



Mergerfilers

GLOBAL LEGAL GUIDES



October 2026

SRS Legal

Portugal Merger Control Guide



Portugal

National Expert

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No new regulation adopted

Note that relevant regulations may be changed before your contemplated transaction is completed. Mergerfilers and our national experts keep information on regulations up to date and even provide alerts on adopted or proposed changes that have not come into force yet but may come into effect before the transaction is completed. When this field is green, we have no knowledge of such imminent changes to the relevant regulations.

Relevant legislation and authorities

1) Is a merger control regulation in force?

Yes. Merger control regulation is contained in the Portuguese Competition Act, Regulation 993/2021, setting forth the Merger Notification Forms, and Regulation 1/E/2003, setting the fees deemed payable for merger control procedures.

2) Which authorities enforce the merger control regulation?

The Portuguese Competition Authority enforces all provisions of the Portuguese Competition Act, including those on merger control.

In very exceptional circumstances – detailed in the Portuguese Competition Authority's bylaws – prohibition decisions may be appealed, by the notifying party to the Minister for Economic Affairs. This extraordinary appeal is independent of the judicial appeal procedure and has suspensive effects on the time limit to lodge the appeal. The potential subsequent decision authorizing the concentration is taken by the Council of Ministers and must be grounded in "fundamental strategic decisions of the national economy". However, this possibility has only been used once in the past in 2006.

Decisions issued by the Portuguese Competition Authority may be appealed to the Competition, Supervision and Regulation Court.

3) Relevant regulations and guidelines with links

Merger control provisions are included in Chapter 3 of the Portuguese Competition Act. Links to the relevant legislation, guidelines and forms are listed here:

Original Portuguese version	Unofficial English translation
Regime Jurídico da Concorrência	Portuguese Competition Act (Translation into English not available)
Estatutos da Autoridade da Concorrência	Bylaws of the Portuguese Competition Authority (Translation into English not available)
Regulamento que estabelece os Formulários de Notificação de Operações de Concentração de	Regulation setting forth the Merger Notification Forms

Empresas (Filing forms in Portuguese are contained respectively as annex I. A "Regular Filing form" and annex I. B "Simplified Filing Form" to this regulation)	(Translation into English not available)
Regulamento das Taxas Aplicáveis à Apreciação de Operações de Concentração	Regulation setting the Filing Fees in merger control procedures (Translation into English not available)
Linhas de Orientação para a Análise Económica de Operações de Concentração	Guidelines for the Economic Analysis of Merger Operations (Translation into English not available)
Linhas de Orientação relativas à Avaliação Prévia em Controlo de Concentrações	Guidelines for Prior Appraisal of Mergers (Translation into English not available)
Linhas de Orientação sobre a adopção de compromissos em matéria de controlo de concentrações	Guidelines on Remedies (Translation into English not available)
Guia de Boas Práticas relativo ao Gun- jumping	Guidelines on Best Practices on Gun Jumping (Translation into English not available)

4) Does general competition regulation apply to mergers or ancillary restrictions?

With respect to merger control, the Portuguese Competition Act is interpreted in accordance with EU competition law, following, in particular, the EC's practice.

Generally, under the Portuguese Competition Act, restrictive provisions which are directly related to and necessary for the implementation of the merger, and related to the Portuguese territory, also in accordance with the criteria included in the EC's Guidelines on Ancillary Restraints, are covered by the merger control clearance. In all other cases, restrictions included in mergers' agreements will be assessed under general competition rules.

5) May an authority order a split-up of a business irrespective of a merger?

Yes, the Portuguese Competition Act allows the Portuguese Competition Authority to impose structural measures in connection with the finding of an infringement of competition law due to anticompetitive practices where (i) these are necessary to put a stop to it and (ii) there is no behavioural measure that would be equally effective or, should it exist, it would be more onerous for the party concerned in the case than the structural measures themselves.

6) Other authorities that also require merger filing or may prohibit transaction

Whenever mergers take place in industries subject to sectoral regulation (such as banking and financial services, securities exchange markets, insurance, energy, communications, water and waste, media or air, rail and road transport or healthcare services) the Portuguese Competition Authority requests the relevant regulator to issue its opinion on the merger before a final decision is adopted either in phase I or phase II of the procedure, which generally are of a non-binding nature, except for mergers taking place in the media sector, whose regulator opinion is binding on the Portuguese Competition Authority, if negative.

