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Determination of 13.10.2005

ALTERATIONS TO THE "PT ADSL NETWORK" WHOLESALE OFFER INTRODUCED BY PT COMUNICAÇÕES, S.A., ON 23.08.2005

I. FACTS

On 23.08.2005, PT Comunicações, S.A. (PTC) carried out a set of alterations to the "PT ADSL Network" wholesale offer and reported them to ICP-ANACOM, declaring that on the same date these alterations had also been reported to Operators and Service Providers (OSP).

Among the reported alterations, the following may be highlighted:

- (a) Launching of three new classes of access with maximum bandwidths set to 2 Mbps, 4 Mbps and 8 Mbps, with 512 Kbps upstream bandwidth and 1:20 maximum contention, which shall start operating on 24.10.2005, date in which PTC declares to be prepared to receive local access orders regarding these new classes of access;
- (b) Price reduction of IP local access for classes 8¹ and 9² and adjustment of the respective maximum contention rates (from 1:10 to 1:20), which shall take
- (c) Discontinuation of classes of access 1³, 2⁴, 3⁵, 6⁶ and 7⁷, for migration reasons, with no attached bandwidth alteration charges. This process shall begin on 24.10.2005 and shall run without charge to 13.04.2006. PTC mentions that all classes among the referred classes 1, 2, 3, 6 and 7 shall be discontinued from the offer following the full migration of their local access parks;
- (d) Launching of two additional levels of quality of service concerning the service return, which shall enter into force on 24.10.2005.

¹ 512 Kbps / 384 Kbps, with 1:10 contention.

² 1024 Kbps / 384 Kbps, with 1:10 contention.

³ 256 Kbps / 128 Kbps, with 1:20 contention.

⁴ 768 Kbps / 128 Kbps, with 1:20 contention.

⁵ 1024 Kbps / 256 Kbps, with 1:20 contention.

⁶ 256 Kbps / 256 Kbps, with 1:10 contention.

⁷ 384 Kbps / 384 Kbps, with 1:10 contention.

Through letter dated 12.09.2005, OniTelecom – Infocomunicações, S.A. requested the intervention of ICP-ANACOM, suggesting the following action measures:

- (a) Immediate alteration to € 10,83 of local access monthly price for class 0⁸, applying to the offers of class 0 and 11⁹ (with 1:50 contention) the same price relation (0,76) existing for classes with the same 1:20 contention bandwidth (classes 8 and 15¹⁰);
- (b) Without prejudice to the prior proposal, the review of all local access prices in order to ensure internal consistency and consistency with other offers, namely with the local loop provision;
- (c) Application of a retroactive nature to alterations determined herein, particularly in case of class 0, in the light of considerations as far as the illegal nature of prices is concerned;
- (d) Maintenance of current classes with 1:10 contention, which appear to have the potential to interest the business market, without prejudice to the creation of the new 1:20 classes hereby introduced in the offer;
- (e) Alteration of the aggregation access price per Mbps to €100 and price alignment of the respective physical support with that of leased lines at the same bandwidth;
- (f) Extension of the migration without charge, up to 13.04.2006, to any bandwidth alteration in the accesses of the “PT ADSL Network” wholesale offer and from this offer to the local loop provision;
- (g) Review of the offer’s levels of quality of service, in accordance with the market needs.

II. ASSESSMENT

II.1. Introduction

The advantage of the alterations reported by PTC on 23.08.2005 would be that they reduce some of the prices of classes of service which needed to be reviewed, and at the same time, that they introduce classes of service with higher bandwidths which, having regard to the contention rate and to the increase of the upstream bandwidth (to 512 Kbps) aim at fulfilling the needs of more demanding customers in terms of minimum guaranteed bandwidth. However, PTC (i) intends to discontinue, without further substantiation, the current classes of service; (ii) does not review the prices of classes of service which are maintained in the offer and (iii) restricts the migration without charge of local accesses of classes 1, 2, 3, 6 and 7 to other available classes, and does not offer a free of charge migration between operators and between aggregation modes.

⁸ 512 Kbps / 128 Kbps, with 1:50 contention.

⁹ 2048 Kbps / 128 Kbps, with 1:50 contention.

