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Determination of 17.5.2007

## **DECISION ON SPECIFIC CONDITIONS IN THE SCOPE OF THE UNIVERSAL SERVICE FOR RETIRED PEOPLE AND PENSIONERS WHO ARE FTS SUBSCRIBERS**

### **I. FRAMEWORK**

1. Pursuant to Decree-Law no. 20-C/86, of 13 February, as amended by Decree-Law no. 18/2003, of 3 February, PT Comunicações, S.A. (PTC) was bound to provide retired persons and pensioners whose household income did not exceed the national minimum wage, a discount by 50% on the resale of the network line, and according to article 4 of the referred Decree-Law (as amended by Decree-Law no. 18/2003, of 3 February) PTC would be compensated every year by the State for loss of earnings arising from the application of this discount. Moreover, article 9 of the Telecommunications Universal Service Convention<sup>1</sup>, dated 30/12/02, defined, in the scope of social obligations, that it would be incumbent upon PT to provide retired persons and pensioners under such circumstances, in addition to the referred discount by 50% on the monthly charge, conditions of provision of fixed telephone service (FTS) not lower than a discount by 10% on the monthly charge as well as credit for telephone communications within the Country, that combined would be, at least, €3.53 (VAT excluded).
2. Article 124 of Law no. 5/2004, of 10 February provides that the Telecommunications Universal Service Convention would be in force until the implementation of the regime provided for in article 93 thereof (and at the latest until 31 December 2003). In this context, with determination of 14/2/04<sup>2</sup>, which defines obligations to be imposed on companies provided with significant market power in narrowband retail markets, and at the same time establishes rules in the scope of universal service pricing, the rules for price-setting provided for in the Universal Service Convention ceased to be in force, except for the price-cap that

<sup>1</sup> <http://www.anacom.pt/template20.jsp?categoryId=56834&contentId=90023>

<sup>2</sup> <http://www.anacom.pt/template31.jsp?categoryId=216105>

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applies to calls within PTC's network, which shall remain in force, for residential calls, until ICP-ANACOM sets a new price-cap. In particular, the obligation upon PTC to provide a discount by 10% and the credit for telephone communications was removed, and in case this company wants to cease this offer, it must notify subscribers, within the time limit provided for in Law no. 5/2004, and ICP-ANACOM. At present, PTC, on its own initiative, provides retired persons and pensioners whose household income does not exceed the national minimum wage, a discount by 10% on the monthly charge and credit for national traffic (applicable to local, regional and national levels) within PTC's network of an amount of €2.3 (VAT excluded).

3. By determination of 29/04/05<sup>3</sup>, ICP-ANACOM determined that companies of the PT Group should reflect the 50% discount in the price associated to the subscriber line resale offer (SLRO), and that beneficiaries, in their turn, should ensure that this amount was reflected in the amount paid by subscribers who are retired persons and pensioners. Accordingly, the SLRO Reference Proposal provides for conditions for the application of the 50% discount on the monthly charge.
4. Meanwhile, article 158 of Law no. 53-A/2006, of 29 December, which approved the State Budget for 2007, repealed Decree-Law no. 20-C/86, which according to information from PTC, and in the absence of any measures, affected around 230,000 subscribers, with an increase of invoicing average costs above 50%, which could lead to a high rate of disconnection of telephone lines, thus resulting in a significant harm to the general market.
5. Following the adoption of that statutory instrument, PTC submitted to ICP-ANACOM, on 13/02/07, two alternative price plans, which should be expressly subscribed, to be provided to retired persons and pensioners whose household income does not exceed the national minimum wage and who were subscribers of a single analogue line, to replace conditions provided at present to these subscribers [50% and 10% discounts on the monthly charge and credit for communications, of an amount of €2.3 (VAT excluded)]:
  - a. "Plan 2"
    - a) Subscriber line resale: €5.064 (VAT excluded);
    - b) Traffic terminating in national fixed networks: €0.041, per minute (VAT excluded);
    - c) Traffic terminating in national mobile networks: €0.248, per minute (VAT excluded).
  - b. "Plan 2"
    - a) Subscriber line resale: €12.66 (VAT excluded);
    - b) Traffic terminating in national fixed networks: free of charge

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<sup>3</sup> <http://www.anacom.pt/template31.jsp?categoryId=215372>

