**8th Lesson**

1. **A Brief Study of Competition Law** 
   1. **Companies and Competition**

Effective competition in the supply of goods and provision of services reduces prices, improves quality and allows greater choice for consumers.

A balanced competitive market assumes, therefore, economic agents subject to competitive pressure from each other, behaving autonomously, through lawful means, based on the merits of the goods or services concerned and or marketing strategy.

When economic agents, through the respective conducts seek to distort or falsify the functioning of markets, may be concerned competence restrictive practices.

* 1. **Competition restrictive practices**

The competition restrictive practices are, fundamentally, three: 1) agreements and concerted practices and decisions of companies’ association; 2) abuse of a dominant position; 3) abuse of an economic dependence.

1) The **agreements and concerted practices and decisions of companies’ association** which have as their object preventing, distorting or restricting substantially the competition in all or part of the market, are prohibited (and null) namely when they aim to fix, directly or indirectly, purchase or sales prices or any other transaction conditions; limit or control production, markets, technical development or investment; fragment the markets or sources of supply; apply in relation to business partners, unequal conditions to equivalent services, thus placing them on that basis, at a competitive disadvantage; do depend agreements celebration of the acceptance by the other parties, of supplementary obligations which, by their nature or according to commercial practice, have no connection with the object of such contracts.

It includes a set of behaviors carried out by separate companies, who coordinate their actions in the market, eliminating the risk and uncertainty inherent to the autonomous conduct of each one, replacing them with an understanding of wills and/or procedures.

On the competitive environment companies are obliged to autonomously determine their behavior in the market. When this doesn´t happen, indicating, in contrast, the existence of coordination between them, we may be facing the existence of competition restrictive practices whenever the companies involved give up from its behavior autonomy in the market, to reduce or eliminate the risks of competition.

These practices, in particular, are forbidden by the Portuguese Competition Law (article 9 of Law nº 19/2012 of May 8th) and article 101º of the Treaty on the Functioning of the EU, punishable whenever they have the purpose or effect of preventing, falsifying or restricting competition.

2) The **abuse of a dominant position** is a competition restrictive practice arising from the using by a company (or a group of companies) of its power in some market.

The abuse of a dominant position is the improper use by a company of its market power, resulting in the exploitation of other economic agents or in the exclusion of competitors from the market.

The determination of the existence of a dominant position of a company in a market, involves understanding the market share of the company, and the market shares of other companies in the market. It considers that a company has a dominant position in a market when it has a power that allows it to behave independently of its competitors, its suppliers and its clients. This is when the company occupies a relevant position that, when it takes decisions in terms of trade policy, doesn´t need to worry about the reaction of other economic agents.

It is understood that the company abuses of its dominant position when adopts behaviors inclined to influence the structure of a market with the purpose of avoiding the preservation of the level of competition on the market or the growth of that competition, where, precisely as a result of its presence, the competition is already weakened

A company abuses of its dominant position if, for example, refuses to supply goods and services to certain companies or practices selling prices of products below cost.

The abuse of a dominant position is forbidden by the Portuguese Competition Law (article 11º of Law nº 19/2012 of May 8th) and article 102º of the Treaty on the Functioning of the EU.

3) The **abuse of an economic dependence** is a practice that occurs from the illicit use form a company of its power in a relation with another one, which is in a state of dependence, due to lack of equivalent alternative for the provision of goods or services.

The abuse of an economic dependence is a competence restrictive practice, and forbidden in the Portuguese Competition Law (article 12 of Law No. 19/2012 of May 8th) but not provided in European Law.

Refers to situations where it is exploited abusively the dominance of one company over another, in the field of bilateral relations between the two whenever this behavior is likely to affect the functioning of the market or the competition.

As essential notes of this practice we can point out that:

1) the abuse of dependence is only observable in a vertical relationship between two companies;

2) the company "victim" now has to be in a state of economic dependence of the "dominant" company, because of the lack of equivalent alternatives. It is considered that the company "victim" has no equivalent alternative when the supply of the good or service in question are covered by a limited number of companies and the company "victim" cannot get identical conditions by other trading partners within a reasonable period of time;

3) the dominant company must have adopted behaviors, regarding the company "victim", in the context of that relationship of dependency, considered abusive. The law exemplifies some of these possible abusive behavior: refusal to supply, abrupt cutting of trade relations, among others; and finally, as mentioned above,

4) abuse of economic dependence must likely to affect the functioning of the market or the structure of competition.

With regard to the consequences for companies for adopting restrictive practices it can lead to the imposition of a fine by the Competition Authority determinate by pondering the gravity of the practice, its duration, the offender's behavior and its impact on competition.

