

THE CARTELS AND
LENIENCY REVIEW

TENTH EDITION

Editors

John Buretta and John Terzaken

THE LAWREVIEWS

THE
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LENIENCY REVIEW

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This article was first published in January 2022
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Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

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Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-83862-533-7

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALLEN & GLEDHILL LLP

ANDERSON MŐRI & TOMOTSUNE

ASSEGAF HAMZAH & PARTNERS

BAKER MCKENZIE LLP

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CRAVATH, SWAINE & MOORE LLP

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PREFACE

Cartels are a surprisingly persistent feature of economic life. The temptation to rig the game in one's favour is constant, particularly when demand conditions are weak and the product in question is an undifferentiated commodity. Corporate compliance programmes are useful but inherently limited, as managers may come to see their personal interests as divergent from those of the corporation. Detection of cartel arrangements can present a substantial challenge for both internal legal departments and law enforcers. Some notable cartels have managed to remain intact for as long as a decade before being uncovered. Some may never see the light of day. However, for those that are detected, this compendium offers a resource for practitioners around the world.

This book brings together leading competition law experts from 25 jurisdictions to address an issue of growing importance to large corporations, their managers and their lawyers: the potential liability, both civil and criminal, that may arise from unlawful agreements with competitors as to price, markets or output. The broad message of the book is that this risk is growing steadily. Stubborn cultural attitudes regarding cartel activity are gradually shifting. Many jurisdictions have moved to give their competition authorities additional investigative tools, including wiretap authority and broad subpoena powers. There is also a burgeoning movement to criminalise cartel activity in jurisdictions where it has previously been regarded as wholly or principally a civil matter. The growing use of leniency programmes has worked to radically destabilise global cartels, creating powerful incentives to report cartel activity when discovered.

This book serves as a useful resource for the local practitioner, as well as those faced with navigating the global regulatory thicket in international cartel investigations. The proliferation of cartel enforcement and associated leniency programmes continues to increase the number and degree of different procedural, substantive and enforcement practice demands on clients ensnared in investigations of international infringements. Counsel for these clients must manage the various burdens imposed by differing authorities, including by prioritising and sequencing responses to competing requests across jurisdictions, and evaluating which requests can be deferred or negotiated to avoid complicating matters in other jurisdictions. But these logistical challenges are only the beginning, as counsel must also be prepared to wrestle with competing standards among authorities on issues such as employee liability, confidentiality, privilege, privacy, document preservation and many others, as well as considering the collateral implications of the potential involvement of non-antitrust regulators.

The authors are from some of the most widely respected law firms in their jurisdictions. All have substantial experience with cartel investigations and many have served in senior positions in government. They know both what the law says and how it is actually enforced,

and we think you will find their guidance regarding the practices of local competition authorities invaluable. This book seeks to provide both breadth of coverage (with a chapter on each of the jurisdictions) and analytical depth for those practitioners who may find themselves on the front line of a government inquiry or an internal investigation into suspect practices.

Our emphasis is necessarily on established law and policy, but discussion of emerging or unsettled issues has been provided where appropriate.

This is the 10th edition of *The Cartels and Leniency Review*. We hope you will find it a useful resource. The views expressed are those of the authors, not of their firms, the editor or the publisher. Every endeavour has been made to make updates until the last possible date before publication to ensure that what you read is the latest intelligence.

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January 2022

PORTUGAL

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I ENFORCEMENT POLICIES AND GUIDANCE

i Legal framework

The legislation regulating cartels and leniency in Portugal is the Portuguese Competition Act (the Competition Act), which was last revised in 2012.² The Portuguese Competition Authority (AdC) has adopted several notices and guidelines relating to various procedural aspects, in accordance with the European Commission's guidelines, including, in particular, the Guidelines on the Calculation of Fines,³ the Notice regarding Immunity from a Fine or Reduction of Fines⁴ and the Guidelines on the Handling of Antitrust Proceedings.⁵

The term 'cartel' does not appear as such in the Competition Act, although cartel activity, along with other collusive agreements and concerted practices, is prohibited under Article 9 (equivalent to Article 101 of the Treaty on the Functioning of the European Union (TFEU)). There are, however, attempts to define cartels in Portuguese legislation. Article 75(1) of the Competition Act, in establishing the leniency regime, states that the leniency provisions are only applicable to agreements and concerted practices among competitors whose object or effect is the restriction of competition by, inter alia:

- a* directly or indirectly fixing sale or purchase prices or any other transaction conditions;
- b* limiting or controlling production, distribution, technical development or investment; or
- c* sharing markets (including bid rigging), through import or export restrictions or through anticompetitive actions against other competitors.

1 Tânia Luísa Faria is a counsel and Margot Lopes Martins is a junior associate at Uría Menéndez – Proença de Carvalho.

2 Law No. 19/2012, published on 8 May 2012, currently under discussion in Parliament.

3 See www.concorrenca.pt/vPT/Noticias_Eventos/Comunicados/Documents/Linhas_de_Orienta%C3%A7%C3%A3o_Coimas_DEZ2012.pdf.

4 See www.concorrenca.pt/vEN/Praticas_Proibidas/Leniency_Programme/Documents/Notice%20on%20Regulation1-2013-PCA_EN.pdf.

5 See www.concorrenca.pt/vPT/Noticias_Eventos/Noticias/Documents/LO_Instrucao_Processos_2013.pdf.

An identical definition was included in Law No. 23/2018 of 5 June 2018 (the Private Enforcement Law),⁶ which transposed the Damages Directive⁷ and also made reference to the ‘secret’ nature of cartel conduct.⁸

Prohibited agreements or decisions under Article 9 are null and void, unless they fall within the scope of Article 10 of the Competition Act – equivalent to Article 101(3) of the TFEU (i.e., if it is demonstrated that they contribute to improving production or distribution of goods or services or to promoting technical or economic progress). In fact, Article 10(3) of the Portuguese Competition Law makes an explicit reference to the EU block exemption regulations to be used as relevant assessment framework by the AdC, even in purely internal cases with no impact on EU commerce.