6. PTC considered that “Plan 1” and “Plan 2” should be integrated, under a regulatory focus, in the universal service, given their characteristics and circumstances in which they arise, associated to the social inclusion of all citizens. In this context, according to that operator, net costs borne with plans under consideration should be provided for in the scope of mechanisms of funding of the costs involved in the provision of the universal service.
7. It is incumbent on ICP-ANACOM, pursuant to article 93 of Law no. 5/2004, to ensure that the access to universal service prices is guaranteed, having regard in particular to national consumer prices and income, deciding on the most adequate means of price access guarantee, and being entitled to determine: (i) the availability of tariff options or packages which depart from those provided under normal commercial conditions, in particular to ensure that consumers on low incomes or with special social needs are not prevented from accessing or using the FTS; (ii) the imposition of price caps and the application of common tariffs; and (iii) other similar schemes. Without prejudice, pursuant to this article also, ICP-ANACOM must ensure that the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination.
8. In this context, the compatibility of “Plan 1” and “Plan 2” should be weighted against obligations on PTC in the narrowband retail and wholesale markets<sup>4</sup>, namely cost orientation of prices, non-discrimination and affordability of prices, as universal service provider.

## II. ASSESSMENT

### II.A ASSESSMENT OF PLANS PROPOSED BY PTC FROM THE PERSPECTIVE OF THE END USER

9. The plans that PTC intends to make available are different to a considerable extent as regards the fixed monthly amount associated to each one, and thus it is necessary to estimate the level of subscription for each one, based on expected usage levels. Thus, based on assumptions and analysis method adopted by ICP-ANACOM<sup>5</sup>, “Plan 2” shall tend to be used by subscribers with an average

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<sup>4</sup> Determination of 17/12/04 - <http://www.anacom.pt/template15.jsp?categoryId=152276>

<sup>5</sup> As regards the levels of traffic, it was considered that: (i) the average use of traffic within PTC’s network corresponds to the level assessed for all PTC customers in 2005, that is, [SCI] [ECI] monthly minutes; (ii) the relation between (a) traffic within PTC’s network and (b) PTC-OSP traffic corresponds to the relation between minutes associated to the same traffics in the results for 2005 for the cost accounting system verified in 2005, that is, around 6.1%, which corresponds to [SCI] [ECI] monthly minutes.; (iii) the average use of PTC-Mobile traffic corresponds to the level assessed in the “PT F-Preferred M” Plan, for calls to non-preferred networks([SCI] [ECI] monthly minutes), having been adopted the relation between the referred levels of average monthly use to estimate the traffic monthly consumption of customers. As regards the average duration of calls and traffic profiles, the most recent available information was considered: (i) for traffic originating and terminating in PTC’s network, in the scope of the assessment of the FTS tariff for residential customers for 2006; (ii) for traffic originating in

monthly traffic use that exceeds [SCI] [ECI] minutes (which corresponds to [SCI] [ECI] minutes of traffic originating and terminating in PTC's network, [SCI] [ECI] minutes of traffic originating and terminating in fixed networks of other entities and [SCI] [ECI] minutes of fixed-mobile traffic), in view of the fact that above these levels of use, "Plan 1" would be more expensive than "Plan 2". It should be stressed that in case of absence of traffic originating in PTC's network and terminating in mobile networks (a relevant situation in case of subscribers who replace this traffic for traffic originating and terminating in mobile networks), "Plan 2" shall tend to be used by subscribers with average monthly use of fixed-fixed traffic that exceeds [SCI] [ECI] minutes (which corresponds to [SCI] [ECI] minutes of traffic originating and terminating in PTC's network and [SCI] [ECI] minutes of traffic originating and terminating in fixed networks of other entities).

Chart 1. Levels of use associated to "Plan 1", "Plan 2" and "Reformed Persons and Pensioners" Plan [SCI]

Source: ICP-ANACOM calculations based on data provided by PTC. [ECI]

10. Based on information on fixed traffic monthly revenues of subscribers covered by the "Reformed Persons and Pensioners" Plan, conveyed by PTC to ICP-ANACOM on 06/02/07, it is estimated that in case that plan was interrupted and "Plan 1" and "Plan 2" were provided, almost all subscribers covered by that plan would subscribe "Plan 1"<sup>6</sup>.
11. It is also clear, based on available information (see chart 1), that most customers covered by the "Reformed Persons and Pensioners" Plan would be in a less favourable situation in case conditions provided for in this plan ceased and they had to subscribe any of the plans proposed by PTC, especially taking into consideration that "Plan 1" is associated to a traffic tariff that is higher than the base tariff and that "Plan 2" presents an analogue access monthly charge significantly higher than the one applied in the scope of the "Reformed Persons and Pensioners" Plan; thus, it is not clear how these plans are appropriate to users to whom they are intended.

