

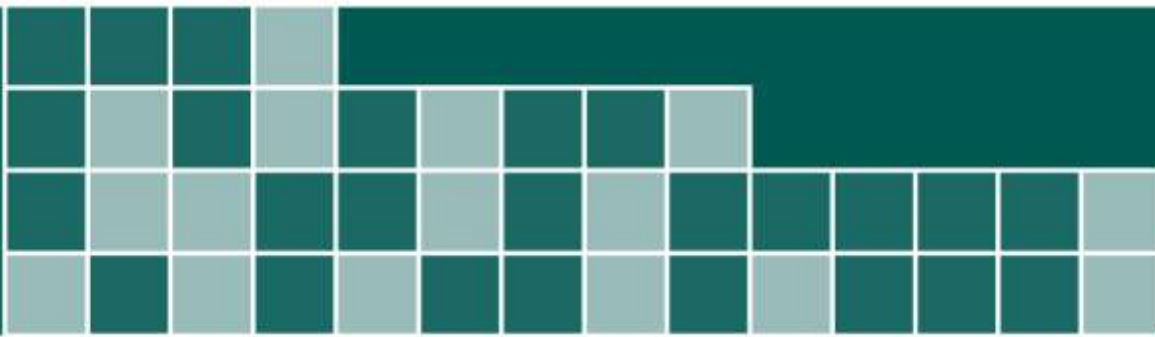
# Private enforcement of competition law in Portugal

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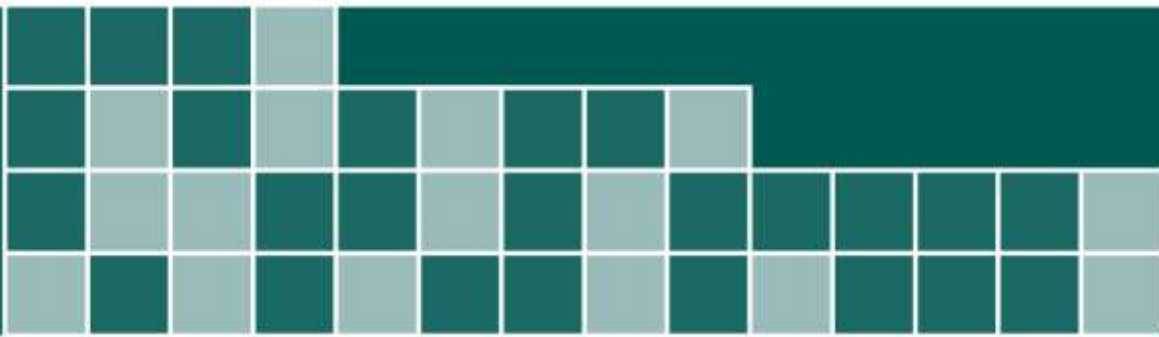


- 1) It happens more than you'd think
- 2) When it does happen, it mostly looks like what you'd expect
- 3) But every now and again...



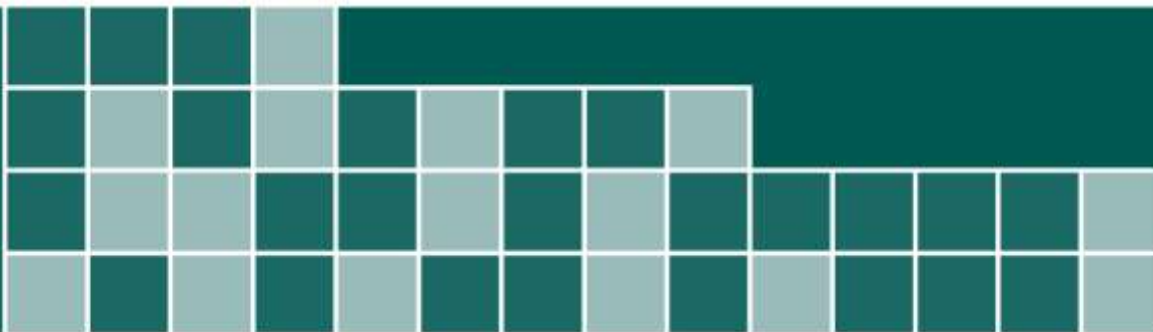
# 1) It happens more than you'd think

- Arbitration: it's out there!
  - Enforcement in civil courts
    - Common perception: only a handful of cases
    - Reality (since 1983):
      - 13 cases where it was invoked but was excluded or not discussed
      - 22 cases where competition law was discussed
      - 3 pending (large) cases
        - 18: relations between manufacturers and distributors
        - 5: supply of services
        - 2: football broadcasting
- Tobacco, coca-cola, coffee, beer, milk, iPods, football broadcasting, shoes, slaughterhouses, newswire services, insurance, distribution, telecoms - From a few to 40 million euros!
- The tip of the iceberg?... More likely the tip of the ice cone