In Portugal, cartels are sanctioned as misdemeanours, or administrative offences,⁹ with fines of up to a maximum of 10 per cent of the offending undertaking’s turnover in the year preceding the decision.¹⁰ Under the Competition Act, individuals with management, direction and monitoring functions are also liable to be sanctioned for competition law infringements in certain circumstances.¹¹ The Competition Act also provides for ancillary penalties corresponding to, for example, the prohibition on taking part in public tenders for a two-year period for competition law infringements concerning these competitive procedures (see Section V).¹²

The Competition Act also includes the possibility to benefit from immunity from fines or a reduction in fines in cartel cases¹³ under the terms of the leniency programme,¹⁴

6 Available at https://dre.pt/home/-/dre/115456103/details/maximized?print_preview=print-preview.

7 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0104>.

8 Article 2(j) of the Private Enforcement Law refers to the definition of the term ‘statement for the purpose of immunity from fines or reduction of fines’, as being ‘an oral or written communication made voluntarily by or on behalf of an individual or an undertaking to a competition authority, . . . describing the information about a secret cartel of which that individual or undertaking has knowledge’.

9 In certain circumstances, facts constituting a cartel involving public procurement (e.g., bid rigging) may be investigated as a crime of disruption of public tenders (under the jurisdiction of the Public Prosecution Service), potentially resulting in criminal sanctions.

10 Some scholars even suggest that the fine could amount to 20 per cent when there is more than one infringement. According to Miguel Moura e Silva, in *Direito da Concorrência* (2018), p. 441, ‘The limit of the fine may be higher than that provided by [the Competition Act] in cases of multiple infringements (Article 19(2) of the General Regime of Misdemeanours)’. Article 19(2) of the General Regime of Misdemeanours provides that when there is more than one infringement, the maximum fine may be twice the abstract maximum applicable to the most serious offence. To the best of our knowledge, this theory has not been enforced in practice.

11 When directly involved in the unlawful decision or practice, members of the board of directors, as well as any individuals responsible for the management or supervision of the infringing undertaking, may be sanctioned with fines of up to 10 per cent of their annual income deriving from the exercise of their functions in the undertaking concerned, during the year when the prohibited practice occurred (see Section V).

12 The nature of this ancillary sanction is quite questionable, as it limits the number of bidders in future tenders and consequently may have the opposite effect by ultimately restricting competition within the concerned tenders or markets (see Section V).

13 Article 70.

14 Articles 75 to 79.

according to which, undertakings or individuals taking part in the practices described in the provisions referred to may apply for immunity or a reduction of a fine if they recognise their participation in the breach and provide concrete evidence that allows the AdC to establish the existence of the alleged infringing conduct (see Section IV).

The Competition Act also provides for a settlement mechanism allowing a reduction of a fine before and after the statement of objections.¹⁵ There is also the option to close investigations subject to conditions, such as commitments submitted by parties, under Article 23 (see Section V).¹⁶ In this case, the investigative process can be reopened within two years if the alleged infringing conduct resumes.

The competition provisions, in particular those related to cartel prohibition, are enforced by the AdC, by the specialised Competition, Regulation and Supervision Court (the Competition Court) and, when related to issues not exclusively pertaining to competition law, by other civil and administrative courts.

The AdC is an independent administrative body in charge of the public enforcement of competition law in Portugal in all sectors of the economy, without exception. When communicating its competition policy priorities for 2021, the AdC declared that it remains ‘vigilant in detecting abuses or anti-competitive behavior that exploit the current situation, for example in terms of price fixing or market sharing, at any level of the supply chain, including in electronic commerce’.¹⁷

To this end, the AdC seeks to increase its capacity for detection and investigation of anticompetitive practices, namely through complaints by consumers and other market participants, and through its leniency programme. A concrete example of the AdC’s goal to increase its capacity for detection and investigation is the proposed modification of the Competition Act resulting from the preparation of the transposition of the ECN+ Directive.¹⁸ The AdC has, in fact, been leading the transposition of the ECN+ Directive into Portuguese law during the past two years and submitted to the government the final draft transposition proposal currently under discussion in Parliament. It is clear from the draft proposal that the AdC has also taken advantage of this opportunity to propose adjustments to the existing Portuguese competition law framework, exceeding the scope of the ECN+ Directive and potentially leading to an increase in the AdC’s investigative powers and access to evidence.¹⁹

15 Despite the absence of a fixed percentage reduction provided in the Competition Act, the AdC tends to apply the 10 per cent reduction as defined at the European level. See, for example, case PRC/2014/02, 9 July 2015, Section 314, and case PRC/2016/06 (*Train Maintenance* cartel), Section 966, where, although not explicitly mentioned, references to negotiations with one of the participants seem to indicate a 10 per cent reduction mark.

16 This option has mainly been applied in cases of vertical agreements and decisions by associations of undertakings. See, for example, case PRC/2018/4, 6 June 2019.

17 See the AdC’s competition policy priorities for 2021, provided in compliance with the provision of Article 7(3) of the Competition Act, available at https://www.concorrenca.pt/sites/default/files/Competition%20Policy%20priorities%20for%202021_0.pdf.

18 Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

19 For further information on the ongoing work on the transposition of the ECN+ Directive into Portuguese law, see: Nuno Salazar Casanova, Tânia Luísa Faria, Duarte Peres and Margot Lopes Martins, ‘A fish out of water – critical analysis of the AdC’s draft proposal for the transposition of the ECN+ Directive into Portuguese law’, *Competition and Regulation Journal*, No. 42–43, available at https://www.concorrenca.pt/sites/default/files/imported-magazines/Revista_CR_42-43.pdf.

The Competition Court is a specialised court incorporated in 2012, competent to hear appeals against decisions of sectoral regulatory entities, and of the AdC. It is also the competent court for private enforcement cases exclusively based on competition law infringements (see Section VII).

ii Competition authority decisions and case law

The powers of the AdC in terms of cartel investigation are provided for in the Competition Act and subsidiarily regulated by the legal framework applicable to misdemeanour offences, which could grant investigated entities some additional protection in terms of rights of defence.

