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TELECOMMUNICATIONS: Regulatory Issues

Country: Portugal

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The attached questionnaire was undertaken in preparation for the biennial OECD *Communications Outlook*. The responses provided by countries on telecommunication regulation were used to provide information supporting the analytical sections published in association with data. A similar questionnaire with responses on broadcasting 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>

TELECOMMUNICATIONS

Market Structure and Regulatory Status (Questions 1-13)

1. Please provide details of the regulation of communication infrastructure, including the public switched telecommunication network (PSTN), provision in your country.

Infrastructure provision for following service	Regulatory Status (e.g. monopoly, duopoly, limited number, fully open to any applicant)	Number of licensed operators (1998)
Local PSTN	Monopoly	1
National PSTN	Monopoly	1
International PSTN	Monopoly	1
Analogue Cellular Mobile (e.g. NMT etc.)	Monopoly	1
Digital Cellular Mobile (e.g. GSM etc.)	Competition	3
Other Mobile Communication (e.g. PCS, PCN, CT-2 etc.)	-	-
Payphones	Open to any applicant	1

2. Please provide details for the major public telecommunication operator (PTO) of public switched telecommunication services in your country. (PTOs are state and privately owned entities providing public switched telecommunication services over their own infrastructure)

Name of PTO	PTO Ownership Status (1998) (e.g. state owned/privately owned) If a balance of ownership exists please indicate the share (%) held by the government
Portugal Telecom S.A.	25% held by the Government

3. Please provide details of market share for the largest PTO in the following categories.

	The largest PTO's share (End 1997)
Local Access (% of access lines)	100%
National Long Distance (% of total minutes)	100%
International (% of total outgoing MiTT)	100%

4. Please provide details of the number of subscribers by cellular and PCN mobile communication operators.

Name of Operator	Number of Subscribers (End 1997)
TMN – Telecomunicações Móveis Nacionais, SA	761 706 ¹
Telecel, Comunicações Pessoais, S.A.	745 252 ²

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

During 1997 the provision of telecommunication services was significantly changed by the publication of the Telecommunications Basic Law (Law nº 91/97) which defines the General Basis that regulates the Establishment, Management and Exploitation of Telecommunications Networks and the Provision of Telecommunications Services. In 1997 the Decree-Law, no 381-A/97, was also published which established the access regime to public telecommunications network operators and to public telecommunication service providers.

According to the new Law the general principles of telecommunications are full accessibility and competition. Concerning full accessibility, the principle of free establishment of public telecommunications networks and provision of the public telecommunications services is generically established, to be carried out according to the applicable legislation.

The establishment, management, commercialisation and use of public telecommunications networks may only be conditional on radio spectrum limitations, numbering availability or for security and public order reasons.

The basic telecommunications network and universal service operators should comply with the open network provision, serving as a support to the transmission of services in general, and its use should be guaranteed to all telecommunications operators under fair competition conditions.

All have the right to use public telecommunication services, through the payment of the corresponding prices and tariffs, as long as they comply with the applicable legal and regulatory provisions.

The setting of prices by the PTO in competitive market segments is deregulated subject to competition rules. However the price regime for the universal telecommunications services is subject to specific legislation.

Any and all acts that distort the competitive conditions or that could translate into abuse of dominant position are prohibited for telecommunication network operators and telecommunication service providers.

There are some exceptions to these principles:

- Until January 1, 1999, it is forbidden for any entity to install and provide transmission means for direct international interconnection between mobile telecommunication service operators and mobile and fixed services and networks. The public service telecommunication operator, through the fixed telephone service ensures this interconnection.
- Until January 1, 2000, the provision of the fixed telephone service in the national territory shall be provided exclusively by the public telecommunications service operator (Portugal Telecom, SA), pursuant to the Telecommunications Act and to its Concession Contract.

¹ Published in TMN annual report.

² Published in Telecel annual report.

- The commercial provision, whether direct or indirect, of a fixed telephone service by non-authorised entities, namely when involving the establishment of international calls by use of return call systems (known as call-back) is a violation of public service telecommunication operator's monopoly.

Access to telecommunications activity is subject to mere registration, or to registration and licence, according to Decree-Law no. 381-A/97, from December 30.

The registration and licensing procedure are the responsibility of ICP. In those cases where scarce frequencies need to be used, within the scope of tenders, it is the responsibility of Government to grant the license.

