

Europe

## Portugal's new leniency policy enacted

Stefano Berra • Wednesday, 9 January 2013 (Yesterday)

Portugal's Competition Authority has modernised its leniency programme to bring it in line with European standards in a fresh attempt to improve its cartel enforcement record.



Manuel Sebastião, head of Portugal's authority

The new rules, which were made public last week, will no longer apply to a number of anti-competitive agreements and will make it easier for potential whistle-blowers to request immunity in exchange for key information.

The new leniency programme will only apply to cartels and no longer cover vertical agreements or other concerted practices.

It will introduce a clear marker system, which allows potential whistle-blowers to apply for leniency before having gathered all the relevant information. The first individual or company to apply could receive

complete immunity from fines, while subsequent applicants could receive fine reductions. The second in line could receive discounts of between 30 and 50 per cent of a penalty, while the third could be granted a fine cut of between 20 and 30 per cent and the fourth applicant up to 20 per cent.

Unlike other European leniency programmes, Portugal will allow companies to apply for full immunity even if the authority has already begun to investigate them for anti-competitive conduct.

While the rules limit third-party access to leniency documents, they do not explicitly determine whether courts may be allowed to obtain such information. The European Court of Justice introduced the possibility for cartel victims in Europe to obtain leniency documents through court orders in its *Pfleiderer* ruling in 2011.

The revision of the leniency policy came as a result of the [introduction](#) of Portugal's new competition law last May, which allowed the agency to directly establish its own leniency programme. The authority conducted a public consultation between July and September 2012 before enacting the new policy.

Portugal has so far struggled to make its leniency policy work and to use it effectively to uncover cartels. Last year, the authority received only one leniency application and imposed fines of just over €300,000 in two cartel decisions.

[Ricardo Oliveira](#), at PLMJ in Lisbon, says the new programme could help the enforcer, but significant hurdles remain.

"The new leniency programme may represent an important step forward in the fight against cartels," he says. "Whether the authority will be able to turn it into an effective tool remains to be seen. It is clear that the new leniency programme increases the authority's ability to be more effective. However, given the authority's modest track record in persuading cartelists to come forward and the prevailing cultural resistance to whistleblowing, it will be interesting to see the extent to which the enforcement of competition rules will benefit from these changes."

The new leniency policy came into force on 1 January.