The AdC's decisions may be appealed to the Competition Court.²⁰ The decisions of this Court may also be appealed, at a second level, to the Lisbon Court of Appeal, which has an autonomous section on intellectual property and competition, regulation and supervision. Appeals limited to issues of law are lodged with the Supreme Court. There is also the possibility of appealing to the Constitutional Court to examine questions of constitutionality raised within the process.

The AdC's most significant cartel cases to date are the *Glucose Diagnostic Strips* cartel,²¹ the *Salt* cartel,²² the *Flour Mills* cartel,²³ the *Catering Services* cartel,²⁴ the *Polyurethane Foam* cartel,²⁵ the *Cleaning Companies* cartel,²⁶ the *Office Consumables* cartel,²⁷ the alleged *Train Maintenance* cartel,²⁸ the alleged *Insurance* cartel²⁹ and the alleged hub-and-spoke cartel cases in the food retail sector.³⁰

In 2019, the AdC made extra efforts to detect and investigate cartels, and some significant landmarks were reached, such as the first sanctioned cartel in the financial sector (the *Insurance* cartel),³¹ which resulted in the biggest fine in the history of the AdC (a record that has since been exceeded in several cases (see Section IV.ii)). The undertakings participating in the *Insurance* cartel were sanctioned for alleged market sharing and coordinating prices in the sale of workplace accident, health and motor insurance to large corporate clients. The purpose of this coordination was apparently to allow the incumbent insurer to retain

20 Article 84(1) of the Competition Act.

21 Case No. PRC/2003/06, 28 December 2004.

22 Case No. PRC/2005/25, 11 July 2006; the case was decided in 2006 and upheld by the Commercial Court of Lisbon in 2008.

23 Case No. PRC/2004/06, 3 July 2009; the case was decided in 2005, overturned by the Commercial Court of Lisbon and subject to a new decision of the AdC in 2009.

24 Case No. PRC/2007/02, 31 July 2012; the case resulted from a leniency submission from a former director of one of the undertakings involved in the cartel.

25 Case No. PRC/2011/01, 18 July 2013.

26 Case No. PRC/2009/10, 1 June 2011; the case was decided in 2011 and upheld by the Lisbon Court of Appeal in 2014.

27 Case No. PRC/2011/10, 30 May 2016.

28 This case is still under investigation for the participants that did not enter the settlement procedure (see Section V). Press Release 05/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201905.aspx?lst=1&Cat=2019.

29 Press Release 16/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201916.aspx?lst=1&Cat=2019.

30 For example, Case No. PRC/2017/1, 18 December 2020, and Case No. PRC/2017/7, 18 December 2020.

31 Case No. PRC/2017/10, 30 July 2019, available at www.concorrenca.pt/vPT/Praticas_Proibidas/Decisoes_da_AdC/Documents/PRC_2017_10_Decisao%20condenatória%20final%20VNC%20pública.pdf.

their respective clients. This cartel was sanctioned following a leniency application, and total fines of €54 million were imposed in the case,³² including fines for two directors and two administrators.³³

In September 2019, the AdC fined 14 banks a total of €225 million (with the highest individual fine at €82 million) for an alleged concerted practice corresponding to an exchange of sensitive commercial information on loans. Although the facts were not analysed as a cartel, the proceedings were initiated subsequent to a leniency application from a first applicant, which benefited from a full exemption of the fine, and a second applicant, which was rewarded with a 50 per cent reduction of its fine.³⁴

Also, in December 2018,³⁵ April 2019,³⁶ June 2019³⁷ and March 2020³⁸ the AdC fined five undertakings and five directors and administrators a total of over €3.4 million for participating in the *Train Maintenance* cartel that focused on public tenders for railway maintenance, including practices that could be characterised as bid rigging.³⁹ The proceedings were concluded earlier than anticipated (between December 2018 and June 2019) for three of the involved undertakings, because of their collaboration with the investigation in admitting their participation in the cartel, and the avoidance of judicial litigation by using the settlement procedure. The percentage of fine reduction is not clear from the publicly available information, but, typically, the AdC will allow the 10 per cent reduction set out at the EU level. On the other hand, the two companies that did not use the settlement procedure were, in addition to the fine, sanctioned with a two-year ban from participation in public tenders (see Section V).

In 2020, according to public information, the AdC initiated various proceedings related to cartels, having issued six statements of objections for alleged anticompetitive agreements, price-fixing and hub-and-spoke arrangements, in the food retail,⁴⁰ telecommunications⁴¹

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- 32 Before the *Insurance* cartel finding, the largest fines in a cartel case totalled €13.5 million and were imposed on Abbot, Bayer, Johnson & Johnson, Menarini and Roche in 2005 for bid rigging in several public offers.
- 33 The total fine imposed on individuals amounted to €58,800. See www.concorrenca.pt/vPT/Praticas_Proibidas/Decisooes_da_AdC/Paginas/PRC201710.aspx.
- 34 Case No. PRC/2012/09, 9 September 2019. This case is currently subject to appeal before the Competition Court. See Press Release 17/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201917.aspx?lst=1&Cat=2019.
- 35 Press Release 20/2018, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201820.aspx?lst=1&Cat=2018.
- 36 Press Release 05/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201905.aspx?lst=1&Cat=2019.
- 37 Press Release 10/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201910.aspx?lst=1&Cat=2019.
- 38 Press Release 02/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202002.aspx?lst=1&Cat=2020.
- 39 Case No. PRC/2016/6, 3 March 2020, available at www.concorrenca.pt/vPT/Praticas_Proibidas/Decisooes_e_Contencioso/Documents/PRC201606-Decis%c3%a3o%20Final%20Ferrovias%20FERGRUPO+SOMAFEL.pdf.
- 40 See Press Release 09/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202009.aspx?lst=1&Cat=2020; Press Release 10/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202010.aspx?lst=1&Cat=2020; and Press Release 18/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202018.aspx.
- 41 Press Release 25/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201925.aspx?lst=1&Cat=2019; Press Release 11/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202011.aspx?lst=1&Cat=2020.

and land surveying⁴² sectors. Also in 2020, the AdC imposed its highest ever individual fines. First, at the beginning of December, by sanctioning a telecommunications operator with a fine of €84 million for alleged market sharing and price-fixing of mobile and fixed telecommunications services.⁴³ It did so again at the end of December, by sanctioning six large retail food chains, two suppliers, a board member and a director for alleged price-fixing through hub-and-spoke arrangements with a total fine of €304 million, including the highest individual fine of €121.9 million.⁴⁴

In 2021, despite its serious effects on the world economy, the covid-19 pandemic does not seem to have constrained the AdC from vigorous enforcement activity and, in November, it issued another decision finding the existence of a hub-and-spoke cartel and sanctioning four supermarket chains and a drinks supplier with an overall fine of €92.8 million.⁴⁵

In 2021, the AdC also instituted various proceedings related to cartels, issuing two statements of objections for alleged cartel conduct – one in the context of public tenders in the private surveillance sector⁴⁶ and another for hub-and-spoke arrangements in the food retail sector.

