



SUMMARY

The Lisbon Court of Appeal ultimately condemned the Bar Association of Chartered Accountants ("OTOC") to pay a fine of 90,000 euros by adopting a training credits regulation that almost exclusively reserved to the OTOC the training of its members. This regulation was considered a decision of an association of undertakings prohibited by national and European laws, as it eliminates competition on the market to the detriment of third training providers.

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Court of Appeal condemns OTOC to pay fine of 90,000 euros for competition restrictive practices

In a recent judgment of 7 January 2014, the Lisbon Court of Appeal confirmed the decisions of the Portuguese Competition Authority ("PCA") and the Commercial Court and condemned the Bar Association of Chartered Accountants (*Ordem dos Técnicos Oficiais de Contas* – "OTOC") for anticompetitive practices on the market of compulsory training for Chartered Accountants (*Técnicos Oficiais de Contas* – "TOCs").

This case began in July 2007, following a complaint to the PCA concerning the compulsory training system for TOCs established by the training credits regulation adopted by the OTOC, association which reserved for itself the exclusive right to provide a third of the compulsory training for its members and established its own criteria for accepting third providers and their training sessions.

In May 2010, the PCA condemned the OTOC on the grounds that the training credits regulation was a decision of an association of undertakings that would constitute a restriction on competition and on the grounds of abuse of dominant position, and imposed a fine of 229,300 euros. Following this decision, the OTOC appealed to the Commercial Court, which again condemned the OTOC in April 2011. The Commercial Court considered the practices in question were unlawful and declared void the provisions of the training credits regulation in question. Although the Commerce Court reiterated the PCA's decision, the Commercial Court disregarded the abuse of dominant position and reduced the fine to 90,000 euros.

The OTOC appealed from the Commerce Court's decision to the Court of Appeal, which then filed request for preliminary rulings on the case to the Court of Justice of the European Union ("CJEU"). In February 2013, the CJEU also considered that a regulation such as the training credits regulation, adopted by a professional association such as the OTOC, must be regarded as a decision of an association of undertakings within the meaning of Article 101(1) TFEU, and that would constitute a restriction on competition prohibited by Article 101(3) TFEU to the extent that it eliminates competition on a substantial part of the relevant market, to the benefit of that professional association, and that it imposes, on the other part of that market, discriminatory conditions to the detriment of competitors of that professional association.

Following this judgment, whose scope was of ruling on the questions concerning the interpretation of Article 101 TFEU submitted by the national court, the Court of Appeal, considered, on the same grounds, the OTOC's regulation prohibited under Article 9 of the Competition Law, approved by Law 19/2012 of 8 May 2012, and Article 101 of TFEU, and upheld the fine amount of 90,000 euros.

The present case should serve as an example to other professional associations to prevent from reserving, almost exclusively, to themselves the training of their members, and to put into force more comprehensive training rules, in particular as to the entry of third providers on the market.