



Following the ERC's negative binding opinion, Portuguese Competition Authority decided to oppose the merger Ongoing/ Vertix/ Media Capital in order to safeguard the diversity and pluralism of the media.

Contacts

António de Macedo Vitorino

avitorino@macedovitorino.com

Cláudia Martins

cmartins@macedovitorino.com

This information is provided for general purposes only and does not constitute professional advice. If you have any question on a matter of Portuguese law you should contact a lawyer licensed to practice law in Portugal. If you are a client of Macedo Vitorino & Associados please contact your usual contact partner or any of the lawyers listed in the contacts section.

Portuguese Competition Authority opposes the merger Ongoing/ Vertix/ Media Capital

On 8 October 2009, the Portuguese Competition Authority ("AdC") was notified of an acquisition proposal of joint control of Grupo Media Capital, SGPS, S.A. by Ongoing Media, SGPS, S.A. and Vertix, SGPS, S.A..

To be approved, this transaction would consist in the acquisition by Ongoing of 35% of share capital of Media Capital in line with a shareholders' agreement to be executed between Ongoing and Vertix.

Ongoing Media is a holding company of Ongoing Group, which operates in several areas, such as online financial publications, owning the daily newspaper "Diário Económico" and 23% of Impresa. Impresa is, in turn, owner of the newspaper "Expresso" and the magazine "Visão" and the television channel "SIC".

Vertix is a holding company, wholly owned by Prisa, and operates in the sector of written press and publishing and distributing books in Portugal.

Media Capital is a holding company owned 95% by Prisa, which operates mainly in the television and radio sectors.

The assessment of this merger required two binding opinions of the regulatory authorities for the media ("ERC") and the electronic communications ("ANACOM").

ANACOM considered that the merger would not enhance the market share of Ongoing on the electronic communications market. Unlike, ERC opposed the transaction.

According to ERC, its positive opinion would be unable to get by without the sale of Ongoing's share capital in Impresa so that it has become less than 1%.

Moreover, Ongoing, as shareholder of Media Capital, would not be allowed to (i) increase its equity participation on Impresa beyond 1% and (ii) interfere in internal affairs, social, editorial or otherwise in Impresa.

After hearing and reviewing the comments submitted by the stakeholders, AdC has decided to oppose the merger on the basis of the negative binding opinion issued by ERC.

Despite the competition assessment of this transaction, AdC considered that the public interest in safeguarding the diversity and pluralism in media, as stated in ERC's opinion, would justify the refusal of this merger.

This negative decision evidences that, rather than a competition assessment, AdC especially took into account ERC's opinion to refuse the merger.

In this context, it would be interesting to verify whether AdC could not be subjected the clearance of this transaction to the remedies, as stated in the ERC's opinion, including the sale of almost all of Ongoing's equity capital in Impresa.

© 2010 Macedo Vitorino & Associados