

Decision

on the provision of data presented by PTC regarding the execution of DTT Subsidy and DTH Reimbursement Programmes

I. Background

In exercising its functions as regulator of the electronic communications sector, as assigned under its Statutes and under the *Lei das Comunicações Eletrónicas* (Electronic Communications Law)¹ (hereinafter LCE), and following a public tender², ICP-ANACOM granted PT Comunicações, S.A. (hereinafter PTC) a right of use of frequencies on a national basis for the digital terrestrial television broadcasting service associated with Multiplexer A - ICP-ANACOM Right of Use of Frequencies No. 06/2008³ (hereinafter DUF).

In this context and in compliance with the stipulations of the respective Tender Regulation and Specifications, and in accordance with the commitments which it assumed in the proposal which it submitted to the tender, PTC is bound, pursuant to the DUF, to undertake the following:

- *"Subsidise the acquisition of reception equipment, under the terms of the proposal presented, specifically where equipment is acquired by citizens with special needs, by disadvantaged population groups and by institutions of proven social value, until the cessation of terrestrial analogue television broadcasts"⁴; and*
- *"Ensure that the population with exclusively complementary means of coverage, specifically DTH (...) - up to 12.8% of the national population, residing in the areas indicated in the proposal - is provided with at least the same services as those provided in areas with terrestrial coverage and is provided with levels of service and conditions of access to end-users which are equivalent". PTC has also committed itself to "providing support to customers in areas not covered by terrestrial digital broadcasting, so that these customers are not compelled to incur additional costs beyond those incurred by customers with*

¹ Law no. 5/2004 of 10 February, as amended and republished by Law no. 51/2011 of 13 September.

² Public Tender for the Granting of a Right of Use for Frequencies, of National Scope, for Provision of the Digital Terrestrial Television Broadcasting Service, launched by Regulation no. 95-A/2008 of 25 February, available at: [Regulation no. 95-A/2008, of 25 of February](#) .

³ ICP-ANACOM Right of Use of Frequencies no. 06/2008 issued on 9, December 2009, available at: [Televisão Digital Terrestre](#) .

⁴ DUF - Article 12, paragraph 1, point f).

terrestrial coverage, including as regards labour costs, and costs related to terminal reception equipment, aerials and cabling"⁵ (Not emphasized in the original).

And, with a view to the accomplishment of the conditions stipulated in the DUF, the following Programmes were subsequently established by ICP-ANACOM determinations:

- *"Programme aimed at the allocation of subsidies to support the acquisition of DTT broadcasting reception equipment by citizens with special needs, disadvantaged population groups and institutions of proven social value"*⁶ (hereinafter 'Subsidy Programme'); and
- *"Programme aimed at the allocation of reimbursements in respect of installations and equipment in areas covered by means of complementary DTT coverage (DTH)"*⁷ (hereinafter 'DTH Reimbursement Programme');

where, in short, the requirements are defined as regards the eligibility of beneficiaries to these subsidies and reimbursements and as regards the respective application procedures, as well as procedures to be implemented by PTC in the handling and fulfilment of applications.

These *Programmes* now form part of the DUF and are therefore binding upon PTC.

The dynamic nature of the digital migration process and the close supervision undertaken by ICP-ANACOM has led to a series of updates/adjustments to the *Programmes* as initially conceived. It was in this context that, by ICP-ANACOM determination of 23 March 2012, the Subsidy Programme was expanded to include an additional subsidy to support digital reception installations, to be allocated to the beneficiaries of that programme - specifically to families in situations of social isolation for cyclical or structural reasons and where the applicant is aged 65 or over⁸.

The Subsidy Programme, including the additional installation Subsidy, and the DTH Reimbursement Programme (in this case only with respect to the established installation price)

⁵ DUF - Article 9, paragraph 1, point d) and paragraph 2.

