



Large retail chains on competition watchdog

'Hub-and-spoke' arrangements in the large retail chains sector are under investigation by the Portuguese Competition Authority. More than ten investigations are currently in place, and should have new developments next year.

The Portuguese Competition Authority (*Autoridade da Concorrência* – 'AdC') issued a statement of objection against three major supermarket chains, Modelo Continente, Pingo Doce and Auchan, and the supplier of cosmetics and personal care products, Beiersdorf, for a potential 'hub-and-spoke' arrangement.

'Hub-and-spoke' arrangements are horizontal restrictions on the supplier or retailer level (the 'spokes'), which are carried out through vertically related players that serve as a common 'hub' (e.g., a common retailer or service provider). The hub enables the coordination of competition between the spokes without direct contacts between the spokes.

In this case, AdC considered that Modelo Continente, Pingo Doce and Auchan (the spokes) used the commercial relationship with the supplier (the hub) Beiersdorf – which markets, among others, the Nivea, Harmony, Hansaplast and Labello brands – to align the retail prices of most cosmetics and personal care products, to the detriment of consumers.

'Hub-and-spoke' arrangements differ from traditional horizontal cartels in the lack of direct communication between the horizontal competitors, even though the adverse market effects may be similar – both may result in a hard-core price-fixing cartel to detriment of consumers. Unlike in horizontal cartels, the strategic nature of information exchanged between suppliers and retailers (which could be a necessary pro-competitive practice) cannot be the ultimate criterion for an unlawful 'hub-and-spoke' arrangement.

In fact, it can be challenging to set boundaries between legitimate exchanges and indirect horizontal collusion and be required to go as far as exchanges about forward-looking pricing information and find evidence of the players' purpose of undertaking an indirect horizontal collusion. The following potential issues could arise: (i) the 'hub-and-spoke' evidence (e.g., retail price setting/alignment, control and monitoring of retail prices, retail price deviation corrections); (ii) the legal framework of the arrangement, depending on either it is an horizontal or vertical arrangement; (iii) the means used to carry out the anticompetitive practice, e.g. Resale Price Maintenance agreements (RPM); and (iv) the purpose and awareness of the involved players.

The current case is not the first 'hub-and-spoke' case investigated by AdC. In the large retail chains sector, this recent case adds up to six other cases in place and for which statements of objection were also issued in March 2019, and June and July 2020. In the large retail chains sector, which is a key-sector, AdC is pursuing above ten investigations, some of which are still under legal secrecy and that should see further developments next year.

In addition, considering an increased use of pricing related tools, e.g. online platforms, third-party algorithms, online price monitoring and adjustment tools, which can enable 'hub-and-spoke' arrangements, it is likely that the current legal framework and enforcement means will need improvement to address these risks in a near future.

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