## II.B COST ORIENTATION OF PRICES

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PTC's network and terminating in fixed networks of other entities, in the scope of the assessment of the FTS tariff for residential customers for 2005; and (iii) for traffic originating in PTC's network and terminating in mobile network, in the scope of the assessment of the "PT F-Preferred M" Plan, for calls to non-preferred networks.

<sup>6</sup> The value was estimated based on the point of contact, in terms of revenues, between "Plan 1" and "Plan 2" (€12.66, VAT excluded), to which would correspond a monthly expenditure in terms of traffic, for users of "Plan 1", of around [SCI] [ECI], VAT excluded. Given the information on subscriber distribution as regards the "Reformed Persons and Pensioners" Plan according to traffic expenditure, it is estimated that around [SCI] [ECI] of customers included in the "Reformed Persons and Pensioners" Plan present a traffic consumption that does not exceed [SCI] [ECI], thus, for this rate of users, "Plan 1" option would be preferable.

12. According to the European Commission, prices below average variable costs must be regarded as abusive, as there is no other economic purpose than the elimination of competition, as each unit produced and sold adversely affects the company. Acknowledging that PTC's cost accounting system does not permit any inferences as to its variable costs, it is considered, as was the case for previous assessments, that direct costs are a *proxi*, although a rough one, for variable costs, as regards national traffic.
13. The evaluation of the principle of cost-orientation of prices was carried out by comparing revenues of PTC's "Plan 1" and "Plan 2" (subscriber line resale and traffic revenues<sup>7</sup>) and: (i) direct costs; (ii) direct and joint costs; and (iii) direct, joint and common costs. As was the case for other assessments carried out by ICP-ANACOM, direct and joint unit costs for 2007, presented in the following table, were estimated by applying an annual reduction by 5%<sup>8</sup>, concerning efficiency and productivity gains, to direct and joint unit costs established in the results of PTC's cost accounting system for 2005, having adopted a mark-up by 10% on the sum of these costs, relatively to common costs (as in the method adopted for the assessment of amendments to RIO 2006). The results of this comparison are summarized in chart 2.

Table 1. Cost estimates for 2007 (€) [SCI]

	Monthly charge	Traffic originating in PTC's network and terminating				
		In PTC's network			In fixed networks of other entities	In mobile networks
		Local	Regional	National		
Direct costs						
Direct and joint costs						
Direct and joint costs and mark-up by 10% on the sum of these costs						

Source: ICP-ANACOM calculations based on PTC's cost accounting system for 2005. [ECI]

Chart 2. Summary of results of the assessment of "Plan 1" and "Plan 2" [SCI]

Source: ICP-ANACOM calculations based on PTC's cost accounting system for 2005 and on average levels of use adopted in the assessment [ECI]

<sup>7</sup> As PTC has not stated otherwise, it was considered that: (i) the traffic tariff modality that applies to PTC's "Plan 1" is similar to the traffic tariff modality that applies to PTC's base tariff, that is, tariff by the second as from the first minute; and (ii) traffic originating in PTC's network and terminating in mobile networks is charged in PTC's "Plan 2" according to PTC's base tariff.

<sup>8</sup> According to the results of PTC's cost accounting system, between 2000 and 2005, the annual average variation of direct and joint unit costs associated to traffic was around [SCI] [ECI] (overall value for local, regional and national levels). Without prejudice, it is deemed that an annual variation by -5% adequately represents the annual decrease of unit costs resulting from the activity of an effective operator, and, thus, constitutes an incentive to the promotion of effectiveness; moreover, it is likely that PTC's curtailment policy developed over the last years will result in an effectiveness gain.

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14. In case the absence of traffic originating in PTC's network and terminating in mobile networks was considered (a relevant situation in case of subscribers who replace this traffic for traffic originating and terminating in mobile networks), the conclusion reached in the previous test would remain valid, as evidenced by the following chart.