Please also see the separate Foreign Investment guide.

7) Are any parts of the territory exempted or covered by particular regulation?

No.

Voluntary or mandatory filing

8) Is merger filing mandatory or voluntary?

Merger control filings are mandatory, provided the Portuguese Competition Act's relevant thresholds are met.

Types of transactions to file – what constitutes a merger

9) Is there a general definition of transactions subject to merger control?

Yes, according to the Portuguese Competition Act, a concentration (in this guide generally referred to as "merger") subject to merger control occurs when a transaction gives rise to a lasting change of control over the whole or part of an undertaking as a result of at least one of the following situations:

1. two or more previously independent undertakings or parts thereof merge;
2. one or more persons or undertakings who already have control of at least one undertaking acquire control, directly or indirectly, of the whole or parts of the share capital or assets of one or several other undertakings; or
3. two or more persons or undertakings create a joint venture that is intended to perform on a lasting basis the functions of an autonomous economic entity (also see topic 13).

Note that certain transactions of a temporary nature are not considered to be mergers subject to merger control with the Portuguese Competition Authority (see topics 24 and 29).

10) Is "change of control" of a business required?

Yes, further to the Portuguese Competition Act, a merger subject to merger control will only occur where the transaction results in a change of control over a business generating a turnover in the market.

11) How is "control" defined?

Under the Portuguese Competition Act, "control" is defined as any act of whatever form that confers the ability to exert on a lasting basis, separately or jointly, a decisive influence, in the given legal and factual circumstances, on the activities of an undertaking. Control arises from any act, irrespective of the form it takes, which, separately or jointly, having regard to the circumstances of fact or law involved, implies the ability to exercise a determining influence on an undertaking's activity.

In particular, this includes:

1. acquisition of all or part of the share capital;
2. acquisition of rights of ownership, use or enjoyment of all or part of an undertaking's assets; and/or
3. acquisition of rights or the signing of contracts which grant a decisive influence over the composition or decision-making of an undertaking's corporate bodies.

"Control" and "Change of control" is interpreted according to EU competition law, including the EU Commission's Consolidated Jurisdictional Notice.

Joint control may be established between a majority and a minority shareholder on the basis of veto rights regarding decisions that are essential for the strategic operation of the business. A merger will occur when the joint control is established and again when it is dissolved; for instance, if a minority shareholder gives up certain essential veto rights so that the majority shareholder gains sole control.

12) Acquisition of a minority interest

The acquisition of a minority interest that does not result in the acquisition of control over a business, by means of veto rights or factual circumstances, is not subject to merger control.

There is no specific percentage below which it is safe to assume that control will not arise. The test for control can only be satisfied when minority interests confer the right to exercise, alone or jointly, decisive influence over the target. That is to say, they confer the ability to veto or block strategic commercial decisions relating to the target. In particular, this may include the approval of its budget, business plan and appointment of management. This veto power may arise as a result of voting rights attached to shares, provisions in the shareholders' agreements and other governance arrangements.

To the best of our knowledge, the lowest shareholding that has been found to amount to control was an acquisition of 24.22% of the share capital of the target company.

13) Joint ventures/joint control – which transactions constitute mergers?

Joint ventures that trigger the merger control thresholds set forth in the Portuguese Competition Act may be subject to merger control where the joint venture is "full function", i.e. whenever the joint undertaking fulfils the functions of an independent economic entity on a lasting basis, and if one, or more, of the three jurisdictional thresholds is met.

A joint venture that is not "full function" – e.g., because it does not perform all the functions of an autonomous economic entity on a lasting basis – is not subject to merger control but may be scrutinized under the general prohibition on anti-competitive agreements between undertakings.

Thresholds that decide whether a merger notification must be filed

14) Turnover thresholds

A merger notification must be filed to the Portuguese Competition Authority if:

1. as result of the merger, a share equal to or higher than 30 per cent and lower than 50 per cent of the national market for a particular good or service or for a substantial part of it is acquired, created or reinforced, provided that in the preceding financial year the individual turnover in Portugal, net of directly related taxes, of at least two of the undertakings taking part in the merger exceeds EUR 5

- million; or
2. in the preceding financial year, the undertakings taking part in the merger has registered in Portugal an aggregate turnover exceeding EUR 100 million, net of directly related taxes, provided that the individual turnover in Portugal of at least two of these undertakings exceeds EUR 5 million.

