

National Association of Surveyors sentenced to 50,000.00 euros for practices restricting competition - AdC Decision, of 11.03.2021, Ref. PRC/2020/2

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On 08.02.2020, the Competition Authority (hereinafter "AdC") received a complaint lodged by the National Association of Training Entities concerning conducts carried out by the National Association of Surveyors (hereinafter "NAS").

This complaint was based on the publication by NAS on its website of a schedule of fees, which was intended to "implement a price list of services common to all its members".

In order to investigate the existence of practices restricting competition and due to the fact that there are indications of the practice of the mentioned infringement, the PCA ordered the opening of the corresponding administrative offence investigation, on 22.05.2020.

Following the investigation carried out by the PCA, the following evidentiary steps were taken:

- a) Request information from NAS; and
- b) Request for information from NAS members.

On 11.11.2020, the investigation in question was closed, and NAS was notified of the respective notice of illegality. On 18.01.2021, it presented to AdC a formal settlement proposal, pursuant to and for the purposes of the provisions of article 27 of Law 19/2012 of May 8, through which it confessed the facts and acknowledged its responsibility in the infringement in question, for the purposes of reducing the amount of the fine to be imposed.

The purpose of the settlement system is to simplify the sanctioning procedure and to speed up the proceedings, thus reducing the litigation arising from misdemeanour proceedings and intensifying the effects of the AdC's action without the need to increase the means at its disposal, which translates into a more efficient application of the Competition Law. In addition, the settlement procedure has advantages for companies linked to anticompetitive practices, especially with regard to the considerable media exposure of the process, since it takes place in a short period, and because not as many elements are broadcast as if it were a condemnatory decision.

After compiling the available information, the PCA concluded that the relevant market was the market for the provision of surveying services in the national territory.

Furthermore, NAS explained that the elaboration, approval and disclosure of the mentioned fee schedule would have the purpose of promoting the uniformity of the prices of the activity performed by its associates throughout the national territory and that NAS does not have any control over the application of the schedule when its associates present their budgets.

In view of the above, we would be facing an infringement of the provisions of article 9, no. 1 of Law no. 19/2012 of May 8, as well as of article 101, no. 1 of the TFEU, being objective elements of the administrative offence:

- a) The existence of two or more undertakings (association of undertakings);
- b) The existence of a concurrence of wills (decision to form an association of undertakings - agreement);
- c) Has the object/objective or effect of restricting competition; and
- d) It is capable of affecting trade between member states.

The first requirement was fulfilled since surveyors are considered to be "undertakings" within the meaning of the competition law regime, as they provide nationwide surveying services as liberal professionals, companies and/or sole proprietors.

Regarding the second element, it would be sufficient that the undertakings concerned have expressed their joint intention to act in the market in a certain way. Well, according to the evidence brought into the case at hand, this will was expressed unequivocally through the elaboration and approval of a schedule of fees, constituting a decision of association of companies capable of interfering with competition in the market of the provision of surveying services.

With regard to the third requirement, the object of the practice or its effect would be taken into account, and the cumulative fulfillment of the two criteria is not necessary. Well, if decisions by associations of undertakings aim at fixing prices, they are prohibited, and it is irrelevant whether surveyors have taken into account the values presented in the advertised price list. Through homogeneous behaviour in the market for the provision of surveying services, the normal risks of competition have been altered, since the delimitation of the supply of services has been promoted, as well as the anticipation of the prices charged by competitors. Thus, NAS's behaviour was capable of influencing the formation of supply/demand, with the mission of restricting and distorting competition.

With regard to the last element, it is dependent on the relevance of the object of the agreement, as well as the positioning of its members in the market. In fact, the preparation, approval and disclosure of a schedule of fees for the pricing of surveying services had the purpose of restricting competition and covering the entire national territory. On the other hand, it could

also affect trade between Member States, as it would remove ambiguity from the market, eliminating distinction by new operators from other Member States, since the liberalization of the European market allows Portuguese surveyors to provide services in other Member States.

In short, NAS proceeded freely, directly, knowingly and voluntarily, its decision fulfilling all the requirements of a decision by an association of companies, knowing that the conduct was prohibited by law.

In determining the sanctions to be applied, the following parameters were considered:

- a) General and special prevention;
- b) Legal measure and determination of the fine;
- c) Gravity of the infraction;
- d) Nature and size of the market affected by the infraction
- e) Duration of the infraction;
- f) Extent of NAS's participation;
- g) NAS's conduct in eliminating the prohibited practice and repairing the damage caused;
- h) NAS's economic situation for the case;
- i) Background in the case; and
- j) Collaboration with the PCA.

Therefore, the settlement proposal submitted by NAS was accepted and the fine to be applied was set at €50,000.00, with NAS benefiting from a 20% reduction for having admitted the commission of the administrative offence.