

## Lawyers back Portuguese antitrust head over conflicts dispute

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Margrethe Vestager is right not to get involved in the new head of the Portuguese Competition Authority's decision to only recuse himself from certain banking and energy cases, lawyers in Portugal have said.

Lawyers told GCR that Nuno Cunha Rodrigues' previous work in those sectors won't prevent him from effectively enforcing EU competition rules.

Last week, Vestager responded to concerns raised by Portuguese lawyer and member of the European Parliament Nuno Melo about Cunha Rodrigues, who succeeded Margarida Matos Rosa as head of Portugal's antitrust agency in March.

Melo's concerns centered on comments Cunha Rodrigues made about the banking and energy sectors in January in the run-up to his appointment, where he indicated he would recuse himself from certain cases when necessary. The competition chief was previously a member of several boards within Caixa Geral de Depósitos banking group from 2017 to 2021. He also sat on the board of Floene, Portugal's largest gas distributor.

But Vestager said the commission cannot intervene in the activities of national competition authorities and emphasised that EU law requires enforcers to avoid conflict of interests and ensure this does not impede enforcement. Vestager said the commission has "no indications that this was not the case in Portugal."

Portuguese lawyers agreed and told GCR that Melo's question was misleading because Cunha Rodrigues later clarified that he would only recuse himself from cases related to the two companies he previously worked for.

Linklaters counsel João Pateira Ferreira in Lisbon said Portuguese law and the authority's statutes are sufficiently clear in relation to conflict of interests, and the new antitrust head was "very forthcoming" in disclosing those previous links.

He said that he does not view Cunha Rodrigues' stance as an impediment to effective enforcement, as the agency is highly scrutinised and the two other members of its board have spent most of their careers with the authority. The level of publicity and discussion Cunha Rodrigues' disclosure of his previous roles have generated is a "good indication of the level of scrutiny" his actions will be subject to, he added.

Conflicts of interest are to be expected if the agency wants to recruit highly qualified and experienced professionals, especially with a relevant background in competition issues in a small country like Portugal, Pateira Ferreira said.

Excluding people with private sector credentials and limiting recruitment to the public sector or to academia would “probably be more detrimental” to the agency’s enforcement in the long term than any individual conflicts that may come up, he noted.

Pateira Ferreira’s views were shared by PLMJ partner Rita Aleixo Gregório, who said it is “salutary that the president himself has been transparent on this issue” and has “considered himself prevented from intervening in these sectors” on his own initiative.

SRS Advogados partner Gonçalo Anastácio in Lisbon said Cunha Rodrigues’ public disclaimer is not only fully compliant with Portuguese law and the authority’s own code of conduct, but also “undoubtedly in line with international best practices and highest standards”.

He added that this controversy is “quite surprising” as Cunha Rodrigues, who is also a professor of competition law at the University of Lisbon, is “very far from the typical revolving door profile” that tends to be the cause of objections.

Three out of four previous heads of the competition authority came from the financial sector and that did not impede their enforcement or raise concern, he noted.

Portugal’s Competition Authority was contacted for comment.

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