15) Market share thresholds

A merger notification must be filed if a share equal to or higher than 50 per cent of the national market for a particular good or service or for a substantial part of it is acquired, created or reinforced. If this market share threshold is met, there is no turnover requirement.

Also see the combined turnover and market share threshold in topic 14.

16) Value of transaction thresholds

N/A

17) Assets thresholds

N/A

18) Special thresholds for particular businesses

There are no provisions in the Portuguese Competition Act relating to specific sectors, other than the indication that the Portuguese Competition Authority's powers over mergers in regulated sectors are exercised in cooperation with the corresponding regulatory authorities. The considerations made in topic 6 also apply.

19) Other thresholds

N/A

20) Rules on calculation and geographical allocation of turnover

Rules on calculation and geographical allocation of turnover are provided in the Portuguese Competition Act. The calculation of the relevant turnover and market shares is also generally in line with the provisions contained in the EU Merger Regulation.

The turnover of the acquiring undertaking shall include the turnover of all of its economic group, including all directly and indirectly controlling and controlled companies. With respect to the target, the turnover includes the turnover of its directly and indirectly controlled (either jointly or solely) subsidiaries.

The turnover includes the value of the products sold and services rendered to undertakings and consumers in Portugal, excluding taxes directly related to such acquisitions and intragroup turnover.

In case of acquisition of part of an undertaking or specific assets, only the turnover relating to the parts or assets which are the object of the transaction shall be taken into account.

21) Is the seller/seller's group turnover relevant in a standard acquisition of sole control?

No.

22) Special rules on calculation of turnover for particular businesses

Credit institutions and financial institutions

In case of credit institutions and financial institutions, turnover shall be replaced by the sum of the following items:

1. Interest income and similar income;
2. Income from securities: i) income from shares and other variable rate securities; ii) income from shareholdings; and iii) income from shareholdings in affiliated undertakings;
3. Commissions receivable;
4. Net profit from financial operations; and
5. Other operating income.

Insurance companies

For insurance companies, turnover shall be replaced by the value of gross premiums written by residents in Portugal, which shall comprise all amounts received and receivable from insurance contracts issued by or on behalf of the insurance undertaking, including outgoing reinsurance premiums, with the exception of taxes or fees collected on the basis of the amounts in premiums or their total volume.

23) Series of transactions that must be treated as one transaction

Further to the Portuguese Competition Act, two or more transactions that are considered mergers between the same natural or legal persons within a period of two years, even when individually considered as not being subject to prior notification, are considered a single concentration subject to prior notification when triggering the applicable merger control thresholds.

Exempted transactions and industries (no merger control even if thresholds ARE met)

24) Temporary change of control

Further to the Portuguese Competition Act, a merger filing is only required if there is a change of control on a lasting basis.

Temporary acquisitions of control do not lead to mandatory filings upon initial acquisition (although the subsequent lasting split-up of the assets may require one or several merger filings).

Control may also be considered temporary in the situations mentioned under topic 25.

25) Special industries, owners or types of transactions

The Portuguese Competition Act specifies that a concentration for merger control purposes does not occur in case of:

1. the acquisition of shareholdings or assets by the insolvency administrator in the framework of an insolvency procedure;
2. the acquisition of a shareholding merely as a guarantee; and
3. the acquisition by credit institutions, financial companies or insurance companies of shareholdings in undertakings with a corporate object outside this sector, when the acquisition is of a temporary nature and for resale purposes, provided that: (i) such acquisition is not made on a lasting basis; (ii) the voting rights associated with the acquired shareholdings are not exercised with the purpose of determining the competitive behavior of the concerned undertakings or are solely exercised with the purpose of

preparing the total or partial transfer of such undertakings, the assets thereof or the acquired shareholdings; and (iii) such transfer occurs within one year from the date of acquisition.

26) Transactions involving only foreign businesses (foreign-to-foreign)

There is no exemption for foreign-to-foreign transactions. All transactions that meet the thresholds are subject to merger control regardless of where the undertakings concerned are registered, operate or own assets.

