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## EVALUATION OF SIGNIFICANT MARKET POWER FOR THE PURPOSES FORESEEN IN DECREE-LAW NO. 415/98 OF 31/12

1. Upon defining the regulatory conditions, which, within the legal environment of liberalisation, will ensure the provision of an open telecommunications network, Decree-Law no. 415/98 of 31/12 becomes particularly important as it establishes the regulatory framework for interconnection among public telecommunication networks.

This diploma establishes the concept of Significant Market Power and, by bringing into effect the competencies specifically attributed to ICP, the declaration of entities detaining it in the markets for (i) interconnection, (ii) fixed telephone networks and/or fixed telephone services, (iii) leased lines and (iv) mobile telephone. According to their categories, these entities shall be subject to different types of obligations defined in said Decree-Law.

2. Under the terms of no. 2 of article 7 of Decree-Law no. 415/98, an organization shall be presumed to have significant market power when it holds a market share greater than 25% in a telecommunications market in the geographic area where they are qualified to operate. However, considering the criteria established in no. 4 of said article 7, ICP may determine that an entity has significant market power, whether or not it holds a market share greater than 25%.

For this purpose, it shall fall upon ICP, following consultation with the Directorate-General for Trade and Competition (DGCC), to yearly determine, declare and publish the list of those entities which have significant market power in the relevant markets.

3. With a view to enriching the decision process related to the notification of entities with SMP for the purposes foreseen in Decree-Law no. 415/98, the interested entities were sounded out as to the criteria used in market definition, with particular emphasis on the domestic interconnection market, given its intrinsic complexity<sup>1</sup>.

Within this scope, ICP invited all operators and the DGCC to participate in this survey. In terms of availability, ICP promoted meetings with all the interested entities, namely: TMN, Telecel, Optimus, PT, Apritel, Marconi, Maxitel, Novis, Jazztel, Apritel, MCI, Broadnet, ONI, TMN, REN, REFER and Repart. Various topics were discussed, such as: the definition of the relevant market (including its geographic component), the methodology for the evaluation of market shares, the specification and applicability of the criteria foreseen in point 4 of article 7 of Decree-Law no. 415/98, the methodological aspects and the parameters for measuring the interconnection market, as well as the regulatory framework at a national and community level.

Based on the perceptions of market conditions and of its functioning and on the results of the survey process<sup>2</sup>, a methodology was created to evaluate significant market power in the domestic interconnection market and in the markets for mobile telephone networks

<sup>1</sup> See document "Auscultação - Poder de Mercado Significativo" (Survey - Significant Market Power 2000) - <http://www.icp.pt/interligacao/nacional2.html>

<sup>2</sup> See document "Resultados da auscultação" (Survey results) - <http://www.icp.pt/interligacao/nacional2.html>

and/or mobile telephone services, having evaluated the 1999 market shares of the various operators in both markets.

4. With regard to the **interconnection market**, and in terms of the definition of market and the way in which to calculate market shares, it was considered that the services which define the interconnection market correspond to the services which ensure the physical and logical connection among telecommunication networks used by the same or different operators, so as to allow access and communications among the different users of the services provided, having as a reference the transactions which give rise to the following revenues:
  - a) Interconnection revenues obtained by mobile and fixed operators, arising from the termination in their network of calls originated in other national networks. Regarding fixed-mobile traffic, it was considered that the remuneration of the mobile operators would be the difference between the retail price and the interconnection prices paid to PT.
  - b) Interconnection revenue arising from national mobile-to-mobile traffic and the transport services for incoming international traffic.
  - c) Interconnection revenue obtained by mobile and fixed operators, as a result of the termination of international traffic.
  - d) "Internal interconnection" revenue imputed to operators of the fixed network and mobile networks. Internal interconnection traffic was considered to correspond to all traffic transported within the fixed network and within the mobile network of each operator. The valuation of internal interconnection traffic in the fixed network was carried out at the average termination price of mobile-to-fixed calls. For mobile networks, this valuation was carried out, per operator, at the average termination price of mobile-to-mobile calls in its network.

For this purpose, we considered the transactions carried out among operators referred to in paragraphs a) and c) of point 1 of article 6 of Decree-Law no. 415/98, corresponding to switched services for conveying, terminating and originating calls.

This analysis was examined according to the criteria foreseen in point 4 of article 7 of Decree-Law no. 415/98. The relevant financial indicators were also analysed, as were the performance and evolution of the companies in the market.

5. In the **market for mobile telephone networks and/or mobile telephone services**, the market shares were evaluated taking into account the operating revenue of the operators/providers in this market, as well as in the evaluation carried out in the previous year<sup>3</sup>.
6. With regard to the **leased lines market** and the **market for fixed networks and/or telephone services**, and in view of the guidelines presented by the European Commission at the ONP Committee<sup>4</sup> and the survey results<sup>5</sup>, it is acknowledged that those entities notified as having SMP for the purposes of Decree-Laws no. 474/99 and 290-A/99<sup>6</sup>

<sup>3</sup> See <http://www.icp.pt/interligacao/nacional2.html>

<sup>4</sup> See <http://www.ispo.cec.be/infosoc/telecompolicy/en/SMPdeter.pdf>

<sup>5</sup> See document "Resultados da auscultação" (Survey results) - <http://www.icp.pt/interligacao/nacional2.html>

<sup>6</sup> See <http://www.icp.pt/actual/decprms.html>

correspond, respectively, to the entities to be notified as holders of SMP in these markets for the purposes foreseen in Decree-Law no. 415/98.

7. Within this context, once consulted the DGCC under the terms of article 7 of Decree-Law no. 415/98, ICP determines that:

7.1. **Portugal Telecom, SA**, or the entity legally succeeding it as concessionaire, has significant market power:

- a) in the national interconnection market,
- b) in the market for fixed telephone networks and/or fixed telephone services and
- c) in the leased lines market.

Consequently, PT shall be subject namely to the essential and specific obligations foreseen in articles 8 and 9 of Decree-Law no. 415/98, for the operators of fixed networks and/or fixed services and of leased lines which have significant market power.

7.2. **TMN – Telecomunicações Móveis Nacionais, SA** and **Telecel – Comunicações Pessoais, SA** have significant market power in the market for mobile telephone networks and/or mobile telephone services.

Thus, TMN and Telecel shall be subject to the specific obligations established in article 8 of Decree-Law no. 415/98 for the operators of mobile networks and/or services which have significant market power.

8. Taking into account market dynamics, the Instituto das Comunicações de Portugal shall begin a revaluation process of significant market power for the purposes foreseen in Decree-Law no. 415/98 of 31/12, up until 31<sup>st</sup> December.
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