

The Portuguese Competition Authority fines € 14,7 million five undertakings implicated in the Canteen Cartel and uses the leniency regime for the first time (Eurest, Trivalor, Uniself, ICA/Nordigal, Sodexo Portugal)

Portugal, Anticompetitive practices, Anticompetitive object/effect, Bid rigging, Cartel, Leniency, Market sharing, Price coordination, Sanctions/Fines/Penalties, Services

On 30 December 2009 the Portuguese Competition Authority (PCA) imposed total fines € 14,720 million on five mass catering undertakings active in the market for meals and refectory, canteen and restaurant management/operating services for anti-competitive practices. This case amounts to the first full-blown application of the 2006 Portuguese leniency regime as well as the first decision where the PCA directly fined executives of the companies participating in the cartel, in the global amount of € 20,000. The whistleblower in this case - the director of one of the involved companies - was awarded full immunity.

The nicknamed "Canteen Cartel" was composed by EUREST, TRIVALOR (parent company of the undertakings GERTAL and ITAU), UNISELF, ICA/NORDIGAL and SODEXO, the largest undertakings active in the relevant markets. According to the press release, it operated nationwide and on a permanent basis for at least nine years.

The ringleaders allegedly colluded to exchange information and entered into a customer market sharing agreement preventing each undertaking from losing its customers for the competitors. This was achieved by fixing prices in business proposals (whether in open competitions or in a public and private tenders) and granting preference to the incumbent undertaking in respect of each client. For cases where this mechanism failed, a compensation system between the cartel participants was put in place. Moreover, if not satisfied with the pricing conditions of a given contract, the incumbent company was entitled to give rise to a new tendering procedure targeting a higher price being assured that the other cartel participants would submit even higher prices such as to be disqualified and ensure that the incumbent would keep the contract.

The PCA found that a number of executives were particularly responsible for not complying with competition rules. Accordingly, executives in all the undertakings except for EUREST were fined €20,000 in total. However, EUREST was fined for participating in the cartel, which leads to believe that the leniency application might have been filed by an EUREST manager on an individual basis. This was the first time since the entry into force of the current Competition Act that executives from participating companies were directly fined.

Finally, it should be noted that the PCA mitigated the fines (which could amount to 10% of the turnover) by taking in consideration inter alia the economic and financial situation of both the undertakings and the country. As such, the individual final fines amount to 4% of the turnover for EUREST, TRIVALOR and UNISELF, 2.8% for SODEXO, and 2% for ICA/NORDIGAL. The decision will in all likelihood be subject to appeal to the Lisbon Commerce Court.

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