Chart 3. Summary of results of the assessment of PTC's "Plan 1" and "Plan 2", considering an absence of traffic originating in PTC's network and terminating in mobile networks **[SCI]**

Source: ICP-ANACOM calculations **[ECI]**

15. In the light of the above, for the adopted average level of use, and considering the more demanding criteria of cost-orientation of prices that ICP-ANACOM had adopted (sum of direct and joint costs): (i) PTC's "Plan 1" presents a margin of around -17% between its revenues (subscriber line resale and traffic revenues) and the respective direct and joint costs; and (ii) "Plan 2" presents a margin of around 9% between its revenues (subscriber line resale and traffic revenues) and the respective direct and joint costs.
16. If traffic originating in PTC's network and terminating in mobile networks is not taken into account and considering, once more, the more demanding criteria of cost-orientation of prices that ICP-ANACOM had adopted (that is, the sum of direct and joint costs): (i) PTC's "Plan 1" would present a margin of around -31% between its revenues (subscriber line resale and revenues of traffic originating in PTC's network and terminating in fixed networks) and the respective direct and joint costs; and (ii) "Plan 2" would present a margin of around 7% between its revenues (subscriber line resale and revenues originating in PTC's network and terminating in fixed networks) and the respective direct and joint costs.
17. The following table summarizes the levels of traffic use that corresponds to the compliance with applicable regulatory obligations, and presents also the conclusions reached on a situation absence of traffic terminating in mobile networks.

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Table 2. Levels of average monthly use (minutes) associated to traffic up to which PTC's "Plan 1" and as from which PTC's "Plan 2" fail to comply with the obligation of cost-orientation of prices **[SCI]**

		Cost-orientation of prices (direct and joint costs) with traffic originating in PTC's network and terminating in mobile networks			
		Traffic F-M included		Traffic F-M not included	
		Plan 1	Plan 2	Plan 1	Plan 2
Fixed-Fixed traffic	Originating and terminating in PTC's network				
	Originating in PTC's network and terminating in fixed networks of other entities				
	TOTAL				

**[ECI]**

18. To summarize, based on the adopted assumptions and assessment method: (i) PTC's "Plan 1" would not comply with the obligation of cost-orientation of prices; and (ii) PTC's "Plan 2", taking into account the likely average use (it should be highlighted that, as referred above, it is expected that this plan is subscribed by persons with an average monthly use of fixed traffic that exceeds **[SCI]** **[ECI]** minutes or **[SCI]** **[ECI]** minutes, in case of absence of traffic terminating in mobile networks), would not comply with the obligation of cost-orientation of prices.

## II.C NON DISCRIMINATION

### II.C.1 GENERAL CONSIDERATIONS

19. It is incumbent on ICP-ANACOM, pursuant to article 93 of Law no. 5/2004, to ensure that the access to universal service prices is guaranteed, deciding on the most adequate means to achieve this purpose. Without prejudice, pursuant to this article also, ICP-ANACOM must ensure that the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination.
20. The feasibility of "Plan 1" would apparently only make sense if pre-selection was inhibited, in view of the fact that attached to a very significant discount applied to the subscription price, it comprises also traffic prices higher than the base tariff. This would fail to comply with Determination of 14/12/04, according to which all PTC's retail offers must be compatible with pre-selection. It should be noted also that PTC's "Plan 2", including all traffic originating in PTC's network and terminating in fixed networks, would eliminate in fact any incentive to make calls in an indirect access modality, although plans proposed did not formally inhibit the access to the indirect access modality.



21. It should be borne in mind, likewise, that the adoption of an approach of replicability similar to the one considered in Determination of ICP-ANACOM of 28/02/07<sup>9</sup>, on the proposal concerning the residential tariff for universal service fixed services, submitted by PTC on 28/08/2006 and amended on 20/12/2006, would increase the complexities involved, and would not be proportional taking into account the possible alternatives and the way they are best suited to aimed targets.
22. In this context, it is deemed that these circumstances would strongly harm competition, preventing or strongly limiting the possibility of PTC's competitors to compete for around 230,000 subscribers who are reformed persons or pensioners, without prejudice to the level of income of the latter being considered restricted.
23. Moreover, PTC did not clarify if it wished or not to reflect conditions attached to "Plan 1" and "Plan 2" in the price associated to the SLRO, being deemed that any discount in the subscriber line resale granted by PTC in the scope of the universal service must be reflected in the SLRO price.

