

Portugal

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COMMUNICATIONS POLICY

1 Policy

How would you summarise government and regulatory policy for the telecoms sector? What is the policy-making and policy-development procedure?

The telecoms industry in Portugal has traditionally been heavily regulated. Over the past few years and following the approval of Law 91/97 of 1 August 1997, (the former Basic Law of Telecommunications), Portugal has privatised the public operator, Portugal Telecom SA (PT). As a member of the European Union, Portugal has, as of 1 January 2000, opened its telecoms market to full competition, including public switched fixed telephone services and related infrastructure.

The Portuguese telecoms regulator, the ICP-ANACOM – *Autoridade Nacional de Comunicações* (the ICP-ANACOM), advises the government on telecoms policy and legislation and monitors compliance with concessions, licences and permits granted to telecoms providers in Portugal. The ICP-ANACOM is accountable to the Ministry in charge of telecoms. Although this Ministry retains basic responsibility for telecoms policy in Portugal, over the past few years, the government has substantially increased the autonomy of the ICP-ANACOM and allowed it to become a more effective and independent regulatory body. As an example of this, new laws have been passed, on January 2002 (Decree Law 309/2001 of 7 December 2001) and on February 2003 (Law no 5/2004 of 10 February 2004, the new Electronic Communications Law that replaces the former Basic Law of Telecommunications), which reinforces the powers and autonomy of ICP-ANACOM namely by granting it powers to approve and publish legally binding regulations, to define the relevant telecom markets and to assess the companies with significant market power.

In the last few years, there has also been a significant increase of pressure from the European Union, consumer protection associations and telecom operators on the Portuguese state to fully promote the implementation of a totally liberalised telecoms market, notably in areas in which, although proper regulation has been approved, some practical issues have been raised in connection to the market power of the incumbent operator in relation to certain areas (eg fixed telephone services, unbundling of the local loop, access to PT ADSL network).

2 Convergence

Has telecoms-specific regulation been amended to take account of the convergence of telecoms, media and IT? Are there different legal definitions for telecoms and media?

Although no specific amendments were made to telecoms-specific regulations to take account of the convergence of telecoms, media and IT, the most recent regulations approved regarding technologies applicable to the different sectors have usually taken into

consideration the convergence between these areas. Such is the case in the regulation of cable networks, UMTS services and digital video broadcasting for terrestrial television.

In this area, it is important to note that on 2 June 1999, the ICP-ANACOM created a 'working party' (*Plataforma de Desenvolvimento e Convergência*), composed of several representative entities, with the purpose of discussing matters in an effort to reach a convergence between all sectors directly connected to telecoms. On 15 May 2002 this working party presented to the Portuguese government a number of proposals for actions aiming to contribute to the definition of a strategy towards the convergence of the media and telecom areas.

Although the recently approved new Electronic Communications Law already establishes some technical requirements regarding digital television and radio broadcasting and frequencies attribution, the telecoms sector, the audio-visual sector (broadcasting services) and the Internet are still mostly regulated separately.

3 Audio-visual sector

Is the audio-visual sector and/or content regulated separately from telecoms?

Yes. Although the new Electronic Communications Law does not expressly refer to such separation, the audio-visual sector and content are regulated by a number of specific laws and regulations. Incidentally, telecoms regulations may contain some technical rules applicable to infrastructures used in both the telecoms and broadcasting sectors (eg frequencies, cable networks, digital terrestrial devices).

TELECOMS REGULATION

4 WTO Basic Telecommunications Agreement

Has your country committed to the WTO Basic Telecommunications Agreement and, if so, with what exceptions?

As with all other EU member states, Portugal has committed to the WTO Basic Telecommunications Agreement. The exceptions introduced are no longer applicable.

5 Public/private ownership

What, if any, proportion of the stock of any incumbent operator is in the ownership of the public or of private enterprise?