¹⁰ 2048 Kbps / 512 Kbps, with 1:20 contention.

ICP-ANACOM is thus of the opinion that some matters remain to be reassessed.

These alterations were reported by PTC to interested parties 60 days ahead of the date of the respective entry into force, as provided for in the obligations imposed following the assessment of the broadband access wholesale market¹¹.

It should be stressed that there is no evidence that the offer resulting from these alterations, which have been reported three months after the entry into force of other important alterations, corresponds to the interests of the offer beneficiaries, except for the PT Group. It thus follows that the alterations appear to have been introduced either on the initiative of PT itself, or in response to requests from subsidiary companies, a situation which may lead to anticompetitive effects, hindering the transparency and stability of market conditions.

II.2. Introduction, alteration and discontinuation of classes of service

PTC proposes to discontinue five classes of service (1, 2, 3, 6 and 7), to alter the contention rate of classes 8 and 9 from 1:10 to 1:20 and to introduce three new classes of service (15, 16 and 17) with 1:20 contention rates.

Should we consider an assessment in purely static terms (that is, without balancing the effect of a price reduction, ensuring the coherence between prices of the different classes of service), the results would be, maintaining the contention level at 1:20, that:

- class 1 would be better replaced by classes 8 and 9 (increase of downstream and upstream bandwidth and price reduction);
- class 2 would be better replaced by classes 9, 15, 16 and 17 (increase of downstream and upstream bandwidth and price reduction);
- class 3 would be better replaced by classes 9, 15, 16 and 17 (increase of downstream and upstream bandwidth and price reduction).

These conclusions would change in case prices of classes of service 1, 2 and 3, which PTC intends to discontinue, were globally consistent, that is, if they were significantly reduced, and thus be appealing to a group of users with lesser maximum bandwidth needs, but who seek a lower bandwidth variation (better contention).

Classes 6, 7, 8 and 9 cannot be directly replaced as the respective contention is higher (from 1:10 to 1:20)¹². As a result, it cannot be said that these classes are better replaced by any other. In fact, the proposal to discontinue classes 6 and 7 and to alter the contention rates for classes 8 and 9 ceases to make available a better contention rate than 1:20 (particularly the 1:10 contention rate) as well as symmetrical classes of service (classes 6 and 7) which could be of interest of a specific market segment.

¹¹ Document “Definition of product markets and geographic markets, assessment of SMP and imposition, maintenance, amendment or withdraw of regulatory obligations” regarding the broadband access wholesale market (at <http://www.anacom.pt/template21.jsp?categoryId=158124>).

¹² However, the alteration of the contention rate of classes 8 and 9 enables PTC to reduce the respective local access prices by 61% and 73% (from €48,71 to €19,00 and from €82,98 to €22,00).

Also in static terms (that is, without balancing the effects of an assessment of price consistency as regards service demand), relatively to the number of customers using the classes of service under consideration, based on the information on the 2nd quarter of 2005, the classes of service PTC intends to discontinue or to alter correspond to around 15 thousand accesses, which represents around 3% of total broadband accesses supported in the “PT ADSL Network” wholesale offer. A major share of such accesses concern the PT Group (around 78%) and largely regard classes 1, 2 and 3. Classes 6, 7, 8 and 9 had, by the end of the second half of 2005, around three hundred customers.

It should be observed that the number of customers using the classes of service PTC intends to discontinue or to alter is conditioned by the wholesale price applicable to such classes, and thus the demand could increase in case there was a global consistency between prices of the different classes of service.

ICP-ANACOM also highlights that, as regards potential discontinuations, it took the view, in the process concerning the determination of 24.06.2005, that the introduction of new classes of service should not imply the discontinuation of existing classes, as this would lead to choice reduction on the part of end users and could present competitive problems to the market.

ICP-ANACOM thus restates that the evolution to the classes of service with higher bandwidth should not imply *per se* the discontinuation of existing classes of service, as this would reduce the choice of end users, save where there are technical impediments, duly substantiated, or an evident lack of interest of the market.

