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THE PORTUGUESE LENIENCY REGIME

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Law*

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Presentation

- **Legal Background / Scope of the Leniency Regime**
- **Immunity from fines / Reduction**
- **Interface with the Portuguese Competition Authority (“PCA”) / Decisional practice**
- **Concluding remarks**

- Integration within the *European Competition Network*
- Law 39/2006, of 25 August 2006 – establishing the rules for immunity and special reduction from fines to be granted by the PCA – the “Leniency Act”
- Regulation 214/2006, of 22 November 2006 (PCA’s)
 - (+) Accompanying Filing Form
- PCA’s *Informative Notice on the Portuguese leniency regime*

- **Objective scope**: leniency granted in proceedings relating to agreements and concerted practices, prohibited under Art. 4 of the Competition Act and, where applicable, Art. 101 of the TFEU

(applies to all types of restrictive agreements, rather than just cartels?)

- **Subjective scope**:
 - **Undertakings; and also**
 - **Members of the board of directors (on an individual basis)**

- **The PCA may grant total immunity from fines:**
 - **to the first company that provides evidence of an infringement, to which the PCA has not yet open an investigation;**
 - **shows *full and continuous* cooperation;**
 - **ceases to participate in the offence; and**
 - **has not coerced the other companies to participate in the breach concerned**

Reduction of applicable fines (levels)

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- Special reduction of at least 50% of the applicable fine:
 - first to provide evidence
 - about an infringement already under investigation and to which a statement of objections has not yet been issued by the PCA
- Special reduction of up to 50% of the applicable fine: second company providing similar evidence and within the same term

- Information and evidence provided should contribute decisively to the PCA's investigation (*significant added value*) and proof of the infringement

(+) full and continuous cooperation; cease to participate in the infringement; and not to have coerced others to partake

- In determining the amount of reduction, the PCA shall consider the importance of the company's contribution (to the investigation and proof)

Additional reduction (“*amnesty-plus*”)

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- Under Art. 7 of the Leniency Act, an additional reduction, or a special reduction(*), might also be awarded

... to companies that provide information and evidence of another infringement, in relation to which these entities would also request immunity or reduction of the applicable fine

() Special reduction under Art. 7: applicable to companies that have not applied for leniency, nor were granted with such status, in the first proceedings concerned*

- **Standard application: leniency submissions in accordance with the Form attached to Regulation 14/2006**
- **Information to be supplied by the applicant:**
 - **parties involved and nature of the infringement;**
 - **relevant market concerned;**
 - **duration;**
 - **details on the execution of the infringement**
- **Possibility of completing evidence in 15 business days**

- **Summary Application**: for companies that have already requested, or are in the process of, a similar submission to the European Commission (*situations where the infringement produces effects in more than 3 Member States - par. 14 of the Commission Notice on cooperation within the Network of Competition Authorities*)
- Applicant allowed to provide complete evidence in 15 business days should PCA decides to initiate proceedings

- The PCA shall inform the applicant of its leniency status after the review of the complete submission
- The final decision on the immunity or reduction request is only taken by the PCA at the end of the relevant infringement proceedings
- Nevertheless, the PCA should immediately inform the applicant, at any stage of the infringement proceedings, if he no longer meets the leniency conditions

- **One public case so far – “*Catering Cartel*” (PCA’s decision of 30 December 2009)**
- **Investigation following a leniency request, lodged by an individual (member of the board of directors)**
- **5 companies and 5 representatives of such companies were fined – in a total of circa € 15 million**

- The national leniency regime needs clearly to be developed in practice
(difficult to strike a balance with the absence of experimented decisional practice)
- Particular area of concern: protection of the company's statements in face of possible damages actions - private enforcement
(can this discourage leniency submissions in Portugal?)



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