27) No overlap of activities of the parties

There is no exemption for transactions where the activities of the undertakings concerned do not overlap; however, where there are no meaningful horizontal overlaps, vertical effects nor conglomerate relations between the parties of the merger, the notification may qualify for simplified procedure, which entails the provision of considerably less information to the Portuguese Competition Authority upon filing (see topic 38).

28) Other exemptions from notification duty even if thresholds ARE met?

A merger meeting the jurisdictional thresholds is subject to mandatory notification. No exceptions are admitted, even though derogations of the standstill obligation may be granted in very exceptional circumstances (see topic 43).

In any case, as consequence of the EU "one-stop shop" principle, the Portuguese merger control rules do not apply if the thresholds for EU merger control are met and the European Commission has not referred the merger to the Portuguese Competition Authority. Similarly, Portuguese merger control rules do not apply where the Portuguese Competition Authority (and at least two other national competition authorities) refers a merger to the European Commission.

Merger control even if thresholds are NOT met

29) May a merging party file voluntarily even if the thresholds are not exceeded?

Theoretically yes, however, mergers that do not exceed the thresholds will face inapplicability decisions but may still be investigated under the general rules of prohibition of anticompetitive agreements.

30) May the competition authority request a merger notification ("call in") or oppose a transaction even if thresholds are not met?

No.

Referral to and from other authorities

31) Referral within the jurisdiction

N/A

32) Referral from another jurisdiction

The Portuguese Competition Authority cannot handle mergers based on referrals from other jurisdictions, except referrals from the European Commission.

The European Commission may refer a merger or part of a merger to the Portuguese Competition Authority.

In such case, the Portuguese Competition Authority may handle the merger even if the thresholds for merger

notification in Portugal are not exceeded. In case of partial referral, the European Commission will handle certain (international) aspects of the merger, whereas the Portuguese Competition Authority will handle strictly Portuguese aspects.

A referral of a merger from the European Commission may be requested either by the Portuguese Competition Authority or by the merging parties.

33) Referral to another jurisdiction

If the thresholds for merger notification are met in at least three EU member states, the parties may request that a single merger notification is made to the European Commission in place of notifications to each of the relevant national authorities.

The Portuguese Competition Authority may also request the European Commission to examine a merger that does not have an EU dimension within the meaning of the EU Merger Regulation but affects trade between EU member states and threatens to significantly affect competition in Portugal.

Besides referral to the European Commission, a merger cannot be referred to competition authorities in other jurisdictions.

34) May the merging parties request or oppose a referral decision?

Referral to the Portuguese Competition Authority:

If a merger is subject to EU merger control, the notifying party may – prior to an EU merger notification – request that the merger is referred to the Portuguese Competition Authority, provided that the merger may significantly affect competition in a distinct market in Portugal. If the Portuguese Competition Authority does not oppose such referral, the European Commission may decide to refer the merger in whole or in part.

The European Commission may also, on its own initiative or upon request from the Portuguese Competition Authority, decide to refer a merger that has already been notified to the European Commission to the Portuguese Competition Authority. The merging parties cannot oppose such referral decision.

Referral from the Portuguese Competition Authority:

If a merger is not subject to EU merger control but is subject to merger control in Portugal and at least two other EU member states, the notifying party may request that a single merger notification is made to the European Commission in place of notifications to each of the relevant national authorities. If none of the relevant authorities oppose the referral, the European Commission will handle the merger notification and no notifications are needed in Portugal or any other EU member state. If any of the national authorities in question oppose the referral, the merger must be notified to each of the relevant national authorities.

Filing requirements and fees

35) Stage of transaction when notification must be filed

Mergers must be notified prior to the implementation of the merger and after the parties are able to demonstrate that there is a serious intention to conclude an agreement, when the main aspects of the deal are stabilized in particular the object and the parties and, where applicable: (i) after the date of disclosure of the preliminary announcement of a public takeover bid or of an exchange offer or (ii) after the date of disclosure of the announcement of the acquisition of a controlling shareholding in a listed company, or (iii) in case of a

public procurement procedure, after the definitive award of the contract and before the closing of the transaction.

