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# **The judicial application of Competition Law**

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### The Judicial Application of European Competition Law

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#### 1 - Was competition law privately enforced in your country before Regulation 1/2003 entered into force?

Competition law was not privately enforced in terms of compensation for damages in Portugal before Regulation 1/2003 came into effect. To this date, competition law has never been privately enforced in terms of compensation for damages either. However, there were some cases of private application of competition law in the Portuguese Courts, with little relevance, such as the case between a Portuguese football club and the company holding the broadcast television rights for the matches of the Portuguese football league, based on the nullity of the agreement between the two parties for breach of Article 81 of the Treaty establishing the European Community (the "EC Treaty") (today article 101 of the Treaty on the Functioning of the European Union - "Treaty") and of the equivalent Portuguese rule, and two cases related to beer distribution agreements. The current Portuguese Competition Law<sup>2</sup> (hereinafter "PCL") and the Portuguese Competition Authority - *Autoridade da Concorrência* (hereinafter "PCA")<sup>3</sup> were created, *inter alia*, to adapt the competition framework to the so-called modernisation, including the expected content of Regulation 1/2003. The decree-law that created the PCA was approved in the Council of Ministers on 20 November 2002 and the Regulation 1/2003 was approved by the Council on 16 December 2002.

Prior to that, although Portugal has had a competition law since 1983, there was no relevant competition law awareness and enforcement in Portugal. Recently, there was some press news that referred to the likelihood of actions for damages following competition law infringements, as regards two cases recently decided by the PCA: (i) the alleged abuse of dominant position by two major TMT companies, in the wholesale and

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<sup>2</sup> The Portuguese Competition Law was enacted by Law No. 18/2003 of 11 June, as amended by Decree Law No. 219/2006 of 2 November, by Decree Law No. 18/2008 of 29 January and by Law No. 52/2008 of 28 August.

<sup>3</sup> The Portuguese Competition Authority was created by Decree-Law No. 10/2003, of 11 January.