
Determination of 14.12.2005

DETERMINATION CONCERNING THE CONDITIONS FOR THE PROVISION OF BUNDLED NETWORK LINE AND TRAFFIC OFFERINGS BY COMPANIES OF THE PT GROUP

1. Following a determination of 29.05.2003¹, ICP-ANACOM confirmed the temporary suspension, by order of 17.01.2003², of the “PT Network Line without Subscription” plans, which comprised 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 is³ to the principle of non-discrimination in interconnection, which primarily involves the obligation to offer the conditions and information that it applies to its own services, subsidiaries and associated companies to interconnection applicants who provide 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 02.02.2005, 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 22.03.2005, that the offer of a mandatory consumer package including both subscription and traffic could constitute a conditioned sale, in breach of article 9 of Law no. 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 other services. ICP-ANACOM also reiterated the determination of 29.05.2003, saying that

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

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

³ See Determination of ICP-ANACOM of 17/12/04, on the imposition of obligations in 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). (only available in portuguese)

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 14.12.2004⁴ 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 their 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 SLRO Reference Proposal were approved, after consultation⁵, by determination of 29.04.2005⁶, and PTC send a SLRO Reference Proposal on 01.06.2005, followed by a second version thereof on 15.06.2005.
8. Following a determination of 21.07.2005⁷, the Board of Directors of ICP-ANACOM approved a draft decision on changes to the SLRO Reference Proposal.
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 proposal until the end of the first quarter of 2006, and decided in favour of this in its determination of 29.04.2005. 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 proposal, as this is considered essential in order to allow all companies, who wish to, to offer “packages” that include subscription and traffic to their commercial customers.
10. In a letter dated 01.06.2005, 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)
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).

⁴http://www.anacom.pt/streaming/OMR29.11.20041.pdf?categoryId=120742&contentId=246306&field=ATTACHED_FILE. (only available in portuguese)

⁵http://www.anacom.pt/streaming/relatorio.ora29.4.05.pdf?categoryId=150162&contentId=270845&field=ATTACHED_FILE. (only available in portuguese)

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

⁷ <http://www.anacom.pt/template12.jsp?categoryId=159302>

13. As specified in the decision of 14.12.2004 concerning the imposition of obligations in the retail markets, “there may be 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 deploy of this offer.
15. It is also important to note, as stated in the determination of 14.12.2004, 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 SLRO Reference Proposal⁸, service providers, with the exception of the PT Group, state that a single bill should be ensured and that a multiple billing scenario would defraud the customers. Therefore the beneficiary company should ensure the billing of the services currently billed by the PT Group, if the line subscriber so chooses to.
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 PT Group companies 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. It should be stressed that, within the current regulatory framework, ICP-ANACOM is not entitled to impose upon the PT Group the obligation to engage the billing and charging services provided by the beneficiaries, and likewise there is no legal provision to impose such obligation on companies that do not enjoy SMP. 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. Taking under consideration a reasonable period for the SLRO deployment, long enough to ensure that beneficiaries could adapt their business plans and offers, it would not be proportional to impose on the PT Group to make the possibility of making available offers bundling network line and traffic subject to the commercial strategy of beneficiaries, after that period was over.

⁸http://www.anacom.pt/streaming/relatorio.ora29.4.05.pdf?categoryId=150162&contentId=270845&field=ATTACHED_FILE. (only available in portuguese)

20. Therefore, the Board of Directors of ICP-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 n.º 309/2001 of 7 December, in exercising its powers provided for in points b) and g) of article 9, of the mentioned Statutes and in light of the regulatory objectives established in points a) of paragraph 1 and b) of paragraph 2 of article 5 of Law n.º 5/2004 of 10 February, having heard interested parties, hereby determines (grounds herefor are comprised in the prior hearing report which is an integral part hereof) the following:

1.º Companies of the PT Group may not provide retail offers which bundle access and telephone traffic at a single price (namely including offers which grant a discount on the monthly subscription price in case a certain amount of communications is consumed) 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) Provided that the billing and charging price established by the beneficiary is reasonable and that, for as long as the SLRO is activated in the loop at stake and for the beneficiary under consideration, the companies of the PT Group request of other beneficiaries the billing and charging of all services provided on the activated accesses to the SLRO, whether they are provided by the companies of the PT Group themselves, or by other companies where the services are billed and charged to customers by companies of the PT Group;

c) Complete and effective deployment of the SLRO by companies of the PT Group.

2.º The SLRO is deemed to be completely and effectively deployed, and thus the requirement in point c) of paragraph 1 is fulfilled, if the number of activated SLRO accesses is at the least 150,000 in equivalent analogue loops, excluding activations performed by PT Group companies.

3.º In case the number of SLRO activated accesses is lower than 150,000 in equivalent analogue loops, excluding activations performed by PT Group companies, ICP-ANACOM, three months after the introduction thereof, may reassess the conditions associated to the provision by companies of the PT Group of retail offers which bundle access and telephone traffic, in order to assess if the absence of the minimum number of SLRO accesses is a result of possible suboptimal performance on the part of the companies of the PT Group as regards the deployment of the SLRO.

As a result of this assessment, if it is deemed that the absence of this minimum number of SLRO accesses is due to inadequate performance on the part of the companies of the PT Group, these shall be prevented from providing retail offers bundling access and telephone traffic, without prejudice to other measures ICP-ANACOM deems appropriate.

On the contrary, in case the deployment of SLRO accesses by companies of the PT Group is globally deemed to be complete and effective, ICP-ANACOM shall not oppose to the provision of retail offers bundling access and telephone traffic,

insofar as the regulatory framework in force is complied with, namely the compliance with obligations of cost orientation of prices and non discrimination.

4.º In the scope of the assessment referred to in point 3.º of the present Determination, ICP-ANACOM shall in particular take under consideration the following elements:

(i) Monthly report of companies of the PT Group provided in point 2 of Annex 4 of the SLRO Reference Proposal, with levels achieved of quality of service indicators defined in the SLRO Reference Proposal broken down by beneficiary, and monthly report of beneficiaries comprising levels achieved of quality of service indicators defined in the SLRO Reference Proposal, such reports being submitted to ICP-ANACOM by companies of the PT Group and by beneficiaries by the tenth working day of the month following that to which they correspond;

(ii) Information on activated SLRO accesses, according to the attached table, to be submitted by companies of the PT Group and by beneficiaries by the tenth working day of the month following that to which they correspond;

(iii) Conditions associated to the SLRO demand, including, *inter alia*, the investment engaged by beneficiaries in the local access network, namely by resorting to the beneficiaries' own means or to the reference unbundling offer (RUO), which may be considered as an alternative or complement to the SLRO.

(iv) Monthly report to be submitted compulsorily by companies of the PT Group, and optionally by beneficiaries, by the tenth working day of the month following that to which it corresponds, on the current state of general conditions and progress verified in the SLRO deployment.

5.º The PT Group shall send to the beneficiary billing data so that these may be directly used, thus rendering swift and effective the billing procedure.

21. It should be further highlighted that ICP-ANACOM, in the scope of its supervision and monitoring assignments, will continue to assess the deployment and functioning of procedures associated to the SLRO, the transparency and effectiveness of which should be ensured by the companies of the PT Group.