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## COMMUNICATIONS OUTLOOK 1999

### BROADCASTING: Regulatory Issues

**Country: Portugal**

**Date completed: 17 July 1998**

The attached questionnaire was undertaken in preparation for the biennial OECD Communications Outlook. The responses provided by Member countries on broadcasting regulation were used to provide information supporting the analytical sections published in association with data. A similar questionnaire with responses on telecommunication regulation is also available. In some cases, data for individual firms, used to compile OECD totals, have not been published at the request of the respondent. For further information, including data, see **OECD Communications Outlook 1999**, and <http://www.oecd.org/dsti/sti/it/index.htm>

**Broadcasting market status (Questions 1- 3)**

**1. Please provide details of the broadcasting and cable television infrastructure provision in your country.**

**Licenses not required for broadcasting, only spectrum needs to be purchased. Listed numbers are those either owning spectrum or those operating cable services.**

Infrastructure provision for following service	Number of licensed operators (1998)	Number of privately owned companies <sup>1</sup>	Number of public service organisations <sup>2</sup>
Terrestrial TV (National coverage <sup>3</sup> )	3	2	2
Terrestrial TV (Local coverage <sup>4</sup> only)			
Terrestrial radio (National coverage)	3	2	1
Terrestrial radio (Local coverage only)	320	320	
Cable television service <sup>5*</sup>	18	9	9
Analogue direct broadcast satellite (DBS) service			
Digital DBS service			

\* More than one organisation is allowed to operate in the same area.

<sup>1</sup> Defined as private sector companies holding one or more licences for service provision.

<sup>2</sup> Including state-owned corporations or institutions holding one or more licences for service provision.

<sup>3</sup> A service with national coverage is defined as a service by a group of television or radio stations distributing a majority of the same programming, that are licensed on a national or regional basis but collectively provide nation-wide coverage. Affiliating companies of the nation-wide broadcast network are included in this category. If new operators have been licensed to provide national coverage in the last three years but are at the stage of rolling out networks please include these operators in the total.

<sup>4</sup> A service with local coverage is defined as a service by a group of television or radio stations that are licensed on a national or regional basis but distribute the programming in the local area only. If new operators have been licensed to provide local coverage in the last three years but are at the stage of rolling out networks please include these operators in the total.

<sup>5</sup> Please indicate if more than one organisation is permitted to own and operate cable television infrastructure in the same area.

**2. Please provide details for the major public / private terrestrial TV broadcasting companies in your country. They include state and privately owned organisations providing broadcasting services with national coverage.**

Name of public / private terrestrial TV broadcasting companies	Ownership Status (1998) (e.g. state-run / state owned / privately owned)	Do they own transmissions infrastructures? If not, please indicate the name of company which provide transmission infrastructures.
RTP	State owned	Portugal Telecom, SA
SIC	Privately owned	Portugal Telecom, SA
TVI	Privately owned	Yes. TVI owns RETI - Rede de Emissoras da Televisão Independente

**3. What was the price of cable television service for a subscriber in the largest city of your country on 1st January 1998? Basic service corresponds to the least expensive option to a customer and premium service the most expensive option. (Local currency, current prices)**

Cable Television services	Basic service <sup>1</sup>			Premium service <sup>2</sup>	
	Connection	Monthly subscription fees	Number of cable channels included in the basic option (excluding free services)	Monthly subscription fees	Number of cable channels included in the premium option (excluding free services)
(Please indicate the name of operator)	TV CABO <sup>3</sup> LISBOA	3.150 PTE	44	2.000 PTE	3
(National average, if available)					

1. On 1 January 1998, the monthly subscription fee was 3 000 PTE.

2. Premium service was introduced on 1 June 1998. at present there are 3 channels: 2 cinema channels and 1 sports channel.

3. This company is one of the 9 operators PTO TV Cabo Portugal, which has 97% of the CATV market. National average data are not so different as those indicated above.

