



SUMMARY

According to the new guidelines, the base amount of the fine is set between 0% and 30% of the turnover related to a breach of competition law, and only when it is not possible to determine that value, will the Competition Authority take into account the undertaking's total turnover.

The new leniency regulation establishes which elements must be submitted to the PCA and enables undertakings to submit an initial application through a marker system and a summary leniency application.

CONTACTS

António de Macedo Vitorino
avitorino@macedovitorino.com

Cláudia Martins
smartins@macedovitorino.com

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The Portuguese Competition Authority issues new guidelines on fines and new leniency regulation

Under the new guidelines on fines, which apply to proceedings started after the entry into force of the new Competition Act, the Portuguese Competition Authority ("PCA") will, by default, take as the base value to set a fine an amount between 0% and 30% of turnover related to a breach of competition law. The PCA will only take into account the undertaking's total turnover when it is not possible to determine the turnover related to a breach of competition law, or when that amount does not match the gravity of the offense.

From that base amount, the PCA will check if there are aggravating or mitigating circumstances on a case-by-case basis and, after this adjustment, it may also increase or reduce the fine according to the benefits obtained by the undertaking as a consequence of the offense and to deterrence purposes.

When the economic benefit obtained by the undertaking as a result of a breach of competition law exceeds the maximum applicable fine, the PCA may set the fine up to the amount of that benefit, provided they do not exceed the maximum fine amount by one third, reaching up to a total of 13.33% of the total turnover of the previous year. The economic situation of an undertaking will only be considered for a reduction of the fine when the undertaking's economic feasibility is at stake.

In addition to those guidelines, the PCA also published its Regulation No. 1/2013, which governs the leniency procedure in cartel cases. The new leniency regulation covers thoroughly which elements must undertakings provide to the PCA together with a leniency application, including information and evidence about the cartel.

The application can be submitted by mail, fax, email, or by oral statements subject to recording by the PCA, later to be reviewed and signed by the applicant. The request is deemed to have been submitted on the date and time of its delivery to the PCA.

If necessary to complete an initial application, the PCA may grant the applicant a marker, as long as it provides certain elements: name, address and information regarding the cartel participants; products and / or services and areas covered by the agreement; the estimated duration of the cartel behavior; and the nature of the cartel. In special cases, the PCA may also accept a summary application, if a breach of competition law affects more than three Member States and a similar request has been made to the European Commission. This application must be submitted on the appropriate form, which is enclosed to the leniency regulation.

Although the leniency will be subject to fulfillment of severe requirements, as listed in the new Competition Act, companies must take into account that, in the event that these requirements are not met, cooperation throughout the process may be relevant to determine the fine by the PCA.