The AdC also issued sanctioning decisions in a case of price-fixing through decisions by an association in the land surveying services market,⁴⁷ a case of vertical restraint in the essential medical devices sector involving an alleged vertical agreement on market sharing and a ban on passive sales,⁴⁸ and in a case of a non-compete agreement in the market for the provision of services to waste management systems.⁴⁹ Further, the AdC issued two other statements of objections: one regarding the first case in Portugal of alleged anticompetitive agreement in the labour market,⁵⁰ and one for an alleged anticompetitive agreement in the context of sectoral associations in the healthcare sector.⁵¹

According to public information, 2021 was also a record year for dawn raids conducted by the AdC, with searches in companies from various sectors, including banking and finance, energy, information services and healthcare.

In short, the AdC has been particularly proactive in investigating and sanctioning anticompetitive practices in recent years. According to publicly available information, in

42 Press Release 17/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202017.aspx?lst=1&Cat=2020.

43 Press Release 20/2020, available at http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202020.aspx.

44 Press Release 22/2020, available at http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202022.aspx.

45 Press Release 21/2021, available at <https://www.concorrenca.pt/en/articles/adc-sanctions-supermarkets-and-common-beverage-supplier>.

46 Press Release 12/2021, available at <https://www.concorrenca.pt/en/articles/adc-issues-statement-objection-seven-companies-taking-part-cartel-public-tenders>.

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49 Press Release 10/2021, available at <https://www.concorrenca.pt/en/articles/adc-sanctions-companies-and-directors-blueotter-and-gego-groups-non-competition-agreement>.

50 Press Release 04/2021, available at <https://www.concorrenca.pt/en/articles/adc-issues-statements-objections-anticompetitive-agreement-labour-market-first-time>.

51 Press Release 13/2021, available at <https://www.concorrenca.pt/en/articles/adc-issues-statement-objections-private-hospitals-and-their-business-association>.

total in 2019,⁵² 2020⁵³ and 2021, the authority issued 19 sanctioning decisions with fines totalling approximately €830 million, one decision with remedies (in the bakery sector) and 15 statements of objections, as well as conducting dawn raids in at least eight investigations and receiving at least four known leniency requests.

II COOPERATION WITH OTHER JURISDICTIONS

The AdC cooperates with the European Commission and other national EU competition authorities throughout the European Competition Network (ECN) and within the Network of Competition Authorities.

As regards the application of Articles 101 and 102 of the TFEU, the AdC has established the formal cooperation mechanisms provided for in Regulation (EC) No. 1/2003, as well as undertaking informal cooperation and exchanges of information within the ECN.

In this context, under Regulation (EC) No. 1/2003, the AdC formally cooperates with other national competition authorities and the European Commission in antitrust proceedings. According to the AdC's Annual Report,⁵⁴ in 2020, despite the pandemic, the AdC participated in several cooperation meetings in the ECN context, and in oral hearings and advisory committee meetings, notably on cartels and restrictive practices.

In addition, in the context of the Portuguese presidency of the Council of the European Union, the AdC, together with the Ministry of Foreign Affairs, was part of the team that chaired the meetings of the Working Party on Competition, which led to the negotiation of the Digital Markets Act.

Moreover, the AdC also cooperates with national competition authorities in the context of other international organisations and networks, including the International Competition Network and the Organisation for Economic Co-operation and Development (OECD) Competition Committee.

Within the OECD, Portugal has submitted written contributions on several topics related to cartels, including on 'Digital Evidence Gathering in Cartel Investigations' for the 18th annual meeting of the Latin American and Caribbean Competition Forum, and on 'Criminalisation of cartels and bid rigging conspiracies'. In 2020, the current president of the AdC, Margarida Matos Rosa, was elected an effective member of the OECD Competition Committee Bureau. Also in 2020, the AdC and the Angolan Competition Authority strengthened their institutional bilateral cooperation by concluding a memorandum of understanding, which was signed in December of that year.

Additionally, the AdC develops cooperation on a bilateral basis. For instance, in 2020, it organised its third bilateral meeting with the French competition authority, as well as a meeting with the President of the Brazilian authority, CADE, on 'Leniency in the fight against cartels'.

52 See, for example, the AdC's Achievements 2019 Report, available at www.concorrenca.pt/vEN/News_Events/Noticias/Documents/AdC%20Achievements%20-%202019.pdf.

53 See AdC's Presentation to the Committee on Economy, Innovation and Public Works of the Portuguese Parliament, available at www.concorrenca.pt/vEN/News_Events/Noticias/Pages/Audition-of-the-Committee-on-Economy,-Innovation-and-Public-Works-of-the-Portuguese-Parliament.aspx?lst=1&Cat=2020; and the AdC's website and press releases, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/Comunicados.aspx.

54 Annual Report on Competition Policy Developments in Portugal to the OECD, 2020, available at [https://one.oecd.org/document/DAF/COMP/AR\(2021\)28/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2021)28/en/pdf).