The telecoms market has changed from a monopoly held by PT to a fully competitive market. The state incorporated PT in June 1994 through the merger of its wholly owned telecoms providers, Telecom Portugal, TLP and TDP in order to strengthen the competitiveness of the telecoms sector. PT has been wholly privatised since December 2000, but the government retains a golden share in PT which provides the government with the right to veto a

number of important decisions, including, inter alia, the payment of dividends in excess of 40 per cent of distributable net income in any year, capital increases and other amendments to PT's articles of association. In addition, a government vote is required to elect a third of the directors, including the chairman of the board.

6 Foreign ownership

Are there any foreign ownership restrictions applicable to authorisation to provide any telecoms services?

There are no restrictions on foreign persons or companies conducting telecoms activity in Portugal.

7 Operator exclusivity

Does any operator have exclusivity and, if so, for which service(s) and for how long?

Since the full liberalisation of the telecoms market in January 2000 (fully implemented with the public tender regarding the issuance of licences for wireless access systems), there is no operator with exclusive rights to any of the telecoms services.

8 Fixed, mobile and satellite services

Comparatively, how are fixed, mobile and satellite services regulated?

Historically, all fixed, mobile and satellite services were commonly regulated by the former Basic Telecommunication Law, which established only different licensing/authorisation procedures depending on whether the relevant service consisted of:

- the provision of public fixed telephone services;
- the establishment and/or provision of public telecoms networks; and
- the establishment of networks or the provision of services requiring the granting of frequencies.

No other telecoms services required a licensing procedure.

The new Electronic Communications Law also does not address fixed, mobile and satellite services separately. Differences exist only to the extent the relevant services require individual rights of use of frequencies or numbering, or, if on the contrary, such rights are not necessary for the provision of such services. In the first case, such rights can only be granted through an open, transparent and non-discriminatory procedure, on the second one, there is a general authorisation principle regime, which basically only requires a notification to the ICP-ANACOM prior to the beginning of the relevant telecom companies' activity.

9 Satellite facilities and submarine cables

In addition to the requirements under question 8 above, are there any other rules applicable to the establishment and operation of satellite earth station facilities and, where applicable, the landing of submarine cables?

Although there are no specific regulations on the establishment and operation of satellite earth station facilities, there are several rules regulating certain characteristics of electric and electronic devices that may be applicable to satellite earth station devices.

For instance:

- Resolution of the Ministers Council 16/94 of 22 March 1994, approves the instructions on telecoms safety (SEGMAC3);
- Regulation (*Portaria*) 767-A/93 of 31 August 1993, establishes the technical characteristics required for certain electronic and electrical devices (those described in EU Directive 89/336/CEE);
- Decree Law 74/92 of 29 April 1992, implements the EU Directive on electromagnetic compatibility;
- Decree Law 117/88 of 12 April 1988, sets out the general health and safety regime with regard to electronic devices;

- There are also no specific regulations on the landing of submarine cables. In any case, the new Electronic Communications Law expressly recognises the right of public telecoms networks' operators to install and maintain their infrastructures in the public domain (such as Portuguese territorial waters).

10 Public telecoms services

Under what conditions may public telecoms services be provided?

According to the Electronic Communications Law, the provision of telecoms services normally falls under the general authorisation regime (*Regime de autorização geral*). This basically requires that the companies that wish to provide telecoms services in Portugal are obliged to:

- provide the ICP-ANACOM with a summary description of the service which they intend to undertake;
- communicate the date planned for the beginning of their activity; and
- provide any identification elements under terms yet to be defined.

However, if the provision of the relevant services requires individual rights of use of frequencies or numbering such rights can only be granted through an open, transparent and non-discriminatory procedure. The specific rules applicable to such a procedure will be established by ICP-ANACOM, except if the same involves a competitive selection between several interested parties and relates to frequencies available for the first time or, even if such is not the case, it relates to services available for the first time. In such later case, the government will be responsible for approving the relevant regulations.

