



Competition

The Competition Authority fined PT and ZON Group to pay a fine of €53 million for abuse of dominant position in the broadband access wholesale and retail markets. This is the highest fine ever applied in Portugal for breach of competition laws.

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Competition Authority imposes an exemplary fine to PT and ZON for abuse of a dominant position

Following several complaints filed in 2003, the Competition Authority imposed a fine of 53 million Euros to the PT Group and ZON Group for abuse of dominant position in the broadband access wholesale and retail markets.

At the time of the filing, the PT Group was the main national supplier in the wholesale and retail markets and held, through its wholly owned subsidiaries Telepac and TV Cabo, a market share of 70.7% in 2002 and 77.7% respectively.

Taking into account that PT Group's wholesale supply – "PT ADSL Network" – was indispensable for the provision of electronic communication services, the PT Group artificially fixed tariffs' prices, and discriminated and limited the production, distribution, technical development and investment in "SAPO ADSL.PT" wholesale service and in "SAPO ADSL.PT - Standard", "Speed On Netcabo 640", "Use Netcabo Speed RC" and "Speed On Netcabo 128", all retail services.

According to the Competition Authority, the PT Group systematically applied different conditions for equivalent services and engaged in positive discrimination in favour of another PT Group's undertaking by applying a discount system to the wholesale tariff offer.

It is estimated that PT's competitors, such as Clix, Novis Telecom, Media Capital and Onitecom, have suffered losses of approximately 11 million Euros during the period between 22 May 2002 and 30 June 2003.

The fines now applied by the Competition Authority to PT and ZON (which was span off from PT in 2007) follows two other landmark decisions against PT of 2007 and 2008 for abuse of dominant position, by refusing access to TVtel and Cabovisão to its cable networks, and for abuse of dominant position in the wholesale market for circuit leasing respectively.

This last decision confirmed that the Competition Authority wishes to create a level plain field in the electronic communications market by applying exemplary fines to the incumbent operator for breaching competition law, following the European Commission's trend as shown by the recent the Microsoft and Intel cases.

However, in the future, the Competition Authority's procedures should be more expedient, not only to avoid the risk of impunity of the offending undertakings that may result from the prescription of the procedures, but also to reduce the barriers to the entry of other competitors in the market, which may ultimately harm end consumers.

The decision, which may still be appealed by PT and ZON, may lead to civil claims from the operators that were harmed by PT's conduct. In these civil actions, the operators may claim compensations against PT and ZON for the suffered damages by the abuse of dominant position.

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