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Competition - Portugal

Competition Authority clears telecoms merger

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On August 26 2013 the Competition Authority issued a clearance decision, subject to commitments, regarding the merger of Optimus and ZON, two of the major players in the Portuguese telecommunications sector with complementary operations in mobile and fixed communications services. The companies filed the merger on February 1 2013, and the assessment procedure involved the analysis of more than 40 relevant product markets, with a particular emphasis on pay television and triple and quadruple-play bundled offers.

Despite the limited overlap between the merging parties' main activities, the Competition Authority based its analysis of the merger's horizontal effects on a certain degree of geographic market segmentation, focusing on the effects of the transaction in areas where Optimus has access to a fibre-optic network. These include mainly urban areas where Optimus has rolled out its own fibre-optic network and areas where it enjoys access to fibre-optic networks under a network sharing agreement with Vodafone Portugal.

Given that Optimus ceased to invest in the further extension of its own fibre-optic network in 2010 and had no plans to expand its infrastructure significantly in the future, the Competition Authority concluded that Optimus's role as a potential competitor in other geographic areas would be limited. However, in those areas where Optimus has access to fibre-optic networks, the authority held that it was effectively competing with ZON and other market players. Further, the authority concluded that the transaction might reduce Optimus's incentive to continue to provide Vodafone Portugal with access to Optimus's fibre-optic network and thereby lessen Vodafone Portugal's ability to compete by using that infrastructure.

As a result, in order to remove any concerns that effective competition might be diluted by the merger in those geographic areas where Optimus has access to a fibre-optic network, the parties submitted the following commitments:

- to extend the duration of the network-sharing agreement between Optimus and Vodafone Portugal;
- to remove the caps on possible contractual liability resulting from the unjustified termination by Optimus of the network-sharing agreement;
- to negotiate wholesale access to Optimus's fibre-optic network with interested third parties;
- to negotiate a contract with Vodafone Portugal for the option to purchase Optimus's fibre-optic network at book value, minus amortisations; and
- to suppress, for a six-month period, any fidelity clauses applying to Optimus's triple-play customers based on fibre access.

These commitments were subjected to a market test in which the parties' competitors intervening in the merger control procedure as interested third parties – Portugal Telecom, Vodafone Portugal and Cabovisão – submitted comments, in addition to the extensive observations that they had already presented at several stages of the procedure.

Apart from its assessment of the merger's horizontal effects in the geographic areas where Optimus has access to a fibre-optic network, no relevant merger-specific vertical effects were identified, namely regarding access to premium sports and cinema content.

The transaction is expected to bring significant benefits to Portuguese consumers of triple-play and quadruple-play services in the form of innovative commercial offers and enhanced price competition between all market players.

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