

Opinion of the Advisory Committee on restrictive agreements and dominant positions given at its meeting of 19 November 2012 regarding a draft decision relating to Case COMP/39.839 (1) — Telefónica and Portugal Telecom

Rapporteur: Latvia

(2013/C 140/04)

For the purpose of the questions below, the 'clause' means clause ninth of the stock purchase agreement entered into by Telefónica SA and Portugal Telecom SGPS SA (the 'parties') on 28 July 2010 (the 'agreement').

1. The Advisory Committee agrees with the European Commission that the clause covers the Spanish and Portuguese markets for electronic communications and television services as identified in the draft decision.
 2. The Advisory Committee agrees with the Commission that the clause provides for a non-compete obligation (instead of a mere self-assessment obligation as alleged by the parties) and amounts to a restriction of competition by object.
 3. The Advisory Committee agrees with the Commission that the clause cannot be considered an ancillary restraint to the agreement.
 4. The Advisory Committee agrees with the Commission that the clause may affect trade between Member States.
 5. The Advisory Committee agrees with the Commission that the clause infringes Article 101(1) of the TFEU, that it does not fall under the exemption of Article 101(3) and that therefore the parties have infringed Article 101 of the TFEU.
 6. The Advisory Committee agrees with the Commission that the duration of the parties' infringement is four months (from 27 September 2010 until 4 February 2011).
 7. The Advisory Committee agrees with the Commission that a fine should be imposed on the parties.
 8. The Advisory Committee asks the Commission to take into account any other points raised during the discussion.
 9. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
-