36) Pre-notification consultations

The Guidelines for Prior Assessment of Mergers, which are inspired by the practice of the European Commission, allow for informal, confidential consultations between the parties and the Portuguese Competition Authority's staff prior to notification and are aimed, among other goals, at:

1. determining whether the transaction is subject to notification, especially if there are doubts as to the concept of "merger" and the verification of the applicable thresholds;
2. verifying the applicability of the simplified form, and guiding the notifying parties in adequately filling in the relevant notification form, thereby avoiding subsequent information requests; and
3. whenever possible, in complex transactions, identifying the relevant markets and potential competition issues raised by the transaction and analyze the viability of ancillary restraints.

37) Special rules on timing of notification in case of public takeover bids and acquisitions on stock exchanges

Please see topic 35.

The Portuguese Competition Act does not prevent the implementation of a public takeover bid or an exchange offer that has been duly notified to the Portuguese Competition Authority, provided that the acquirer does not exercise the voting rights attached to the securities in question before clearance is granted.

Such bids and acquisitions are, in any event, subject to specific rules, notably those provided for in the Portuguese Securities Code and the Portuguese Commercial Companies Code.

38) Forms available for completing a notification

There are two forms available: the simplified and the regular form. Both are only available in Portuguese versions (see link under topic 3).

The regular form is applicable to all mergers where the criteria for application of the simplified form are not met. Additionally, the Portuguese Competition Authority may, when necessary for the comprehensive assessment of the concentration, request the submission of a regular form irrespective of the criteria for submission of a simplified form being met.

According to the Merger Notification Forms Regulation, the simplified form is applicable to mergers that, on a preliminary assessment, do not create significant impediments to competition, in accordance with the following criteria:

1. none of the parties to the merger are active in (i) either the same relevant markets (no horizontal overlap), (ii) in upstream or downstream related markets (no vertical effects), or (iii) in neighboring markets (no conglomerate relationships), in which any other parties to the merger are active.
2. when the parties to the merger are active in the same relevant markets (horizontal overlap) provided that their combined market share does not exceed 20%; or their combined market share exceeds 20%, but is lower than or equal to 25%, and the corresponding increase of market share does not exceed 2% within the geographical scope of the market in the national territory;
3. when the parties are active in vertically related markets, provided that the individual or combined market shares at any level of the production chain (upstream or downstream) do not exceed 25% within

- the geographical scope of the markets in the national territory,
4. when the parties to the merger are active in neighboring markets, provided that the market shares in any of these markets does not exceed 25% within the geographical scope of the markets in the national territory.

Changes from sole to joint control or from joint to sole control can also benefit from the simplified form as long as the acquirer did not have, prior to the merger, activity in the same relevant market, in vertically related markets or in neighboring markets as the ones where the joint venture is active.

39) Languages that may be applied in notifications and communication

Notification forms need to be submitted in Portuguese; notwithstanding, the Portuguese Competition Authority accepts supporting documents in other languages, such as English and Spanish.

40) Documents that must be supplied with notification

The parties are normally required to provide with the filing form, among other less significant annexes:

1. the financial statements and annual reports;
2. the documents directly related to the merger, namely agreements between the parties;
3. preliminary announcements;
4. articles of association;
5. shareholders' agreements;
6. information on suppliers and customers; and
7. a non-confidential version of the notification.

41) Filing fees

The notification is only effective if filed together with a document that confirms the payment of a filing fee.

In accordance with the Regulation on Filing Fees, the basic filing fee is calculated in view of the parties' turnover in Portugal and vary from EUR 7,500 to EUR 25,000, when the previous financial year's combined turnover in Portugal for the undertakings concerned exceeds EUR 300 million, calculated according to the relevant provisions of the Portuguese Competition Act.

Additionally, if the Portuguese Competition Authority decides to proceed with an in-depth investigation (see topics 20 and 23), a further fee of 50% of the basic fee shall be payable.

Implementation of merger before approval – “gun jumping” and “carve out”

42) Is implementation of the merger before approval prohibited?

Yes; a merger subject to prior notification shall not be implemented until tacit or express clearance is granted by the Portuguese Competition Authority.

This does not prevent, however, (i) the implementation of a public takeover bid to purchase or an exchange offer that has been duly notified to the Portuguese Competition Authority, provided that the acquirer does not exercise the voting rights attached to the securities in question before clearance is granted; or the (ii) implementation of sale of a bank to an authorized third party pursuant to a resolution adopted by the Bank of Portugal under the applicable EU and national legal framework, in order to ensure the stability of the financial system.

Please also see topic 37 regarding public takeover bids and acquisitions of listed undertakings.