## **II.C.2 REPLICABILITY OF PLANS**

24. On an initial analysis, revenues resulting from PTC's "Plan 1" and "Plan 2" were compared (subscriber line resale and traffic revenues) with costs resulting from the engagement by PTC's competitors of its interconnection service (origination and termination of calls) [under the terms of the reference interconnection proposal (RIO) published by PTC on 23/03/07 - version 2/2007 – which comprises new interconnection prices resulting from determination of 28/02/07, in particular the reduction by 10% on each component of the time-based interconnection (activation price and price per minute), comprising call termination and origination], presented in the following table. These costs were estimated based on average interconnection costs associated to the provision of each service, for each level of use, which were estimated on their turn considering the interconnection prices per minute for an average duration call, admitting that the interconnection tariff corresponds to the retail tariff usually used by ICP-ANACOM (considering: (i) a local call origination; and (ii) a local termination, single tandem or double tandem, whether the call was local, regional or national, respectively).
25. In a more demanding analysis, to estimated interconnection costs were added PTC's marketing costs, as presented in the following table, which were deemed to correspond to costs attached to the following activities: "C - To market and to sell"<sup>10</sup>, "E - To maintain customer services"<sup>11</sup> and "F - To bill and to collect"<sup>12</sup>,

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<sup>9</sup>[http://www.anacom.pt/streaming/decsft\\_uk28022007.pdf?categoryId=237882&contentId=466653&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/decsft_uk28022007.pdf?categoryId=237882&contentId=466653&field=ATTACHED_FILE)

<sup>10</sup> Which includes the following sub-activities: "C1 - To market products and services" - To define the business policy, establish products and services plans, namely by managing marketing-mix variables:



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comprised in PTC's cost accounting system. Like other assessments carried out by ICP-ANACOM, including the ones on other PTC retail offers, marketing unit costs for 2007 were estimated by applying an annual reduction by 5%, relative to efficiency and productivity gains, to marketing unit costs for 2005.

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product, pricing, communication and distribution channels; "C2 - To advertise and disclose products and services" - To define, implement and control market communication/disclosure action for products and services, by means of advertising, direct marketing (mailings), telemarketing, merchandising, etc.; "C3 - To sell products and services" - Comprises sales, as well as the handling and forwarding of products and services requests and applications; "C4 - To support, govern and control sales" - To ensure sales logistics; to gather and handle data for sales control and objective negotiation; to guide, boost and coordinate sales in the scope of the management and development of new sales channels; to promote action that aims to develop the commercial network: implementation of new sales channels, recasting and broadening the existing ones; to provide technical support to sales forces; "C5 - Customer portfolio management and follow-up" - To ensure and promote a personal business relationship with the customer.

<sup>11</sup> Which includes the following sub-activities: "E1 - To receive report of faults / quality of service" - To receive, register and distribute fault reports; "E2 - To repair the service in the network of the subscriber and terminal equipment" - To perform the test/trial, to provide a technical characterization of the fault, to visit the location, perform necessary tasks to restore standard levels of quality and to close the repair order; "E3 - To assess the quality of service" - To assess the service provided to the customer, including the definition of quality targets; to gather and analyse quality indicators of provided services; to implement projects related to the improvement of the quality of service and of the company's commercial operation; and to issue quality reports; "E4 - To deal with, clarify and inform the customer" - To provide free clarifications and information requested by customers, namely in the scope of the telephone fixed service; this activity does not comprise those which are included in activities E1 - To receive report of faults / quality of service, F3 - To receive and handle billing complaints and C3 - To sell products and services; "E5 - To create and update basic records of customer database(CDB)" - To enter and alter basic records that comprise the CDB. This activity does not include the maintenance of the CDB HW/SW, the framework of which relates to the activity in S7 - Customer database Maintenance.

<sup>12</sup> Which includes the following sub-activities: "F1 - To develop/maintain billing/collection procedures" - To develop, standardize and optimize billing/collection procedures; to support the implementation of new billing/collection methods, ensuring the definition and unification of functionalities and operation rules of associated information systems; "F2 - To bill" - To guarantee and ensure the availability and processing of billing data; to validate records on which customer bills are based; to ensure billing control; and to issue, address and send bills; "F3 - To receive and handle billing complaints" - To receive and handle billing complaints; "F4 - To collect" - To classify and process collections; to control reimbursements; to launch non-payment procedures; to negotiate instalments; to launch bad debts procedures; and to bring court procedures; "F5 - Revenue assurance" - To assess business processes and to identify associated potential risks; to design and propose alterations to business processes that minimize revenue risks; and to conceive and implement control methods that enable the compliance with such procedures.

