertakings, concerted practices and decisions by associations of undertakings which have as their purpose or effect the prevention, restriction or distortion of competition) may be deemed justified when it contributes to improve the production or distribution of goods or services or to promote technical or economic development, provided that, cumulatively, they:

a) Offer the users of such goods or services a fair part of the benefit arising therefrom.

b) Do not impose on the undertakings concerned any restrictions that are not indispensable to the attainment of such objectives.

c) Do not grant such undertakings the opportunity to suppress the competition in a substantial part of the goods or services market at stake.

As to the public interest defence/importance, it is established by article 4 of the PCA that the undertakings that have been legally entrusted with the management of services of general economic interest, or are by their nature legal monopolies, are subject to the provisions of the PCA, to the extent that enforcement of these provisions does not create an obstacle to the fulfilment of their specific mission.

Article 7 of the PCA sets the priorities of the Portuguese Competition Authority's mission and states that in carrying out its responsibilities, the Competition Authority shall be guided by the criterion of public interest in competition enforcement and support, and to this end it may define priorities in the handling of issues that it is called on to analyse.

Also, it is established by the PCA that the Competition Authority shall exercise its sanctioning powers on a case-by-case basis, whenever the public interest of pursuing and punishing infringements of competition rules entails the initiation of administrative offence proceedings, taking into account in particular the priorities in

competition policy and the elements of fact and law brought by the parties to the file, as well as the seriousness of the alleged infringement, the likelihood of being able to prove its existence and the extent of investigation required to fulfil as well as possible its mission to ensure compliance with articles 9, 11 and 12 of the PCA and articles 101 and 102 of the TFEU.

5.2 Is the "passing on defence" available and do indirect purchasers have legal standing to sue?

Since, as referred to above, and in accordance with civil procedure rules on civil liability claims, the claimant can only be compensated for the damages suffered as a result of the anticompetitive practice and in accordance with the "causal link" between the anticompetitive practice and the damages in the amounts that he is able to provide evidence before court; if the claimant is not able to provide evidence that he has suffered the damages, or if the damages were suffered by another entity, he will not be entitled to the compensation of such damages.

On the contrary, anyone that suffers damages as a result of an anticompetitive practice, which includes indirect purchasers, provided that the requirements established by article 483 of the Portuguese Civil Code are met and it is possible to provide evidence before the court and under the Portuguese civil procedural law of: i) the occurrence of an infringement of a legal provision, i.e., existence of anti-competitive practice; ii) the occurrence of damages; and finally iii) the "causal link" between such infringement and the occurrence of such damages, such indirect purchaser can claim damages before the court.

5.3 Are defendants able to join other cartel participants to the claim as co-defendants? If so, on what basis may they be joined?

In Portugal, it is possible that defendants join other cartel participants to the claim as co-defendants. In general terms, interested parties not entitled as a claimant or defendant may join a claim. As stated at article 311 of the CPC, if the interested party has the exact same interest in the claim as the claimant or the defendant, it may join the lawsuit by assuming beside them the position of the defendant (or the claimant). The joining party may join the defence offered by the existing parties.

Article 36 of the CPC allows a coalition (*coligação*) of defendants when the cause of action is one and the same, or when the claims are in an ancillary or dependent relationship. A coalition is also permitted when the outcome of the main claims, despite it being a different cause of action, depend essentially on the assessment of the same facts or the interpretation and application of the same rules of law or contract clauses are entirely equivalent. In this case, a coalition embodies the creation of a deal in which various parties agree to participate in a common action, each in their own interest but joining forces for a common cause.

Joint parties (*litisconsórcio*) are also lawful if the material relation at stake concerns several individuals, and the action can be brought by or against the owners of the interests. But, as stated in article 32 of the CPC, if the law or the contract is absent, the action may also be brought by or against one of the interested parties, and the court should in this case acknowledge only the respective share of interest or responsibility, although the claim covers the totality. In sum, this legal institute allows the gathering of several parties with the same motives and interests in a single process for the defence of common interests.