43) May the parties get permission to implement before approval?

Yes, the notifying party may submit a reasoned request prior to or subsequent to the notification requesting that the standstill obligation is waived. After considering the consequences for the undertakings concerned of suspending the merger or the exercise of the voting rights and the negative effects to competition, the Portuguese Competition Authority may grant the waiver.

The waiver may, if necessary, be accompanied by conditions and obligations to ensure effective competition. The Portuguese Competition Authority is very restrictive in waiving the suspension obligation, as it considers that such waiver can be only granted in very exceptional circumstances, such as the imminent bankruptcy of the target company and, in any case, provided that no competition concerns exist.

44) Due diligence and other preparatory steps

The Portuguese Competition Authority has issued a Best Practices Guide on Gun-jumping, where it clarifies what undertakings can and cannot do in the context of merger control, detailing the relevant procedures that should be taken into account to mitigate the risk of early implementation of a merger. This guide includes information on: (i) antitrust protocols, drafting of M&A agreements, conduct of the parties and safeguards for the exchange of commercially sensitive information (data room, clean teams, data treatment, executive committees, confidentiality agreements).

45) Veto rights before closing and "Ordinary course of business" clauses

An "ordinary course of business" clause that prevents the target company from taking decisions outside the course of its ordinary business until the closing date is generally considered acceptable.

However, it must be assessed on a case-by-case basis to what extent the parties may discuss – or provide each other with veto rights concerning – any decisions in their respective businesses.

46) Implementation outside the jurisdiction before approval – "Carve out"

Normally the Portuguese Competition Authority considers the transaction as a whole, especially if there are no specific assets pertaining to the Portuguese part of the acquired business. However, and further to topic 38, the standstill obligation may be exceptionally waived by the Portuguese Competition Authority following a reasoned request from the notifying party.

47) Consequences of implementing without approval/permission

The implementation of a merger subject to prior approval before such approval has been granted makes the merger, and its related legal transactions, ineffective.

Breach of the standstill obligation is sanctioned with fines up to 10% of the parties' turnover in Portugal in the year immediately preceding that of the final decision adopted by the Portuguese Competition Authority.

The Portuguese Competition authority may also apply a periodic penalty payment, of up to a maximum of 5% of the average turnover in the preceding year, upon the notifying party(ies) until filing.

Furthermore, fines up to 10% of their annual income may apply to the persons holding managing, senior or supervision positions in the notifying party(ies), in particular if there is evidence that they had, or should have

had, knowledge that the merger should not have been implemented before prior approval from the Portuguese Competition Authority.

Private enforcement may also be used by possible third parties to claim damages arising from the infringement of the standstill obligation.

The Portuguese Competition Authority has increasingly been pursuing gun jumping cases.

The process – phases and deadlines

48) Phases and deadlines

Phase	Duration/deadline
<u>Pre-notification phase:</u> Not mandatory. However, advisable in case of complex mergers. There are no formal rules on pre-notification consultations. Under the Prior Assessment Guidelines the parties can send a memorandum briefly describing the essential elements of the transaction or a draft notification form.	No set duration or deadline
<u>Assessment of completeness of notification :</u> If considered complete, the notification becomes effective on the date it is filed together with the document that confirms the payment of the filing fee. If the notification is deemed incomplete or includes inaccurate data, the Portuguese Competition Authority invites the notifying party to complete the notification and the notification becomes effective on the date the missing elements are filed. After conforming the completeness of the filing, the Portuguese Competition Authority shall publish the essential elements of the notification in two national newspapers, so that any interested third parties may submit their observations, in particular if they oppose the concentration.	The Portuguese Competition Authority has 7 working days to assess the completeness of the notification submitted.
<u>Phase I investigation:</u> In phase I of the procedure, the Portuguese Competition Authority has to issue one of the following decisions: (i) that the merger is not subject to mandatory filing; (ii) non opposition to the merger; or (iii) initiate an in-depth investigation (and open phase II of the procedure), when, given the evidence gathered during phase I, it has serious concerns on the compatibility of the merger with effective competition on the market.	30 working days from the date when the notification becomes effective.

