

## **DRAFT DECISION CONCERNING CONDITIONS FOR THE PROVISION OF BUNDLED NETWORK LINE AND TRAFFIC OFFERINGS AT A SINGLE PRICE BY PT GROUP COMPANIES**

1. Following a determination of 29 May 2003<sup>1</sup>, ICP-ANACOM has confirmed the temporary suspension, by order of 7 January 2003<sup>2</sup>, of the “PT Network Line without Subscription” plans for, comprised of an offer in which the traditional network line subscription for telephone service at a fixed location was replaced by a monthly expense that could be converted into traffic.
2. PT Comunicações, S.A. (PTC), as an entity with significant market power (SMP), was bound at that time and still is<sup>3</sup> to the principle of non-discrimination in interconnection, which primarily involves the obligation to offer the conditions and informations that it applies to its own services, subsidiaries and associated undertakings to interconnection applicants offering similar services and that are under similar conditions.
3. Consequently, given that PTC exclusively handled billing and collecting of its direct customers subscriptions and given the absence of a network line subscription wholesale offer, ICP-ANACOM has concluded that indirect access providers would not be able to bundle subscription and traffic under the same offer and that this was discriminatory treatment and would constitute an obstacle to both market entry and new operators’ development.
4. On 2 February 2005, PTC presented a proposal revising universal service pricing for residential customers and bundling monthly subscriptions with intra-network traffic on weekends and public holidays.
5. ICP-ANACOM objected to such a proposal, notifying PTC, on 22 March 2005, that the offer of a mandatory consumer package including both subscription and

<sup>1</sup> <http://www.anacom.pt/template12.jsp?categoryId=74830>

<sup>2</sup> <http://www.anacom.pt/template12.jsp?categoryId=53241>

<sup>3</sup> See ICP-ANACOM determination of 17<sup>th</sup> December 2004 concerning the imposition of obligations in the wholesale markets for call origination and termination in the public telephone network at a fixed location.

([http://www.anacom.pt/streaming/8.9final.pdf?categoryId=138582&contentId=250987&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/8.9final.pdf?categoryId=138582&contentId=250987&field=ATTACHED_FILE)).

traffic could constitute a conditioned sale, in breach of article 9 of Law n.º 24/96, of 31 July, which prohibits service providers from making the provision of a good or service dependent upon the purchase or provision of another/other services. ICP-ANACOM also reiterated the determination of 29 May 2003, saying that although the “package” was not mandatory, questions would remain with regard to other operators’ ability to replicate a similar offer.

6. Following a determination of 14 December 2004<sup>4</sup> concerning the imposition of obligations in narrowband retail markets, companies of the PT Group which are active in retail markets of access were obliged to publish a reference proposal for the Subscriber Line Resale Offer (SLRO), in order to enable the SLRO beneficiaries therefrom to render available its own innovative retail offers (thus adding value to the subscriber through the establishment of diversified services) and to compete with the offers of the PT Group that bundle access and other services in optional plans.
7. The minimum elements to be comprised in the Reference SLRO Offer were approved, after consultation<sup>5</sup>, by determination of 29 April 2005<sup>6</sup>, and PTC send a Reference SLRO Offer on 1 June 2005, followed by a second version thereof on 15 June 2005.
8. Following a determination of 21 July 2005, ICP-ANACOM’s Board of Directors approved the decision on changes to the Reference SLRO Offer.
9. In light of anticipated advantages concerning the “economies of learning” resulting from experience accumulated by activating the SLRO in analogue accesses, ICP-ANACOM did not object to PTC including ISDN accesses in the reference offer until the end of the first quarter of 2006, and decided in favour of this in its determination of 29 April 2005. In any case, it is believed that the complete and effective deployment of the SLRO will be dependent upon the inclusion of ISDN accesses in the reference offer, as this is considered essential in order to allow all companies, wishing to, offer “packages” that include subscription and traffic to their commercial customers.
10. In a letter dated 1 June 2005, PTC presented its estimate of access activations under the SLRO, forecasting 660,000 activations in 2005, 147,000 in 2007 and 99,000 annually for the 2007-2009 period, excluding ADSL activations (for which it did not present estimates). As stated in this letter, PTC expects that all pre-selection regime users will activate the SLRO.
11. According to ICP-ANACOM estimates, at the end of the first quarter of 2005 there were around 666,000 accesses in pre-selection, with companies of the PT Group offering telephone services under a pre-selection regime in approximately 62,400 of these accesses (9.4 percent of all accesses in pre-selection).