11 Radio frequency (RF) requirements

For wireless services (eg mobile), are radio frequency (RF) licences/permits required in addition to any telecoms services authorisations, and is an RF licence available on a competitive or non-competitive basis? Is RF frequency the subject of auction or tradable in any circumstances?

The new Electronic Communications Law states that the granting of rights frequencies use rights is subject to an open, transparent and non-discriminatory procedure. It is yet unknown if, under the new regime, this procedure, will require a competitive selection or not when involving the provision of wireless services.

Historically, under the previous regime, the radio frequencies use rights necessary for the provision of mobile phone services were included as part of the rights granted with the mobile phone services licence, which was attributed through a bidding process.

With respect to the trading or transfer of the radio frequencies use rights, the new regime provides that the transfer of such rights is allowed, provided that prior authorisation from ICP-ANACOM is obtained.

12 Third-generation services

Is there any regulation for the specific roll-out of third-generation mobile services (eg in terms of licences, standards, etc)?

Yes. The terms and conditions applicable to the roll-out of third-generation mobile services are thoroughly regulated both by the laws and regulations that established the public tender for the issuance of the UMTS licences in Portugal and in the text of the licences issued.

In addition to the term for the commercial start-up of the UMTS services, the terms of UMTS licences include provisions on standard interfaces to be used, the number of control centres and base stations that need to be set up and respective timetable,

electromagnetic field limitations, number portability and inter-connection, geographic areas to be covered, transfer of licence conditions, general policy on prices and tariffs, safety measures, etc. In addition, the winning operators for the UMTS licences are also bound by the additional commitments made by each of them in the context of their application in the public tender.

13 Fees

Which fees are payable for which types of authorisation?

The applicable fees due under the Electronic Communications Law (which has revoked the governmental ordinance that established the previous applicable fees) are still to be determined.

14 Authorisation timescale

What is the time taken by the licensing authority for grant of licences or other necessary authorisations?

Under the general authorisation regime, the relevant operator may begin to provide telecom services, as soon as it obtains confirmation that the notification made to ICP-ANACOM regarding the beginning of its activity has been received.

As a general rule, the decision to grant or refuse rights to use frequencies or numbering resources has to be taken within:

- 15 days for numbering resources; or
- 30 days for frequencies.

If the granting of rights to use frequencies or numbering resources involves a competitive selection procedure then the maximum term for a decision to be taken shall be:

- 30 days for numbers; and
- eight months for frequencies.

15 Licence duration

What is the normal duration of licences?

Under the general authorisation regime, telecoms services may be provided for an undetermined term after proper notification has been made to ICP-ANACOM. Under this regime, the relevant telecoms operators will also have to notify ICP-ANACOM once its activity ceases.

With respect to rights granted to use frequencies, The normal duration of the rights granted to use frequencies is 15 years and may be renewed for equal periods of time at the licensee's request one year before the licence expires.

16 Modification/assignment of licence

How may licences be modified? Are licences assignable or able to be pledged as security for financing purposes?

Under the general authorisation regime, this question is not applicable since there is no license to be modified. In any case, the Electronic Communications Law provides that the relevant telecoms operators must notify ICP-ANACOM within 30 days of a change of address.

As for the rights granted to use frequencies and numbers, the same can be assigned with the prior authorisation of the ICP-ANACOM.

Although it is theoretically possible for such licences to be pledged, owing to the strong limitations on the transfer of the licences they are seldom used as security for financing purposes.

Recently the Lisbon Commercial Court ordered an injunction against one of the Portuguese UMTS licensees that involved the pledge of its UMTS licence. This decision has been appealed for illegality but no final decision is now expected since the procedure has been terminated by the parties that applied for the injunction.

17 Cable networks

Is there any restriction in your country regarding ownership of cable networks, in particular by telecoms operators?

There are no restrictions regarding ownership of cable networks.