**Broadcasting Regulatory Framework (Questions 4 - 9)**

**4. Which organisation(s) administer the following services (carriage and content) in your country and what are their main responsibilities? Please mention agencies dealing with spectrum allocation and management, and providing licences.**

Please provide details:

**a. Terrestrial broadcasting service**

**b. Cable Television service**

*Spectrum allocation and management*

ICP - Instituto das Comunicações de Portugal

*Providing licences*

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Secretário de Estado da Comunicação Social

**c. Direct broadcast satellite (DBS) service**

*Spectrum allocation and management, and providing licenses*

ICP - Instituto das Comunicações de Portugal

Main responsibilities:

**ICP - Instituto das Comunicações de Portugal**

- Granting of licences and authorisation to communication operators and general supervision of their activities;
- Approval and standardisation of material, telecommunications terminals and radiocommunication equipment;
- Management, control and supervision of the radioelectric spectrum.

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- Granting licences to the broadcasting (radio and TV) operators (*Since the new Broadcasting Act of June 1998*)
- Ensure the right of access to information and the freedom of the press ;
- Ensure the independence and pluralism of the media (press and broadcasting)
- Guarantee the rights to broadcasting time, to reply and counter-reply.

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- Member of government responsible for the mass media that propose and ensure the accomplishment of policies, measures and legislation in the media field.

5. **Please provide a description of significant recent policy changes affecting the provision of broadcasting services, as well as any draft laws, or regulatory proposals to be implemented in 1998.**

Please provide details:

A new Broadcasting Act was approved by Parliament in 1998 (Law no. 31-A/98, of July 14th 1998).

6. **How is broadcasting defined in your country's regulatory framework? In addition, please specify public service obligations stipulated in broadcasting regulations.**

Definition of broadcasting:

**Television broadcasting** shall be considered to be the transmission, encoded or not, of non-permanent images and sounds by means of electromagnetic waves or any other appropriate vehicle, whether through the air or through cables, that is intended to be received by the public, except for telecommunications services that operate on individual request.

**Radio broadcasting** shall be defined as the unilateral transmission of sound communications, by means of radio electric waves or any other suitable medium, intended to be received by the general public

Public service obligations:

**Television Public Service obligations:**

- To maintain quality standards in diversified, cultural, educational, documentary, informative and entertaining programming, without any kind of social, political, religious, ethnic or sexual exclusion;
- To promote Cinema, Theatre, Music, Dance, Literature and Portuguese Painting;
- To establish a programming balance which reflects the habits, traditions and interests of the country's various regions;
- To guarantee the production and the broadcasting of educational and entertainment programs for children and young people transmitted at an appropriate hour;
- To give priority to national productions and co-productions with other countries, in particular with those belonging to the European Union and the Community of Portuguese Speaking Countries;
- To guarantee a balance between its own production and independent production;
- To offer objective, accurate, independent, informative, impartial information, rejecting sensationalist tabloid-style news;
- To be guided by broadcasting ethics which clearly reject gratuitous violence and the exploitation of sex, or whatever is considered in any way a violation of human dignity;
- To contribute to definition of the national identity and cultural values through its international broadcasts, to spread awareness of the Portuguese language, and to strengthen co-operation with peoples of the Portuguese-speaking community;
- To limit advertising to no more than 7'30'' (seven minutes and thirty seconds) in each hour of RTP-1 programming (1st Channel);
- To exclude any kind of commercial advertising from RTP-2 (2nd. Channel).
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**Radio Public Service obligations:**

- Ensure the independence, pluralism, quality and objectivity of its information and programming, in such a way as to safeguard its independence from the Government, Civil Service and other public powers;
- Contribute, by means of balanced programming, towards the information, recreation and educational and cultural enhancement of the general public, catering for its diversity, in terms of age, occupation, interests, area and origin;
- Promote the defence and diffusion of the Portuguese language and culture, with a view to reinforce the national identity and solidarity between Portuguese people, both inside and outside of the country;
- Promote the creation of educational or training programmes, especially those aimed at children, young people, adults and the aged, with different levels of skills, groups of professionals and cultural minorities.