II.3. Free of charge migrations

PTC proposes that OSP migrate local accesses of classes 1, 2, 3, 6 and 7 to any other available classes of access, with no attached bandwidth alteration charges. This free of charge migration process shall run from 24.10.2005 to 13.04.2006, according to the proposal of PTC.

According to PTC, classes 1, 2, 3, 6 and 7 shall cease to be commercially available for new ADSL local accesses, as well as for migrations and alterations to existing access to these classes, as from 24.10.2005, being discontinued from the offer as soon as the total migration of the respective local access parks is carried out.

In line with the previous opinion of ICP-ANACOM, declared in the determination of 24.06.2005, and in order to ensure consistency with other offers, the restriction of migrations without charge to migrations to the same operator is a situation which cannot be accepted. Thus, concomitantly with determination of 24.06.2005, free of charge migration requests now provided for shall be extended to any bandwidth alteration, regardless of the aggregation mode and whether a service provider alteration (transfer between providers) is to take place or not, to be in force between 24.10.2005 and 13.04.2006.

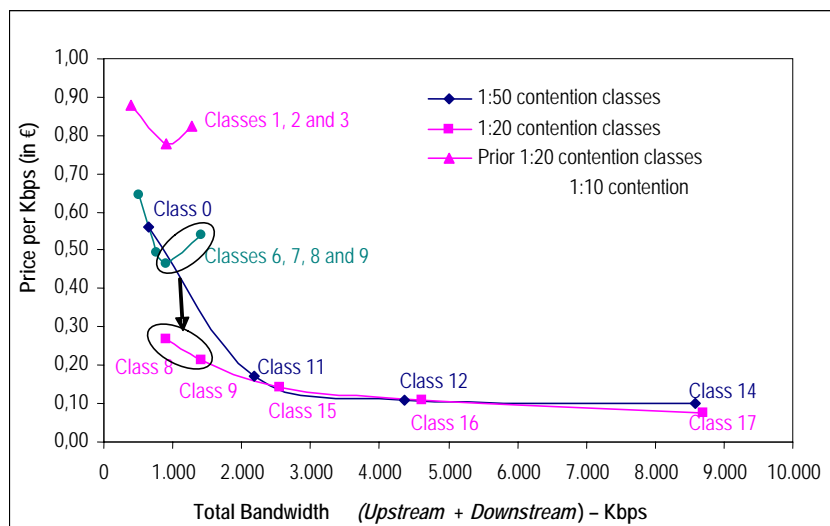
In order to ensure the proper implementation of migrations, PTC must present to OSP a non-discriminatory migration plan, which meets the wishes of OSP.

II.4. Consistency between prices of the different classes of service

Figure 1 presents the implicit traffic price as regards bandwidth associated to the different classes of service. This price was achieved as follows:

- the access price considered to be independent from bandwidth and contention (€ 7,05, established to be the ATM local access price) was withdrawn from each of the classes of service;
- The amount thus obtained represents the component that varies according to the bandwidth and contention implicit in the prices comprised in the wholesale offer reported by PTC.

Figure 1. Implicit traffic price as regards bandwidth associated to the different classes of service



The analysis of Figure 1 shows that, particularly as regards the price of class 0 and the classes PTC intends to discontinue are not consistent with prices of the remaining classes of service.

As a result, such as what PTC intends to do as regards classes 8 and 9, PTC should also review local access prices of the different classes of service in a consistent and duly substantiated way.

II.5. Levels of quality of service

Ainda no âmbito das alterações à oferta “Rede ADSL PT”, a PTC propõe disponibilizar dois níveis de qualidade de serviço adicionais relativos à reposição do serviço, designados respectivamente por “MAX8HU” e “MAX12HL”. Seguem-se os detalhes destes dois níveis de qualidade de serviço.

Also in the scope of the alterations to the “PT ADSL Network” wholesale offer, PTC intends to make available two additional levels of quality of service concerning the

service return, named respectively “MAX8HU” and “MAX12HL”. The details of these two levels of quality of service are set out below.