For registration purposes, formal request should be presented with the certificate from the relevant commercial registration office.

This Decree-Law entails further regulation, namely those related to the provision of certain services and network operators, as well as public payphones.

In 1997 the Regulation of Public Telephone Service has also been reviewed (Decree-Law nº 240/97). This new regulation brings important modifications which are expected to benefit customers. Some of those measures relate to the possibility of selective call barring to audiotext services, free itemised billing and 'soft disconnection'.

The publication of the interconnection law is foreseen which transposes the European Union Interconnection Directive into the national legislation. Universal service provisions also being studied including their scope, costs and the way or ways to compensate its provision.

6. Please provide a brief description of the responsibilities of the national regulatory authorities for public telecommunication services.

The national regulatory authority, ICP (Instituto das Comunicações de Portugal) is responsible for:

- Advising the Government on communication issues;
- Supervision, monitoring and enforcement of all regulations concerning telecommunications;
- Radio spectrum management;
- Approval and homologation of telecommunications materials and equipment;
- International representation on telecommunications *fora*;
- Propose any legal measures on telecommunications to be approved by Government or Parliament, namely:
 - Definition of the framework concerning the pricing of universal services
 - Definition of the interconnection framework concerning dominant operators;
 - Licensing and registration of telecommunications networks operators and service providers.

7. Are there any foreign ownership, size of shareholding or other ownership restrictions on individuals and corporations investing in the incumbent PTO(s) in your country?

No.

- 8. Are there any communication infrastructures or services (e.g. cable television, terrestrial broadcasting, satellite broadcasting) PTOs in your country are not permitted to directly provide? In addition, please specify any restrictions on PTOs investing in companies that such infrastructure or services.**

No. The only restriction relates to the obligation for some services be subjected to a licensing or registration procedure.

- 9. Is the incumbent PTO(s) in your country allowed to provide mobile communication services?**

If 'yes', is there a requirement for accounting separation between the PTO's mobile and fixed operations?

Yes.

If the incumbent chooses to provide these services directly there is a requirement for accounting separation. A cost accounting system must also be implemented. This requirement also applies to companies with exclusive rights in other economic sectors and to dominant operators.

- 10. What selection procedures are used to determine licenses for new PTOs (e.g. calls for tenders, government appointments, license on request)?**

Until 1 January 2000 the incumbent PTO has a monopoly for PSTN services.

As for the other services, according to the present legal regime, there is an obligation for companies to be registered with ICP. That registration allows them, after informing the regulator, to operate some services. On the other hand the services that use scarce frequencies (these are annually published by ICP) need a license which is usually obtained in a public call for tender. There are also licenses for the public network operators.

11. Please specify any restrictions or obligations imposed on new competitive network suppliers?

The establishment or the provision of public telecommunications networks and the granting of frequencies for the establishment of networks is subject to registration and licence.

New operators may not provide PSTN networks until 1 January 2000. Until then licenses for operation of public telecommunications networks may only be granted to the following entities:

- a) Operators of mobile public telecommunications services and satellite network service operators;
- b) Cable distribution networks operators;
- c) Radio and television operators;
- d) Franchised entities for public services having private telecommunications networks.

The entities wishing to obtain a license should submit to the ICP the information and documents defined by the legislation that show the fulfillment of some formal, technical and economic requirements.

For entities that establish and provide public telecommunication networks there are general obligations, which are the same as the obligations of other operators. They relate to the obligation to observe the conditions and limitations inherent in the registration or established in the license; to abide by the legal provisions applicable to telecommunications; to abide by the applicable exploitation regulations; to use equipment duly approved by the relevant entity; to allow to ICP the verification of the equipment, to provide the necessary information for the monitoring and control of the duties and conditions deriving from the registration or the license, as well as to provide information for statistical processing purposes; to allow access to the respective facilities for monitoring purposes; to make the necessary corrections, when required, bearing in mind the normal functioning of the facilities and the appropriate pursuit of business; to ensure, under equity terms, access to the services provided through the payment of the applicable prices.

As for specific obligations, the entities that establish and provide public telecommunications networks are obliged to install systems appropriate to the legal interception of communications, at their own expense, and to provide them to the legally responsible authorities. Those entities are also obliged to provide the unencryption or deciphering means, in case those facilities are provided.

