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Competition Authority completes analysis of mobile communications price rises

The Competition Authority (CA) has completed the Portuguese mobile communications market analysis that was triggered when the three main Portuguese mobile communications network operators announced and adopted price increases of 2.5%, to be applied from March 2009.

At present there are five mobile communications providers in Portugal: three function as network operators, namely TMN, Vodafone and Optimus, and two as mobile virtual network operators (MVNOs), namely CTT (under the brand name *Phone-ix*) and Zon (under the brand name *Zon Mobile*).

In January 2009, the three national mobile network operators, TMN, Vodafone and Optimus, announced that they would be raising their prices by 2.5%. This would apply to most services provided, with effect from March of the same year.

TMN was the first operator to announce this price rise, on 16 January 2009, with its direct competitors then announcing identical increases: Vodafone on 17 January and Optimus on 28 January.

The date from which these price rises took effect were also different, as they came into effect for TMN and Optimus customers on 1 March and for Vodafone customers on 5 March 2009.

The CA recognised that the leader-follower model of behaviour could possibly be applied to the context of these price increases. The Portuguese mobile communications market is characterised by the costs of changing, a fact that favours this model of behaviour: reproducing the leader's price rise tends to be profitable for the companies that follow, given that the absence of a price revision will not be reflected in an increase in market share.

The CA's analysis also acknowledges that the price increases in the mobile service tariffs may possibly be explained by an external shock shared by all the companies, one related to the inflation predicted for the year 2009, which was set at precisely 2.5%.

The CA analysed the prices for mobile communications services by making comparisons on the basis of what is usually termed the ARPU (average revenue per user) and ARPM (average revenue per minute). From these comparisons, it ascertained that, for the national network operators, the progression in the ARPU was downwards in the period between 1988 and 2008 and, in general, parallel. The progression in the ARPM indicator was also downwards and parallel for the three operators from mid-2001 till 2009.

Legal practice on competition holds that the recognition of parallel behaviour in the setting of prices is not a sufficient condition to conclude that an anti-competitive concerted practice or agreement exists.

The analysis of the price levels for mobile communication services and their progression showed that, for prepaid tariff plans (representing 73% of the total), the prices

in Portugal for the baskets covering any traffic profile are significantly lower than the average for the 19 EU27 member states belonging to the OECD, with divergences of over 20%. With regard to the progression in the prices of these baskets, it has generally been downwards.

On the basis of both the analysis carried out and existing case law, the CA cannot conclude that the price rises identified provide evidence of anti-competitive practices, in particular a concerted practice or agreement, under the Competition Act.

Accordingly, the CA considers that the launch of an auction process to award the rights of use for BWA (broadband wireless access) frequencies may help to develop more effective competition in the marketplace, in promoting the entry of new players and not restricting the way in which those frequencies are used. Furthermore, the CA believes that the MVNOs (mobile virtual network operators) can also contribute to a more intense competitive environment in the mobile communications market, provided that they are guaranteed conditions of access to the network.

The conclusion reached here does not mean that the CA does not need to continue monitoring the mobile communications market, a procedure that allows it to detect illegalities in competition.

Lisbon, 5 March 2010

(The report 'Mobile Communications in Portugal – price rises of 2.5% in March 2009' is available at www.concorrencia.pt)