In terms of practical developments and coordination in actual cases, the AdC also formally cooperated with the Spanish competition authority, CNMC, in a recent case in the information services sector. Although the case has yet to be made public, it has been referred to by the AdC as a coordinated investigation with the CNMC, involving coordinated and simultaneous dawn raids, in June 2021. This type of cooperation has already been seen in practice in, for example, the *Polyurethane Foam* cartel case.⁵⁵

III JURISDICTIONAL LIMITATIONS, AFFIRMATIVE DEFENCES AND EXEMPTIONS

i Extraterritoriality

Portuguese competition law is applicable to all activities, be it in the private or public sector and regardless of the nationality of participants. The Competition Act applies to cartel practices that take place in the Portuguese territory or that have, or may have, effects in Portugal.⁵⁶

Therefore, in theory, any agreement between undertakings located outside the Portuguese territory may be investigated and sanctioned in Portugal if they may affect competition within the country. However, in practice, there are no records of decisions where cartels that occurred outside Portugal, but with impact in the Portuguese territory, have been investigated by the AdC.

ii Parent company liability

Even though the AdC has tried to extend the liability for competition law infringements to parent companies, similar to that within the EU, there appear to be substantial differences, in practice, between the application of this principle at the EU level and in Portugal.

Indeed, in several cases, the AdC has directly fined subsidiaries that participated in cartels (or other restrictive practices) without charging, or even involving, the parent companies.⁵⁷ In other cases, the AdC's intention to involve the parent company has been limited by the applicable internal legal provisions.

In this regard, the Lisbon Court of Appeal, in a case of abuse of dominant position, has clearly stated that the mere knowledge by the parent company of any infringement by the subsidiary shall not involve *ipso jure* the attribution of liability to the parent.⁵⁸ This is primarily because the imposition of liability on the parent based on the mere knowledge of the subsidiary's infringement could be incompatible with certain constitutional principles of criminal procedure that apply to competition proceedings, given their quasi-criminal nature and the application of very heavy pecuniary sanctions.⁵⁹

55 See the decision of the AdC in case No. PRC 2011/01, Sections 26–27, available at www.concorrenca.pt/vPT/Praticas_Proibidas/Decisoes_da_AdC/Documents/DecisaoPRC201101.pdf.

56 Article 2(2) of the Competition Act.

57 In case No. PRC 2004/31, 29 May 2008, the AdC fined Nestlé Portugal (Nestlé's subsidiary in Portugal) €1 million for restrictive vertical agreements; in case No. PRC 2005/25, 11 July 2006, the AdC fined Vatel, Companhia de Produtos Alimentares, SA (the Portuguese subsidiary of the Escó group, headquartered in Germany) €545,672 for cartel activities (price-fixing and market sharing).

58 Decision of the Lisbon Court of Appeal, case No. 36/16.QYUSTR.L1, 14 July 2017, *Associação Nacional de Farmácia*.

59 On this topic, the transposition of the Directive ECN+ will probably bring changes. Indeed, the draft transposition proposes amending Article 73 of the Competition Act to provide for joint and several

As for the calculation of fines, even if in terms of turnover the Competition Act does not specify any geographical scope for consideration, both the AdC's practice and the guidelines on the calculation of fines seem to indicate that turnover in Portugal is taken into account.⁶⁰

iii Affirmative defences and exemptions

Article 10 of the Competition Act excludes certain agreements from the scope of the Article 9 prohibition.

For this purpose, these agreements must, cumulatively, (1) 'allow the users of the concerned goods or services an equitable part of the resulting benefit', (2) 'not impose on the undertakings concerned any restrictions which are not indispensable to the attainment of these objectives', and (3) 'not afford such undertakings the possibility of eliminating competition from a substantial part of the market for the goods or services at issue'. Provided that all of these criteria are fulfilled, the undertakings may be exempt from the sanctions applicable in cases of vertical agreements. However, it is highly unlikely that a cartel agreement could qualify for such an exemption.

The AdC has also made it clear that the 'state action' defence is not widely available to justify coordination between operators. In fact, according to the AdC, the state must refrain from promoting arrangements between competitors, and this was addressed in a case concerning meetings promoted by the government of the Azores with several milk producers in which commercial conditions might have been discussed. The AdC closed the case without imposing any sanctions but recommended that the government of the Azores end the practice and refrain from acting in any way that could potentially facilitate collusive behaviour in the region.

IV LENIENCY PROGRAMMES

i Legal framework

The leniency programme in Portugal, as at the EU level, is a mechanism that enables participants (individuals or legal persons)⁶¹ in a cartel to obtain full or partial immunity by collaborating in the AdC's investigation.

Despite not being explicit in the law, this mechanism is understood as applying exclusively to cartel cases and does not apply to the other offences provided for in Article 9 on decisions by associations of undertakings and concerted practices.

liability in two scenarios: (1) the companies are part of the same economic unit or one company exercises determining influence on another at the time of the infringement; and (2) liability for the economic successors of the infringing company.

60 Section 19 of the Guidelines provides that for the calculation of the base amount of turnover 'the updated average of the sales and services rendered, directly or indirectly related to the infringement, carried out in Portuguese territory' is taken into account.

61 Articles 76(b) and 79(1) of the Competition Act provide that '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' may benefit from immunity from fines.

However, the AdC admitted a leniency application in a case of exchange of information without suspicion of cartel activity.⁶² The point is that this limitation to cartels is no more than a direct application of the constitutional principle of proportionality according to which the AdC cannot resort to a mechanism that is not strictly necessary and appropriate.⁶³

The Portuguese leniency regime, provided under Articles 75 to 82 of the Competition Act, lays out a regime that allows the AdC to grant immunity from fines or a reduction of fines in administrative proceedings concerning prohibited practices under Article 9 of the Competition Act.

These rules provide that every individual or legal person that could be sanctioned for participating in a cartel may apply for immunity from, or reduction of, a fine under the Competition Act. The moment when the applicants present themselves to collaborate with the AdC is crucial, as only the first undertaking to denounce the existence of the infringement shall benefit from full exemption from the fine. The subsequent undertakings that do so may only benefit from a reduction of up to 50 per cent.

For this purpose, the Competition Act provides for several levels of reductions, depending on when each application was made. According to the Act, the first undertaking providing information and evidence of significant added value (i.e., the first applicant after the one eligible for immunity) is entitled to a reduction of 30 to 50 per cent, the next may benefit from a reduction of 20 to 30 per cent and subsequent undertakings from a reduction of up to 20 per cent.

