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Adoption of a Leniency Regime in Portugal

A company which is the first to report to the Portuguese Competition Authority ("PCA") cartels of which it is or has been part may now benefit from a full exemption of the fine it might incur for such prohibited practices.

Indeed, in order to mirror the situation of most of the EU jurisdictions and the one already in place at EU level, the Portuguese Parliament adopted, on 17 May 2006, a law establishing the legal regime of fine exemption or attenuation for companies wishing to cooperate with the PCA competition investigations.

Thus, not only "undertakings" (i.e. companies or associations of companies) but also their directors who are responsible under the terms of Article 47(3) of Law 18/2003 for infractions against competition law may now benefit from the exemption/reduction of fine.

In order to be fully exempted, the undertaking reporting the prohibited practice and providing the PCA with information and elements proving its existence must be the first to do so, and before the opening of an inquiry by the PCA. It shall "fully cooperate" with the PCA from the moment it files a request for fine's suppression and immediately cease

its participation to the infraction. It must also not have been the instigator of the infraction.

Three other regimes for fine attenuation are available when investigations have already started: (i) the first company reporting the cartel may see its fine reduced by at least 50%; (ii) the second company may see its fine reduced of up to 50% if it supplies relevant information to the PCA; and (iii) an undertaking that supplies information about another cartel to which it has been part may also benefit from a special attenuation of its fine.

If the introduction of such a regime may allow certain companies to benefit from full fine exemption and provides the PCA with a new investigation tool it may also render those companies which have admitted participation to cartels more vulnerable to civil liability actions. This constitutes a risk that should be carefully assessed by undertakings wishing to apply for leniency.

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