The entities that provide public telecommunications should have an analytical accounting system and to have a separate accounting for the telecommunications business or alternatively, to create legally distinct entities for the corresponding businesses, whenever:

1. They pursue a business under exclusivity in other sectors different from the telecommunications; or
2. They are participated in by the public telecommunications service operator; or
3. They hold a significant position in the markets concerned.

12. Are there any restrictions on the use of leased lines nationally or internationally (including resale)?

These activities are liberalised and subject to licensing and registration procedures. International interconnection between mobile and foreign operators must be provided by Portugal Telecom until January 1st 1999.

13. Under the communication regulation existing in your country how would national and international voice telephony services provided over the Internet, by entities other than a PTO, be defined and treated? Please mention any restrictions or obligations that may apply.

Voice telephony services over the Internet provided by entities other than Portugal Telecom are forbidden. Voice telephony services must be provided exclusively by Portugal Telecom until 1 January 2000.

Pricing (Questions 14 -15)

14. What, if any, conditions are applied to the tariffs set by PTOs? (Please include any price control information such as price caps and specify for which service they apply).

Generally telecommunication service prices are deregulated. Nevertheless prices must be properly publicised and prices of services provided on a universal service basis are regulated. The prices of most services falling under Portugal Telecom's concession (PSTN, leased lines, interconnection charges, telex, telegraph, broadcasting) are subject to the principles of cost orientation, non-discrimination and transparency. These prices are subject to price agreements established between ICP, Portugal Telecom and the General-Directorate for Trade and Competition (DGCC). There are price caps for PSTN prices and leased line services. PSTN price caps for the period 1998-2000 are:

- IPC-4% a year for all services.
- IPC-2% a year for domestic services (connection, rental, local, regional and national calls).

Leased lines price-caps are:

- RPI-18% in 1998;
- RPI-25% in 1998 and 1999;
- RPI-29% in 1998, 1999 and 2000.

15. If communication discount schemes are available in your country please provide information on one or more popular schemes applicable to residential users, dial-up Internet access users and a low user scheme from the incumbent PTO. In the space below please indicate the main features:

All prices exclude 17% VAT in continental Portugal and 12% VAT for Madeira and Azores.

Residential User Discount Scheme

- 1) “Família e Amigos” Plan: 15% discount on trunk calls prices and 5% discount on international call prices for 5 pre-selected numbers. The subscription charge is PTE1.282,10 and the monthly rate is PTE256,40.
- 2) “Local+” Plan: PTE5,00 discount per call on calls to 3 pre-selected local numbers. Monthly rental is PTE100,00. There is no subscription charge.

Internet Access Discount Scheme

- 1) “Net +” Plan: PTE8,50 discount per call and off-peak period starts at 18.00H. 10% discount if call volume exceeds 270 pulses per month. No monthly rental and no subscription charge.
- 2) “Netline”: Telephone line for exclusive access to the Internet. Monthly rental: PTE2.777,00 with 270 pulses included. 10% discount on the price of calls for volumes exceeding 270 pulses. There is no subscription charge.

Low User Scheme

- 1) “Pacote Económico”: Automatic discounts for subscribers whose call volumes are smaller than 213 pulses. There is no subscription charge and no monthly rental.
- 2) “Pensionistas e Reformados” Plan: 62.5% discount on the monthly rental charge and 35 free pulses. There is no subscription charge.
- 3) Discounts for people benefiting from income support: 30% discount on monthly rental and connection charge.

Note: Residential user refers to an average consumer’s home telephone service. A dial-up Internet user refers to a consumer accessing the Internet via a PC with a modem over the local public switched telecommunication network. Low user schemes is a term sometimes applied by PTOs to schemes designed for segments of the community that are financially disadvantaged.

Numbering/Domain Names (Questions 16 - 17)

16. Please describe the numbering policy in your country. Please mention the responsible authority and whether portability has been introduced and for which services (e.g. 800 numbers, cellular numbers, local PSTN numbers).

ICP (Instituto das Comunicações de Portugal) is the entity responsible for the granting and management of the Portuguese numbering plan.

Numbering policy in Portugal is based on the principle of equal access to numbering. Presently the restructuring of the National Numbering Plan is being discussed but this discussion does not imply a change of the referred principle.

Number portability has not yet been introduced, however there is a European Union agreement that requires countries to introduce portability not later than year 2002.

