

PRESS PACKAGE

**PORTUGUESE COMPETITION OBSERVATORY INITIATES
COLLECTIVE ENFORCEMENT ACTION AGAINST SPORT TV
TO COMPENSATE CONSUMERS
FOR DAMAGES CAUSED BY INFRINGEMENTS OF COMPETITION LAW**

12 March 2015

1. PORTUGUESE COMPETITION OBSERVATORY

The Portuguese Competition Observatory (OdC) is an association created in november 2014, made up primarily of Portuguese academics connected to study of competition, from a legal and economic perspective.

Its objective is to promote effective competition on the national markets and the respect for competition law, defending the rights of consumers.

The association is built on the principle of independence and is not, at present, financed by any entity.

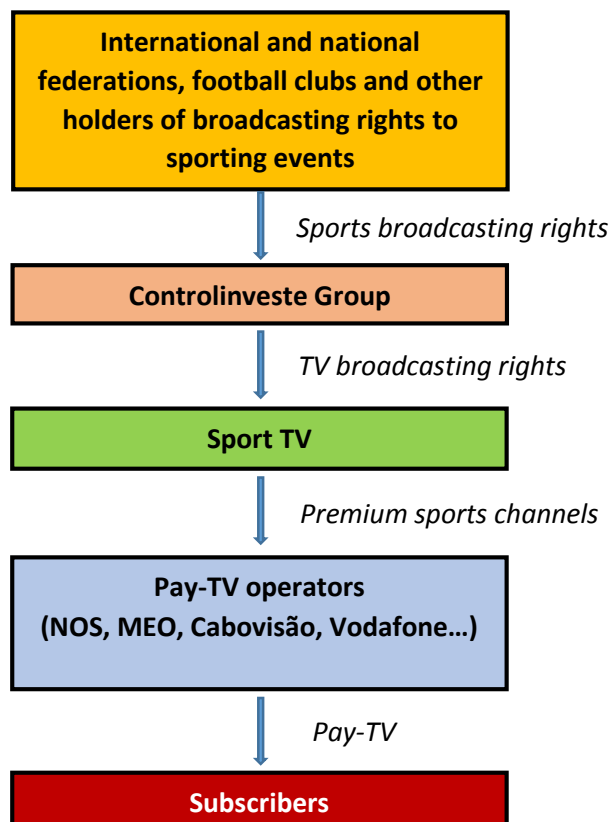
The OdC is presided over by Professor Eduardo Paz Ferreira, of the University of Lisbon Law School. The current members include professors from the majority of Portuguese Universities.

2. CONTEXT

Sport TV was created in 1998. It began as a partnership between the Controlinveste Group, RTP and the PT Group.

It was then held in equal shares by the Controlinveste Group and the PT Group, through PT Multimedia. In 2007, PT Multimedia was sold, becoming ZON, later ZON Optimus and, finally, NOS.

Presently, Sport TV is owned in equal shares by Controlinveste and by NOS.



In the market upstream from that where Sport TV is active, throughout the years, TV broadcasting rights for sporting events were concentrated in the Controlinveste Group (especially for championships organized the Portuguese Professional Football League), with long lasting exclusive contracts.

In 2000, the Lisbon Appeal Court affirmed that the exclusivity in the way these rights were granted infringed competition law (case no. 60506).

In april 2013, the Portuguese Competition Authority (PCA) opened an investigation against the Controlinveste Group and Sport TV for anticompetitive practices in the manner these rights were traded, in what concerns the Portuguese First and Second Football Leagues. In December 2014, the PCA announced a public consultation on commitments proposed by these companies to eliminate competitive concerns.

Throughout the years, Sport TV has been the target of several complaints for anticompetitive practices, relating to the manner in which it sold its premium sports channels.

In April **2004**, as a condition for authorizing the concentration which led to the control of Sport TV by Controlinveste and PT Multimedia, the **PCA imposed on Sport TV obligations not to discriminate** between cable TV operators.

In June **2013**, following up on a complaint, the **PCA found that Sport TV abused its dominant position** by, at least between 1 January 2005 and 30 march 2011, having imposed discriminatory conditions on operators and limited the development and investment in the market of pay-TV.

As a result, the PCA imposed on Sport TV a fine of 3,7 million EUR. This decision was confirmed by the Competition, Regulation and Supervision Tribunal, although with a reduction of the fine. The final appeal is still pending before the Lisbon Appeal Court.

The PCA Decision indicated that Sport TV's practices caused damages to operators (confidential figures) and to consumers.

3. POPULAR ACTION AGAINST SPORT TV

The OdC initiated today a “popular action”, asking the court to declare that Sport TV infringed competition law, causing damages to the final users of Sport TV channels, as well as to all clients of pay-TV in Portugal, and that it must compensate them.

What are the anticompetitive practices in question?

The popular action argues that Sport TV infringed European and Portuguese competition law, specifically the prohibition of **agreements restricting competition** and of **abuse of a dominant position**, by **causing an artificial increase of prices** on the retail market for pay-TV, **limit the development and investment** in this market and **excluded final users** from the benefit of Sport TV channels.

