[PT] Competition Court Upholds Regulator’s Decision on Sports Broadcaster

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On 28 January 2015, the Competition Court upheld the Competition Authority’s (Autoridade da Concorrência - AdC) decision regarding the prohibition of the distribution of Sport TV shares between three Portuguese media companies. Controlinveste Media, NOS (the former Zon Optimus) and Portugal Telecom (PT) where planning this procedure, known as a “triangle operation”, designed to split the Sport TV capital stock. The strategy was to sell 25 per cent to NOS (of the 50 per cent that PT owns in Sport TV), while keeping the remaining 50 per cent under the purview of Controlinveste.

Following this and after advancing to an in-depth investigation, the body responsible for ensuring the implementation of competition policy in Portugal, the Competition Authority, had decided to prevent the acquisition by NOS of Sport TV’s shares. This resolution, adopted on 31 July 2014, was grounded on the assumption that it could create significant barriers to competition in the broadcasting market and, in particular, in the field of broadcasting rights for premium sports’ content under subscription.

Under these circumstances, a judicial appeal was brought to the Competition Court by the media companies, whose intention was to get the tacit approval of the operation. The argument put forward was based on the lack of compliance with the deadline for the media content regulator’s determination (called Entidade Reguladora para a Comunicação Social - ERC) (see IRIS 2008-8/28), a binding opinion in cases where it is negative, as in the case at hand. In order to justify the delay and the request to extend the established deadline, the ERC alleged difficulties in assessing the merger, as well as the need to gather additional data. However, the Court rejected the media companies’ appeal and upheld the Competition Authority’s decision.

The Competition Court, called Tribunal da Concorrência, Regulação e Supervisão (TCRS), was created in 2011 and its competence is for appeals from independent administrative bodies with regulatory and supervisory functions, such as the Bank of Portugal, the Portuguese Market Commission of Securities (CMVM), the telecommunications regulator (ANACOM), the ERC or the Insurance Institute.

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Autoridade da Concorrência, Tribunal dá razão à AdC na ação intentada por Controlinveste, Zon e PT no âmbito da operação triângulo, de 18-02-2015

http://www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_201502.aspx

Competition Authority, "The Court rules in favour of the PCA in the action brought by Controlinveste, Zon and PT as part of the "Triângulo" Operation", 18 February 2015

http://www.concorrencia.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201502.aspx

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