⁶ By determination of the Management Board of ICP-ANACOM of 24 March 2011, available at: [Decision on the grant of a subsidy for purchase of DTT equipment](#) – decision 24.03.2011

⁷ By determination of the Management Board of ICP-ANACOM of 7 April 2011, available at: [Decision on the grant of subsidy for DTH installation and equipment](#) – decision 07.04.2011

⁸ Determination available at: [Decision adjusting the programme for granting subsidies for the purchase of DTT receivers by citizens with special needs, disadvantaged groups of population and institutions of a proven social value](#)

ended on 26 April (ICP-ANACOM determination of 4 January 2013). The DTH Reimbursement Programme, insofar as it applies to reception equipment, remains in effect for the entire duration of the DUF - that is, until 9 December 2023.

II. Confidentiality invoked by PTC as regards information reported to ICP-ANACOM on the execution of the *Programmes*

It is incumbent upon ICP-ANACOM, in exercising the oversight functions assigned to it under its Statutes and the LCE, to verify compliance with the undertakings made by holders of rights of use of frequencies as are awarded pursuant to tender procedures.

Meanwhile, the entities subject to such obligations are required to provide ICP-ANACOM with such information as is necessary to confirm compliance with the conditions associated with rights of use to which they hold title⁹.

For the purposes of monitoring and verifying compliance with the obligations of the identified DUF, including those resulting from the *Programmes*, ICP-ANACOM defined a set of indicators as would enable it to evaluate PTC's execution of the *Programmes* and also determined the frequency with which PTC would be required to report these indicators to ICP-ANACOM.

This obligation has been notified (and updated, to the extent that ICP-ANACOM considered it necessary to add/specify/adjust¹⁰ the respective indicators) to PTC by ICP-ANACOM notice nos. S061798/2011 of 01.08.2011; S021458/2012 of 15.03.2012; S033905/2012 of 09.05.2012; S074569/2012 of 23.10.2012; S004746/2013 of 30.01.2013; and by email of 25.04.2013.

When submitting the information requested by ICP-ANACOM in order to verify execution of the *Programmes*, PTC proceeded to invoke its confidentiality, stating in particular that "(...) *all submitted information is held confidential and may not be disclosed/published in whole or in part without the prior written authorisation of PT Comunicações*" and further stated that it does not authorise the use of the information sent in any framework and/or for any purpose other than as determined in the notice to which response is being provided.

⁹ Article 108. paragraph 1 and article 109, paragraph 1, point c) of the LCE.

¹⁰ Some indicators defined by ICP-ANACOM were adapted, in light of difficulties cited by PTC in their calculation, and, in some cases, ICP-ANACOM has accepted the submission of estimates.

Referring specifically to PTC's letter of 15.06.2012¹¹ and considering no reasoning was provided in said letter to support the status of confidentiality invoked by PTC, ICP-ANACOM notified¹² PTC that, pursuant to article 108, paragraph 3 of the LCE, it was required to identify the information which it held as confidential, on a reasoned basis, and submit, where warranted, a non-confidential copy of the document.

In response, PTC¹³ reiterated the confidential nature of the information provided, essentially basing its assertion on two arguments: **(i)** the data provided represents information which concerns the internal organization of the company and entails the disclosure of amounts spent in the context of the execution of the *Programmes*, which amounts are incorporated in the economic and financial proposal presented in the tender, where they are classified as confidential; and **(ii)** the information, whose disclosure is in question, relates to organizational processes implemented by PTC which are protected by industrial secrecy.

III. Set of indicators to be disseminated by ICP-ANACOM notified to PTC in the prior hearing

Having considered the arguments presented by PTC in light of the legal framework governing access to administrative documents involving trade or industrial secrets or secrets regarding the internal operations of companies, ICP-ANACOM considered the dissemination of data related to the execution of the Subsidy and DTH Reimbursement Programmes to be unavoidable, albeit disseminated according to a subset of the data already reported by that company; as such ICP-ANACOM proceeded to define global and aggregate indicators which, being relevant to demonstrate the execution of the programmes, were not, in the opinion of ICP-ANACOM, of a confidential nature for the purposes of external disclosure at two levels: i) widespread dissemination by ICP-ANACOM upon its own initiative, and ii) provided upon specific request, assessed on a case-by-case basis.