18 Local loop

Is there any specific rule in your country regarding access to the local loop or providing for local loop unbundling?

The new regime sets out the elements that must be provided by in the general offer regarding access to the local loop (*Oferta de Referência para Acesso ao Lacete Local* or ORALL). Historically, the entity subject to this obligation was the incumbent operator, Portugal Telecom (through its subsidiary company PT Comunicações SA). The ORALL included several specific details, technical and quality requirements with which the incumbent operator had to comply in order to facilitate access to the local loop by other operators.

19 Internet

How are Internet services, including voice over the Internet, regulated?

At present, there is limited Portuguese and EU legislation specifically covering the provision of Internet services, although there are laws and regulations relating to certain specific aspects of Internet activities, including the use of domain names, digital signatures, electronic invoices, data protection and, mostly recently, electronic commerce, which implements the EU adopted E-Commerce Directive.

The new regime, expressly recognises the Internet as one of several possible electronic communication networks. To such extent, Internet services are generally subject to the same rules as those provided through any other type of network. In this domain, there are no specific regulations, in particular with respect to voice over Internet services.

20 Interconnection

How is interconnection regulated? Can the regulator intervene to resolve inter-operator disputes? Are wholesale (interconnect) prices controlled? What are the basic interconnect tariffs?

Interconnection regulation is now regulated by the new Electronic Communications Law, which contains the rights and obligations of different categories of operators and service providers and grants the ICP-ANACOM an even wider range of powers (in comparison to the previous regime) to intervene in dispute resolution or by its own initiative and to fix ex-ante conditions, in particular where operators with significant market power are involved. As before, the new law also imposes specific obligations concerning cost-orientation principles for interconnection tariffs and the publication of reference interconnection offers, which are subject to specified minimum elements defined by the ICP-ANACOM and subject to its review.

21 Retail tariffs

Are retail tariffs regulated and, if so, which and how?

Until now, telecoms operators other than PT were free to establish the prices for their services.

PT has regularly entered into pricing conventions with ICP-ANACOM and the commerce and competition agency, which established price caps on PT's prices for fixed telephone services (ie installation charges, line rental fees and prices for domestic and international telephone calls), leased lines and telex.

The new regime now empowers ICP-ANACOM to intervene and impose all the conditions deemed adequate to assure that

companies with declared significant market power in retail markets offer consumers transparent, cost-orientated and non-discriminatory prices.

22 Customer terms and conditions

Are customer terms and conditions required to be filed with and/or approved by the regulator?

Yes. A draft of customer terms and condition used by each telecoms operator is subject to approval by the ICP-ANACOM.

23 Changes to telecoms law

Are any major changes planned to the telecoms laws of your country?

The Portuguese telecoms regulatory framework has recently suffered a significant change with the approval of new Electronic Communications Law, which basically adapts and implements a number of Directives on Telecoms adopted by the Council of Ministers of the EU on 14 February 2002 (the Telecoms Package). The new law replaces and revokes the former Basic Law of Telecommunications and almost all the previous complementary legislation.

It is therefore expected that extensive regulation will have to be passed in the following months in order to fully replace the former legislation and complement the new Electronic Communications Law. Matters such as the definition of telecoms fees and relevant markets, identification of the companies with significant market power and their inherent obligations, and the regulation of the procedures required for the attribution of rights to use numbering and frequency resources, will most probably call out for immediate attention.

In addition and although the Portuguese government has recently approved legislation implementing the E-Commerce Directive, the provisions of the EU Privacy and E-communications Directive still lack implementation. For this the EU Commission has initiated the second phase of a non-compliance procedure against Portugal. It is therefore expected that Portugal will take immediate steps to implement these missing aspects.

MEDIA REGULATION

24 Ownership restrictions

Are there any restrictions on the ownership and control of broadcasters? Can foreign investors participate in broadcasting activities in your country?