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Table 3. Interconnection cost estimates (origination and termination) per minute of an average duration call for 2007 (€) **[SCI]**

	Monthly charge	Traffic originating in PTC's network and terminating		
		In PTC's network	In fixed networks of other entities	In mobile networks
Interconnection costs				
Interconnection and marketing costs				

**[ECI]**

Source: Letter from PTC dated 27/01/06, with entry ANACOM-E04768/2006, and PTC faxes dated 29/08/06, with entry ANACOM-E45749/2006, and 08/09/06, with entry ANACOM-E47818/2006, and RIO version 2/2007.

26. The following chart summarizes the results of the assessment, based on the assumptions and method described above. As mentioned above, an alternative situation (see chart 5) of an absence of traffic originating in PTC's network and terminating in mobile networks was also considered.

Chart 4. Summary of results of the assessment of "Plan 1" and "Plan 2" **[SCI]**

Source: ICP-ANACOM calculations **[ECI]**

Chart 5. Summary of results of the assessment of "Plan 1" and "Plan 2", considering an absence of traffic originating in PTC's network and terminating in mobile networks **[SCI]**

Source: ICP-ANACOM calculations **[ECI]**

27. Table 4 summarizes the levels of traffic use that correspond to non compliance with the obligations of non-discrimination, and present also the conclusions as regards an absence of traffic originating in PTC's network and terminating in mobile networks.

Table 4. Levels of average traffic use (minutes) associated to traffic up to which PTC's "Plan 1" and as from which PTC's "Plan 2" fail to comply with the obligation of non-discrimination **[SCI]**

		Non discrimination (Interconnection and marketing costs)			
		Traffic F-M included		Traffic F-M not included	
		Plan 1	Plan 2	Plan 1	Plan 2
Fixed-Fixed traffic	Originating and terminating in PTC's network				
	Originating in PTC's network and terminating in fixed networks of other entities				
	TOTAL				

**[ECI]**

28. To sum up, as regards “Plan 1”, the monthly consumption as from which it would comply both with the obligations of cost-orientation of prices and non-discrimination would be [SCI] [ECI] minutes (in case the absence of traffic terminating in mobile networks was considered, the consumption as from which both obligations were complied with would be [SCI] [ECI] minutes). As regards “Plan 2”, the monthly consumption up to which it would comply both with the obligations of cost-orientation of prices and non-discrimination would be [SCI] [ECI] minutes (in case the absence of traffic terminating in mobile networks was considered, the consumption up to which both obligations were complied with would be [SCI] [ECI] minutes).
29. As it would merely compensate for end users, as referred above, to select “Plan 2” for levels of use above [SCI] [ECI] minutes of fixed-fixed traffic, it may be concluded that this plan fails to comply with applicable regulatory obligations for the expected use. Accordingly, taking into account that “Plan 1” would only be selected by customers with a monthly level of use of fixed-fixed traffic below [SCI] [ECI] minutes, it may be concluded that this plan also fails to comply with the regulatory obligations of cost-orientation of prices and non-discrimination, for the expected level of use.

### III. CONCLUSION AND DETERMINATION

30. Taking into account the analysis above and, namely, whereas:
- a) Bearing in mind the expected levels of use associated to each of these plans, they fail to comply with the obligations of cost-orientation of prices and non-discrimination to which PTC is bound as regards retail and wholesale narrowband markets, under ICP-ANACOM determinations of 14/12/07 and 17/12/04;
  - b) ICP-ANACOM is also entitled to weight these obligations under article 93 of Law no. 5/2004, pursuant to which it is incumbent on this Authority to ensure that the access to universal service prices is guaranteed, having regard in particular to national consumer prices and income, deciding on the most adequate means of price access guarantee, and being entitled to determine: (i) the availability of tariff options or packages which depart from those provided under normal commercial conditions, in particular to ensure that consumers on low incomes or with special social needs are not prevented from accessing or using the FTS; (ii) the imposition of price caps and the application of common tariffs; and (iii) other similar schemes. Without prejudice, pursuant to this article also, ICP-ANACOM must ensure that the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination;