ICP-ANACOM considered that the dissemination of indicators defined along these lines would not cause PTC any harm, since they would not entail disclosure of information related to its internal organization and would make no revelation about implemented organizational

¹¹ Letter from PTC with reference 20283547.

¹² ICP-ANACOM Notice no. S053856/2012 of 30.07.2012.

¹³ Letter from PTC with reference 20296285 of 10.08.2012.

processes subject to industrial secrecy. Additionally, ICP-ANACOM held that reporting on the execution of the *Programmes* did not involve the disclosure of financial-economic information as might reveal details of PTC's economic situation, as is protected by trade secrecy, since the disclosure relates to information on the fulfilment of obligations to which the company is bound.

Therefore, bearing in mind

- (i) that the sensitivity and social impact of the DTT migration process necessitates access to information at a higher level and to information that is more detailed and more intense than in other situations where access is requested pursuant to activities undertaken by ICP-ANACOM to supervise and oversee compliance with obligations;
- (ii) the objective, established by ICP-ANACOM, of disseminating data related to the Subsidy and DTH Reimbursement Programmes, albeit in the form of a subset of the data reported; and
- (iii) the right to information under the CPA - Código do Procedimento Administrativo (Administrative Proceeding Code) and the LADA - Lei de Acesso aos Documentos Administrativos (Law of Access to Administrative Documents);

ICP-ANACOM notified PTC as to the defined subset of indicators, setting out its view as to the non-confidentiality of such information, in order that the company, if it saw fit, could state its position at a prior hearing to be held, in accordance with articles 100 and 101 of the CPA¹⁴, on the list of indicators, with a view to external disclosure from the date on which the communication conveying the data is received by the services of ICP-ANACOM.

Following conclusion of the hearing and prior to adoption of the final decision, it is important to summarize the position expressed by PTC, as interested party, and the position taken by ICP-ANACOM with regard to PTC's position. Accordingly, the following section identifies the key aspects of PTC's stated position:

¹⁴ Notice ICP-ANACOM-S008431/2013 of 21.02.2013.

IV. Position stated by PTC

PTC submitted its position within the deadline established for the purpose, by letter¹⁵ received by ICP-ANACOM on 07.03.2013.

In its position, PTC reaffirms, in short, the confidentiality of all information so qualified in their communications of 15.06.2012 and 10.08.2012, *"for which reason it does not accept the "indicators" which ICP-ANACOM proposes to disclose, insofar as [in the view of the company] they all involve the disclosure of confidential information (...) with consequent infringement of the rights and the constitutional and legally protected interests of PTC, considering that ICP-ANACOM had failed to demonstrate the existence of other, more weighty interests as might prevail over the legal position of the (. . .) company."*

In particular, PTC made the following points:

- i) Inapplicability of the CPA and the LADA to the case, since there is no question of any third-party rights to information (procedural or non-procedural), but only the question of an intention of ICP-ANACOM, upon its own initiative and in the absence of any specific request, to disclose certain information to the public. PTC therefore considers that there is no basis for ICP-ANACOM to assert that the right to information (procedural and non-procedural), as constitutionally and legally enshrined, constitutes basis for legitimizing such public disclosure;
- ii) Lack of determination and identification of any type of value that justifies the intended public disclosure. While recognizing the particularities which the DTT migration process entails and the importance of the principle of administrative transparency and open government, PTC considers that ICP-ANACOM has not demonstrated, as is its onus to demonstrate, the specific public interests it seeks to safeguard through the dissemination of the information in question;
- iii) Inexistence of direct stakeholders with a right to procedural information as regards the information which PTC has provided on the execution of the *Programmes* ("*level 2 disclosure*"). In this context, PTC does not consider either the constitutional regime or the CPA as providing justification for the disclosure of such information;

¹⁵ Letter of PTC with reference 20335948 of 07.03.2013.