	PT ADSL Network–“MAX8HU” Level		PT ADSL Network–“MAX12HL” Level	
Service Return (Faults)	Average time limit for 100% of incidents (working hours)	Maximum time limit for 95% of incidents (working hours)	Average time limit for 100% of incidents (linear hours)	Maximum time limit for 95% of incidents (linear hours)
	4	8	6	12
Service availability (Monthly basis)	99,50%		99,50%	
Price (no VAT included)	Activation ⁽¹⁾	€12,47	Activation ⁽²⁾	€12,47
	Monthly payment	€2,50	Monthly payment	€5,00

⁽¹⁾ Alteration of the current level of quality of service to the “MAX8HU” additional level of quality of service.

⁽²⁾ Alteration of the current level of quality of service to the “MAX12HL” additional level of quality of service.

This alteration is positive, as it enables a wider choice on the part of wholesale customers as regards the quality of service they intend to ensure to final customers.

However, ICP-ANACOM requests from PTC that puts forward reasons for prices as well as for the established levels of quality of service.

III. DETERMINATION

In the light of the above analysis and whereas:

- (a) By determination of 24.06.2005, and deeming it necessary to ensure consistency with other offers, ICP-ANACOM determined that free of charge migration requests provided for classes 2 Mbps, 4 Mbps and 8 Mbps shall be extended to any bandwidth alteration, regardless of the aggregation mode and whether a service provider alteration (transfer between providers) is to take place or not, to be in force for a 6-month period from the date of alteration of the offer resulting from the final determination;
- (b) Unilateral alterations of the “PT ADSL Network” wholesale offer, on the initiative of PT itself, or in response to requests from subsidiary companies, with a significant impact on OSP retail offers, may not correspond to global market interests and may lead to anticompetitive effects, hindering the transparency and stability of market conditions;
- (c) The evolution to the classes of service with higher bandwidth should not imply *per se* the discontinuation of existing classes of service, as this would reduce the choice of end users, save where there are technical impediments, duly substantiated, or evident lack of interest of the market;
- (d) There is no consistency between local access monthly charges of the different classes of service, and thus a global review thereof should take place;

- (e) There are no grounds for granting the prior hearing of interested parties, under point a) of paragraph 1 of article 103 of the Code of Administrative Procedure, as the alterations to the “PT ADSL Network” wholesale offer enter into force on 24.10.2005 and the prior hearing of interested parties would imply either the entry into force of the new conditions, without the alterations hereby determined, or the suspension of an offer with some merit, which would be contrary to market interests;

the Board of Directors of ICP-ANACOM, in the scope of assignments provided for in point b), e) and f) of article 6 of the Statutes, approved by Decree-Law no. 309/2001, of 7 December, and pursuant to point a) of article 3 of article 68 of Law no. 5/2004, and to points b) and g) of the Statutes, hereby determines the following:

1. PTC shall alter the “PT ADSL Network” wholesale offer, to take effect as from 24.10.2005, as follows:
 - a. As provided for in the determination of 24.06.2005, PTC shall extend free of charge bandwidth alterations to providers of migration requests, regardless of the aggregation mode and whether a service provider alteration (transfer between providers) is to take place or not, to be in force for the same period of time,
 - b. The classes of service currently in force shall not be discontinued, nor shall PTC cease to accept new access or migrations to these classes, save where there are technical impediments, duly substantiated, or evident lack of interest on the part of wholesale customers;

For this purpose, PTC shall submit to ICP-ANACOM, within a 10-day time limit from the alterations mentioned in paragraph 2 of the present determination, the grounds for the discontinuation of classes of service under consideration, and providers benefiting from the offer shall express to ICP-ANACOM, within the same time limit, the respective interest in the continuation of the offer, presenting duly substantiated grounds thereto.

2. PTC shall consistently review the local access prices of the different classes, which shall enter into force within a 20-day time limit from the date of the present determination, and for this purpose shall submit the respective reasons to this Authority.
3. The alterations ICP-ANACOM may determine to prices presented by PTC shall take effect as from the date of entry into force of such prices, as set forth in paragraph 2.

ICP-ANACOM recommends that in the future, where PTC balances the introduction of significant alterations to the “PT ADSL Network” wholesale offer, and before reporting alterations, this company should hear the beneficiaries of the offer on this subject, in order to better adjust the wholesale conditions to the market interests.