The Portuguese Competition Authority cannot block a merger in phase I.	
<u>Phase II:</u> By the end of the phase II deadline, the Portuguese Competition Authority must decide whether: (i) not to oppose the merger (with or without commitments offered by the notifying parties); or (ii) to prohibit the merger, when it considers that the merger, as notified or as modified by the notifying party, is likely to create significant impediments to effective competition in the domestic market or in a substantial part of it.	90 working days from the date of notification to carry out additional inquiries necessary to determine the compatibility of the merger with effective competition (this deadline incorporates the working days already used by the Portuguese Competition Authority during phase 1)

Assessment and remedies/decisions

49) Tests or criteria applied when a merger is assessed

The substantive test under the Portuguese Competition Act is the "Significant Impediment to Effective Competition" ("SIEC"). Authorization is granted to mergers that do not create a SIEC in the national market or in a substantial part of it. By contrast, mergers which create a SIEC, in particular resulting from the creation or reinforcement of a dominant position, are prohibited.

In order to make the mentioned assessment, the following elements shall be taken into account:

1. the structure of the relevant markets and the existence or absence of competition from undertakings established in such markets or in a distinct part of the relevant market;
2. the position of undertakings participating in the relevant markets and their economic and financial power, in comparison with their main competitors;
3. the purchaser's market power and its ability to prevent the reinforcement of situations of economic dependence vis-à-vis the undertaking that results from the merger;
4. potential competition and the existence, in law or in fact, of entry barriers to the market;
5. the possibility of choice for suppliers, clients and users;
6. the access of the different undertakings to sources of supply and markets for their goods;
7. the structure of existing distribution networks;
8. supply and demand trends and developments for the products and services in question;
9. special or exclusive rights granted by law or attached to the nature of the products traded or services provided;
10. the control of essential facilities by the undertakings in question and the access opportunities to such facilities offered to competing undertakings;
11. technical and economic progress resulting from the merger to the extent that it does not create an obstacle to competition and as long as the merger provides efficiency gains to end users and consumers; and
12. the contribution that the merger makes to the international competitiveness of the Portuguese economy.

50) May any non-competition issues be considered?

Theoretically yes. As mentioned in Topic 6a, the Portuguese Government may oppose the acquisition of

control over a strategic asset by a person or company of a third country (located outside the European Union or the European Economic Area) if such acquisition poses a genuine and sufficiently serious threat to national security or to the security of supply of the relevant essential services.

Also, please see topic 2: the member of government in charge of economic affairs (currently the Minister of Economy) may overturn a prohibition decision of the Portuguese Competition authority where the benefits of said merger to the strategic economic interests of the national economy surmount the disadvantages resulting from the merger.

51) Special tests or criteria applicable for joint ventures

Please see topic 13.

52) Decisions and remedies/commitments available

The notifying party may, at any time during the merger control proceedings (phase 1 or phase 2), offer commitments to preserve effective competition. Such commitments may include divestment or other structural or behavioural remedies.

The Portuguese Competition Authority may (and most likely will) refuse commitments that it considers to be merely dilatory, insufficient or inadequate to remedy the identified competition concerns.

Publicity and access to the file

53) How and when will details about the merger be published?

After confirming the completeness of the filing, the Portuguese Competition Authority shall publish the essential elements thereof in two national newspapers, at the expense of the notifying parties, so that any interested third parties may submit their observations to the transaction. In addition, the Portuguese Competition Authority will publish the non-confidential details of the transaction in its [website](#), as well as a non-confidential version of the final decision.

Based on the parties' input, the Portuguese Competition Authority will also organize a non-confidential version of the notification for consultation purposes.

The Portuguese Competition Authority allows external access to its merger database, which may be accessed through the Portuguese Competition Authority's website and provides information on all merger cases that have been notified and decided by the Portuguese Competition Authority since its creation in January 2003.

54) Access to the file – the merging parties

Access to the Portuguese Competition Authority's file is given to the merging parties on request during both phases of the procedure. In case the file includes submissions from third parties, the merging parties will only have access to non-confidential versions of these documents.