The Competition Authority can still apply, during the sanctioning procedure, a protective measure (eg. the practice suspension) when investigations suggest a practice is about to cause serious and irreparable damage or difficult to repair for competition.

The legal consequence for the managers or the directors of the companies involved in those practices is the application of a fine not exceeding 10% of the respective annual compensation earned by the performance of their duties in the offending company, the last full year in which there has been a prohibited practice.

**5.3 Benefits of the complainants to the Competition Authority for violations of Competition Law committed by themselves**

The benefits of the complainants to the Competition Authority for violations of Competition Law committed by themselves are eventually the exemption or the reducing of the fines amount, since the company reveals its participation in an alleged agreement or concerted practice, and is this company the first to provide information and evidence and cooperates with the Competition Authority during the sanctioning procedure.

The exemption or fine reduction only applies to agreements and concerted practices and decisions of companies' association which have as their object preventing, distorting or restricting substantially their competition in all or part of the market.

**5.4 Competition Authority powers**

The Competition Authority mission is to assure and apply the rules of promotion and defense of competition in the private, public, cooperative and social sectors, ensuring the respect for the principle of the market economy and free competition, in view of the efficient functioning of markets, optimal allocation of resources and the interests of consumers. To this end, it has sanctioning, supervision and regulation powers.

In the exercise of its sanctioning powers, it is for the Competition Authority:

1) Identify and investigate the behavior liable to infringe the national and European Union Competition Law, particularly with regard to restrictive practices, proceeding to the examining and decision on the respective processes applying to where appropriate, sanctions;

2) To charge fines;

3) To adopt protective measures;

In the exercise of its supervision powers, it is for the Competition Authority:

1) instruct and decide administrative procedures relating to concentrations between companies in order to determine their effect on the structure of competition, considering the need to preserve and develop, in the interest of consumers, the effective competition on the market;

2) To carry out studies, inspections and audits, in competition matters.

In the exercise of its regulatory powers, it is for the Competition Authority:

1) Prepare and approve regulations;

2) To make recommendations and general directives;

3) To comment legislative initiatives or other relating to the promotion and protection of competition, upon request of the Parliament or the Government;

4) To make suggestions or proposals for the creation or revision of the legislation.

**Case studies**

**X, SA/PLC company holds 70% of the market share of perfumes business in Lisbon. It decided to lower the prices below cost price in order to eliminate small competitors.**

1. **Identify and describe the behavior of X, SA/PLC.**

The behavior of X, SA/PLC, consists on the **abuse of a dominant position and** is a competition restrictive practice arising from the using by a company (or a group of companies) of its power in some market.

The abuse of a dominant position is the improper use by a company of its market power, resulting in the exploitation of other economic agents or in the exclusion of competitors from the market.

The determination of the existence of a dominant position of a company in a market, involves understanding the market share of the company, and the market shares of other companies in the market. It considers that a company has a dominant position in a market when it has a power that allows it to behave independently of its competitors, its suppliers and its clients. This is when the company occupies a relevant position that, when it takes decisions in terms of trade policy, doesn´t need to worry about the reaction of other economic agents.

It is understood that the company abuses of its dominant position when adopts behaviors inclined to influence the structure of a market with the purpose of avoiding the preservation of the level of competition on the market or the growth of that competition, where, precisely as a result of its presence, the competition is already weakened.

1. **If X, SA/PLC holds 0,2% do market share would your answer be the same?**

**The answer wouldn’t be the same**. There´s no dominant position of the X. SA/PLC in the market, because its market share is very small so, on the one hand, it doesn’t have the power that allows it to behave independently of its competitors and, on the other hand, the company does not occupy a relevant position in the market in order to influence the structure competition.

1. **What are the possible consequences for the directors of X, SA/PLC?**

The legal consequence for the directors of the companies involved in those practices is the application of a fine not exceeding 10% of the respective annual compensation earned by the performance of their duties in the offending company, the last full year in which there has been a prohibited practice.

1. **Describe, briefly, the powers of the Competition Authority.**

The Competition Authority mission is to assure and apply the rules of promotion and defense of competition in the private, public, cooperative and social sectors, ensuring the respect for the principle of the market economy and free competition, in view of the efficient functioning of markets, optimal allocation of resources and the interests of consumers. To this end, it has sanctioning, supervision and regulation powers.

In the exercise of its sanctioning powers, it is for the Competition Authority:

1) Identify and investigate the behavior liable to infringe the national and European Union Competition Law, particularly with regard to restrictive practices, proceeding to the examining and decision on the respective processes applying to where appropriate, sanctions;

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1) instruct and decide administrative procedures relating to concentrations between companies in order to determine their effect on the structure of competition, considering the need to preserve and develop, in the interest of consumers, the effective competition on the market;

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