No, there are no restrictions on the ownership and control of broadcasters. Foreign investors are free to participate in broadcasting activities in Portugal in the same way as Portuguese investors.

25 Cross-ownership

Are there any regulations in your country in relation to the cross-ownership of media companies?

No, there are no regulations in Portugal in relation to the cross-ownership of media companies.

26 Licensing requirements

What are the licensing requirements in order to be able to broadcast in your country, including the fees payable and the timescale for the necessary authorisation?

The access to the broadcasting activity is subject to licensing, either through public tender or other authorisation processes, depending on whether the emissions uses the terrestrial radio spectrum or not.

Depending on the type of licensing procedure, the time needed for such a procedure to be completed is the following:

- 90 days for television licences (from the end of the term for the presentation of the applications or any corrections that need to be made);
- 15 days for television authorisations (counting from the reception of the process by the High Authority for Media);
- 105 days for radio licences (from the end of the term for the presentation of the applications or any corrections that need to be made); and
- 22 days for radio authorisations (from the end of the term for the presentation of the applications or any corrections that need to be made).

The issue of licences and authorisations depends on the result of the evaluation of the technical and financial viability of the projects filed by the candidates, which must contain certain information and documentation as provided by law.

The licenses and authorisations for television broadcasting are issued by the High Authority for Media, and are valid for 15 years, renewable for the same period of time. The fees due in relation to television broadcasting licences are as follows:

- Licence issuance: €49,880
- Licence renewal: €24,940
- Authorisation issuance: €12,470
- Authorisation renewal: €6,235
- Authorisation/License replacement (for loss or destruction): €1,000:

The High Authority for Media is also the competent entity for the issue of licences and authorisations for radio operators, which are valid for 10 years, renewable for the same period of time. The fees due in relation to radio broadcasting licences are as follows:

- Licence application: €250
- Granting of a licence: €2,494
- Licence renewal or amendment: €998
- Licence replacement (for loss or destruction): €100

27 Broadcast of foreign programmes and local content

Are there any regulations concerning the broadcasting of foreign programmes? Are there any rules requiring a minimum amount of local content?

The existing rules require television operators which operate television services with national coverage to broadcast a minimum percentage of programmes originally produced in the Portuguese language for Portuguese television broadcasters. This percentage can vary between 50 per cent and 15 per cent depending on the type of channels (eg general or specialised).

There are also certain requirements that demand national television operators that operate television programmes with national coverage to incorporate a certain percentage of programmes produced in the European Union. Such a percentage is to be applied progressively according to European Union defined criteria.

It is also established as a general rule, that all the programmes broadcast on national television channels should either be spoken or subtitled in Portuguese.

In relation to music broadcasting (irrespective of being through radio or television), Portuguese law requires Portuguese operators to broadcast a minimum of 50 per cent Portuguese-produced music (or 15 per cent being erudite music).

As to the minimum amount of local programme content, it is further established that local radio broadcasters (as opposed to national operators) must broadcast at least eight hours of their own programming.

28 Advertising

How is advertising regulated?

Advertising is generally regulated by Decree Law no 330/90, as amended (the Advertising Code).

The Advertising Code establishes a number of specific broadcasting advertising restrictions which are notably the following:

- Advertising for tobacco and sponsorship by entities that produce tobacco or tobacco-related products are prohibited.
- Advertisements of alcoholic beverages may neither target children or teenagers nor encourage excessive consumption and is prohibited between 7am to 10.30pm.
- Advertisements of prescription medical drugs and treatments is prohibited.
- Advertisements of gambling is prohibited, except regarding the games of *Santa Casa da Misericórdia* (a charity institution).
- Advertisements of miraculous products or services is prohibited.
- Advertising broadcasting must not affect the integrity of programmes and should take into consideration the natural pauses, duration and nature of programmes.