- iv) Impossibility, in light of the regime of the LADA and in the absence of specific request, of establishing the scope of information to be made available in advance. PTC states, as regards the application of the LADA, that *"it is only able to assess whether information sought by third parties upon specific request, may or may not be made lawfully available upon presentation of each specific request (...) whereby the exercise being undertaken by ICP-ANACOM lacks legal utility and applicability"*;
- v) PTC also reiterates the following, as regards the indicators identified by ANACOM, in summary:
- The indicators contain information concerning the internal operation of the company, which information is protected by trade secrecy;
 - The indicators refer to amounts spent by PTC in the context of executing the *Programmes*, since the respective values are part of the economic and financial proposal submitted by the company in the tender. In this regard, PTC states that it has previously informed ICP-ANACOM that information comprising the economic and financial plan should be considered confidential, *"which assertion was not contested by ICP-ANACOM (...)"*. In PTC's opinion, any information contained in or resulting from the execution of this plan, as presented in its proposal, will always remain confidential for the purposes of disclosure by ICP-ANACOM or for the purposes of responding to requests for access to documents contained in administrative processes related to the issue of rights of use of frequencies for the DTT service;
 - They involve the disclosure of information related to organizational processes of PTC, as protected by trade secrecy;
 - They involve data and items relating to its activity and users in the context of DTT deployment, which items are protected by trade secrecy and refer to the internal operations of PTC.

Given the specifics of the matter and the difference in positions, ICP-ANACOM decided to seek the opinion of the Comissão de Acesso aos Documentos Administrativos (Committee on Access to Administrative Documents) (hereinafter CADA); this solution was also accepted by PTC.

V. Opinion of CADA

By letter dated 09.05.2013¹⁶, ICP-ANACOM requested the opinion of CADA pursuant to article 27, paragraph 1, points c) and h) of the LADA, as regards access to administrative documents relating to the execution of the Subsidy and DTH Reimbursement Programmes, as is incumbent upon PTC subsequent to the tender procedure for the allocation of a right of use of frequencies on a national basis for the Digital Terrestrial Television (DTT) broadcasting service.

By letter, received by ICP on 25.08.2013¹⁷, CADA sent the requested opinion, which is available on CADA's website¹⁸. By notice of 12.08.2013¹⁹, ICP-ANACOM gave PTC notice of the received opinion.

In short, and by reference to specific questions put by ICP-ANACOM in its request for an opinion, CADA expressed the following position:

"1. It is the position taken by ICP-ANACOM that the defined list of global and aggregate indicators (...) does not contain or reveal confidential information - specifically, and, contrary to the position argued by PTC, that the indicators do not contain information regarding the internal operations of the company as protected by trade secrecy, do not entail the disclosure of information related to the organizational processes of PTC as protected by trade secrecy and do not comprise data and items related to its activity and users in the context of DTT deployment as would constitute items protected by trade secrecy and which refer to the internal operations and activity of PTC. Does ICP-ANACOM's position conform to the legal framework and the principles of CADA in this matter?"

CADA takes into account ICP-ANACOM's assertion that the indicators in question were defined for the purposes of monitoring and verifying compliance with the obligations of the DUF awarded to PTC, particularly obligations arising from the *Programmes*, whereby said indicators make it possible for ICP-ANACOM to assess the extent to which these *Programmes* have been executed; as such CADA makes a distinction between two situations: first indicators defined by

¹⁶ Notice ANACOM-S020549/2013.

¹⁷ Notice of CADA with reference 1059 2013.07-23, Process 186/2013.

¹⁸ available at: <http://www.cada.pt/uploads/Pareceres/2013/226.pdf>

¹⁹ Notice ANACOM-S034623/2013.

ICP-ANACOM and, second, the information which stems from the requirements established under these indicators. In this context, CADA held that:

- "a) As regards the indicators themselves, there is nothing therein which reveals confidential information, whereby no basis is seen for opposing the provision of access to third party and/or to disclosure;
- b) As regards information held by the consultant authority consequent to fulfilment of the obligations referred to in these indicators, there is likewise deemed to be no obstacle to the disclosure thereof to third parties.

