

Press Release 24/2009

### CA imposes fines on five mass catering undertakings

The Competition Authority has imposed fines of EUR 14,720,000 on five mass catering undertakings for anti-competitive practices in the market for meals and refectory, canteen and restaurant management/operating services.

The ruling is the result of an enquiry opened following a denunciation, in accordance with Law No. 39/2006 of 25 August, commonly called the “Leniency Act”.

1. The undertakings, on which fines totalling EUR 14,720,283.27 (fourteen million, seven hundred and twenty thousand, two hundred and eighty three euros and twenty seven cents) have been imposed, are as follows:
  - a. EUREST (Portugal) – Sociedade Europeia de Restaurantes Lda, for which the fine amounts to EUR 5,207,746.61 (five million, two hundred and seven thousand, seven hundred and forty-six euros and sixty-one cents).
  - b. TRIVALOR – Sociedade Gestora de Participações Sociais SA (owner of the undertakings Gertal and Itau), for which the fine amounts to EUR 6,778,686.20 (six million, seven hundred and seventy-eight thousand, six hundred and eighty-six euros and twenty cents).
  - c. UNISELF – Gestão e Exploração de Restaurantes de Empresas Lda, for which the fine amounts to EUR 1,742,124.83 (one million, seven hundred and forty-two thousand, one hundred and twenty-four euros and eighty-three cents).
  - d. ICA – Indústria e Comércio Alimentar SA / NORDIGAL – Indústria de Transformação Alimentar SA, for which the fine amounts to EUR 634,387.87 (six hundred and thirty-four thousand, three hundred and eighty-seven euros and eighty-seven cents).

- e. SODEXO PORTUGAL – Restauração e Serviços SA, for which the fine amounts to EUR 357,337.76 (three hundred and fifty-seven thousand, three hundred and thirty-seven euros and seventy-six cents).
2. The Competition Authority also delivered a guilty verdict in the case of five legal representatives of the defendant companies, under Article 47 (3) of Law No. 18/2003 of 11 June. Accordingly, fines totalling EUR 20,000.00 (twenty thousand euros) were imposed on the administrators and managers of SODEXO, ICA/NORDIGAL, UNISELF, ITAU and GERTAL.
3. The denouncing party was exempted from punishment, under the terms and for the purposes of Articles 8 (2) and 4 of the Leniency Act.
4. In this case, the maximum total penalty imposable would have been around EUR 38,700,000, corresponding to 10 per cent of the turnover for 2006 of the above-mentioned undertakings as a whole.
5. Having considered all the relevant facts, the legal criteria for setting the actual amount of the fine and, indeed, the economic and financial conditions of the country and the undertakings in question, the Competition Authority Council resolved that a fine amounting to 4% of turnover in the case of Eurest, Trivalor and Uniself, 2.8% in the case of Sodexo, and 2% in the case of ICA/Nordigal was an appropriate penalty for the seriousness of the facts and the different undertakings' degree of involvement in the offences now being punished.
6. The Council did not apply the additional penalty of withdrawal of the right to participate in procedures for the formation of contracts whose object covers typical services in service-purchasing contracts. This penalty is provided for in Article 45 (1) b) of the Competition Act, in the wording of Article 6 of Decree-Law No. 18/2008 of January but only covers facts ascertained after 29 July 2008, the date on which the said decree-law came into force.
7. However, the Competition Authority cannot but emphasise that the offence committed by the defendants is very serious, since they created a mechanism for cooperation that substituted the normal uncertainty surrounding their behaviour on the market, with negative consequences for the normal exercise of competition.
8. Moreover, the undertakings in question are the largest in the relevant market and, in addition, their offence was practised in the whole country, not only affecting public contract-awarding bodies in the health and education sectors, among others, but also

private contract-awarding bodies. The offence was committed on a permanent basis for at least nine years.

9. The agreement between the undertakings and the exchange of information regarding the undertakings participating in it took the form of a system guaranteeing that each undertaking would retain its customers by means of an operation fixing the prices to be presented in an open competition or invitation to tender. This protected the incumbent undertaking, which would, accordingly, be given preference over the other participants. Furthermore, the system set out the compensation that each participating undertaking would receive from its competitors, should it not be awarded a service contract. The agreement also established that the undertakings could provoke a new tendering procedure when dissatisfied with the pricing conditions for the service provided, with the assurance that the others would collaborate by presenting tenders with a higher price.
10. Concerted practices, and agreements between undertakings, commonly referred to as cartels, represent competition breaches in terms of Article 4 (1) of Law No. 18/2003 of 11 June. The fight against cartels, one of the most harmful anti-competitive practices, is a priority for the Competition Authority: it will carry out an investigation whenever it gains knowledge of them, whether it does so on its own initiative (of its own motion), via third-party complaints or – under the leniency regulations – through an undertaking or person involved.

Lisbon, 30 December 2009