



**Ius Omnibus v Super Bock**

**16 de Dezembro de 2020**

## **Portuguese brewer faces €400 million antitrust damages claim**

Charley Connor

16 December 2020

A consumer protection group has filed Portugal's second-ever opt-out competition damages class action claim, seeking up to €400 million from brewing company Super Bock for imposing minimum resale prices on wholesalers and retailers.

The case follows-on from a decision by the Portuguese Competition Authority, which last year **fined** Super Bock €24 million for fixing minimum resale prices of its beverages sold in hotels, restaurants and cafes between 2006 and 2017. The claim was filed on Monday at the Portuguese Competition, Regulation and Supervision Court by Ius Omnibus, a consumer group led by Ana Gomes, a Portuguese presidential candidate and former Member of European Parliament.

It seeks compensation for all consumers who resided in Portugal and bought the company's products in bars, cafés, restaurants or hotels, estimating that they would each receive around €40.

The claim is the second opt-out class action filed by Ius Omnibus in less than a month that follows on from a ruling by a competition authority. It is also only the second to ever be filed in Portugal since a 2019 law introduced opt-out claims for antitrust damages

Ius Omnibus **filed** its first claim earlier this month against Mastercard. That case also seeks at least €400 million from the company to compensate all of the country's consumers for overcharges allegedly passed on by Mastercard's

anticompetitive interchange fees, which were the target of a European Commission infringement decision in 2007.

The new claim seeks damages from Super Bock – one of Portugal’s largest drinks manufacturers, which is majority-owned by Carlsberg – to compensate consumers for the excessively high price they allegedly paid for the company’s beer, cider, bottled water, sodas, iced tea, wines and sangria.

The competition authority’s decision found the company determined, by direct and indirect means, both wholesale and retail prices and other conditions for the resale of those drinks.

Super Bock regularly monitored compliance with these resale conditions and retaliated against distributors who did not comply by cutting the quantity of products it supplied to them and even terminating their contracts, the enforcer originally said in its infringement decision.

Ius Omnibus alleged in a press release yesterday that Super Bock’s anticompetitive practices affected all Portuguese consumers who bought the company’s products from a hospitality venue, as they paid more for those products than they would have if “Super Bock complied with the law”.

The claimant noted that Super Bock’s minimum prices increased by 30% between 2006 and 2014, while its costs only increased by 6%. This means prices were 24% higher than justified, it said.

The association is also asking the court to find that Super Bock’s anticompetitive conduct stretched beyond the time period identified in the competition authority’s decision. It claims that the resale price maintenance was in force by at least 2000 and continues “to this very day”.

Super Bock did not respond to a request for comment.

Miguel Sousa Ferro, counsel to Ius Omnibus, said this is likely the first damages action following on from the Portuguese enforcer’s decision against Super Bock.

As it is brought by a specially-created consumer protection association, this case is only viable as an opt-out action given the small amount of damages per consumer, he said.

Ferro explained that Portugal does not have a proper class certification step, as in other jurisdictions like the UK. The court will ask Super Bock “to challenge the claim” and the court’s first intervention after that will be to determine if the claimant has “active legitimacy”, or the right to represent consumers under Portugal’s popular action regime, Ferro said.

The court will also examine at that time any defences that Super Bock chooses to raise, including whether the claim is time-barred, he added.

Counsel to lus Omnibus

Sousa Ferro & Associados

Partner Miguel Sousa Ferro in Lisbon

Cardigos & Associados

Partner Porfírio Moreira in Lisbon