



AUTORIDADE DA
CONCORRÊNCIA

Fusão entre AC e AR: o caso Português

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**3.ª CONFERÊNCIA LUSO - ESPANHOLA
DE DIREITO DA CONCORRÊNCIA
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Context - Regulation 1/2003

Article 35: Designation of competition authorities of MS

- **Leaves Member States a large degree of margin for the design of the national competition enforcement regimes**
- **Sole explicit requirement as regards the institutional framework of competition enforcement in the MS:**
 - “(...) provisions of this regulation are effectively complied with.”
- **In contrast, EU legislation in areas such as the telecommunications, energy and railway sectors, contains more specific and detailed conditions regarding the national supervisory authorities.**

- **Compatibility with Regulation 1/2003: VEBIC (C-439/08)**
 - Article 35 of Regulation 1/2003 precludes national rules which do not allow a national competition authority to participate as a defendant in judicial proceedings brought against their own decisions.
- **Compatibility with the ECHR: Menarini (ECtHR Complaint 43509/08)**
 - It is compatible with the ECHR (article 6) for administrative authorities to pursue and punish competition law infringements, if possibility to appeal to a judicial body with full jurisdiction.

Context – MoU on Specific Economic Policy Conditionality

Measure 7.8 (MoU 6th Update)

- Ensure the effective functioning of the Competition Authority financing model [Q4-2012]
- Report on the conditions for the proper execution of its mandate [Q4-2012]

Measure 7.7 (MoU 7th Update)

- Submitted to parliament by framework law for regulators [Q1-2013]:
 - **establishing a regulatory environment** that protects the public interest and promotes market efficiency
 - **guaranteeing the independence** and financial, administrative and management autonomy
 - **strengthening the overarching role of the Competition Authority** in enforcing competition rules

The Portuguese Model

Option for an autonomous Competition Authority

- Framework law of independent regulators – Lei n.º 67/2013
 - Instituto de Seguros de Portugal
 - Comissão de Mercado de Valores Mobiliários
 - **Autoridade da Concorrência**
 - Entidade Reguladora dos Serviços Energéticos
 - Autoridade Nacional de Comunicações
 - Instituto Nacional de Aviação Civil
 - Instituto da Mobilidade e dos Transportes
 - Entidade Reguladora dos Serviços Energéticos
 - Entidade Reguladora da Saúde

The Portuguese Model - Lei n.º 67/2013



General principles:

- **Independence:** Administrative, financial and management
- **Supervision, Regulatory and Sanctioning Powers**
- **Protection of consumer rights and interests**

Challenges ahead:

- The adoption of bylaws
- Possibility of derogation of Lei n.º 67/2013 by other laws?

Thank you

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