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Autoridade Nacional de  
Comunicações (ANACOM)  
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Portugal

For the attention of  
Ms Fatima Barros  
Chairperson

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Dear Ms Barros,

**Subject: Commission Decision concerning Case PT/2015/1817: Wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal**

**Opening of Phase II investigation pursuant to Article 7 and pursuant to Article 7a of Directive 2002/21/EC as amended by Directive 2009/140/EC**

## **1. PROCEDURE**

On 18 November 2015, the Commission registered a notification from the Portuguese national regulatory authority, Autoridade Nacional de Comunicações (ANACOM)<sup>1</sup>, concerning the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal<sup>2</sup>.

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<sup>1</sup> Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33, as amended by Directive 2009/140/EC, OJ L 337, 18.12.2009, p. 37, and Regulation (EC) No 544/2009, OJ L 167, 29.6.2009, p. 12.

<sup>2</sup> The relevant market corresponds with Market 18 of the Commission's Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services ('the 2003 Recommendation on Relevant Markets'); C(2003) 497, 2003/311/EC, OJ L114 of 8.5.2003, p.45.

The national consultation<sup>3</sup> ran between 27 July 2015 and 21 September 2015.

On 26 November 2015, a request for information<sup>4</sup> was sent to ANACOM and a response was received on 1 December 2015.

## **2. DESCRIPTION OF THE DRAFT MEASURE**

### **2.1. Background**

In 2007 ANACOM notified to the Commission its first round market review of the wholesale broadcasting market for the delivery of content to end-users in Portugal<sup>5</sup>. At the time and on the basis of demand- and supply-substitutability considerations, ANACOM decided to split the relevant market into the following four different wholesale product markets, all of which were national in scope: (1) analogue terrestrial AM radio broadcasting; (2) analogue terrestrial FM radio broadcasting; (3) cable television broadcasting; and (4) analogue terrestrial television broadcasting.

In the following, ANACOM identified only analogue terrestrial television broadcasting as a market susceptible to *ex ante* regulation, and excluded the other markets from further market analysis on the basis of the three criteria test. Also on the basis of very high market shares ANACOM designated PT Group companies operating within the boundaries of the defined relevant market (PTC at the time, which is now called MEO) as having SMP in the wholesale market for analogue terrestrial television broadcasting and imposed a full set of regulatory obligations on PTC/MEO. At the time the Commission criticised that ANACOM did not take sufficiently into account the effect of alternative broadcasting platforms on terrestrial broadcasting.

Following the first revision of the Recommendation on Relevant Markets, the Commission decided at the end of 2007 to remove the wholesale market for broadcasting transmission services, to deliver broadcast content to end users from the list of relevant markets susceptible to *ex ante* regulation<sup>6</sup>.

In 2008 MEO won a public tender to provide digital terrestrial television (DTT) broadcasting services through the operation of a multiplex (Mux-A). Following the successful tender, MEO entered into commercial agreements with several broadcasters.

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<sup>3</sup> In accordance with Article 6 of the Framework Directive.

<sup>4</sup> In accordance with Article 5(2) of the Framework Directive.

<sup>5</sup> See case PT/2007/0655.

<sup>6</sup> See Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services ('the 2007 Recommendation on Relevant Markets'); C(2007) 5406, 2007/879/EC, OJ L344 of 28.12.2007, p.65.

On 26 April 2012, the analogue terrestrial transmission signal was switched off across the entire territory of Portugal and was replaced by digital terrestrial transmission capacity (supplemented by services via satellite).

## **2.2. Market definition**

Given the 2012 switch-off of analogue terrestrial transmission signals, ANACOM's analysis focussed on the provision of digital terrestrial transmission (DTT) capabilities. Starting from an assessment of the retail market, ANACOM proposes to define as the relevant wholesale product market the market of terrestrial digital broadcasts of free-to-air television channels, including the supplementary service of DTH (satellite) cover for remote areas without digital terrestrial coverage. Despite the strong presence and widespread popularity of alternative platforms delivering (pay-TV) broadcasting content (e.g. via optical fibre, coaxial cable or (other) broadband solutions), ANACOM is of the view that such pay-TV offers do not fall in the same product market as DTT solutions as customers, at the retail level, tend to view them as distinct services with complementary rather than substitutable character. In addition, in ANACOM's view (without, however, undertaking a SSNIP test) switching at the wholesale level in response to a SSNIP is unlikely to be of note since many DTT wholesale customers, which are obliged under Portuguese national law to deliver audiovisual content via the DTT platform and are, thus, not in a position to abandon the DTT platform, which remains the only broadcasting delivery option in some (more rural) areas of Portugal.