55) Access to the file – third parties

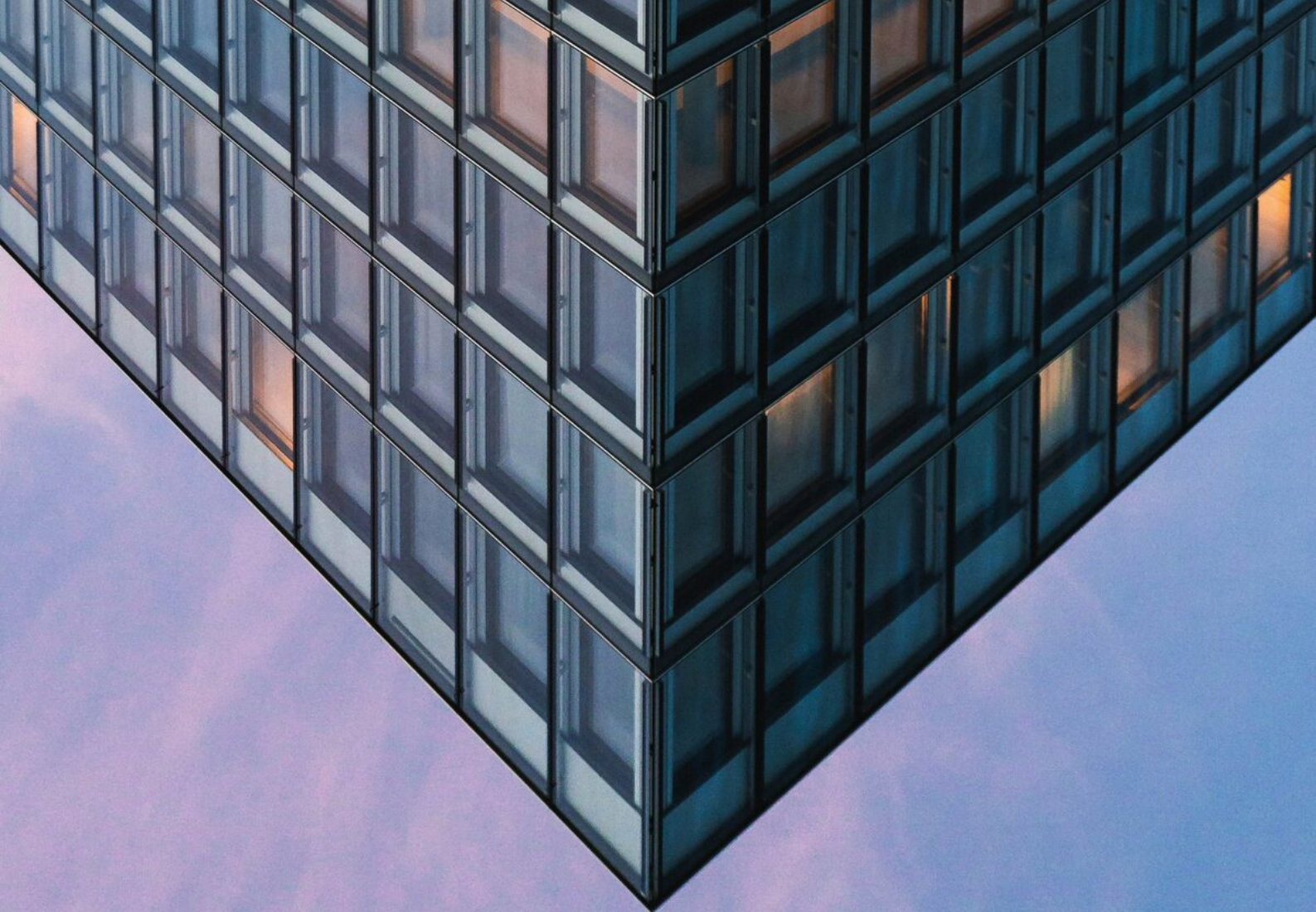
Third parties with direct interest or with a legitimate interest in the merger may be granted access to (a non-confidential version of) the file for the purposes of submitting observations.

Judicial review

56) Who can appeal and what may be appealed?

Decisions of the Portuguese Competition Authority adopted in merger control proceedings may be appealed to the Competition, Regulation and Supervision Court ("Competition Court"). The Competition Court rulings are subject to review by the Lisbon Court of Appeals. If limited to matters of law, the decisions of the Lisbon Court of Appeals may be appealed to the Supreme Court of Justice.

Decisions of the Portuguese Competition Authority adopted in proceedings regarding infringements of merger control rules, for instance gun jumping decisions, may also be appealed to the Competition Court. The decisions of this court may be appealed to the Lisbon Court of Appeals, as a court of last resort.



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