MACEDO VITORINO & ASSOCIADOS
Sociedade de Advogados, RL

Competition

The European Commission has launched an in-depth investigation against the Portuguese State in order to determine whether the State guarantee granted in favour of Banco Privado Português (BPP) complies with State aid rules.

European Commission investigates State aid granted to Banco Privado Português

Following the financial crisis, the Portuguese Government granted a guarantee in favour of Banco Privado Português (“BPP”). This guarantee was approved by the European Commission on 13 March 2009.

BPP is a small Portuguese financial institution providing private banking, corporate advisory and private equity services, mostly to private clients.

The purpose of the guarantee, amounting to 450 million euros, was to help BPP to get credit from other financial institutions. With this support, BPP managed to obtain a loan from six Portuguese financial institutions.

The European Commission authorized the Portuguese Government to provide the guarantee for an initial period of six months but required the submission of a plan setting out the measures that the Portuguese Government intended to implement in order to ensure the restructuring of BPP, in compliance with the European Community rules on State aids.

The adoption of this plan was a condition for accepting a guarantee fee below the level that would have been applied under the European Commission guidelines on state aid to overcome the financial crisis.

However, until now no restructuring plan was submitted to the European Commission. In addition, on 5 June 2009 the Portuguese Government extended the term of the guarantee for an additional period of six months, which it failed to notify to the European Commission.

As a result of the lack of approval of the plan and the extension of the term of the guarantee, the European Commission has now decided to open a formal investigation to assess whether the guarantee is still in accordance with the guidelines of the European Commission on State aids.

In particular, the European Commission intends to assess whether that aid is appropriate to solve the specific situation of BPP without distorting competition in the European Community market.

The European Commission also intends to determine if the restructuring of BPP is still a satisfactory measure to solve BPP’s situation and would avoid further State aids in favour of this financial institution in the future.

Although the outcome of this investigation is not predictable, if the European Commission concludes that the guarantee is an illegal aid, it is likely that the Portuguese Government will have to withdraw or change such aid, which may aggravate the situation of BPP and compromise its restructuring in the short or medium term.

Whatever decision is taken by the European Commission, the Portuguese Government will be bound to comply, as otherwise the European Commission could initiate a proceeding against the Portuguese Government before the European Court of Justice, which could imply the application of sanctions.

Contacts

António de Macedo Vitorino

avitorino@macedovitorino.com

Cláudia Martins

cmartins@macedovitorino.com