## **2.3. Finding of significant market power**

ANACOM considers that the relevant market is susceptible to ex ante regulation<sup>7</sup>, and proposes to designate the incumbent operator, MEO, with SMP – based predominantly on (i) very high market shares<sup>8</sup>, (ii) significant barriers to entry given the high sunk costs required to duplicate the existing network, (iii) the lack of prospective competitive entry and (iv) the lack of countervailing buyer power.

Whilst ANACOM states that national DTT penetration is low and decreasing<sup>9</sup>, which correlates to a simultaneous increase in the usage of pay-TV offers, ANACOM does not address in more detail, whether this migration can be attributed to competitive pressure from pay-TV on DTT, thus not assessing in how far the significant presence and use of alternative broadcasting platforms providing pay-TV television services can constrain the ability of MEO to act independently in the

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<sup>7</sup> In its notification ANACOM sets out that it is of the view that the three-criteria-test is met as the relevant markets cumulatively (i) displays high, non-transitory barriers to entry, (ii) has no tendency towards effective competition and (iii) is not characterised by the fact that ex post competition law alone could adequately address the competitive problems identified.

<sup>8</sup> ANACOM assumes that MEO, as the only DTT provider, has a market share of 100% at the wholesale level.

<sup>9</sup> Figures presented by ANACOM suggest a 23.4% penetration rate for DTT in 2013, down from an initial national coverage of around 40% of the Portuguese population when the service was launched in 2009, compared with an estimated 84.4% (per family household) penetration rate for pay-TV solutions. In response to the Commission's request for information ANACOM stated that no more recent data was available in this respect.

relevant DTT market. In particular, ANACOM does not disperse the argument<sup>10</sup> that there has been evidence across Europe for a while now of increasing platform competition concerning the market for broadcasting transmission, which justified removing the wholesale broadcasting market for the delivery of broadcast content to end-users from the list of markets susceptible to ex ante regulation already 8 years ago.

Furthermore, ANACOM confirms, that as part of the public tender to grant MEO the licence to operate the DTT multiplex (Mux-A), MEO is already subject to pricing obligations<sup>11</sup>, i.e. faced with certain constraints as to its ability to set prices freely.

In addition, ANACOM confirms that it did not receive any complaints or was faced with disputes during the negotiations<sup>12</sup> for the commercial agreement with the broadcasters and MEO raising concerns that MEO was not negotiating in good faith. On the contrary, in response to the Commission's request for information ANACOM states that as a result of an investigation following a complaint made after the agreement had been signed, ANACOM found that prices currently charged by MEO are not excessive but cost-oriented and do not presently raise concerns.

#### **2.4. Regulatory remedies**

In order to address the perceived competitive concerns identified on the relevant market ANACOM proposes to impose the following obligations<sup>13</sup> on the designated SMP operator: (i) an obligation to provide network access, (ii) a non-discrimination obligation, (iii) transparency obligations, (iv) financial reporting and accounting separation obligations and (v) a price control and cost accounting obligation.

With regards to the latter, ANACOM proposes to impose an *ex ante* price control despite the fact that prices for DTT services had been agreed in commercial negotiations and found to be cost-oriented following an investigation by ANACOM in 2013. ANACOM argues that – on a forward looking basis – costs of an efficient operator are likely to decrease over time but that MEO has very little incentives either in reducing costs of the wholesale service it provides and, thus, in operating in an efficient manner or to reduce its wholesale prices if there are efficiency gains. In

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<sup>10</sup> See in particular section 4.4 of the Explanatory Note to the 2007 Recommendation on Relevant Markets, Commission Staff Working Document of 13 November 2007, Explanatory Note accompanying document to the Commission Recommendation on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, SEC(2007) 1483/2.