In addition to the general advertising restrictions established by the Advertising Code, the four existing national and unrestricted television channels: SIC and TVI (the privately owned channels), RTP 1 and RTP 2 (the stated-owned channels), are subject to the following general advertising limits:

- TVI and SIC may not dedicate more than 15 per cent of their daily broadcasting time to the broadcasting of commercial advertising. Exceptionally such a limit may be increased to 20 per cent when the advertising includes teleshopping or other forms of commercial publicity. As a matter of practice, these rules allow SIC and TVI to transmit up to 12 minutes of commercial advertising per hour.
- RTP1 is limited to broadcasting six minutes of commercial advertising per hour.
- RTP2 is only allowed to broadcast institutional advertising (eg governmental initiatives and cultural events) since September 2003.

In relation to commercial radio stations, a 20 per cent time limit is also established for advertising in the total daily period of broadcasting.

29 Must-carry obligations

Does your country have regulations which specify a basic package of programmes that must be carried by network operators for the distribution of broadcasts to the public, ie 'must-carry obligations'. Is there a financing mechanism?

Television operators must include in their broadcasts information programmes and a minimum amount of independently produced programs in the European Union. There is a financing mechanism provided for in the law in order to support the production of these programmes. Television operators are also obliged to broadcast certain announcements in cases of national emergency.

Radio broadcasters that provide programmes classified as having a 'general' or 'informative' theme must broadcast, between 7am and 12am, a minimum of three news services with at least three hours between each broadcast.

30 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws of your country?

The revision of the Portuguese Constitution is currently under process. Among the matters to be discussed and reviewed is the removal of the status of the High Authority for Media (*Alta Autoridade para a Comunicação Social* or AACCS) from the Constitution to be regulated in a specially approved law (passed with two-thirds of the voting rights of the national parliament). It is

therefore likely that the status and powers of the AACCS are going to change in the near future.

Also under preparation is a new radio law. There are still several draft laws under discussion but a final text is only expected at the end of 2004.

REGULATORY AGENCIES

31 Regulatory agencies

Which body or bodies are regulatory agencies for which purposes? Is the body which regulates telecoms separate from the one which regulates broadcasting?

The ICP-ANACOM is the regulatory agency in charge of the telecoms sector while the AACCS is the entity primarily responsible for the media sector.

The ICP-ANACOM, as the telecoms regulator, advises the government on telecoms policy and legislation and monitors compliance with concessions, licences and permits granted to telecoms providers. Among the ICP-ANACOM's responsibilities are:

- representation of the Portuguese government in international organisations;
- standardisation and approval of terminals and other communications equipment;
- management and supervision of the radio spectrum;
- the definition of interconnection conditions when entities with significant market power are involved; and
- to approve regulations whenever necessary to exercise its powers.

The ICP-ANACOM is also responsible for the planning of frequencies in accordance with the following criteria:

- availability of radio-electric spectrum;
- guarantee of effective competition in the relevant markets;
- effective and efficient use of the frequencies.

According to the Portuguese Constitution, the AACCS is an independent entity in charge of assuring the right to information, the freedom of press and the independence of the media in relation to the political and economic powers, as well as the possibility of expression and debate between different opinions and the exercise of rights of antenna and response. Regular Portuguese legislation further provides that AACCS also has the powers to supervise compliance with the applicable law by the media companies and well as to manage the granting of radio and television broadcasting licences.

32 Establishment of regulator

How is each regulator established and to what extent is it independent of network operation/services and of government?

The ICP-ANACOM is accountable before the MSE. The MSE retains basic responsibility for telecoms policy in Portugal. Over the past few years the government has substantially increased the autonomy of the ICP-ANACOM and allowed it to become a more effective and independent regulatory body.

The AACCS is fully independent and administratively autonomous entity, that works directly with the national parliament. This entity is only accountable to the courts.

33 Appeal procedure

How may decisions of the regulator(s) be challenged or appealed and on what basis – merits, law and/or procedure?

