

PCA STRENGTHENS MONITORING OF ANTICOMPETITIVE BEHAVIOUR IN THE LABOUR MARKET

The Portuguese Competition Authority (“**PCA**”) has been developing, in the past weeks, a set of initiatives aimed at further monitoring potential anti-competitive conduct in the labour market, even if the application of competition law in labour markets is typically limited, if not unprecedented, in many jurisdictions.

The PCA – after a market investigation into competition conditions in the labour market in Portugal and based on existing practice in other jurisdictions – published on 27 April 2021 for public consultation,¹ an Issues Paper titled “Labour market agreements and competition policy” (the “**Issues Paper**”),² and a Best Practices Guide titled “Preventing Anti-competitive Agreements in the Labour Market”,³ while investigating this type of conduct.⁴

The PCA’s actions, although raising doubts of a legal and economic nature, as well as from a competition policy standpoint, show its clear intention to give these markets priority. The PCA already stated that the most common anticompetitive concerns in a labour context relate to two types of agreements: (i) those to not solicit or hire workers and (ii) those to fix workers’ wages or other forms of remuneration.

According to the PCA, the first type of agreement can potentially limit workers’ ability to change companies (by reducing the number of potential employers), lessen workers’ bargaining power and reduce the price of workforce (i.e. wages and other remuneration).

With regard to the second category of agreements, which relate to remuneration, the PCA has identified anticompetitive concerns pertaining to companies’ ability to expand their workforce being limited, workers’ mobility being restricted and price co-ordination in downstream markets being potentially facilitated.

¹ The Issues Paper is under public consultation until 9 June 2021.

² Available in English at http://www.concorrencia.pt/vPT/Noticias_Eventos/ConsultasPublicas/Documents/Preliminary%20Version%20Issues%20Paper_No-Poach%20EN.pdf

³ Available in English at http://www.concorrencia.pt/vPT/Noticias_Eventos/ConsultasPublicas/Documents/Preliminary%20Version%20Best%20practices%20in%20the%20labour%20market.pdf

⁴ PCA’s Press Release 04/2021, available at http://www.concorrencia.pt/vEN/News_Eventos/Comunicados/Pages/PressRelease_202104.aspx

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