<sup>11</sup> Under the tender obligations, two separate prices are defined: (a) an annual price per television channel and (b) an annual price per Mbps. However, ANACOM claims in its notification that the prices were set in 2008 assuming that Mux-A would be used to its full capacity. As a result, the fact that currently Mux-A operates with some free capacity would have to be regarded as a significant change in circumstances, which warrants a new regulatory assessment of the situation.

<sup>12</sup> In response to the Commission's request for information, ANACOM only stated that it received requests to intervene by broadcasters a few months after the commercial agreement had been signed.

<sup>13</sup> These obligations are to be imposed in addition to existing obligations in place under the public tender for the provision of the DTT mux, which MEO won.

essence, ANACOM is concerned that there is nothing that would force MEO to reduce its wholesale prices if these become substantially higher than (efficient) costs.

### 3. ASSESSMENT

#### **3.1. Serious doubts pursuant to Article 7(4) of the Framework Directive as regards the assessment of effective competition**

Following a thorough examination of the notification and the additional information provided by ANACOM, the Commission considers that the draft measure concerning the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal falls within the scope of Article 7(4)(a) and 7(4)(b) of the Framework Directive and would affect trade between the Member States.

Under Article 7(4)(a) of the Framework Directive, the Commission can express its serious doubts as to the compatibility of a draft measure with EU law when it concerns the definition of a market differing from those defined in the Recommendation in accordance with Article 15(1) of the Framework Directive. The Recommendation identifies those markets the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives (i.e. defining a market for the purpose of *ex ante* regulation). In addition, the Commission refers to Article 15(3) of the Framework Directive which stipulates that the NRAs shall, taking utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national circumstances. In the present case, ANACOM aims at identifying the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal, a market which is not listed by the Commission as susceptible to *ex ante* regulation, without giving due consideration to the ability of other broadcasting delivery platforms to exercise sufficient constraints at the wholesale level.

Under Article 7(4)(b) of the Framework Directive, the Commission can express its serious doubts as to the compatibility of a draft measure with EU law when it concerns NRA's assessment assigning (or not) an undertaking or undertakings as having either individually or jointly with others significant market power under Article 16 (3), (4) or (5) of the Framework Directive.

The Commission also considers that the draft measure as notified by ANACOM would affect trade between Member States because the conditions for the access to the relevant market determine the cost and the ability of other operators (including those established in other Member States) to provide electronic communications services. The assessment as to the product(s) belonging to the relevant wholesale market as well as a finding or not of an undertaking to hold singularly or jointly SMP in that market, can have consequences on including or not certain products within the scope of regulation and on the imposition of certain remedies, such as access or price control. As a result, the scope of the proposed regulation has an immediate and direct effect on costs of entry into the relevant market as well as the ability of operators to compete profitably in the broadcasting market in Portugal. This is not limited to Portuguese operators but would equally affect those operators who wish to enter the Portuguese market from another MS. As such, the proposed measure would actually or potentially, directly or indirectly affect the ability of undertakings established in another Member State to provide electronic communications services.

Similarly, when deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, Article 16(1) of the Framework Directive lays down that the national regulatory authorities shall carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation and taking utmost account of the SMP Guidelines. ANACOM's analysis of whether MEO, indeed, has SMP on the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal must therefore be based on an appropriate delineation of the relevant market as well as a thorough assessment of the alleged SMP holder's ability to behave to an appreciable extent independently of competitors, customers and, ultimately, consumers.

The Commission also notes that in accordance with Article 16(2) of the Framework Directive, where an NRA decides whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine whether a relevant market is effectively competitive, which shall be done on the basis of the relevant market definition. As a consequence, any amendment of the market definition may alter the result of the SMP analysis.