The procedural rules for leniency are laid down in a separate regulation, Regulation (EU) No. 1/2013, which is complemented by the AdC's Guidelines on Leniency Applications. The leniency application must be submitted by written request providing, notably:

- a* the object of the application;
- b* the identification of the applicant;
- c* precise and detailed information on the cartel;
- d* identification of, and contact details for, the involved companies; and
- e* an indication of the existence of requests made in other jurisdictions.⁶⁴

The AdC provides a template for the submission of a summary application for immunity from, or reduction of, fines.

The granting of the exemption or reduction is not automatic and the applicant must:

- a* promptly provide all the information and evidence that the applicant has or may obtain;
- b* respond expeditiously to any request for information that may contribute to determining the facts;
- c* refrain from any act that may hinder the progress of the investigation; and
- d* refrain from disclosing the existence or the contents of the application, or the intention to submit such an application.⁶⁵

62 This case is currently subject to appeal before the Competition Court. See Press release 17/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201917.aspx?lst=1&Cat=2019.

63 Article 18(2) of the Portuguese Constitution.

64 Article 2(2), Regulation (EU) No. 1/2013.

65 Notice regarding immunity from a fine or reduction in a fine in administrative procedures to establish infringement of competition rules, Section 12.

Nevertheless, the Competition Act provides that the application for immunity from, or reduction of, the fine is confidential, along with all the documents and information submitted for the purpose of gaining immunity or a fine reduction.⁶⁶ However, the AdC shall allow the parties concerned access to the application for immunity or fine reduction, and to the relevant documents and information, although copies cannot be made unless authorised by the applicant.

In this respect, the Private Enforcement Law offers some protection to leniency applicants, namely through:

- a* the limitation of its joint liability to its own direct or indirect customers or suppliers, and to any other injured parties that cannot obtain full compensation from the other infringing companies for the damage suffered;⁶⁷ and
- b* the limitation of access to leniency applications as evidence, by preventing the use of declarations made for the purposes of exemption or reduction of a fine as evidence.⁶⁸

ii Decision practice

There are several public cases in Portugal that started on the basis of leniency applications by undertakings or individuals, which has become more common in recent years.

Catering Services cartel (2007)

The AdC started its investigation following an individual leniency application submitted under the terms of the previous regime provided for in Law No. 39/2006 of 25 August 2006 by a former director of one of the investigated undertakings. The applicant benefited from immunity from fines. However, the remaining cartel participants and its directors were fined a total of €14,720,283 (although this was later reduced by the Competition Court).⁶⁹

Commercial Forms cartel (2012)

The AdC sanctioned this cartel involving undertakings operating in the printing and graphics sector. Several undertakings were fined for a price-fixing and market-sharing agreement concerning the application form paper market after an investigation triggered by a leniency application. The fines totalled €1.798 million. In addition, three board members were fined €6,000 each for being aware of the cartel and failing to take action to put an end to it.⁷⁰

Polyurethane Foam cartel (2013)

This was a cartel in the market for polyurethane foam for comfort products. This case is very important since the AdC's investigation was conducted in parallel with a cartel investigation in the same market by the CNMC. The investigation was triggered by a leniency request by an undertaking that received full immunity (as did its board members), and all the sanctioned

66 Article 81(1) of the Competition Act.

67 Article 5(4).

68 Article 14.

69 Case No. PRC/2007/02, 31 July 2012.

70 Case No. PRC/2010/08, 13 December 2012.

undertakings and individuals benefited from substantial fine reductions in view of the settlement procedure. The AdC imposed fines amounting to €993,000 on two undertakings and fines of €7,000 on board members.⁷¹

Prefabricated Modules cartel (2015)

In the area of public procurement, five undertakings were sanctioned for anticompetitive practices in public tenders for the supply and assembly of prefabricated dwellings that would be used to enable the normal course of school activities during the reconstruction of certain schools, under a governmental public works initiative named Parque Escolar. In this case, the undertakings involved have waived their right to appeal against the AdC's decision, to benefit from a 10 per cent reduction of their fines. Therefore, the fines imposed on the five undertakings by the AdC amounted to €831,810.⁷²

Office Consumables cartel (2016)

A fine of €440,000 was imposed for restrictive practices of a horizontal nature (cartel) in the Portuguese market for the production and marketing of envelopes. The leniency applicant benefited from full exemption from the fine.⁷³

Insurance cartel (2019)

The leniency applicant benefited from full exemption of the fine as the first company to come forward under the leniency programme and to present the AdC with sufficient evidence of the cartel. Two other participants benefited from a reduction by means of the settlement procedure.⁷⁴

Banking case (2019)

The AdC fined 14 banks a total amount of €225 million for alleged concerted practice through the exchange of sensitive commercial information. Although not analysed as a cartel, the proceedings were initiated subsequent to a leniency application from a first applicant, which benefited from full exemption from the fine, and a second applicant, rewarded with a 50 per cent reduction of its fine.⁷⁵

Telecommunications cartel (2020)

In December 2020, based on a leniency application, the AdC imposed a record fine of €84 million on one of the main telecommunications operators in Portugal for alleged market sharing and price-fixing of mobile and fixed telecommunications services with the leniency applicant, another telecommunications operator, which benefits from full exemption from the fine.⁷⁶

71 Case No. PRC/2011/01, 18 July 2013.

72 Case No. PRC/2014/2, 9 July 2015.

73 Case No. PRC/2011/10, 30 May 2016.

74 Case No. PRC/2017/10, 30 July 2019.

75 Case No. PRC/2012/09, 9 September 2019.

76 Press Release 20/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202020.aspx.

Telecommunications case (2020) – statement of objections

In July 2020, again following a leniency application, the AdC issued a second statement of objections in the telecommunications sector to the four main Portuguese telecommunications operators for an alleged cartel to limit competition in online advertising on the Google search engine.⁷⁷

In this context, the AdC made it clear that it will continue to promote the leniency policy as an essential instrument for cartel identification, particularly through the imposition of heavy and dissuasive fines in cartel cases, to stress the advantages of the leniency regime.⁷⁸

V PENALTIES

In Portugal, cartel activities are administrative (not criminal) offences sanctioned with fines not exceeding 10 per cent of the offending undertaking's turnover in the year preceding the decision.⁷⁹ Fines imposed to date in cartel cases have generally amounted to around 5 per cent of the infringing undertaking's turnover.