6 Timing

6.1 Is there a limitation period for bringing a claim for breach of competition law, and if so how long is it and when does it start to run?

Proceedings with the purpose of declaration of nullity of an agreement or clause can be brought at any time (there is no time limit). Such declaration of nullity can also be ordered by the court without the need of any request.

As to the actions for damages, in accordance with article 498 of the Portuguese Civil Code, the right to compensation shall be extinguished within three years from the date on which the claimant became aware of its right, despite not knowing the responsible person and the full extent of the damage.

6.2 Broadly speaking, how long does a typical breach of competition law claim take to bring to trial and final judgment? Is it possible to expedite proceedings?

With regard to decisions from the Competition, Regulation and Supervision Court, it is not possible to accurately predict the duration of a judicial proceeding of this nature, mainly because this Court was recently created. However, the Lisbon Commercial Court that formerly decided on the Competition Authority's appeals usually took no less than two years to decide.

As to private litigation in judicial courts, a civil liability procedure is expected to last approximately three years.

7 Settlement

7.1 Do parties require the permission of the court to discontinue breach of competition law claims (for example if a settlement is reached)?

Under the PCA, it is now possible to terminate a procedure on restrictive practices further to a settlement concluded between the undertakings in question and the Portuguese Competition Authority.

As to the private competition litigation before the judicial courts, general rules on civil procedure shall apply and, as such, at any time it is possible for the claimant to withdraw the judicial request (totally or in part) and the defendant is also entitled to the right to confess the infringement and/or the occurrence of damages derived from it (totally or in part). Both parties can also settle on the proceedings at any time. However, the settlement must follow specific rules and is usually subject to the final confirmation of the court.

7.2 If collective claims, class actions and/or representative actions are permitted, is collective settlement/settlement by the representative body on behalf of the claimants also permitted, and if so on what basis?

The PCA sets out rules (articles 22 and 27) concerning settlement proceedings in the investigative phase and in the prosecution phase. Concerning a damages action, there is no specific judicial settlement procedure available. There are general rules (articles 283 and 289 of the CCP) allowing parties to reach a settlement both before and during a court proceeding, provided that no non-disposable rights are involved. The settlement may be accomplished by agreement of the parties or through conciliation (as article 594 of the CCP

states, conciliation can occur at any stage of the proceedings provided that the parties jointly request it or when the court finds it appropriate). Any settlement among the parties during a court proceeding shall be subject to approval (*homologação*) by the judge. Although not specifically mentioned at the popular action regime, this is allowed. Article 16 of the Law 83/95 states that, within the scope of judicial review, the Prosecutor may replace the author in the event of a transaction (and also when the withdrawal of the litigation process take place, as well as when harmful behaviours to the interests involved occur). Therefore, a collective settlement or a settlement by the representative body on behalf of the claimants is also permitted.

8 Costs

8.1 Can the claimant/defendant recover its legal costs from the unsuccessful party?

The party that loses a judicial dispute must bear its costs. In the case of a partial conviction, the costs are proportionally divided between the parties.

Therefore, the winning party can recover the legal costs incurred in connection with the proceedings from the losing party.

Under a class action process, article 20 of law 83/95 states that the plaintiff is exempt from the payment of costs in case of partial granting of the claim. In the case of total dismissal, the plaintiff will be subject to a penalty fixed by the judge of between a tenth and half of the costs that would normally be appropriate, having regard to its economic situation and the formal or substantive reason for the dismissal. Furthermore, there is a joint responsibility for the expense of the claimants involved, in general terms.

8.2 Are lawyers permitted to act on a contingency fee basis?

The Portuguese Bar Association Act, i.e. Law 145/2015, 9 September, establishes the most important rules on fee determination that lawyers must comply with.

Article 105 of the above-mentioned Portuguese Bar Association Act sets out that lawyer fees shall correspond to an adequate compensation for the services effectively rendered and, for the establishment of the fees, the lawyer shall consider the importance of the services rendered, the complexity and urgency of the matter and the intellectual effort involved and also the final result and the time spent, the responsibility of the case and other professional practices.