The Commission therefore expresses serious doubts as to the compatibility of ANACOM's draft measure with the provisions of Article 15(1) and (3) and Article 16(1) and (2) of the Framework Directive on the basis of the following considerations:

#### **Flawed assessment of the competitive constraints in the relevant market**

At the current stage of the procedure and on the basis of the information available, the Commission has serious doubts that ANACOM's conclusion that the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal is not effectively competitive is compatible with EU law. In particular, the Commission has serious doubts that ANACOM met its obligations pursuant to Articles 15(3) and 16(1) of the Framework Directive that NRAs shall define and analyse relevant markets in accordance with the principles of competition law, taking utmost account of the Recommendation and the SMP Guidelines<sup>14</sup>.

The Commission points to the fact, that according to ANACOM, the market as defined by ANACOM is characterised by low and declining penetration rates, which correlate to a simultaneous increase in the usage of pay-TV offers. The apparent migration of customers from the DTT platform to alternative broadcasting delivery platforms, which can be witnessed in Portugal, suggests that substitutability should at least be explored in much more detail. As a result, the Commission is currently of the view that ANACOM fails to give due consideration to the ability of other broadcasting delivery platforms to serve as a substitute of DTT services, at the very least in those areas where the network footprints overlap, and possibly to constrain DTT wholesale provision in other parts of the national territory.

More importantly, the Commission, at this stage, considers that the assessment carried out by ANACOM of the competitive constraints exercised by these alternative broadcasting platforms on the (narrowly defined) DTT service is not

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<sup>14</sup> Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services (2002/C 165/03), ("the SMP Guidelines").

compatible with EU law, and in particular with the obligation that NRAs shall, taking utmost account of the Recommendation and the SMP Guidelines, analyse relevant markets in line with the principles of competition law. In this respect, the Commission considers at this stage that the finding of SMP in the relevant market as proposed by ANACOM is not supported by sufficient evidence, that there is, indeed, a competitive problem, which warrants *ex ante* intervention under Article 16(4) of the Framework Directive.

The Commission reminds ANACOM that in accordance with Article 16(4) of the Framework Directive, ANACOM should intervene to impose obligations on undertakings only where markets are considered not to be effectively competitive as a result of such undertakings having significant market power, which is a position equivalent to dominance as provided in Article 14 (2) of the Framework Directive. To this effect ANACOM should demonstrate that the proposed SMP operator, MEO, has a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and, ultimately, consumers.

In this respect, the Commission notes that MEO appears not only constrained in its ability to set wholesale prices by the obligations imposed on it as part of the public tender but has set wholesale prices for access to the DTT platform with individual broadcasters on the basis of commercial agreements. The Commission further notes that, according to ANACOM, there had been no indications before or during the negotiations of access agreements that would have suggested that MEO was exercising a position of undue economic strength. On the contrary, ANACOM confirmed, in response to the Commission's request for information, that wholesale prices currently charged by MEO to the broadcasters are not excessive but cost-oriented. As a result, it is difficult to accept, based on the evidence available, that MEO is or was behaving to an appreciable extent independently of its customers.

On a forward looking basis, whilst the Commission takes note of the concerns expressed by ANACOM as to the perceived risk that MEO may not adjust wholesale prices in accordance with potential efficiency gains, the Commission considers that this view neglects the mutual dependency between broadcasters and content delivery platform providers. While broadcasters seek access, all platform providers have in principle an incentive to grant broadcasters access to their platform in order to efficiently fill the available capacity. The transition from analogue to digital terrestrial television broadcasting has provided an additional impetus for such broadcasting platforms to compete and attract end-users, which in a two-sided market also means attracting and obtaining content. Such a scenario indicates to the Commission that despite potentially high market entry barriers the market dynamics tend towards effective competition.

In addition ANACOM did not assess in sufficient detail and in line with the principle of taking a modified Greenfield approach, in how far "must-carry" obligations, which may be imposed under Article 31 of the Universal Service Directive could further address any perceived problems of access to transmission platforms without taking recourse to *ex ante* regulation.

Further, the Commission notes that pursuant to Article 8(2)(a) to (c) of the Framework Directive, NRAs shall contribute to the development of the internal market by ensuring that there is no distortion or restriction of competition in the

electronic communications sector and by encouraging efficient investment in infrastructure and promoting innovation.

