

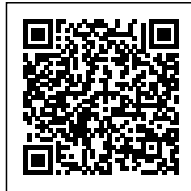
TRL UPHOLDS €34.4M SANCTIONS TO EDP & SONAE

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The Lisbon Court of Appeal (TRL) confirmed the AdC's decision to fine EDP and Sonae in 2017 for a non-competition agreement and deemed the process urgent since the statute of limitations for proceedings may soon expire.

Without prejudice to applicable suspension causes of the statute of limitations period (such as suspensions resulting from the pandemic and the request for a preliminary ruling to the Court of Justice of the European Union (CJEU)), the statute of limitation will occur shortly, prompting the TRL to decide that the process will proceed during judicial vacations.

In a ruling dated February 19, the TRL deemed the appeals of EDP and Sonae unfounded, fully confirming the sentence of the Competition, Regulation, and Supervision Court (TCRS) of 2020.

The TRL also confirmed that the infringement was committed intentionally, maintaining the fines applied, which together amount to 34.4 million euros. In the 2020 sentence, the TCRS had confirmed the infringement sanctioned by the AdC, only reducing the value of each of the fines applied by 10%, to the total mentioned. In 2017, the AdC sanctioned the companies EDP - Energias de Portugal, S.A., EDP Comercial - Comercialização de Energia, S.A., Sonae Investimentos, SGPS, S.A., Sonae MC - Modelo Continente SGPS, S.A. and Modelo Continente Hipermercados, S.A. for entering into a non-competition agreement within the scope of a commercial campaign partnership, which constitutes a violation of competition rules.

Through the agreement, EDP and Sonae undertook not to enter each other's markets, namely, binding Sonae not to compete in the sale of electricity in mainland Portugal for a period of two years. The TRL has now confirmed that the non-competition agreement in question had the capacity to

"significantly restrict competition, in whole or in part, in the national market for the sale of electricity" and that by entering into such agreement "in the context of the liberalisation of the electricity market (...), the parties agreed, freely and expressly, to restrict the manner in which similar partnerships could be established and also agreed to restrict the possibility of each target of a business group engaging in competitive activities in the markets where the other business group operates."

In October 2023, the CJEU had replied to a request for a preliminary ruling by the TRL, which addressed several questions concerning the application of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) in the legal dispute between EDP, Sonae, and the AdC. In its judgement, the CJEU determined that a non-competition clause within a commercial partnership agreement, which prohibits one party from entering the electricity market during its liberalization, particularly when the other party is a major player, can indeed be considered an agreement designed to prevent, restrict, or distort competition, supporting the AdC's stance.