This information is, in essence, contractual information which stems from a public tender (...)".

CADA adds "*Therefore, this Commission considers that the position set out by ICP-ANACOM is in conformance (...) with CADA's principles in this matter. Furthermore: ICP-ANACOM's position is in line with the prevailing legal framework: it is in accordance with the LADA and, furthermore, it has not been demonstrated that it exceeds the scope of ICP-ANACOM's responsibilities, in particular those referred to in points c), h) and n), paragraph 1 and paragraph 2 of article 6 of its Statutes" (underlined herein).*

Additionally, on the subject of the first question put by ICP-ANACOM, on whether the information in question "*(...) might not contain so-called company secrets*", the answer lies in CADA's response - paragraph 6 of article 6²⁰ of the LADA and in article 268, paragraph 2²¹ of the Constitution of the Portuguese Republic (CRP), giving basis to the position that "*since secrecy constitutes a limitation on the exercise of the right of access, said secrecy may not result in such a limitation except where it is safeguarded by the CRP as constituting rights or interests recognized by the CRP*".

CADA, by reference to a previous opinion issued on the subject, states that the restriction on access provided for in article 6, paragraph 6 of the LADA *is based on the premise that the documents subject to said restriction contain secret information*, since the referenced provision that protects secrecy *aims to ensure that the exercise of the right of access to administrative*

²⁰ Paragraph 6 of article 6 determines: "*A third party has a right of access to administrative documents containing trade or industrial secrets or secrets about the internal operations of a company only where it has written authorization from the company or where it has a direct, personal and legitimate interest which, according to the principle of proportionality, is of sufficient importance*".

²¹ Right of access to administrative records and files, which is recognized as a right of a similar nature to the rights, freedoms and guarantees

documents does not provide a means of compiling strategic data from the Administration related to the fundamental interests of third parties, thereby distorting market rules. And with basis in the concept embedded in the Código da Propriedade Industrial (Industrial Property Code), CADA concludes that it is possible to affirm that industrial or commercial secrets constitute secret information, which, as such, has commercial value (current or potential) and is subject to measures which maintain secrecy. Thereafter, CADA illustrates what such a concept covers, and affirms:

"Consequently, when the consulted party (or requested party) considers that the requested documents contain information comprising "company secrets" and the applicant has not been supplied with written permission from the requested company and fails to demonstrate a "legitimate and direct personal interest which, according to the principle of proportionality, is of sufficient relevance", it may, on a reasoned basis that "sets out [its] argumentation in a clear and unambiguous manner and, thereby, the premises which support its decision, so as to inform the applicant as to the reasons for the adopted measure (...) to reject the request for access in the part relating to such information (article 6, paragraph 6). (...) Therefore (...), according to paragraph 7 of article 6 [of the LADA], the consulted/requested party will provide partial access to the requested documentation having removed any reserved content".

As to the first question, CADA concludes, *in short (...) that "it may be stated that:*

- a) Access should constitute the rule, since it corresponds to the exercise of a fundamental right with the same structure as rights, freedoms and guarantees and sharing the same regime:*
- b) Restrictions should be applied narrowly and only after a reasoned analysis of the specific case, and furthermore must be substantiated;*
- c) It is necessary, therefore, to distinguish in each case what is not accessible (as an exception to the right of access), whereas all that remains may be disclosed to third parties" (underlined herein).*

"2. If so, are there any legal restrictions to access by third parties upon request (...)? And are there any legal restrictions on disclosure upon ICP-ANACOM's initiative, including on its website?"

In CADA's view "(...) it does not appear that the information in question is covered by the exception provided for in paragraph 6 of article 6.

And therefore, nothing prevents such access (...) and there is nothing which prohibits ICP-ANACOM from making such information available, 'including on its website'.

Whether access is provided reactivity (i.e. upon request) or provided proactively (i.e., spontaneously), the consultant party shall comply with 'the principles of publicity, transparency, equality, justice and impartiality' as govern access to administrative documents (article 1).

