

Final decision

On the amendment to the definition of “bundle of services” used in the quarterly survey on fixed electronic communications and nomadic VOIP services

1. On 3 March 2011, ICP - ANACOM' Management Board approved a final decision on the new statistical indicators of fixed electronic communications and nomadic VoIP services.

In this scope, a 'Bundle of Services' was deemed to mean a “commercial offer of a single operator which includes two or more services (fixed telephone service, broadband internet access service, subscription television service, mobile telephone service, mobile broadband internet access service, etc.) and which is sold as a single offer with a single bill”.

2. On 9 October 2012, further to a request from an operator, ICP - ANACOM clarified that, for the purpose of the reporting of statistical indicators of fixed electronic communication services approved by determination of 3 March 2011, “*the concept of bundle covers the following features:*

- a) *Commercial offer by a single provider;*
- b) *including two or more services;*
- c) *on the market as a single offer;*
- d) *with a single price;*
- e) *with a single bill, regardless of the breakdown of items concerning each service included in the bundle; and*
- f) *subscribed in terms that could not be achieved outside the bundle, either because services are not available separately (in the case of pure bundling) or because the bundle offer is associated to specific conditions (in the case of mixed bundling).*

In line with this view, the classification of a specific offer as a “bundle of services” requires compliance with the four cumulative requirements referred above in points a), b), c) and e), and it is further clarified that:

- *The requirement of the placing on the market as a single offer is based on the payment of several services for a single price, proposed by the provider in the scope of offer conditions and agreed on by the parties when the respective contract is concluded, regardless of how such single price is presented on the bill; and*
 - *The conclusion on whether a single offer exists requires the verification of the terms on which services concerned are provided, in order to determine if the same conditions and/or prices could be achieved outside the bundle”.*
3. As regards the requirement “*commercial offer by a single provider*”, the definition presented is based on definitions drafted by the European Commission (EC) in the scope

of the E-communications Household Survey¹ and of the 13th Implementation Report of the electronic communications regulatory framework².

4. However, commercial offers have been placed on the market which, in spite of combining services from various providers, who are usually part of the same economic group, show all the remaining characteristics which define a bundle. These offers are publicized and communicated to users, and perceived by the latter, as a bundle of services.

On the other hand, it is possible that other offers are made available combining services provided by providers of fixed electronic communications and by mobile operators, namely, services of providers of virtual mobile services, regardless of whether providers involved are part of the same economic group.

At the same time, EC has developed the concept of bundle for statistical purposes in several contexts. For example, in the scope of the Questionnaire on the Digital Agenda Scoreboard 2014 (communication of 12 November 2013), EC does not require services part of a bundled offer to be provided by the same provider³.

EC considers that emphasis should be put on the “single offer” criterion, making a distinction in this scope between the commercial relation client/provider and the way how the service is technically provided. In the scope of the “single offer”, the client maintains a commercial relation with a single provider only, although technically the service may be provided by several bodies.

5. For the reasons set out above, the removal of the reference to a “*commercial offer by a single provider*”, included in the definition of a bundle of services for the purpose of the reporting of statistical indicators of fixed electronic communication services approved by determination of 3 March 2011, is deemed to be justified.
6. In this context, by determination of 30 January 2014, the Management Board of ICP - ANACOM approved a draft decision (DD) amending the definition of “bundle of services” used in the quarterly survey of fixed electronic communication and nomadic VoIP services, and submitted the referred DD to the prior hearing of interested parties, in accordance with articles 100 and 101 of the Administrative Procedure Code, for a period of 20 working days.
7. Providers of fixed electronic communications, who, in the scope of the survey to fixed electronic communications and nomadic VoIP services, had reported subscribers of bundled services during 2013, were consulted, and a report of the prior hearing which includes a summary of contributions received, as well as the position of ICP - ANACOM thereon, was prepared.

¹ “QC10. By bundle, we mean a combined package offering more than one communication service from the same provider at a single price”, Eurostat, E-communications household survey.

² “‘Bundled offer’ means a commercial offer of a single operator which includes two or more services such as fixed and mobile public telephony services, access to TV programmes and broadband internet access, offered for a single price and as part of one bill”, CE, 13th Implementation Report.

³ “‘Bundled offer’ means a commercial offer of two or more of the below services marketed as a single offer and offered for a single price ...”, EC, Digital Agenda Scoreboard 2014 – Questionnaire A (communication of 12 November 2013).

8. On the basis of positions taken by bodies heard, and taking into account the views taken on the issue by the European Commission, the definition of bundle was amended to include that in general, the reporting obligation on bundle information falls on the provider with whom the relation with the user is established in the scope of the subscription of the bundle.
9. In this context, the Management Board of ICP - ANACOM, under paragraph 1 of article 108 and article 109 of Law No. 5/2004, of 10 February, as amended and republished by Law No. 51/2011, of 13 September (ECL), and under article 13 of the Statutes of ICP - ANACOM, approved by Decree-Law No. 309/2001, of 7 December, hereby determines that the definition of “bundle of services” used in the quarterly survey of fixed electronic communications and nomadic VoIP services is replaced by the following:

‘Bundle of Services’ means:

- a) *commercial offer including two or more services;*
- c) *on the market as a single offer;*
- d) *with a single price;*
- e) *with a single bill, regardless of the breakdown on items concerning each service included in the bundle; and*
- f) *subscribed in terms that could not be achieved outside the bundle, either because services are not available separately (in the case of pure bundling) or because the bundle offer is associated to specific conditions (in the case of mixed bundling).*

In line with this view, the classification of a specific offer as a “bundle of services” requires compliance with the three cumulative requirements referred above in points a), b) and d), and it is further clarified that:

- *The requirement of the placing on the market as a single offer is based on the payment of several services for a single price, proposed by the provider in the scope of offer conditions and agreed on by the parties when the respective contract is concluded, regardless of the way how such single price is presented on the bill; and*
- *The conclusion on whether a single offer exists requires the verification of the terms on which services concerned are provided, in order to determine if the same conditions and/or prices could be achieved outside the bundle”.*

In general, the reporting obligation on bundle information falls on the provider with whom the relation with the user is established in the scope of the subscription of the bundle.

10. Other definitions and indicators of the fixed electronic communications and nomadic VoIP services approved by determination of ICP - ANACOM’s Management Board of 3 March 2011 remain in force.