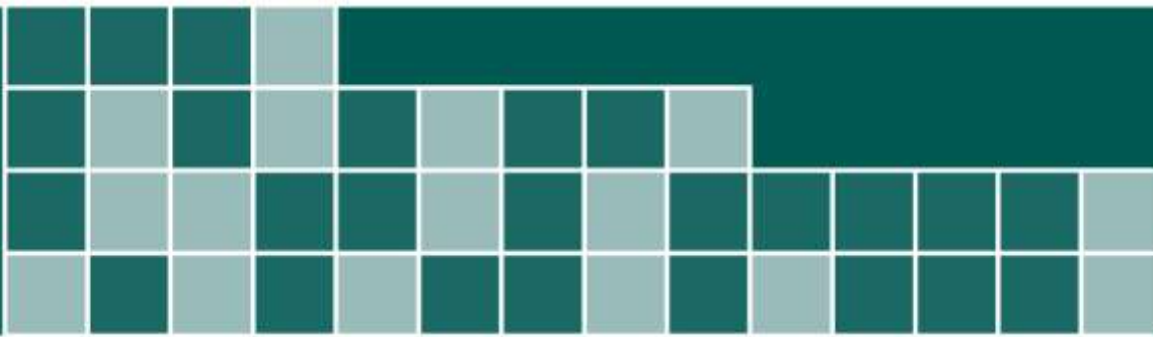
## 2) When it does happen, it mostly looks like what you'd expect

- No judgment in a follow-on case (yet)
- Tort damages have never been awarded
- Majority of cases: competition law raised as a defence
- Tendency of courts to protect the “little guy”
- Most first instance judgments rather poor in competition law assessment, sticking to civil law
- Supreme Court: “Competition what?”



### 3) But every now and again...

- Several successful claims based on competition law (although a minority, this is due to the merits of the cases)
- One case ended in “compensation”, but more an “unjust enrichment” case (returning unlawful payments)
- One *actio popularis* – Deco v. Portugal Telecom (but...)
- Recently – hint of follow-on cases and private enforcement by medium-large companies
- Some first instance judgments show broad knowledge of competition law (role of *amicus curiae* briefs)
- Lisbon Appeal Court stands out

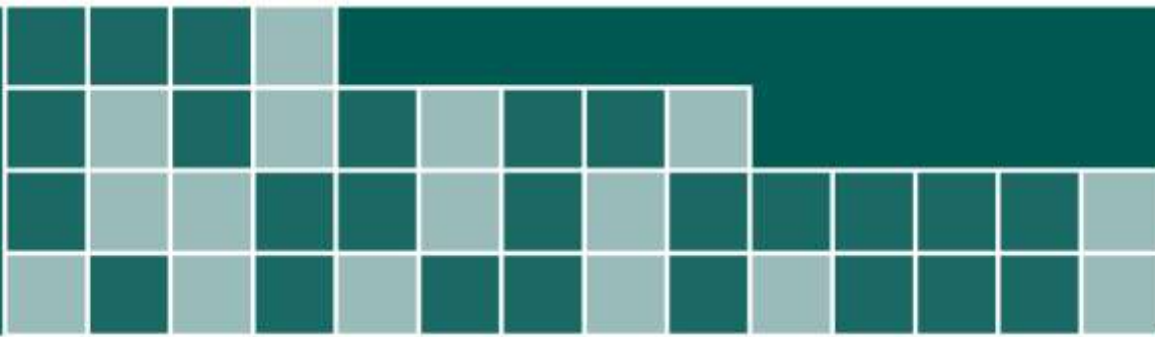


### 3) But every now and again...

Crucial doubts already clarified:

- Competition law infringements give rise to tort suits (“responsabilidade extracontratual”)
- Issues of relation between EU and national law (primacy, direct effect, consistent interpretation...)
- Distribution of the burden of proof
- Broad concept of “undertaking”
- Requisites of economic dependence
- Competition law may be raised *ex officio*

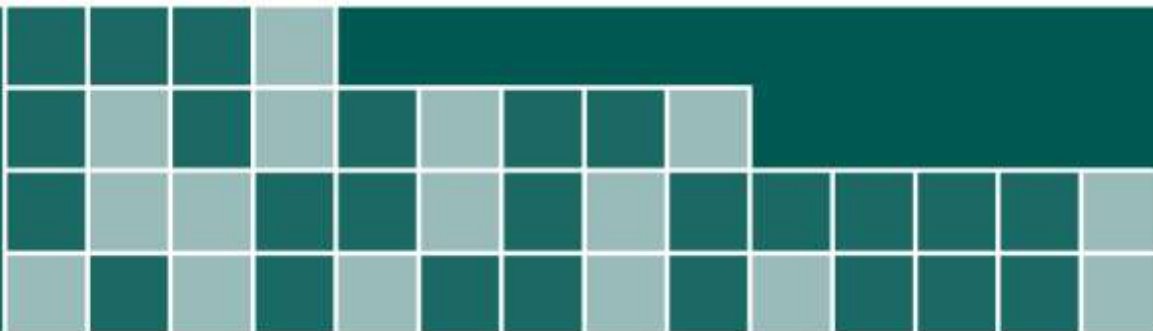
But the war isn't over!



## Bottomline...

- A long way to go  
but...
- Courts have shown themselves to be receptive to the private enforcement of competition law (except Supreme Court), and willing to follow EU case-law and precedents
- So... who's to blame?...





Thank you!

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