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Determination of 9.5.2005

## **DETERMINATION ON THE FIXED-MOBILE RETAIL TARIFF (PTC)**

1. Pursuant to the determination of ANACOM dated 14/12/04, on the imposition of obligations in the narrowband retail markets<sup>1</sup>, the fixed-mobile (F-M) tariff of PT Comunicações, S.A. (PTC) is subject to a validation from this Authority, having regard to the fact that there are regulatory mechanisms binding on the retention amount, namely the principle of cost orientation. According to the mentioned determination, PTC should provide a reasoned justification for the retention amount, based on efficient, economic costs.
2. The determination of ANACOM dated 14/12/04, on the imposition of obligations in the narrowband retail markets, established that, as far as the F-M calls are concerned, the undertakings of the PT Group shall practise amounts at reasonable levels, in order to ensure that final prices charged to users are also reasonable, PTC being also bound to transpose the evolution determined for F-M termination prices to the practised retail prices. The same deliberation further maintained that PTC's retention amount concerning the F-M traffic should be cost-orientated.
3. The intervention of ANACOM in the scope of the assessment of PTC's retail tariff, and in particular the retention amount, aims essentially to protect consumer interest, by restricting or preventing the development of drawbacks to the use of network externalities on the part of end-users.
4. In the scope of the determination of ANACOM of 25/02/05<sup>2</sup>, regarding the price control obligation in the wholesale markets for voice call termination in individual mobile networks, the price evolution to which mobile operators must comply with has been established, for the period from March 2005 to December 2006. It should

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<sup>1</sup>[http://www.anacom.pt/streaming/OMR29.11.20041.pdf?categoryId=120742&contentId=246306&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/OMR29.11.20041.pdf?categoryId=120742&contentId=246306&field=ATTACHED_FILE). (This information is available in portuguese)

<sup>2</sup>[http://www.anacom.pt/streaming/dec.contrprecos.pdf?categoryId=143262&contentId=258996&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/dec.contrprecos.pdf?categoryId=143262&contentId=258996&field=ATTACHED_FILE). (This information is available in portuguese)

be highlighted that the decrease of prices set therein has been explicitly determined by ANACOM and does not stem from an initiative of operators.

5. In addition to the reduction of prices for call termination in mobile networks, PTC notified ANACOM, on 07/03/05, as to the revision, which took effect from that date onwards, of retail prices of traffic originating in its own network and terminating in the networks of TMN, Vodafone and Optimus mobile operators.
6. With the purpose of assessing the variation in PTC's retention amount in F-M traffic, ANACOM requested billing data for this type of traffic on 11/03/05, and, on 28/03/05, the grounds for the tariff proposed. PTC, on 28/03/05, submitted information on F-M traffic, and on 11/04/05, presented the reasons for the proposed tariff.
7. Taking due regard to the applicable regulatory principles, ANACOM assessed the available information, and deemed that the increase registered in PTC's retention amount for F-M calls resulting from the retail tariff established by PTC on 07/03/05 had not been supported by conclusive evidence.
8. Therefore, ANACOM determined upon PTC, on 18/04/05, *inter alia*, that the undertaking was bound to submit, within a 5 working-day time limit, a new proposal for retail tariffs concerning F-M calls, and that PTC's retention amount for calls to: (a) TMN and Vodafone not be greater than the retention amount registered previously to the tariff in force from 07/03/05; Optimus not be greater than the average retention amount of calls to TMN and Vodafone. This tariff proposal should attach a supporting document of the compliance with the rules listed in the document "Methodology used for estimating PTC retention in F-M traffic" (in annex to the referred determination), without prejudice to any adjustments this Authority deemed necessary in the future, following the assessment of billing data to be received.
9. Furthermore, it was also incumbent upon PTC to establish phased reductions of retail prices for F-M calls, to be introduced in parallel to the establishment of new prices for mobile termination, on the dates appointed in the document on obligations applicable to the mobile termination market, and the average amount of retention per minute of calls to each mobile operator should not be increased.
10. In compliance therewith, PTC submitted on 26/04/05, a new tariff proposal for the so-called F-M calls (see table below). The alteration of the tariff of 07/03/05 corresponded also to an alteration of the tariff structure as regards the hourly load factor, as the period between 9 p.m. and 10 p.m., concerning the traffic to the TMN and Vodafone networks, was established as an off-peak period. As regards the traffic to Optimus, the respective off-peak hours were not subject to any changes, starting from 9 p.m.

