

FOCUSING ATTENTION SECTOR BY SECTOR - MARQUES MENDES & ASSOCIADOS

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In line with wider European trends, Portugal's national competition authority (Autoridade da Concorrência – AdC) has embarked on a policy of targeting particular business sectors, explains Mário Marques Mendes, of Lisbon's Marques Mendes & Associados.

"The recent past has seen the AdC make significant moves to tackle what it perceives as anti-competitive behaviour in certain sectors or groups, notably as regards the activity of professional services associations and pharmaceuticals, including levying record fines" he says.

In fact, the AdC has adopted, in 2005 and 2006, a series of decisions concerning professional associations' price-fixing practices, including those of veterinarians, dentists, shipping agents and medical doctors, applying an aggregate amount of fines of € 681.116.

Late 2005 saw the AdC impose a combined fine of €15.8m on Abbot, Bayer, Menarini, Johnson & Johnson and Roche – subsequently appealed by some of them – for tender irregularities in the provision of diabetes diagnosis products to state hospitals, following in-depth investigations, generating significant news coverage.

In 2007, the AdC also applied a record fine of €38 million on PTC, a company within the Portugal Telecom group, in its first abuse of dominant position decision.

In this area of abuse of dominance, it must be noted the announced intention by the AdC to make investigations into certain aspects of operators' activities, says Marques Mendes, notably in the air transport, telecommunications and energy sectors.

Portugal has seen a large amount of merger activity, notably in the telecoms and media sectors, including the divestment of the multimedia division of Portugal Telecom (PT) in the past year following the failed attempt by Sonaecom to acquire PT – a deal that was subject to intense regulatory scrutiny.

In addition, notes Marques Mendes, the head of the AdC, in recent speeches, gave a clear indication of willing to continue focusing on the telecommunications and energy markets, in close cooperation with the sectoral regulators. Moreover, as the AdC is obtaining significant victories in Courts following appeals of some of its decisions, it announced the forthcoming submission to the Government of a proposal addressing procedural issues aimed at improving certain aspects of the current law.