These practices included, in short:

- Prohibiting pay-TV operators from carrying out commercial or promotional campaigns involving Sport TV channels without prior authorization from Sport TV;
- Frequently refusing proposed promotional campaigns involving Sport TV channels;
- Requiring operators to present to it a number of commercially sensitive information (including planned promotions), to which the largest pay-TV operator, its shareholder (currently, NOS), had access, thereby increasing transparency on the market and dissuading more aggressive competition, by depriving it of its effectiveness;
- Using a system to calculate wholesale prices linked to the recommended resale price which, together with its other practices and the characteristics of the pay-TV market, meant that those recommendations functioned, in practice, as resale price maintenance;
- Using a system to calculate wholesale prices which was discriminatory, imposing losses on some operators in the sale of Sport TV channels at the recommended prices, making it impossible, in practice, for them to offer those channels below recommended prices and to pressure for a generalized decrease of Sport TV prices on the retail market;
- Refusing the individual sale of a single Sport TV channel, obliging users to acquire the whole package;
- Systematically discriminating other pay-TV operators, in favour of its shareholder (currently, NOS), imposing on them damages which prevented the reduction of prices and the development of and investment in the pay-TV market.

When did these practices take place?

The practices may have been present since the beginning of Sport TV's activity, up to the present.

However, to make it easier to meet the burden of proof, this popular action only encompasses the period **between 1 January 2005 and 30 June 2013**.

The starting date was chosen because it is also the starting date of the period wherein the PCA identified an abuse of a dominant position by Sport TV, for discrimination between pay-TV operators. This decision and the respective case file include many elements which make it easier to prove the relevant facts.

The end date was chosen because it is the day before Sport TV lost its monopoly in the supply of paid premium sports channels in Portugal, due to Benfica TV's entry into the market. Even if it would seem that Sport TV continued to hold a dominant position after that moment, this limitation greatly simplifies the discussion of this point.

What are the damages in question?

In a first phase, the popular action is only meant to obtain a declaration that competition law was infringed and that the injured users must be compensated.

Only in a second phase, if the first is successful, will the court be called on to quantify the damages caused to the final users represented in the popular action.

This quantification may be made through precise and complex analysis and/or through an equitable assessment.

Briefly, the damages amount to the price consumers paid extra for acquiring services on the retail pay-TV market and/or to the economic utility which they lost by being excluded from the benefit of certain services on that market, due to the unlawful practices of Sport TV keeping retail prices above what they would have otherwise been.

The total amount of damages will depend, namely, on the court's finding on the proof of the practices and their duration.

Merely as an example, if it were found that the unlawful practices led to an increase in the price of the Sport TV package of at least 1 EUR, a subscriber of the Sport TV channels during the entire reference period would be entitled to 102 EUR compensation.

In practice, the damages to Sport TV subscribers may have been much higher.

It should be noted that, in reaction to the entry of Benfica TV into the market, in July 2013, Sport TV lowered the price of its package from 26.5 EUR (SD) / 29 EUR (HD) to 22.79 EUR.

But there are other types of damages.

Among the subscribers of Sport TV during the reference period, there were some who did not want to sign up for the entire Sport TV package. They wished only one channel, with preferred contents, which they would have obtained at a lower price, but were not given that option and ended up paying for the entire package, at a much higher price.

There were also pay-TV clients who did not subscribe Sport TV during the reference period and

- (a) didn't buy the Sport TV package only because its price was above their willingness to pay;
- (b) weren't willing to pay for a package, but would have paid for a single Sport TV channel with preferred contents, if that option had been given to them.

The artificial increase in prices and/or the absence of an individualized offer of individual channels prevented these users from benefiting from those channels, which implies damages corresponding to the loss of economic utility.

It should be noted that, following Benfica TV's entry into the market, the total number of subscribers of premium sports channels in Portugal drastically increased. The decrease in prices of the Sport TV package led to an increase in the number of subscribers. Additionally, Sport TV began selling an individual channel with select contents, called "Sport TV Live", for 9,90 EUR. This channel was subscribed by 10 to 20 thousand users, some which did not previously subscribe to the Sport TV package.

Finally, all subscribers of pay-TV in Portugal, during the period in question, regardless of whether they subscribed or might have subscribed to Sport TV, were injured by these anticompetitive practices. Indeed, as was pointed out by the PCA, these practices limited competition between pay-TV operators and innovation on and development in this market, to the detriment of consumers.

Who is represented in this popular action?

Under the Portuguese law for popular actions, any and all consumers who suffered damages as a result of the practices of Sport TV in question will be represented, unless they explicitly choose not to be represented (opt-out system).

During the period in question, Sport TV channels had a total number of subscribers which varied between 450.000 and 675.000.

To these, one must add the pay-TV clients who would have subscribed Sport TV package if their price had been lower, or who would have subscribed to a single Sport TV channel with preferred contents it had been made available individually.

Finally, the OdC may also represent, in this action, all pay-TV clients, in general, in the periods and in the areas in which there was competition between operators, even if they never intended to subscribe to Sport TV. The national number of pay-TV subscribers rose steadily during the period in question, from 1.79 to 3.14 million subscribers.

For additional clarifications:

observatorio.concorrencia@gmail.com