



Competition - Portugal

Portugal Telecom wins appeal against Competition Authority fine

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The Lisbon Commercial Court recently ruled in favour of Portugal Telecom in its appeal⁽¹⁾ against a €38 million fine imposed in 2007.

In August 2007 the Competition Authority fined Portugal Telecom for refusing to grant two competing cable operators access to its underground ducts (for further details please see "[Regulator fines Portugal Telecom for refusing access to infrastructure](#)"). This decision and the fine in question have subsequently been reversed by a ruling issued in March 2010.

In several respects, the court's conclusions on the facts of the case supported the authority's decision. Among other facts, the court concluded that Portugal Telecom knowingly refused access to ducts in which there was sufficient physical space for its competitors' cables to be deployed and that its refusals were not justified on technical grounds or for cost-related reasons.

Portugal Telecom's access policy was allegedly based on the need to reserve at least two unoccupied ducts in all segments for the purposes of network maintenance and (from 2002 onwards) network expansion. The court concluded that the defendant's justifications for denying access were not always consistent regarding the number of spare ducts to be reserved or the reasons for such a policy. In addition, it was proved that in several areas of Portugal Telecom's network, cables were deployed in sections where no spare ducts existed.

Furthermore, the construction of own infrastructure for the deployment of cables (with the aim of providing pay-television, broadband and fixed telephony services) was considered not to be an overall alternative to the roll-out of a cable network due to land use limitations and the costs involved.

Nevertheless, the court's decision focused primarily on the issue of whether Portugal Telecom's underground ducts should be considered essential infrastructure in those specific segments and locations where access was denied. Although the court considered that the complete replication of Portugal Telecom's extensive system of underground ducts did not constitute a relevant alternative (due to the costs implied), it found that there was insufficient evidence to demonstrate that no adequate alternatives existed in those specific segments where access was denied. Therefore, it could not conclude that the ducts in question constituted essential infrastructure at the local, rather than national, level.

As a result, the authority's decision and the fine were reversed and Portugal Telecom was acquitted. The authority has subsequently appealed this first instance ruling to the Lisbon Court of Appeal.

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Endnotes

(1) 1065/2007, 2nd section of the Lisbon Commerce Court.

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