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- c) The implementation of any of the proposed plans means in practice that the respective subscribers would be inhibited from making calls in an indirect access modality, and even if this inhibition did not formally exist, “Plan 2”, including in the subscription all traffic to national fixed networks, would eliminate in fact any incentive to make calls in that modality;
- d) As ICP-ANACOM determined on 14/12/04, “all tariffs applied by the PT Group shall be compatible with pre-selection offers provided by other operators”;
- e) It is necessary to maintain simple procedures as regards the provision of specific conditions to reformed persons and pensioners with a low income, so as to avoid any confusion on the part of these end-users, as far as the perception of these conditions is concerned;
- f) Both plans proposed by PTC generally result, for reformed persons and pensioners who are subscribers, in less favourable conditions than the ones that are currently provided by the universal service provider;
- g) If current conditions were maintained [discount by (i) 50% on the monthly charge and (ii) discount by an additional 10% on the monthly charge and €2.3 (VAT excluded) of traffic credit, at PTC’s choice], the likely adverse impact in terms of competition and protection of the interests of the end-user would be minimized and would guarantee access to reformed customers and pensioners with a low income, without aggravating the situation in force;
- h) It would thus be important, also on account of grounds of security and certainty of all part involved, to ensure that conditions in force at the date of entry into force of Law no. 53-A/2006, of 29 December, which approved the State Budget for 2007, are effectively maintained;
- i) Simplification of procedures associated to the provision of conditions to reformed persons and pensioners, both at the level of relations between operators and between operators and subscribers, is a important issue for ICP-ANACOM, so as to promote transparency, taking into account, notwithstanding, the need to maintain control mechanisms to avoid abusive use of schemes which are only aimed, under the law, to specific groups of customers;
- j) It is important to ICP-ANACOM, in the pursue of its assignments and pursuant to point b) of paragraph 3 of article 86 of the above-mentioned Law, to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest, which implies that discounts on the subscription price granted in the scope of the universal service are reflected in the scope of the SLRO;

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- k) ICP-ANACOM shall consider net costs associated to (i) the discount by 50% on the subscription of retired persons and pensioners who are subscribers of a single analogue line and whose household income does not exceed the national minimum wage, and to (ii) discount by 50% on the value of the network line resale reflected in the scope of SLRO accesses that support services provided to retired persons and pensioners who are subscribers of a single analogue line and whose household income does not exceed the national minimum wage, in the scope of the evaluation and calculation of the universal service net costs, as provided for in article 95 and 96 of Law no. 5/2004,

the Board of Directors of ICP-ANACOM, in the scope of assignments conferred by points b), d), f) and h) of paragraph 1 of article 6 of the Statutes in annex to Decree-Law no. 309/2001, of 7 December, in compliance with powers provided for in paragraph 3 of article 86 and paragraph 1 and point a) of paragraph 2 of article 93, all of Law no. 5/2004, of 10 February, and in the pursue of regulation objectives established in points a) and c) of paragraph 1, points a) and b) of paragraph 2, point a) of paragraph 4 and of paragraph 5, all of article 5 of that Law, having heard interested parties and the Advisory Council of ICP-ANACOM (which issued a favourable opinion), hereby decides, taking also into account the grounds included in the prior hearing report, which is an integral part hereof, the following:

- 1) Not to accept the proposal presented by PTC on 13/02/07, which consists in two pricing plans, “Plan 1” and “Plan 2”, intended to replace the current “Reformed Persons and Pensioners” Plan;
- 2) To determine upon PTC to provide, in the scope of the universal service, to reformed persons and pensioners who are subscribers of a single analogue line and whose household income does not exceed the national minimum wage, a discount by 50% on the subscription on the value of the network line resale (by reference to the base tariff of the universal service that applies by default). PTC is also entitled to make available, at its own commercial choice, an additional discount by 10% on the analogue access monthly charge and a traffic credit of an amount not exceeding €2.3 (VAT excluded);
- 3) To determine upon PTC that the mentioned discount by 50% on the value of the network line resale be reflected on SLRO accesses that support services provided to retired persons and pensioners who are subscribers of a single analogue line, whose household income does not exceed the national minimum wage, in the same terms as those provided at present;
- 4) To determine upon PTC to review and to submit to ICP-ANACOM, within thirty working days, a proposal that simplifies procedures associated to the granting of specific conditions to retired persons and pensioners who are

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subscribers, taking into account, notwithstanding, the need to maintain control mechanisms to avoid abusive use of schemes which are only aimed, under the law, to specific groups of customers, bearing in mind the repeal of Decree-Law no. 20-C/86 and this determination, carrying out the necessary adjustments so as to ensure general access and transparency.

- 5) The effects of point 2 and 3 hereof shall retroact to 01/01/07.