



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission fines Telefónica and Portugal Telecom € 79 million for illegal non-compete contract clause

The European Commission has imposed fines of € 66 894 000 on Telefónica and of € 12 290 000 on Portugal Telecom for agreeing not to compete with each other on the Iberian telecommunications markets, in breach of Article 101 of the Treaty on the Functioning of the European Union (TFEU) which prohibits anti-competitive agreements. In July 2010, in the context of the acquisition by Telefónica of the Brazilian mobile operator Vivo, which was until then jointly owned by both parties, the parties inserted a clause in the contract indicating they would not compete with each other in Spain and Portugal as from the end of September 2010. The parties terminated the non-compete agreement in early February 2011, after the Commission opened antitrust proceedings.

Commission Vice President in charge of competition policy Joaquín Almunia said: *"The Commission is committed to ensuring the creation of a genuine single market in the telecoms sector. We will not tolerate anticompetitive practices by incumbents to protect their home markets, as they harm consumers and delay market integration."*

Instead of competing with each other for offering clients the most advantageous conditions, as is expected in an open and competitive market, Telefónica and Portugal Telecom deliberately agreed to stay out of each other's home markets. By preserving the status quo in Spain and Portugal, the agreement hindered the integration process of the EU telecoms sector. Non-compete agreements are one of the most serious violations of EU competition rules, as they potentially result in higher prices and less choice for consumers.

The fines were set on the basis of the [Commission's 2006 Guidelines on fines](#) (see [IP/06/857](#) and [MEMO/06/256](#)). In setting the level of fines, the Commission took into account the duration of the infringement (4 months) and its gravity, including the fact that the agreement was not kept secret by the parties. The early termination of the agreement was also taken into account by the Commission as a mitigating circumstance.

Background

Article 101 of the TFEU prohibits agreements that have the object or effect to restrict competition and may affect trade in the EU Single Market.

Both Telefónica and Portugal Telecom are the largest telecoms operators in their home countries. For example, in 2011 Telefónica accounted for almost half of all revenue generated by the Spanish telecoms sector. Each of the parties has a very limited presence in the other party's home country.

The Commission opened an investigation on its own initiative in January 2011 (see [IP/11/58](#)) after it became aware of the agreement between Telefónica S.A. and Portugal Telecom SGPS S.A. The Commission has a copy of the agreement concluded on the occasion of the Vivo transaction and of the non-compete clause, which originally was due to run from September 2010 to the end of 2011. The Commission sent the parties a Statement of Objections in October 2011 (see [IP/11/1241](#)).

The Vivo transaction itself is not affected by the decision.

Action for damages

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision is binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without these being reduced on account of the Commission fine.

The Commission considers that meritorious claims for damages should be aimed at compensating, in a fair way, the victims of an infringement for the harm done. More information on antitrust damages actions, including the public consultation and a citizens' summary, is available at:

<http://ec.europa.eu/comm/competition/antitrust/actionsdamages/documents.html>

More information will be available under the case number [39839](#) in the Commission's public case registry on the competition website once any confidentiality issues have been resolved. A periodic compilation of antitrust and cartel news is available in the [Competition Weekly News Summary](#).

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