

## The Lisbon Commerce Court confirms decision against bid-rigging cartel by pharmaceutical companies but substantially reduces fines (Abbott, Menarini and Johnson & Johnson)

**Portugal, Anticompetitive practices, Bid rigging, Cartel, Damages, Sanctions/Fines/Penalties, Fine mitigating, Pharmaceutical, Healthcare, Services**

On 7 January 2010 the Lisbon Commerce Court upheld a 2008 decision by the Portuguese Competition Authority (PCA) imposing a € 13.4 million fine on pharmaceutical companies Abbott, Menarini and Johnson & Johnson for participating in a bid-rigging cartel.

Back in 2005 the PCA fined the pharmaceutical companies €16 million for participating in two bid-rigging cartels related to public tenders held by hospitals for the purchase of blood glucose monitoring reagents (test strips). Roche voluntarily paid the fines in both cases whilst Johnson & Johnson only accepted to pay in one of them, having brought an appeal before the Lisbon Commerce Court in the other case. All other undertakings appealed against the decision in both cases, which were jointly assessed by the Commerce Court.

In 2007 the Court referred the case back to the PCA due to procedural shortcomings related to defence rights. In early 2008 the PCA issued a new decision based on the same facts although applying lower fines (a total of € 13.4 million instead of € 16 million). Bayer paid the new fine and Abbott, Menarini and Johnson & Johnson appealed again to the Lisbon Commerce Court [1]

In its judgment of 7 January 2010 the Lisbon Commerce Court confirmed the PCA's findings as to the number of infringements committed by the three companies (63) and upheld the approach taken by the PCA according to which multiple infringements rather than a single continuous infringement were at stake.

However, the amount of fines applied to the two appellants was further reduced from a total of € 10.47 million to € 5.0 million, a radical 52% reduction. The Court found that the PCA had not overcome the burden of proof as regards either the economic benefits enjoyed by the cartelists or the exact amount of damages inflicted to the State in public tenders. The Court also explicitly dismissed PCA's reasoning for a particularly harsh penalty being applied to Johnson & Johnson as a consequence for lodging an appeal. According to the PCA, the fact that the company had actively cooperated with the PCA and provided the information allowing for the second 2005 decision was incompatible with subsequently filing an appeal. Accordingly, the latter move should be punished as an illegitimate means to avoid liability.

Hence, the Commerce Court reduced the fines as follows: Abbott (35 infringements) - from € 7 million to € 3 million; Menarini (27 infringements) - from € 2.81 million to € 2 million; Johnson & Johnson (1 infringement) - from € 658.413 to € 70.000.

This judgement confirms the trend followed by the Lisbon Commerce Court as regards reduction of fines in cartel cases investigated by the PCA [2]

---

[1] See, Luís D. S. Morais, *The Portuguese Competition Authority adopts a new decision concerning a cartel of pharmaceutical companies following a decision of the Lisbon Commercial Court (Abbot, Bayer, Johnson & Johnson, Menarini)*, e-Competitions, n° 16329 Pablo Ibáñez Colomo, *The Portuguese Competition Authority imposes fines to 5 pharmaceutical companies for collusion in tender procedures for the provision of medical supplies to public hospitals (Abbott Laboratórios)*, e-Competitions, n° 319 and Pablo Ibáñez Colomo, *The Portuguese competition authority adopts a decision against five pharmaceutical companies for collusion in a public tender procedure (Abbott, Bayer, Johnson & Johnson...)*, e-Competitions, n° 263.

[2] See Frederico Pereira Coutinho, Ana Kéri, *The Lisbon Court of Appeal confirmed the Portuguese NCA's decision on the salt cartel case (Salexpor, Salmex, Vitasal)*, e-Competitions, n° 17428.

---

Miguel Mendes Pereira | Abreu Advogados (Lisboa) | [miguel.m.pereira@abreuadvogados.com](mailto:miguel.m.pereira@abreuadvogados.com)

Nuno Carrolo dos Santos | Abreu Advogados (Lisbon) | [nuno.c.santos@abreuadvogados.com](mailto:nuno.c.santos@abreuadvogados.com)