The members of the board of directors of the infringing undertakings, as well as any individuals responsible for the management or supervision of the areas of activity in which there has been a competition law infringement, are liable to be sanctioned under the Competition Act, unless they are subject to a more serious sanction under a different legal provision. They are liable to this sanction when they know, or it is their duty to know, that an infringement has been committed and they have not adopted appropriate measures to end the infringement immediately. The fine imposed on individuals cannot exceed 10 per cent of the individual's annual income deriving from the exercise of their functions in the undertaking concerned.

As an ancillary sanction under Article 71 of the Competition Act, the AdC may impose a ban of up to two years on the undertaking's right to take part in tendering processes for public works contracts or public service concessions, the leasing or acquisition of movable assets or the acquisition of services or procedures involving the award of licences or authorisations by public entities. The ban may be imposed in cases in which the practice leading to an administrative offence punishable by a fine occurred during or as a result of those processes (i.e., bid rigging). Although this ancillary sanction is doubtful – as it limits the number of bidders in future tenders so could, therefore, be considered anticompetitive in itself – the AdC has applied it, for the first time, in March 2020. In the *Train Maintenance* cartel case, the AdC imposed on the two companies that did not use the settlement procedure

77 Press Release 11/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202011.aspx?lst=1&Cat=2020.

78 See the AdC's competition policy priorities for 2019, provided in compliance with the provision of Article 7(3) of the Competition Act, available at www.concorrenca.pt/vEN/News_Events/Noticias/Documents/AdC%20Competition%20Policy%20Priorities%20for%202019.pdf.

79 According to general rules subsidiarily applicable to misdemeanours, when there is more than one infringement, the maximum fine may be twice the abstract maximum applicable to the most serious offence, which, in a cartel, would be 20 per cent of the turnover of the offending undertakings (see Miguel Moura e Silva, in *Direito da Concorrência* (2018), p. 441). However, to our knowledge, this theory has not been applied to competition infringements in Portugal.

an additional sanction of a ban of up to two years on participation in public tenders, limited to the tenders relating to the market for maintenance services for track equipment on the national rail network.⁸⁰

In addition, the AdC may publish an extract of its decision in the Official Journal of the Portuguese Republic and in a national, regional or local newspaper with a large circulation, according to the relevant geographical market.

Article 29 of the Competition Act establishes that the AdC may also impose behavioural or structural measures to end prohibited practices or their effects. This mechanism has never been used by the AdC.

In addition to the leniency programme, during the course of investigation⁸¹ or during the prosecution phase,⁸² the parties can put forward a settlement submission by admitting the facts, acknowledging their responsibility for the infractions and accepting that the facts confessed cannot be subject to judicial review by means of appeal.

Although they are not necessarily linked to leniency applications, these cases also involve a negotiation between the companies and the AdC, a collaboration in the investigation through the gathering of evidence and usually the recognition of some form of misconduct. In recent years, the AdC has made extensive use of the possibility of closing cases with undertakings through this settlement procedure, even though it is not clear, contrary to that taking place at the EU level, what percentage of fine reduction is attributed to settlement.

For instance, in December 2018,⁸³ April 2019⁸⁴ and June 2019,⁸⁵ in relation to three participants in the *Train Maintenance* cartel, the AdC concluded proceedings earlier than anticipated because of the collaboration of the companies that admitted their participation in the cartel and the avoidance of judicial litigation by using settlement procedures.⁸⁶ As the use of this procedure allows the simplification and acceleration of the process, the company benefited from a reduction in the total fine imposed (the percentage of reduction has not been made public). Regarding the remaining companies, the AdC adopted its final decision in March 2020⁸⁷ having imposed a higher fine (total of €1.8 million) and, as mentioned, a ban of up to two years on participation in public tenders.

80 Case No. PRC/2016/06, 3 March 2020.

81 Article 22 of the Competition Act.

82 Article 27.

83 See Press Release 20/2018, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201820.aspx?lst=1&Cat=2018.

84 See Press Release 05/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201905.aspx?lst=1&Cat=2019.

85 See Press Release 10/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201910.aspx?lst=1&Cat=2019.

86 See Press Release 05/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201905.aspx?lst=1&Cat=2019.

87 Press Release 02/2020, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_202002.aspx?lst=1&Cat=2020.

VI 'DAY ONE' RESPONSE

Under Articles 18, 19 and 20 of the Competition Act, the AdC has a prerogative to perform and execute a broad set of investigative actions in the context of anticompetitive practices. As such, the AdC can:

- a* interrogate the suspected company and each person connected to it, and request relevant documents and information;
- b* interrogate any person whose statements the AdC might find relevant, as well as requesting documents and information when pertinent;
- c* search, examine and apprehend documents necessary for collecting evidence, whether physical or digital in nature, from the company's headquarters and vehicles; and
- d* temporarily seal locations likely to contain relevant documents, to aid in the collection of evidence.

In addition, the AdC can also conduct raids of private residences provided this is authorised by a judge. Raids and document collection conducted at lawyers' and doctors' offices, and banks' headquarters, must be carried out in the presence of a judge, for the purpose of preserving professional or banking privilege. Additionally, a raid can only be conducted with a warrant from the competent judicial authority and it must be conducted within the scope of the warrant.

When investigated by the AdC, any person can be accompanied by a lawyer during the process or at a hearing, to assess the legal standing of a defendant before an inspection commences or to appeal AdC decisions.