Meanwhile, article 10 stipulates that the authorities and undertakings to which LADA applies shall ensure disclosure, 'specifically in electronic databases as are easily accessible to the public over public telecommunications networks', of the administrative information therein, 'updated at least every six months.'

Ultimately what the consultant entity seeks is availability of information on the accomplishment of the obligations to which PTC is subject, which information (according to the records) does not indicate a restriction on disclosure to third parties» (Now underlined).

"3. Considering the divergence between the positions taken by ICP-ANACOM and PTC, is it incumbent upon ICP-ANACOM to decide on the issue - as regards the lack of confidentiality - and as such, provide indicators to third parties (...) requesting access to this information?"

CADA provides a positive response, noting that future situations should always be examined on a case-by-case basis.

In conclusion, CADA considers that "the position taken by ICP-ANACOM is correct insofar as the defined list of global and aggregate indicators (...) does not contain or reveal confidential information", whereby there is nothing which prohibits ICP-ANACOM from making this list, and the information derived therefrom, available on a reactive or proactive basis".

VI. Position of ICP-ANACOM

General considerations

ICP-ANACOM is an independent regulatory authority which, in the context of its activity, and in clear fulfilment of the general principle of open Government, has a duty to ensure the transparency of decision-making procedures and to make such procedures public; likewise, it is incumbent upon ICP-ANACOM to consult and interact with undertakings which are present in the sectors where it intervenes and with other relevant sector entities, as well as citizens, as the ultimate beneficiaries of the supervision and oversight performed within the framework of its Statutes, specifically article 55, and of the substantive laws governing regulated sectors and general law applicable to administrative activity.

In this context, ICP-ANACOM makes available all information as is its obligation to make available, as well as information whose publication it deems warranted, under the law, in order to inform the public and enable the informed participation of citizens in the administrative activity and in the exercise of their rights.

In the present case, - given the sensitivity and the social impact of migration to DTT, which has affected (and affects) the population that received television services exclusively using the analogue terrestrial broadcast system - in the opinion of ICP-ANACOM and as transmitted to PTC, the public interest justifies public access to information at a higher level and that it be more detailed and more intense than in other situations where access is requested on activities of supervision and oversight, while naturally respecting any situations where information is confidential.

It is in this context that it is considered important and appropriate to define a set of indicators on the execution of the DTT Subsidy and DTH Reimbursement Programmes, whose specific content²² does not reveal confidential information and, consequently, does not warrant the

²² Involving, naturally the two realities set out by CADA in its opinion, that is the definition of indicators and information resulting from the requirements established under these indicators.

application of restrictions (i) on access following a request for such information - as indeed, has occurred²³ - or (ii) on general public dissemination where ICP-ANACOM sees fit.

Given ICP-ANACOM's intention, pursuant to its statutory powers and upon its own initiative, to make certain information public, the matter has been examined in light of the CPA and LADA; this legislation sets out the constitutional principle of transparency which gives basis to the right of citizens to information on decisions which affect them, as well as the constitutional principle of open government (article 268, paragraph 1 and 2), in order to assess whether there was some limitation as would prohibit the release (in whole or in part) of the information concerned. This Authority considers therefore that the cited legislation is applicable to the case.

Specific Considerations

Reiterating the position notified at the appropriate time to PTC, ICP-ANACOM does not recognize the existence of confidential information in the global and aggregate indicators which it now defines, nor in the information incorporated by said indicators.

Indeed, these indicators relate roughly to the cumulative number of received requests/applicants, the cumulative number of beneficiaries of the programmes and of DTH Kits sold (subsidized and non-subsidized), as well as the accumulated expenditure incurred as a result of the various subsidies/reimbursements in question.

As such, making this accumulated data available:

- (i) does not involve information related to the internal organization of PTC, and does not reveal implemented organizational processes protected by trade secrecy; and
- (ii) does not constitute disclosure of economic-financial information that gives insight into the company's economic situation, insofar as it entails the availability of data on the execution of *Programmes* that embody obligations laid down in the DUF granted to the company following a tender procedure.