17. Have there been any recent government policy initiatives in your country in respect to the administration of Internet top level domain names. (An example of a top level domain name is .be for Belgium).

In Portugal FCCN – Fundação para a Computação Científica Nacional has the responsibility for the management of Internet top-level domain names.

During 1997 a Resolution (Resolution of Council of Ministers n°69/97) was published that mandated the Ministry of Science and Technology to prepare legal measures in order to regulate the registration and the management of Internet domain names in Portugal, after consulting ICP – Instituto das Comunicações de Portugal and MSI – Missão para a Sociedade da Informação, and bearing in mind international guidelines concerning this subject.

While the above mentioned legal measures are not approved, Ministry of Science and Technology also has responsibility for trying to resolve any problems that could arise between FCCN and the beneficiaries of domain names in Portugal.

Interconnection (Questions 18 - 21)

18. Are PSTN interconnect or access charges a matter for commercial agreement between operators and if so is there provision for arbitration and by whom? Is there a requirement to publish the rate for PSTN interconnect or access charges? If 'yes' please provide a schedule of interconnection charges for the PSTN.

Interconnection charges result from commercial agreements between operators, and must comply with the cost orientation, non-discrimination and transparency principles.

If, after three months of negotiations, an agreement has not been reached, the regulator, ICP, intervenes and sets the interconnection rates. Interconnection charges must be made available to ICP, DGCC and to anyone else who requires them.

The Portuguese situation is rather peculiar in the sense that the Land Mobile Service Operators have the right to determine the pricing of the fixed to mobile calls (and to keep the respective revenues), paying the PSTN operator interconnection charges.

19. For the purpose of establishing interconnect or access charges is accounting separation used?

Interconnection charges must be cost-oriented. In determining interconnection charges, information from the cost accounting system is taken in consideration.

20. Once the interconnection or access charge has been established is it available as a standard rate for other service providers (including other PTOs and resellers)?

The Price Convention agreed between ICP, DGCC and Portugal Telecom (the incumbent operator) states that the prices applicable to interconnection are negotiated between Portugal Telecom and the other operators or service providers. Presently, standard rates have been defined in a common agreement and are applicable to each type of operator.

21. Does regulation specify that competitive service providers can co-locate facilities on the same site as incumbent PTOs? Please indicate whether resellers and Internet Service Providers can co-locate equipment under the same terms and conditions as PTOs without being designated as a PTO?

The Concession Contract³ imposes upon Portugal Telecom the obligation to guarantee the provision of the fixed telephone service, the fixed telex service and one fixed switched data transmission service, ensuring its “interconnection and interworking technically feasible, with public telecommunication services provided by other operators, when requested by them and whenever the technical access specifications are met”.

The Basic Law⁴ admits expropriations when required, *inter alia*, for the installation, protection and maintenance of the infrastructures of the public telecommunications networks. It establishes that the “basic telecommunications network should work as an open network, serving as a support to the transmission of the services in general, and all telecommunication operators under fair competition conditions should ensure its use”. Interconnection through the networks of operators holding significant positions in the market is also required.

Concerning co-location, the Basic Law exempts the basic telecommunications network operators from “paying fees or any other charges, for the construction of the infrastructures or for the passage of different installation or equipment parts that are necessary for the exploitation of the object of the respective network’s lease”.

The regulation of the access regime to public telecommunication networks and to public telecommunication services provider foresees that:

“1. The entities licensed for the establishment and provision of public telecommunications networks are ensured: a) The right to request, under the terms of the general law, the expropriation and constitution of administrative rights of way indispensable for the installation, protection and maintenance of the respective infrastructures; b) The right of access to the public domain under equity conditions, for the installation and maintenance of the respective infrastructures.

2. Whenever it is not allowed, in a concrete situation, the installation of new infrastructures, for reasons dealing with the protection of the environment, the arrangement of the territory and the defence of the urban and rural landscape, access to the conduits, poles and existing other facilities shall be ensured under the terms and payment conditions to be agreed between the parties.

3. In the event that the entities involved do not reach an agreement, they can forward the matter to ICP, which shall decide, namely whenever payment conditions are at issue, based on cost-oriented criteria.

4. Licences to be granted under the terms of this diploma, namely concerning the establishment of public telecommunications networks, do not constitute exemption from the remaining licensing acts foreseen in the law, namely those that are the responsibility of the municipal bodies”.

³ Concession basis of the public telecommunications services.

