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Portuguese Competition Authority fines supplier of health and food supplements for RPM in a settlement deal

On 19 December 2022, the Portuguese Competition Authority (Autoridade da Concorrência, 'AdC') imposed a 1.25 million EUR settlement fine on Farmodiética for fixing and imposing retail prices on its distributors, a practice more commonly known as resale price maintenance ('RPM').

Farmodiética - Cosmética, Dietética e Produtos Farmacêuticos, S.A. is an important supplier of health and food supplements, with presence in various distribution channels throughout Portugal.

Between 5 October 2015 and 21 January 2022, Farmodiética sent its distributors retail price lists in order to impose the respective resale prices on them and set the maximum applicable discounts.

Farmodiética operated a monitorization system to ensure that its distributors implemented the resale prices and maximum discounts imposed. It also created an incentive system, thereby threatening or reducing the commercial conditions of its distributors, as well as limiting restocking or even cutting supplies in case of non-compliance.

The case came to an early conclusion due to a settlement procedure, in which Farmodiética admitted its liability and waived its litigation rights to the facts at stake in the decision. Therefore, the fine was reduced by 30%, amounting to 1,258,900 EUR.

This is the sixth fine imposed by the AdC in RPM cases, and the second largest of the bunch (although with a huge gap in relation to the highest one, which was imposed on Super Bock: a 24 million EUR fine in 2019 in PRC/2016/04). It also illustrates the AdC's recent focus on the health sector, as it is the third case in this sector in a very short period of time – next to the Private Health Hospital Groups and respective Association (a cartel saga), and the very recent accusations of nationwide collusion relating to private clinics and laboratories.