



EUROPEAN COMMISSION

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Autoridade Nacional de Comunicações
Avenida José Malhoa No. 12
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PORTUGAL

For the attention of:
Mr Álvaro Dâmaso, Chairman of the Board
Fax: +351-21-721-10-04

Dear Mr Dâmaso,

Subject: Cases PT/2004/0053, PT/2004/0054, PT/2004/0055, PT/2004/0056, PT/2004/0057, PT/2004/0058 and PT/2004/0059

Retail markets for fixed telephony in Portugal

Article 7(3) of Directive 2002/21/EC¹: No comments

I. PROCEDURE

On 26 May 2004, the Commission registered seven notifications by the *Autoridade Nacional de Comunicações* (“ANACOM”) concerning the retail markets for fixed telephony (access and calls) in Portugal and, additionally, a market for calls to non-geographic numbers under case numbers PT/2004/0053 to 0059. The seven notifications cover the following markets:

- market for access to the public telephone network at a fixed location for residential customers (case PT/2004/53) and for non-residential customers (case PT/2004/54);
- market for publicly available local and national telephone services provided at a fixed location for residential customers (case PT/2004/55) and for non-residential customers (case PT/2004/56);

¹ 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.

- market for publicly available international telephone services provided at a fixed location for residential customers (case PT/2004/57) and for non-residential customers (case PT/2004/58);
- market for publicly available telephone calls provided at a fixed location to non-geographic numbers (case PT/2004/59).

On 7 June 2004, the Commission requested ANACOM to submit further information and clarification related to the market for calls to non-geographic numbers (case PT/2004/59). ANACOM provided the requested information and clarification on the same day.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (“NRAs”) and the Commission may make comments on notified draft measures to the NRA concerned.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Market definition

The access markets notified cover analogue access and the Integrated Services Digital Network combining two (ISDN2) or thirty (ISDN30) 64kbps connections. The retail markets for fixed calls cover respectively the market for local and national calls (including local, regional, intercity and national traffic, as well as fixed to mobile calls), the market for international calls and the market for calls to non-geographic numbers. With the exception of calls to non-geographic numbers, each product market is further divided between residential and non-residential customers.

These market definitions are broadly in conformity with the Recommendation on relevant markets² (“the Recommendation”). The market for telephone calls to non-geographic numbers constitutes a refinement of the retail market for local and national telephone calls.

As regards the relevant geographic markets, ANACOM concludes that competitive conditions are sufficiently homogeneous to consider that each market is nationwide and covers the entire territory of Portugal.

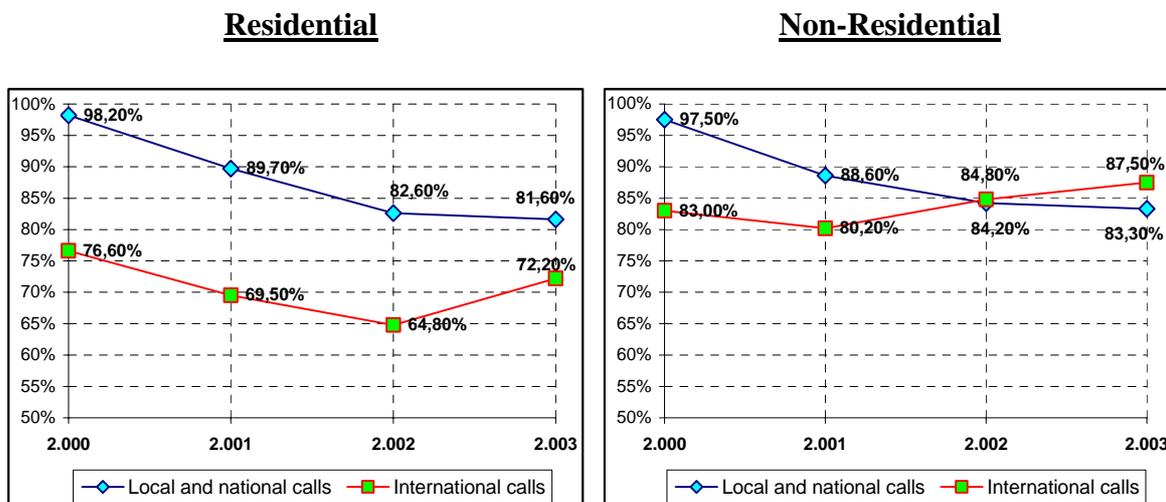
II.2. Finding of Significant Market Power (SMP)

ANACOM’s market review concludes that PT Group (Grupo PT consisting of PTC, TMN and PT Prime companies) has SMP in each of the relevant markets notified.

The main criteria considered by ANACOM in reaching its findings on SMP are high market shares, market concentration on the basis of the Herfindahl-Hirschman Index (“HHI”), the overall size of the market leader (PT Group), barriers to entry and expansion, absence of countervailing buying power, and the profitability of PT Group as shown by the cost accounting system.

² Commission Recommendation 2003/311/EC 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, OJ L114, 8.05.2003, p. 45.

In respect of the first criterion, ANACOM has shown that PT Group has maintained a market share in excess of 90% (in volume) in the access markets (93.9% in respect of residential customers, 96.2% in respect of non-residential customers). For the national and the international outgoing traffic, market shares (in volume) have developed as indicated below:



In terms of calls to non-geographic numbers, PT's market share is above 75% in volume.

II.3. Regulatory remedies

ANACOM has decided to split its market analysis process into two stages and the current notifications are limited to the market definition and the SMP assessment. In its summary notification, ANACOM states that the regulatory obligations will be defined and imposed according to the policy objectives set out in national and Community legislation and taking into account the ERG Common Position on remedies. According to its work plan, ANACOM should launch a national public consultation during the month of July 2004 and subsequently notify the draft measures to the other NRAs and the European Commission no later than August 2004. The final decision is scheduled to be taken in September 2004.

III. NO COMMENTS

The Commission has examined the notification and the additional information provided by ANACOM, and has no comments. It notes ANACOM's statement in respect of remedies and recalls that all measures falling within the scope of Articles 15 or 16 of the Framework Directive, Articles 5 or 8 of Directive 2002/19/EC ("Access Directive") or Article 16 of Directive 2002/22/EC ("Universal Service Directive"), are subject to the procedure referred to in Art. 7(3) Framework Directive. Accordingly, ANACOM will have to notify the remedies it intends to impose in the markets concerned.

Pursuant to Article 7(5) of the Framework Directive, ANACOM may adopt the resulting draft measures and, where it does so, shall communicate it to the Commission.

The Commission's position on these particular notifications is without prejudice to any position it may take vis-à-vis other notified draft measures.

Pursuant to Point 12 of Recommendation 2003/561/EC³ 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 Commission⁴ within three working days following receipt whether you consider, in accordance with Community and national rules on business confidentiality, that this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours sincerely,
For the Commission,
Erkki Liikanen
Member of the Commission

³ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

⁴ Your request should be sent either by email: INFSO-COMP-ARTICLE7@cec.eu.int or by fax: +32.2.298.87.82.