It is possible, in accordance with the above-referred provision, to previously agree to a fixed fee. However, article 106 of the Portuguese Bar Association Act expressly prohibits the establishment of "*quota litis*", this being understood as the agreement between the client and his lawyer, before the conclusion of the proceedings, that the lawyers' fees are exclusively dependent upon the final result of the issue, whether they consist of a specific amount or any other kind of goods. Thus, contingency fees are not allowed.

Nonetheless, the previous establishment of fees (even if through a percentage) in connection with the value of the case entrusted to the lawyer, is allowed, provided that it is not dependent on the result. The establishment of an increase of fees depending on the result attained by the lawyer is also allowed.

8.3 Is third party funding of competition law claims permitted? If so, has this option been used in many cases to date?

There is no specific provision on this issue. However, we do not envisage any obstacle to that option under Portuguese law, even though, as far as we are aware, such option has not been used in many cases in the past.

9 Appeal

9.1 Can decisions of the court be appealed?

Decisions of the Portuguese Competition Authority

In accordance with article 88/1 of the PCA, decisions by the Competition Authority imposing a fine or a periodic penalty payment may be appealed to the Competition, Regulation and Supervision Court. Fines or periodic penalty payments ordered by the Competition Authority can be reduced or increased by this court.

Court decisions issued by the Court of Competition, Regulation and Supervision may be appealed before the competent Court of Appeal.

Private Litigation

Within private competition litigation, the possibility to appeal from the so-called first instance judicial courts to the Courts of Appeal ("*Tribunais da Relação*") and from these courts to the Portuguese Supreme Court of Justice ("*Supremo Tribunal de Justiça*") in civil proceedings will depend on the value of the action. If it exceeds the value of the respective *alçada*, then it is possible to appeal.

10 Leniency

10.1 Is leniency offered by a national competition authority in your jurisdiction? If so, is (a) a successful, and (b) an unsuccessful applicant for leniency given immunity from civil claims?

Articles 75 to 82 of the PCA set out the Portuguese leniency legal framework. Under the Portuguese leniency programme, it is possible to grant immunity from fines or a reduction of fines.

In accordance with article 75 of the PCA, immunity from fines or a reduction of fines shall be granted in administrative offence proceedings concerning agreements or concerted practices between two or more undertakings, prohibited pursuant to article 9 of the PCA and, if applicable, pursuant to article 101 of the TFEU, where such agreements or practices are aimed at coordinating competitive behaviour on the market or influencing relevant parameters of competition, specifically through the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets, including collusion in auctions and bid-rigging in public procurement, restrictions on imports or exports or anti-competitive actions against other competitors.

Under the terms of article 76 of the PCA, both the responsible undertaking and the members of the board of directors or the supervisory board of legal persons and equivalent entities, as well as those responsible for the executive management or supervision of areas of activity where an administrative offence has occurred, being considered responsible for the infringement of competition law, can benefit from immunity from a fine or reduction of a fine under the leniency programme.

The PCA sets out, in its articles 77, 78 and 79, the conditions that must be satisfied in order to qualify for leniency when disclosing to the Portuguese Competition Authority the participation in an alleged agreement or concerted practice. Full immunity from fines can be granted for the first undertaking that discloses information and reductions not exceeding 50 per cent of the total amount of the fine can also be granted by the Portuguese Competition Authority.

Given the scarce application of the Portuguese leniency programme and the fact that there is no significant case law in Portugal regarding actions for damages in competition cases, it is not yet possible to ascertain if courts will grant immunity from civil claims against a leniency applicant.

10.2 Is (a) a successful, and (b) an unsuccessful applicant for leniency permitted to withhold evidence disclosed by it when obtaining leniency in any subsequent court proceedings?

There are no specific provisions on the issue. However, we do not envisage any obstacle that could prevent the applicant for leniency to present to the court the same evidence that he presented to the Portuguese Competition Authority.

