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Competition - Portugal

Competition Authority Fines Portugal Telecom for Discriminatory Pricing

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Relevant Markets
Abusive Conduct
Fine

On September 1 2008 the Competition Authority fined Portugal Telecom €2.1 million for alleged abuse of a dominant position in the wholesale market for leased lines. The authority's decision is subject to appeal before the Lisbon Commercial Court.

This is the second decision involving abuse of a dominant position by Portugal Telecom, whose practices were held to infringe Article 6 of the Competition Act and Article 82 of the EC Treaty (for further details please see "[Regulator Fines Portugal Telecom for Refusing Access to Infrastructure](#)").

Relevant Markets

The relevant markets are the wholesale markets for leased lines (both terminal and transit sections).

Leased lines in public telecommunications networks provide transparent transmission capacity between terminal points without the need for user-controlled switching functions. Leased lines or circuits provide a permanent physical connection between two points for the user's exclusive voice or data traffic requirements.

Wholesale clients lease circuits for interconnection between fixed and mobile networks, usually in order to develop their own networks and supply other telecommunications services. These services are acquired and resold by downstream customers. Most of the leased circuits provided on the retail market, whether by companies in the Portugal Telecom group or by other operators, rely on Portugal Telecom's wholesale supply of leased lines.

The authority's press release states that in 2003 and 2004 Portugal Telecom was the only provider of wholesale services for analogue transit sections and terminal sections of leased lines, enjoying an estimated market share of nearly 100%, while its share of the market for wholesale services for digital transit sections exceeded 86%. In the authority's opinion, this meant that Portugal Telecom's wholesale offer for leased lines was effectively the only option for its competitors.

Abusive Conduct

The abusive conduct consisted of Portugal Telecom's application of a discriminatory pricing policy for leased lines, which was in force between March 1 2003 and March 7 2004. This pricing scheme was held to benefit companies in the Portugal Telecom group; therefore, it was deemed discriminatory and was held to limit production, technical development and investment to the detriment of competitors and consumers.

The authority considered that the abusive conduct also affected the downstream markets (eg, fixed telephony, broadband and mobile communications).

Fine

In calculating the fine, the authority considered the mitigating circumstance that the national regulatory authority for the electronic communications sector had not objected to the introduction of the pricing policy in question. It also took into account Portugal Telecom's decision to abandon the policy following a decision by the sector regulator in February 2004. However, the fact that the alleged abusive conduct was liable to

affect trade between EU member states was considered an aggravating circumstance.

Portugal Telecom is understood to be preparing an appeal.

For further information on this topic please contact [Gonçalo Machado Borges](#) or [Cláudia Coutinho da Costa](#) at [Morais Leitão Galvão Teles Soares da Silva & Associados](#) by telephone (+351 21 381 7400) or by fax (+351 21 381 7411) or by email (gmb@mlgts.pt or ccosta@mlgts.pt).

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