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[http://www.anacom.pt/streaming/relatorio.orla29.4.05.pdf?categoryId=150162&contentId=270845&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/relatorio.orla29.4.05.pdf?categoryId=150162&contentId=270845&field=ATTACHED_FILE)

<sup>6</sup> <http://www.anacom.pt/template12.jsp?categoryId=150562>

12. According to PTC estimates, there should be 807,000 accesses associated with the SLRO by the end of 2006. Excluding accesses in pre-selection from PT Group companies, this number should be around 731,400 accesses (assuming that the percentage of accesses for which companies of the PT Group offer pre-selection remains constant).
13. As specified in the decision of 14 December 2004 concerning the imposition of obligations in the retail markets, “may exist obstacles to the SLRO deployment originating from the technical complexity associated with its implementation and the fact that the operator with SMP may have little incentives to effectively carry it out”. Likewise, in light of PTC’s position concerning the retail and wholesale markets and the need to safeguard market competition, it is believed that an offer from PTC bundling traffic with the subscription value must be conditional upon the SLRO’s development and effective deployment.
14. Given PTC’s estimates, it is believed that achieving 150,000 SLRO activations, corresponding to around 20% of the activations forecasted for the end of 2006 (excluding activations from PT Group companies), is possible in a relatively short time frame and compatible with the rapid and effective implementation of this offer.
15. It is also important to note, as stated in the determination of 14 December 2004, following the SLRO deployment and in light of its impact on the market, that ICP-ANACOM may reassess the market conditions and readjust the applicable price cap in markets of access and local and national telephone services in the public telephone network at a fixed location for residential customers.
16. In the public consultation on the minimum elements to be comprised in the Reference SLRO Offer<sup>7</sup>, service providers, with the exception of the PT Group, state that a single bill should be ensured, that a multiple billing scenario would be defraud the customers, and that therefore the beneficiary company should ensure the billing of the services currently billed by the PT Group, if the subscriber so chooses.
17. In the respective consultation report, ICP-ANACOM clarified that the existence of the SLRO can promote the existence of a single bill, but it may not ensure it, since there could be circumstances in which the undertakings of the PT Group may not request the beneficiaries to bill and collect the remaining services comprised in the SLRO beyond the line’s monthly payment, as well as situations of non-agreement between the beneficiaries and third parties providing services comprised in the SLRO. According to available information, there is no country where a single bill is guaranteed under all circumstances and for all types of access.
18. Nonetheless, ICP-ANACOM recognizes the concrete possibility of a single bill as a means of increasing the level of competition in the market.
19. Thus, ICP-ANACOM’s Board of Directors, in the scope of its jurisdiction provided for in article 6, item 1, sections b) and f) of its articles of association, approved by Decree Law n.º 309/2001 of 7 December, in exercising its powers provided for in

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[http://www.anacom.pt/streaming/relatorio.orla29.4.05.pdf?categoryId=150162&contentId=270845&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/relatorio.orla29.4.05.pdf?categoryId=150162&contentId=270845&field=ATTACHED_FILE)

article 9, sections b) and g) of its articles of association and in light of the regulatory objectives established in article 5, item 1, section a) and item 2, section b) of Law n.º 5/2004 of 10 February (Electronic Communications Law), hereby approves as a draft decision:

1. That companies of the PT Group may not provide retail offers which bundle access and telephone traffic at a single price unless all of the following cumulative requirements are met:

- a) PT Group companies must provide Basic and Primary ISDN (in addition to analogue) accesses for activation of the SLRO;
- b) The minimum number of SLRO accesses activated must be at least 150,000 in equivalent analogue loops, excluding activations from PT Group companies;

And, insofar as the billing and collecting price set by the beneficiary undertaking is reasonable,

- c) PT Group companies must request the beneficiary companies to bill and collect all services provided over accesses activated for the SLRO, whether provided by PT Group companies or provided by other companies when billed to and collected from subscribers by PT Group companies.

2. Notwithstanding the fulfillment of the aforementioned requirements, retail offers from PT Group companies must conform to the applicable regulatory framework, in particular by fulfilling obligations involving content orientation of prices and non-discrimination.

3. PT Group companies must send ICP-ANACOM information on the number of accesses activated under the SLRO up to the month following the month to which the information in question concerns, in accordance with the attached chart.

20. It should also be emphasized that ICP-ANACOM, under the scope of its supervision and monitoring powers, will continue to verify the deployment and operation of proceedings associated with the SLRO, which PT Group companies must guarantee to be transparent and effective.

21. Interested parties wishing to state their opinions on the draft decision may do so, in writing, within a period of thirty working days, in accordance with the provisions of articles 100 and 101 of the Code of Administrative Procedure. For this purpose, “interested parties” include telephone service providers at a fixed location, data transmission service providers, Internet access service providers and PT Group companies.

22. This draft decision will be submitted to a general consultation procedure under the terms of article 8 of Law no. 5/2004 and consultation procedures approved by ICP-ANACOM on 12 February 2004, with interested parties wishing to state their opinions having a period of thirty working days to do so.