Furthermore, the conclusion of CADA is clear and reinforces ICP-ANACOM's position regarding the issue at hand; this therefore confirms the legitimacy of disclosing the information in question.

²³ We refer to the request for access received from DECO - Associação Portuguesa para Defesa do Consumidor (Portuguese Association for Consumer Protection), as was notified to PTC by notice ANACOM-S034623/2013 of 12.08.2013.

In this regard it is to be noted that CADA considered that the position taken by ICP-ANACOM *is consistent with its principles in this area, and is in accordance with the prevailing legal framework.*

In addition, CADA expressly held that *"(...) it does not appear that the information in question is covered by the exception provided for in paragraph 6 of article 6 [of the LADA].*

And therefore, nothing prevents such access (...) and there is nothing which prohibits ICP-ANACOM from making such information available, 'including on its website'.

Whether access is provided reactivity (i.e. upon request) or provided access proactively (i.e., spontaneously), the consultant party shall comply with 'the principles of publicity, transparency, equality, justice and impartiality' as govern access to administrative documents (article 1).

(...) Ultimately, what the consultant entity seeks is availability of information on the accomplishment of the obligations to which PTC is subject, which information (according to the records) does not warrant a restriction on disclosure to third parties" (underlined herein).

CADA also considered that ICP-ANACOM has authority to decide in the case, as regards the lack of confidentiality in relation to a request for access, as in the case of the request received from DECO.

As regards PTC's argument that the information covered by the indicators refers to the amounts spent by the company in the context of executing the *Programmes*, as incorporated by the respective values of the economic and financial plan of the tender proposal, the confidentiality of which data had not have been challenged by ICP-ANACOM (whereby PTC concluded that any information contained in or resulting from the implementation of this plan should always remain confidential,) the following position, as already set out on this aspect, is reiterated.

Accordingly, while the economic and financial project (as forms part of the economic and financial proposal) has been considered confidential, the proposal presented the overall figures forecast at the time for the subsidy of reception equipment where supplied to groups of people with special needs and to institutions of proven social value, as well as overall figures for the subsidy of reception equipment in areas with complementary DTH coverage. Not only do these global values refer to commitments undertaken by PTC under the tender, constituting, as such, information with public interest, these values are also expressly contained in the Final Report on

the analysis and evaluation of the application to the Mux A tender, in respect of which PTC did not identify any information as being confidential²⁴.

Finally, it should be noted that, since it does not recognize the confidential nature of the information in question, ICP-ANACOM is not bound to weigh the interests of an applicant for access to such information, such as DECO, with the interests of PTC.

Therefore, given the above and whereas:

- i) The opinion of CADA constitutes a key component of this decision-making process (as a course also suggested by PTC); and
- ii) The conclusion is unequivocally supportive of ICP-ANACOM's position;

the draft decision of ICP-ANACOM, as notified to PTC on 21.02.2013 is to be maintained - that is the definition of a set of indicators, as not considered confidential for the purpose of external disclosure by ICP-ANACOM on two levels - widespread dissemination to the public and upon request for access - from the date on which ICP-ANACOM receives the communication from PTC conveying said information.

VII. Decision

Accordingly, based on the arguments set out, and pursuant to the powers set out in article 6, paragraph 1, points b) and h) and paragraph 2, point c) of its Statutes, as published in annex to Decree-Law no. 309/2001 of 7 December, in pursuing the objectives of regulation laid down in article 5, paragraph 1, point c) of the LEC with respect to its assigned function of monitoring and overseeing compliance with the commitments undertaken by holders of rights of use of frequencies awarded in the course of tender procedures, and pursuant to point l) of article 26 of its Statutes, the Management Board of ICP-ANACOM determines:

To approve the set of indicators to be disclosed on the execution of the DTT Subsidy and DTH Reimbursement Programmes, as well as the mode of disclosure by

²⁴ Letter from PTC, 11.11.2008, with ref. 19989137.

ICP-ANACOM of the information reported by PTC as regards said Programme, in accordance with the document **in annex** to the present decision.

Lisbon, 4 September 2013