



OBSERVATÓRIO DA APLICAÇÃO DO DIREITO DA CONCORRÊNCIA

**AUTORIDADE DA CONCORRÊNCIA (ADC) FINES THE PORTUGUESE DRIVING SCHOOLS ASSOCIATION (APEC)
FOR ENGAGING IN ANTICOMPETITIVE PRACTICES**

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By its decision of September 28th, 2017, Autoridade da Concorrência (Portuguese Competition Authority) (henceforth, AdC) fined the Portuguese Driving Schools Association (henceforth, APEC), as well as its president, in a total amount of EUR 413.776,71 for having adopted a decision by an association of undertakings with the intent to prevent, restrict or distort competition, in breach of article 9 of the Portuguese Competition Law (Law No. 19, 2012).

The harmful conduct began on September 28th, 2016, continuing until the date of this decision, and was to be applied to a total of 173 driving schools in the Greater Lisbon and Setúbal area.

I. Opening of the inquiry

The investigation by AdC began as a result of a complaint received on October 6th, 2016, in which an email was forwarded which was addressed to several owners of driving schools. The email concerned the minimum prices to be fixed regarding the applications for a driving licence, prices which had been previously agreed upon following a series of meetings between the various driving schools.

Faced with alarming indicators of wrongdoing, the administrative board of AdC ordered, on December 7th, 2016, the opening of an inquiry into the conduct of APEC and associated driving schools to determine whether restrictive practices prohibited by article 9(1) of the Portuguese Competition Law had taken place.

II. Decision of the inquiry

The investigation came to an end on July 27th, 2017. It analysed the conduct of APEC and its president, Alcino Machado da Cruz, as well as the conduct of other driving schools not part of the association. Regarding the latter, the administrative board decided to close the case against them for lack of sufficient evidence of infringement of competition law.

On the same date, the Statement of Objections was adopted, in which the board decided that there was a strong possibility of a conviction in the case against APEC and its president.

Both Addressees exercised their rights of defence, by written submissions, on August 12th, 2017.

III. Analysis of the legal matter



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AdC found that APEC constituted an association of undertakings within the meaning of article 9(1) of the Portuguese competition law, more specifically an association of driving schools. These were, in the AdC's opinion, undertakings according to the definition enshrined in EU jurisprudence, as they pursued an economic activity, providing their services in the market for driving training in the area of Greater Lisbon and Setúbal.

AdC also concluded that the conduct by APEC amounted to a decision by an association of undertakings, as it demonstrated the existence of a collective will between the driving schools to fix minimum prices for driving licences. This collective will was evidenced by APEC's initiative in organizing meetings between all the driving schools it provided services to, as well as by email correspondence between them. This correspondence announced all the measures adopted to fulfil the harmful conduct, measures which were being followed by the great majority of the driving schools.

Lastly, AdC found that this decision had, as its object, the prevention, restriction and distortion of competition. The very nature of the decision (i.e., fixing minimum prices) meant that there was an objective restriction of competition laws, susceptible of "interfering with the normal functioning of the market" due to its undue influence in the development of market supply and demand.

IV. The conclusion by AdC

AdC decided that the conduct by APEC and its president was unlawful, adding that the Addressees had acted with malice, since they knew the legal regime applicable and were unwilling to cease the harmful conduct, in clear breach of article 9 of the Portuguese Competition Law (Law No. 19, 2012).

Both APEC and its president, Alcino Machado da Silva, were ultimately fined in an amount of, respectively, EUR 400.000,00 and EUR 13.776,71. The amount of the fines was calculated according to the criteria established in article 69 of the Portuguese Competition Act, the Guidelines on the method for setting fines, namely the associated driving schools turnovers, with regard to APEC, and the annual income received in 2016, with regard to its president.

This decision is subject to appeal to the Competition Court.