PTC F-M Retail Prices (proposed tariff). Charge per second as from the first minute.

| Amounts in Euro cents         | TMN e Vodafone           |                   | Optimus                  |                   |
|-------------------------------|--------------------------|-------------------|--------------------------|-------------------|
|                               | 1 <sup>st</sup> . Minute | Following minutes | 1 <sup>st</sup> . Minute | Following minutes |
| Week-ends and holidays        | 11.00                    | 23.90             | 13.95                    | 31.50             |
| Off-Peak hours (9 p.m-9 a.m.) | 11.00                    | 23.90             | 13.95                    | 31.50             |
| Peak hours (9 a.m.- 9 p.m)    | 11.00                    | 27.90             | 13.95                    | 36.50             |

11. ANACOM based its assessment on the traffic data submitted by PTC, on 26/05/05 (which excludes traffic subject to discounts and price plans as well as traffic originating in public pay-phones), concerning the period between 17/01/05 and 19/04/05, which included the traffic verified by BDI (source of information of billing to end-customers) to which the base tariff applies.
12. As regards traffic profile, namely the average duration of calls in each interval and respective weight of calls in each class, the profile shall correspond to the traffic associated to each tariff, traffic prior to March 2005 being associated to the traffic profile prior to the hourly load factor, and the proposed new tariff being associated to peak and off-peak periods subsequent to March 2005. Note that the alteration of the hour structure in the retail tariff of PTC, which consisted of the extension of off-peak hours concerning calls to the Vodafone and TMN mobile networks, does not affect the traffic profile for calls to the Optimus network.
13. Based on the tariff proposed, ANACOM concluded that the average retail price associated to the F-M calls presents a variation of -16,3% as regards the tariff in force up to 07/03/05.
14. Therefore, the Board of Directors of ANACOM, in the scope of the assignments provided for in points b) and f) of paragraph 1 of article 6 of the Statutes thereof, approved by Decree-Law no. 309/2001 of 7 December, having regard to the regulation objectives provided for in point c) of paragraph 1 of article 5 of Law no. 5/2004, of 10 February, as well as the provisions in the above-mentioned determination of 14/12/04, hereby determines the following:
  - 1º) Not to oppose to the PTC F-M tariff proposal presented on 26/04/05, which shall enter into force on 11/0/05;
  - 2º) That, for the purpose of calculating the retention amount, the F-M traffic concerning discounts and price plans shall also be comprised;
  - 3º) The effect of not including the traffic concerning discounts and price plans in the variation estimate of the retention amount for the period between 07/03/05 and 01/07/05 shall be comprised in the tariff to enter into force on 01/07/05;
  - 4º) Considering that the F-M tariff in force between 07/03/05 and 11/05/05 resulted in an increased retention amount for PTC, contrary to the applicable regulatory provisions, such increase shall be corrected in the tariff to enter into force on

01/07/05 (to the extent of the amount that exceeds the retention amount resulting from the tariff proposal presented by PTC on 26/04/05);

5°) To reinforce that PTC shall establish phased reductions of retail prices for F-M calls, to be introduced in parallel to the establishment of new prices for mobile termination, on the dates appointed in the document on obligations applicable to the mobile termination market, and that the average amount of retention per minute of calls to each mobile operator should not be increased.

15. The above provisions are without prejudice to any other measures ANACOM may take at the level of PTC's retention amount concerning the F-M traffic, in accordance with the applicable regulatory principles and any alteration in the tariff structure (namely as regards the initial time credit).