⁴ Telecommunications Basic Law – Law nr. 91/97 of 01/08 which defines the general basis that regulate the establishment, management and exploitation of telecommunications networks and the provision of telecommunications services.

Information for Updating OECD Tariff Comparison Baskets (Question 22)

22. Please provide the following information for your largest PTO.

What is the average duration of a local call (i.e. average time of a call in the lowest tariff band for PSTN)?	Not available for publication.	
What is the proportion of calls that fall within your lowest tariff band (i.e. local calls) as a percentage of total national calls?	Business (%) Not available for publication.	Residential (%) Not available for publication.
What percentage of calls from the fixed network (PSTN) terminate in mobile networks (e.g. analogue and digital cellular networks)?	Business (%) Not available.	Residential (%) Not available.
What percentage of total leased lines (i.e. leased circuits) are local (i.e. 2 km or less)?	Not available.	

Universal Service/Consumer Issues (Questions 23 -25)

23. In the context of universal service policies which elements of telecommunication service are considered as part of universal service in your country?

In Portugal the concept of universal service is defined in the Telecommunications Basic Law “as the set of specific duties inherent to the provision of certain public telecommunication services, aimed at meeting the communication needs of the population and economic and social activities in Portugal, in an equitable and continuous manner and through appropriate remuneration conditions, bearing in mind the demands of a harmonious and balanced economic and social development”.

The Price Convention establishes a series of facilities targeted at the accomplishment of certain social obligations for citizens with less economic resources. For example, there is a minimum reduction of 60% on the monthly rental of the fixed telephone service and a minimum offer of 25 monthly pulses to retired persons and pensioners. Operators must also make available to populations with special needs a handset with amplifier and light warning display, and line with fixed destination.

The Regulation of Exploitation of the Fixed Telephone Service⁵ adds that specific prices may be established in situations involving the provision of services with social utility, e.g. services destined to low users and to specific social groups (including citizens with special needs) and to specific projects with limited time length.

The same Regulation defines the rights of subscribers and users of the fixed telephone service, some of which may be considered elements of universal service. Hence, the subscribers to the fixed telephone service have the right to access the fixed telephone service, independently of the geographic location under conditions of transparency, equality and non discrimination, according to specified levels of quality of service; to dispose of free detailed billing and to access value added services supported in the fixed telephone service.

The rights of the users include the free access, through the national emergency number and through public telephone boxes, to the various emergency systems; the access to facilities of service offered by the operator; the access to informative services and the access to the fixed telephone service through public telephone boxes.

The Regulation of the Fixed Telephone Service imposes upon the operator the obligation to install and operate public telephone boxes, appropriately identified and maintained in a condition of good working order, on public highways and public places, such as train stations, ports and airports, following a criteria of geographic coverage, population density and public utility, in order to satisfy the collective needs of the population.

⁵ Decree-Law nr. 240/97 of 18/09.

24. Please provide details of any explicit funding mechanism for universal service and its coverage.

Article 25 of the Concession Contract foresees that any financial losses arising from the fulfilment of obligations concerning the universal service provision will be compensated, “without prejudice to the adoption of safeguard means which could be established within the community policy scope applicable to the universal service, in case of approval, alternate or cumulatively, in the following ways”:

- a) Through tariff systems actually in force;
- b) Through community funds arising from safeguard means which could be established within the community policy scope applicable to the universal service, made available or to be available from grantor in accordance with the respective programs;
- c) Through the deduction of the respective amount of the rent to be paid by concessionaire to State;
- d) Through a compensation fund foreseen under certain terms of Article⁶.

25. With what institutions other than telecommunication service providers can customers lodge complaints regarding these operators? (e.g. regulators, ombudsman, Ministry, etc.) Is there a requirement for annual reporting of the number of consumer complaints? If so how are complaints measured and reported.

Consumers can lodge complaints against operators with regulators, the ombudsman, the ministry and the courts.

Complaints regarding billing are one of the “quality of service” indicators, of Portugal Telecom, monitored every quarter by ICP. The information is provided by the operator. ICP may conduct its own studies or audit the results.

⁶ The negative exploitation margins eventually emerging from the universal service provision, when approved, might be compensated through a compensation fund of universal service provision, for which the concessionaire and other telecommunications operators will participate, under the terms which will be set up by special legislation which will regulate the object of the services under the concession.