**7. Are there must-carry rules? For example, are cable television or satellite operators required by regulation to provide capacity for certain services? If yes, please elaborate on the reasons.**

Please provide details:

Cable operators are obliged to distribute all channels of the public service broadcasting. In case cable operators may be entitled to distribute any radio station they shall also distribute the stations of the public service radio network. (*Vide article 12.º of Decree Law No. 241/97 of 18 September, which modified Decree Law No. 292/91 of 13 August on the regulation of cable operators activity*)

Cable operators shall have the capacity to transmit simultaneously several television programmes, and shall also guarantee the quality and prosecution of the service (*Respectively Articles 3.º/1 and 16.º/2 h), Decree Law No. 241/97*).

Cable operators shall ensure the transmission of an information programme on the services made available by them to the public, which may include data of public interest (*Article 16.º/2 i) Decree Law No. 241/97*).

Furthermore, cable operators shall keep up to three channels of their network for the distribution of free to air regional or local television channels, and the distribution of video or radio signals from non-profit entities for research, educational and cultural purposes (*Article 16.º/2 j) Decree Law No. 241/97*).

**8. Are there any local content requirements for broadcasters and cable television operators in your country in terms of the level of domestically produced content which must be broadcast, the amount of turn-over which must be allocated to domestic production or other criteria? NO**

	If Yes, please provide local content specification and where applies.
Terrestrial Television service	<p>The new Broadcasting Act approved by Parliament (Law no. 31-A/98, of July 14th 1998) states that television operators of national channels shall reserve at least 50% of their transmission time, excluding the time appointed to advertising, teleshopping and teletext services, for programmes originally spoken in Portuguese. Television operators shall also reserve at least 15% of their transmission time for programmes originally spoken in Portuguese and having a cultural objective (<i>Respectively articles 35.º/2 and 3 of new Broadcasting Act</i>).</p> <p>As foreseen in the Council Directive No. 89/552/EEC of 3 October 1989, as amended by Directive No. 97/36/EC of the European Parliament and of the Council of 19 June 1997, television operators shall ensure, when practicable, that a majority proportion of works qualified as Community or of European origin are broadcast in their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion should be achieved progressively.</p> <p>Those television operators who exploit national channels shall reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teleshopping and teletext services, for European works of independent producers produced within the last five years.</p> <p>According to the provisions of new Broadcasting Act, the Portuguese State shall examine the appropriate legal, financial, tax or credit arrangements in order to allow broadcasters to accomplish the rules on the promotion of television productions (<i>Article 39.º new Broadcasting Act</i>). The fulfilment of the obligation to broadcast at least 15% of the transmission time for programmes having a cultural objective and originally spoken in Portuguese, will be required only after three years from the implementation of the above mentioned arrangements (<i>Article 38.º/2 new draft Broadcasting Act</i>).</p>
Cable Television service	
DBS service	

**9. Are there any limitations on share ratio, number of stations, or other ownership restrictions on entities investing in service providers of terrestrial broadcasting, cable television and satellite broadcasting in your country? Please refer to each service individually, if they have separate restrictions.**

If yes, please provide details:

The new Broadcasting Act, *Law no. 31-A/98, of July 14th*, does not impose directly any maximum limit percentage on the capital ownership of television operators as the former Act has done, but clearly states that Competition Law - Decree Law No. 371/93 of 29 October - is applicable to television operators, such as the rules on inadmissible practices, in particular the rules on the abuse of a dominant position, and rules on the concentration of undertakings.

The practices of horizontal concentration of television operators subject to a previous notification by the "Competition Council" (*Body responsible for the judgement of inadmissible practices according to the Competition Law*) - such as the making or strengthening of a market share superior to 30% of the television national market, or when the concentration implies a global annual turnover superior to 30 thousand million PTE -, shall be reported to the High Authority for the Mass Media ("Alta Autoridade para a Comunicação Social") which can only make a negative judgement, which is binding, only in cases where freedom of expression and the ability to provide different opinions are at stake.