The ICP-ANACOM's decisions and resolutions first have to be challenged to the minister of MSE before they can be appealed to the administrative courts. MSE resolutions are directly appealed to the administrative courts. These decisions/resolutions can be

challenged or appealed on the basis of breach of applicable legislation or procedures. In contrast, the AACS decisions and resolutions can only be challenged or appealed through the administrative courts.

34 Competition and telecoms/audio-visual regulation

To the extent that there is a/separate national regulatory body(ies) for the telecoms and audio-visual sectors responsible for telecoms/audio-visual-specific regulation and a national competition authority responsible for general competition rules, what is the respective scope of their jurisdiction in the telecoms/audio-visual sectors, and is there any mechanism under national law to avoid conflicting exercise of jurisdiction by the two/various authorities? Is there a specific mechanism to ensure the consistent application of competition and sector-specific regulation?

The ICP-ANACOM, as the national regulatory authority responsible for telecoms, does not have any specific responsibility or power regarding anti-competitive practices, except for those related with the identification of the relevant markets and the companies with significant market power. In certain cases, ICP-ANACOM is also asked to give their non-binding opinion to competition law authorities when there are telecoms companies involved.

The AACS, the entity responsible for the media sector, also has no particular powers in relation to anti-competitive practices.

All competition and merger control issues in the telecoms and media sector (as with any other sectors) are dealt with by the minister in charge of trading and the Office of Trade and Competition (*Direcção Geral de Comércio e Concorrência*, or DGCC).

35 Interception

Are there any special rules requiring operators to assist government under certain conditions in the interception of telecoms messages?

Yes. As in the previous regime, the new Electronic Communication Law, provides that operators that run telecoms networks are obliged to install at their own expense and to assist the duly authorised authorities with systems capable of legal interception of communications, and to provide the means for the decrypting or decoding of communication when the encryption or coding of messages is used or provided by the operator.

In any case, according to the Portuguese Code on Criminal Procedure, the interception of communications is generally subject to courts' orders (and not to the government).

COMPETITION AND MERGER CONTROL

36 Competition law in the telecoms and broadcasting sectors

Are anti-competitive practices in these sectors controlled by regulation or general competition law and by which regulator and/or competition authority?

Anti-competitive practices are expressly prohibited in the Basic Law of Telecommunications and are controlled by general competition law authorities. The competition authorities are empowered to control anti-competitive practices.

37 Regulatory thresholds for telecoms and broadcasting M&A

What are the criteria and thresholds for regulatory or competition law review of telecoms sector mergers, joint ventures and acquisitions? Do these differ for transactions in the broadcasting sector?

The criteria and thresholds for telecoms mergers, joint ventures and acquisitions are the same as for other sectors. The competition law provides two alternative thresholds based on market share and turnover. Competition law applies where:

- a market share above 30 per cent of the national market, or a substantial part thereof, of a given product or service is acquired or increased; or
- the aggregate turnover in Portugal of the companies involved exceeds 30,000 million escudos (approximately €2,150 million) during the last financial year, net of taxes directly related to the turnover. The substantive criteria for clearance are a positive financial balance and the international competitiveness of the companies involved.

38 Regulatory authorities for telecoms and broadcasting M&A

Which are the regulatory and/or competition authorities responsible for such review?

The authorities responsible for such review are the minister in charge of trading and the DGCC. Before taking a decision the minister may request advice from the Competition Council.

39 Procedure and timescale for telecoms and broadcasting M&A

What are the procedures and associated timescales for review and approval of telecoms and broadcasting mergers and acquisitions?

The notification is submitted to the DGCC, which has 40 business days to submit it to the minister for a decision. The minister has 50 business days to decide or to request advice from the Competition Council. The Competition Council has 30 days to give advice to the minister, who in turn has 15 days to make a decision. Therefore, if advice from the Competition Council is not required by the minister, a decision could be taken within 90 business days from the notification of the transaction. If the advice of the Competition Council is requested, the delay increases to 135 business days.



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