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## EU AND COMPETITION LAW

# EUROPEAN COMMISSION IMPOSES FINES ON TELEFÓNICA AND PORTUGAL TELECOM

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The practices concerned started in July 2010, when Telefónica acquired the Brazilian mobile operator Vivo, until then owned jointly by Telefónica and Portugal Telecom. In the contract, the parties agreed to a clause indicating they would not compete with each other in Spain and Portugal as from the end of September 2010. Such contract was terminated in February 2011, after the European Commission opened antitrust proceedings.

Having examined the situation, the European Commission has decided that the agreement made by the parties constitutes a breach of Article 101 of the TFEU. The Commission stated that

«instead of competing with each other for offering clients the most advantageous conditions, as is expected in an open and competitive market, Telefónica and Portugal Telecom deliberately agreed to stay out of each other's home markets».

In its decision, the European Commission took into account the fact that both Telefónica and Portugal Telecom are the largest telecoms operators in their home countries. The fines were set taking into account the duration of the alleged infringement and its gravity, including the fact that the agreement was not kept secret by the parties. The early termination of the agreement was taken into account as a mitigating circumstance. Hence, the Commission has imposed fines of € 66 894 000 on Telefónica and of € 12 290 000 on Portugal Telecom.

Nevertheless, according to the European Commission, the Vivo transaction itself is safeguarded and will not be affected by the decision.

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