The Commission is concerned that ANACOM's relevant market analysis underestimates the significant competitive constraints from other broadcasting delivery platforms on the relevant market, and therefore it has serious doubts that it fulfils the goals of the Framework Directive and particularly those enshrined in Article 8(2)(a) to (c).

The Commission therefore raises serious doubts that ANACOM's proposed SMP finding on the basis of its narrow market definition is compatible with EU law, more precisely with the requirements laid down in Article 15 (3) and Article 16(1) and (2) of the Framework Directive justified in light of the objectives laid down in Article 8(2)(a) to (c) of the Framework directive.

#### *Creation of barriers to the internal market*

The Commission also considers that ANACOM's draft measure would create a barrier to the internal market. As mentioned before, the proposed measure would affect trade between Member States because the conditions for the access to the Portuguese market for digital terrestrial broadcasting determine the cost and the ability of other operators (including those established in other Member States) to provide electronic communication services in Portugal. In particular, the exact scope of the regulatory intervention through the draft market definition as well as the proposed SMP finding and the resulting proposal to continue regulation in the relevant market in Portugal may therefore have an influence, direct or indirect, actual or potential, on the ability of broadcasters established in other Member States to compete profitably in the broadcasting market in Portugal and to offer their services via the DTT platform in the Portuguese market. In addition it would have an immediate and direct effect on costs of entry into the relevant market. As such, inappropriate regulatory intervention would create barriers to the internal market.

### **3.2. Serious doubts pursuant to Article 7a(1) of the Framework Directive as regards the proposed imposition of a price control (including cost-orientation obligation)**

Furthermore, following a thorough assessment of the notification and the additional information provided by ANACOM, the Commission considers that the notified draft measure falls under the Commission's powers of ensuring consistent application of remedies as set out in Article 7a of the Framework Directive, as the measure aims at imposing obligations on an operator, in conjunction with Articles 9 to 13 of the Access Directive.

The Commission raises serious doubts that ANACOM's proposed remedies are compatible with EU law. In particular, the Commission questions that the proposal to require MEO to offer wholesale access on a cost-oriented basis and subject to a price control can be objectively justified in light of the objectives laid down in Article 8 of the Framework Directive and that it is proportionate. As a result, the Commission considers that the proposed measure does not comply with the requirements of Articles 8(4) and 13(1) of the Access Directive in conjunction with Article 8 of the Framework Directive and Article 16(4) of the Framework Directive.

The Commission also considers, at this stage, that ANACOM's draft remedies would affect trade between Member States because the conditions for the access to the relevant market determine the cost and the ability of other operators (including those established in other Member States) to provide electronic communication services. In particular, the scope of the proposed regulation has an immediate and direct effect on costs of entry into the relevant market as well as the ability of operators to compete profitably in the broadcasting market in Portugal. This is not limited to Portuguese operators but would equally affect those operators who wish to enter the Portuguese market from another MS. As a result, an imposition of a strict cost orientation obligation on the incumbent operator, MEO, may have an influence, direct or indirect, actual or potential, on the ability not only of MEO but also any undertaking established in other Member States to offer electronic communication services in the Portuguese market and therefore the draft measure would create barriers to the internal market.

The Commission therefore expresses serious doubts as to the compatibility of ANACOM's draft measure with the provisions of Articles 8(4) and 13(1) of the Access Directive:

**Inappropriate and disproportionate use of a price control, including cost-orientation obligation**

*Compliance with Article 8(4), and 13(1) of the Access Directive*

The Commission refers to Article 8(4) of the Access Directive which requires NRAs to impose remedies that are based on the nature of the problem identified, proportionate, and justified in the light of the objectives laid down in Article 8 of the Framework Directive. In addition, Article 13(1) of the Access Directive stipulates that obligations relating to cost recovery and price controls (including obligations for cost orientation) shall only be imposed in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at excessively high levels.