Despite these wide powers of investigation, there is some uncertainty over the scope of these powers within the Portuguese framework. This uncertainty mainly concerns whether emails should be regarded as documents or as correspondence (the latter enjoys increased protection). Some jurisprudence on the matter states that only unread emails should be regarded as correspondence and the rest should be considered digital documents; a more recent court decision stated that emails could not be used outside a criminal case. This matter is currently under discussion on account of the transposition of the ECN+ Directive – a process that has, as mentioned, been spearheaded by the AdC itself. In this context, the AdC suggested, in its draft proposal for legislative transposition submitted to the government, to include the clear possibility of the AdC having access to, or being able to collect, all information, data or clarifications in any format, whether physical or digital (namely documents, files and emails or instant messages), irrespective of the media, condition or location in which they are stored, as long as they are accessible to the undertaking under investigation.⁸⁸

Nevertheless, the AdC seems to be unfazed by these concerns, and in recent years has conducted a significantly high number of raids,⁸⁹ which in a typical *modus operandi* included the seizure of emails and data searches commonly using very broad search terms, often leading to the seizure of large amounts of information classified as personal, irrelevant or unrelated to the case and, on occasion, even seized in breach of professional secrecy.

88 For further information, see: Nuno Salazar Casanova, Tânia Luísa Faria, Duarte Peres and Margot Lopes Martins, 'A fish out of water – critical analysis of the AdC's draft proposal for the transposition of the ECN+ Directive into Portuguese law', *Competition and Regulation Journal*, No. 42–43.

89 See, for example, Report on AdC's achievements 2017–2019, available at www.concorrencia.pt/vEN/News_Events/Noticias/Documents/AdC%27s%20Achievements%202017-2019.pdf.

Because of the possibility of raids, employees should be trained to comply with them and be advised that a record of all taken documents should be kept. Cooperation with the AdC's investigation is an attenuating circumstance taken into consideration in the setting of fines.

VII PRIVATE ENFORCEMENT

The Portuguese private enforcement regime was established by the Private Enforcement Law, following the Private Enforcement Directive. The legislator aimed to further ensure that the law would fully protect the right to compensation, by expressly allowing the appeal to a collective action for damages.

This Law marks the adoption of the first specific set of rules in force in Portugal concerning actions for damages resulting from a breach of competition rules. Hitherto, cases of damages resulting from anticompetitive infringements judicially claimed were based on general rules on civil liability.

By means of this innovative regime, a claimant may bring a competition claim before the Competition Court, which has exclusive competence for these types of judicial claims. Notably, however, the Court only has jurisdiction to rule on matters relating exclusively to infringements of competition law. This seems to leave room for the involvement of ordinary civil courts in damages actions not exclusively related to breaches of competition law.

In accordance with the Private Enforcement Directive,⁹⁰ the Private Enforcement Law provides for a presumption of damages in cartel cases,⁹¹ stating that 'cartels shall be liable for damage caused by their infringements, unless proved otherwise'.

The Law applies to damages actions, as well as to other requests based on infringements of competition law (e.g., nullity of agreements and contractual clauses, and unjust enrichment). Moreover, the new legal framework applies regardless of whether the infringement of competition law on which the claim for damages is based has already been recognised by a competition authority or a court.

Up to now, the majority of private enforcement cases in Portugal have concerned abuse of dominant position. However, since the transposition of the Private Enforcement Directive in 2018, private enforcement has garnered attention. As in the rest of the EU, this development has been marked in Portugal by the *Trucks* cartel, which has had a substantial impact on private enforcement litigation in Portugal, with an extensive and increasing number of actions for compensatory damages currently pending. Other cases are currently under assessment and the first case of private enforcement in Portugal was concluded, in November 2021, with an agreement (approved by the Competition Court) between the Ius Omnibus Association, representing consumers in the context of a popular action, and the National Association of Land Surveyors.

VIII CURRENT DEVELOPMENTS

According to publicly available information, competition law sanctions have been imposed in Portugal most frequently in respect of restrictive practices (including price-fixing) within trade and professional associations, and bid-rigging cartels. Recently, the AdC seems to have

90 Article 17(2).

91 Article 9(1).

increased its focus on the food retail sector and has publicly confirmed that it is currently pursuing more than 10 investigations and has already issued four statements of objections. In addition, in three different decisions, the AdC imposed record total fines on six of the main food retail chains in Portugal, three beverage suppliers and several board members and directors for alleged price-fixing agreements characterised as hub-and-spoke arrangements.

The AdC has resorted to the leniency programme with increasing frequency, and individual sanctions have also been imposed more frequently. In addition, the settlement mechanism established in the Competition Act was first used in 2013 and is increasingly being used, proving to be a very useful instrument to investigate and prove cartel cases, as well as for other antitrust infringements.

Within the leniency programme, the AdC is proposing extending the possibility of granting immunity from fines or a reduction of fines to associations of undertakings as long as they themselves participate in an economic activity and have themselves participated in the infringement, rather than acting on behalf of their members. The AdC has proposed that the grant of exemption from fines under the leniency programme should be subject to additional requirements to ensure that applicants cooperate fully with the AdC throughout all stages of the programme. The possibility of including the leniency procedural rules within the Competition Act is also being discussed, as it is now regulated autonomously.

The next significant development for the legal framework relates to the transposition of the ECN+ Directive, the draft legislative proposal for which was prepared by the AdC and submitted to the government on 3 April 2020.⁹² The draft proposal is currently under discussion in Parliament. It expressly provides that the AdC shall be able to access any technological device, including smartphones, tablets and cloud servers, and it extends the type of elements that may be covered by AdC raids and seizure procedures to include explicitly both read and unread emails and instant messaging systems.

The outcomes of the appeals in the *Insurance* cartel and in the alleged infringement in the banking sector are expected in the course of 2022 and these will be very significant for future interpretation of the legal concepts at issue.

In conclusion, the modifications to the Competition Act following transposition of the ECN+ Directive are likely to represent a significant change to Portuguese competition law, as these will give the AdC important new powers. The prospect of extended powers only assumes more significance in light of the fact that AdC has been increasingly proactive in recent years, developing a more aggressive competition enforcement policy in various sectors, even in the context of the covid-19 pandemic.

The year 2022 is also very likely to bring more concrete developments in the area of private enforcement in Portugal.

92 See Press Release 21/2019, available at www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201921.aspx?lst=1&Cat=2019.

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ISBN 978-1-83862-533-7