11 Anticipated Reforms

11.1 For EU Member States, highlight the anticipated impact of the EU Directive on Antitrust Damages Actions at the national level and any amendments to national procedure that are likely to be required.

The EU Directive on Antitrust Damages Actions is likely to act as a catalyst for damages actions in Portugal, a country where private antitrust litigation is rare, and improve the prospects of success for follow-on damages claims by victims of antitrust infringements. There are a limited number of cases of private enforcement on competition law since its implementation in Portugal, in 1983. Even when the competent competition authorities had already identified an antitrust infringement, and it was obvious that such a breach led to damages to consumers and clients, Portuguese courts have almost never been asked to compensate such damages, by any of the procedural means available, and never through the popular action. With the removal of important obstacles by, *inter alia*, rebalancing rights of access to relevant evidence, helping the quantification of damage, making clear the effect of decisions of national competition authorities on national courts, establishing a general principle of joint and several liability among cartelists, harmonising relevant time limits, regulating the relevance of passed-on overcharges and clarifying that leniency applications continue to be protected beyond administrative proceedings and through to follow-on damages claims – the Portuguese private enforcement tradition, with rare application, may acquire a new lease of life.

The existing legal framework in Portugal, in particular the popular action mechanism, already provides for theoretically adequate instruments for private enforcement of competition rules. Nevertheless, to boost it in practice, the possible ways to address the inadequacy of private enforcement in Portugal are well known and do not differ from the main solutions considered at the European level, some of which were already pointed out during the discussions around the proposal for a new Portuguese Competition Law, in force since 2012:

(i) In Portugal, under the current framework, there is no specialised court for private litigation and any judicial court of any local circumscription (*comarca*) may be competent. National courts will apply the rules on tort liability set out in articles 483 and 562 of the Portuguese Civil Code. Thus, the centralisation of private enforcement of competition law in a specialised court, specifically the Competition, Regulation and Supervision Court, that already centralises all appeals relating to PCA decisions, will be of great significance.

(ii) Legal clarification of cooperation mechanisms between the courts, the PCA and the European Commission, explicitly providing for the expressed possibility of *amicus curiae* intervention, and not as party, by the PCA, at the request of the courts or on its own initiative, in any legal proceedings connected with national or European competition rules.

(iii) Mandatory communication by the courts to the PCA of all sentences and appeals in lawsuits concerning national or European competition rules.

(iv) Explicitly providing for the possibility of a staying of proceedings in lawsuits which discusses the application of the competition rules, when the court has knowledge of open cases by the European Commission or by the PCA and it is necessary or appropriate to wait for the decision of the competent authority.

(v) Revision of the Portuguese Competition Act in order to compel the PCA, whenever possible, to personally notify injured parties of their right to initiate autonomous private enforcement actions, whenever these parties have been identified in the course of the adoption of the PCA's decisions.

(vi) The active legitimacy in judicial proceedings relating to claims for breach of competition rules should be explicitly recognised by competitors or other undertakings directly or indirectly affected by the infringement at issue, as well as the relevant associations.

(vii) Creation of, in the Portuguese legal system, a specific provision regarding litigation between undertakings concerning competition damages arising from practices identified by a competition authority.

(viii) Encouragement of training actions for judges and lawyers.

11.2 Have any steps been taken yet to implement the EU Directive on Antitrust Damages Actions in your jurisdiction?

On 28 July 2016, the Portuguese Competition Authority (PCA) delivered the draft legislation for the transposition of the EU Directive on Antitrust Damages Actions to the Government, after a public consultation which received 17 contributions from relevant stakeholders.

Besides the public consultation, the PCA organised a consultative workshop on the subject, in order to "market test" some of the proposed solutions with the participation of representatives of several and diverse stakeholders.

The draft legislation intends to transpose into national law the Directive which will assist citizens and undertakings to claim damages in case they are victims of infringements of antitrust rules.

11.3 Are there any other proposed reforms in your jurisdiction relating to competition litigation?

Currently, to the best of our knowledge, there are no other proposals for reform concerning competition litigation.

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