For the reasons set out above, the Commission already questions that one can conceivably contemplate a lack of effective competition in the relevant wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal. However, even if such a case could be made, the Commission further questions the alleged ability of MEO to sustain prices at excessively high levels. As mentioned previously, ANACOM itself states that current prices levels – over 6 years after the launch of the platform – are cost-oriented and not excessive. In addition, wholesale prices have been the result of commercial agreements that had been entered into without *ex ante* price obligations being in place and in relation to which no formal complaints had been brought to the regulator before or during negotiations.

As such the Commission does not consider at this stage that the price control obligation is objectively justified. In line with the requirements of Article 8 (4) of the Access Directive, the chosen method of cost recovery should always be appropriate in the particular circumstances and based on the nature of the competition problem identified.

In view of the Commission, the abstract – and as yet unsubstantiated – concern that, going forward, MEO may not pass on any potential efficiency gains, for example related to the potential maximising of the capacity of the relevant Mux-A, to its wholesale customers, which could result in wholesale charges above cost, is in itself

not sufficient reason to impose a price control obligation as it is not based on sufficiently strong evidence of the likely development of a potential harm to competition in the relevant market. As a result and based on the information currently available, the Commission considers, that the imposition of any such intrusive remedy would not be objectively justified and also disproportionate. Should ANACOM really be able to conclude that – despite the Commission serious doubts expressed in relation to the assessment of effective competition – MEO were to hold a position of SMP, it would be more appropriate and proportionate to address the competitive concerns first with lighter regulation, for example through the requirement to provide access on reasonable terms and conditions, and to consider a (stricter) price control only if the abstract concerns about MEO's ability to set prices independently should, indeed, materialise during the course of the market review period.

The Commission considers at this stage that the evidence provided by ANACOM so far is not sufficient to demonstrate that there is a clear risk of excessive pricing by MEO for the relevant wholesale services. As a result, the Commission seriously doubts that the proposed measure is compatible with the requirements of Article 13 of the Access Directive.

In light of the above, the Commission expresses serious doubts that the price control obligation proposed by ANACOM for the SMP operator, MEO, is compliant with EU law and in particular with Article 8(4) and 13(1) of the Access Directive, in so far as it is not objectively justified or based on the nature of the competition problem identified.

#### *Creation of barriers to the internal market*

The Commission considers, at this stage that ANACOM's draft measure would create a barrier to the internal market. The proposed imposition of a price control, including a cost-orientation obligation, would affect trade between Member States because the conditions for the access to the relevant market determine the cost and the ability of other operators (including those established in other Member States) to provide electronic communication services. In particular, the exact level of access prices has an impact on the ability of broadcasters established in other Member States to compete profitably in the broadcasting market in Portugal and to offer their services via the DTT platform in the Portuguese market. In addition any such price control would have an immediate and direct effect on the costs of entry (also by operators established in another MS) into the Portuguese market. As such, a price control set through SMP regulation in Portugal may therefore have an influence, direct or indirect, actual or potential, on the ability of any undertaking established in other Member States to offer electronic communications services in the Portuguese market and therefore the draft measure would create barriers to the internal market.

The above assessment reflects the Commission's preliminary position on these particular notifications, and is without prejudice to any position it may take *vis-à-vis* other notified draft measures.

The Commission points out that, in accordance with Article 7 of the Framework Directive, the draft measure regarding the market definition and finding of significant market power concerning the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal shall not be adopted for a further two months.

The Commission points out that, in accordance with Article 7a of the Framework Directive, the draft measure regarding remedies imposed on the wholesale broadcasting market for the delivery of broadcast content to end-users in Portugal shall not be adopted for a further three months.

Pursuant to Point 15 of Recommendation 2008/850/EC<sup>15</sup> the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission<sup>16</sup> within three working days following receipt whether you consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which you wish to have deleted prior to such publication.<sup>17</sup> You should give reasons for any such request.

Yours sincerely,

For the Commission  
Maroš ŠEFČOVIČ  
Vice-President

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<sup>15</sup> Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

<sup>16</sup> Your request should be sent either by email: CNECT-ARTICLE7@ec.europa.eu or by fax: +32 2 298 87 82.

<sup>17</sup> The Commission may inform the public of the result of its assessment before the end of this three-day period.