**Cross-ownership and cross sector provision (Questions 10 - 14)**

**10. Are there any restrictions on terrestrial broadcasting companies from directly providing the cable television infrastructures and services in your country? On the other hand, are there any restrictions on cable television operators from directly providing the terrestrial broadcasting companies in your country?**

If yes, please provide details:

- a. Restrictions on terrestrial broadcasting companies providing the cable television infrastructures
- b. Restrictions on terrestrial broadcasting companies providing the cable television services
- c. Restrictions on cable television operators providing the terrestrial broadcasting

Terrestrial broadcasting companies are able to provide the cable television infrastructures and services, conditional to obtaining an authorisation given by ICP (*Institute for Communications in Portugal*), according to the terms and requirements of Decree Law No. 241/97 of 18 September.

In case cable television operators aim to provide terrestrial broadcasting they shall comply with the requirements foreseen in the new Broadcasting Act approved by Parliament in 1998 (Law no. 31-A/98, of July 14th 1998).

**11. Please specify any restrictions on cable television operators and terrestrial broadcasting companies investing (including merging and acquiring shares) in companies that provide other infrastructures or services. NONE**

Please provide details:

- a. Restrictions on cable television operators investing in telecommunications operators
- b. Restrictions on cable television operators investing in terrestrial broadcasting companies
- c. Restrictions on terrestrial broadcasting companies investing in telecommunications operators
- d. Restrictions on terrestrial broadcasting companies investing in cable television operators

There are no specific restrictions further to the rules foreseen in the Competition Law - *Decree Law No. 371/93 of 29 October-*.

**12. Are there any restrictions or limitations on foreign investment regarding services of terrestrial broadcasting , cable television and satellite broadcasting in your country? Please refer to each service individually, if they have separate restrictions.**

**NO**

If yes, please provide details:

The new draft Broadcasting Act approved by Parliament (Law no. 31-A/98, of July 14th 1998) does not state any restriction or limitation on foreign investment.

**13. Are there any regulations restricting cross media ownership (e.g. broadcast television, radio, newspapers) for infrastructure and services in the same geographical market. NO**

If yes please provide details:

In what regards *multimedia* cross ownership there are no restrictions.

Concerning *monomedia*, cross ownership shall be subject to the restrictions pointed out in the answer to question No. 9, in particular the previous and binding judgement by the High Authority for the Mass Media on the practices of horizontal concentration of television operators subject to a notification process to the "Competition Council". The High Authority for the Mass Media's judgement can be negative only in case when freedom of expression and the ability to provide different opinions are at stake.

- 14. What kind of methods are adopted by regulatory authorities in order to measure market shares in broadcasting market? If the measure used is “audience rates”, please describe the methodology used.**

Description of market share measurement

There is no specific regulation on the method to measure market shares in broadcasting sector. The main method used is the measure of “audience rates”.

Please provide methodology for measuring audience rates.

**Convergence (Questions 15 - 18)**

- 15. Under the communication regulation existing in your country how would services provided over the Internet, which some have likened to broadcasting services (e.g. audio and video services transmitted over the Internet) be defined and treated?**

Please provide details:

The new Broadcasting Act, approved by Parliament (Law no. 31-A/98, of July 14th 1998), is not applicable to communications services operating on individual demand.

This exclusion covers services transmitted point to point such as video-on-demand.

Therefore, all services point-to-multipoint intended for reception by the public and independently of the technical means of transmission employed (terrestrial transmitter, cable, satellite, etc.) are covered by the present regulation.

- 16. Would a video on demand service be treated differently in terms of regulations, by the transmission methods (for example, PSTN, cable or satellite)?**

Please provide details:

Decree Law No. 241/97 of 18 September on the regulation of cable operators activity foresees the admissibility of video on demand services distributed through cable. In areas concerning other means of transmission of communication services there is no specific regulation.

- 17. Under the communication regulation existing in your country how would conditional access services, such as in digital DBS services, be treated?**

Please provide details:

- 18. Please detail plans for digital broadcasting and cable television services.**

	Number of Licences to be granted	Expected Number of New Channel Capacity	Expected Date of Service Commencement
Terrestrial TV service			
Terrestrial Radio service			
Direct Broadcast Satellite service			
Cable Television service			
Additional information and comments			