

ANACOM'S DECISION on the dispute opposing SONAECOM and PT Comunicações, regarding compensation payments for non-compliance with levels of quality of service established for response to requests to verify eligibility in 2006

On 04.12.2007, SONAECOM - Serviços de Comunicações, S.A. (SONAECOM) submitted an application¹, pursuant to paragraph 1 of article 10 of Law no. 5/2004, of 10 February (ECL) requesting ANACOM to settle a dispute opposing that company to PT Comunicações, S.A. (PTC), involving the meaning and scope of application of certain provisions of the Reference Unbundling Offer (RUO) regarding compensation payments for non-compliance with levels of quality of service for response to requests to verify eligibility.

I. SONAECOM'S ALLEGATIONS

1. On 7 March 2007, date on which the company pursued the activity as NOVIS Telecom, S.A., SONAECOM requested PTC, by letter, to pay compensations for non-compliance with levels of quality of service concerning requests to verify eligibility during the 1st and 2nd halves of 2006.
2. On 15 March 2007, the company sent PTC, by email, a detailed list of all individual requests made in the scope of the RUO regarding which, during 2006, PTC had failed to comply with maximum response or supply deadlines. This list included a specific table concerning the eligibility verification service, stating PTC's response delays to requests submitted thereto.
3. 8 months having elapsed, PTC has not questioned not challenged the number of event occurrences described by SONAECOM, but, by letter of 19 March 2007, the former informed SONAECOM that it deemed not to be bound to pay the demanded amounts.
4. PTC supported this refusal on the fact that SONAECOM had failed to comply with procedures provided for in the RUO as regards forecast plans – point 3 of annex 12 and point 2.4 of annex 13 – stating that

“1. The resources engaged by PT Comunicações in activities connected to the restoration of the service are planned on the basis of park forecasts. Accordingly, in view of the fact that NOVIS failed to submit its loop request forecasts [...], within the time limits and conditions provided for in the respective offers [cf. Point 3.2 of Annex 12 of the RUO] PTC upholds the position adopted previously...

2. PT Comunicações also plans the resources engaged in activities connected with the assessment of eligibility on the basis of loop order forecasts sent by operators...”

¹ Registered with reference ANACOM-E73435/2007.

5. SONAECOM takes the view that its right to compensation in full is not prevented by the content of the demand forecast plan submitted to PTC by the end of December 2005.
6. The applicant acknowledges that in the forecast plan submitted in December 2005, it informed PTC that it would confirm later the information on loops and that the planning of requests for modules and signal transportation was being completed.
7. It adds that demand forecasts, as a whole, were discussed with PTC in at least 35 operational meetings throughout 2006, and that PTC did not request additional information on forecasts or expressed its doubts as to the respective appropriateness.
8. SONAECOM declares that forecast plans for 2006 were confirmed and endorsed after having been submitted on 31.12.2005, however it deems that this fact is not likely to have any impact on PTC's ability to comply with eligibility deadlines.
9. The company sustains that there is no correlation between the information content, the antecedency, the accuracy or any other element of demand forecasts concerning loops, signal transport, co-installation, and PTC's "*dimensioning of resources*" necessary to meet eligibility requests.
10. The verification of eligibility is a fully automatic process and, as such, the volume of verification requests and operator forecasts concerning the demand for other services, according to the RUO, are irrelevant as far as PTC's response ability is concerned.
11. In SONAECOM's opinion, the eligibility verification service does not require the engagement of specific means by PTC, the scope of forecast plans being limited to the plans of effective demand, not including the verification of eligibility.
12. The verification of eligibility does not require the engagement of resources because it merely entails a database validation – RUO System Information (concluded by PTC in 2005) – of information in order to reply to the question "*is the loop, the unbundling of which is requested, eligible?*" that is, whether the loop in consideration may be unbundled.
13. The verification of eligibility through the RUO Information System is thus automatic, at least since the end of 2005.
14. SONAECOM also points out that as regards non-active loops, PTC has means to verify automatically whether the address of the potential customer is covered by the PTC's exchange coverage area where the operator is co-installed, resorting to the RUO Information System.
15. The company adds that PTC has informed that the verification of eligibility of loops ordered through the RUO Information System does not involve manual tasks.
16. SONAECOM declares that even in the case of non-active loops, the handling of which requires some manual tasks, the verification of eligibility occurs by the same process. Consequently, it is not necessary for PTC to adjust its resources to

- ensure compliance with this specific service indicator, as there is no material to acquire nor human resources to dimension.
17. SONAECOM thus reaches the conclusion that there is no correlation between forecast plans and the volume of eligibility verification requests, PTC's ability to comply with levels of service not depending on whether demand forecasts are in fact submitted.
 18. On the other hand, SONAECOM sustains that the scope of forecast plans is limited to effective demand projections, and does not include eligibility verification, as a request for eligibility does not always entail an effective subsequent order, nor an effective order exempts a previous favourable eligibility reply.
 19. Forecast plans aim exclusively to enable PTC to adjust its resources to the expected demand, taking into account the performance of work connected to the effective implementation of requests for loop supply, co-installation or signal.
 20. Being aware of a demand forecast does not affect, as a result, neither directly or indirectly, the capacity to comply with the eligibility verification service. Any deficiency in the sending of forecast plans for 2006 would never be likely to affect PTC's ability to perform adequately the tasks related with the verification of loop eligibility.
 21. In the light of the above, and in view of the fact that PTC's refusal, with grounds presented, completely subverts the dissuasive goals of compensations provided for in the RUO, SONAECOM requests of ANACOM that it orders PTC to pay compensations incurred in 2006 amounting to **[SCI]** **[ECI]** *"together with payable and future default interest until payment in full, pursuant to article 102, paragraph 3 of the Commercial Code"*.

II. PTC'S CHALLENGE

22. By letter ANACOM-S60361/2007, of 20.12.2007, PTC was notified to assess the request for dispute settlement and allegations put forward by SONAECOM, within 10 working days.

PTC's reply was submitted by telecopy dated 11.01.2008², originals in paper having been received at the premises of ANACOM on 15.01.2008³.

PTC challenges SONAECOM's reasoning, giving a different interpretation to the applicant's declarations.
23. PTC refers that it is important to look at RUO versions of 17.05.2005 (version 14.01) and 24.11.2005 (version 15.00) which lay down different obligations as far as the presentation of order forecast plans for 2006 is concerned.

² Registered with reference ANACOM-E02766/2008.

³ Registered with reference ANACOM-E03920/2008.

24. The RUO determines that in order to ensure a correct planning and optimization of resources necessary for the evolution of the local loop offer, the OLO must present a local loop demand forecast plan.
25. According to RUO version 14.01 (17.05.2005), forecast plans must be submitted by the last week of June of the year N, and should concern the years N+1 and N+2. The 24.11.2005 version changes this method and establishes that plans should be submitted on a half-yearly basis. The effect of this change is that up to the last day of half-year N, OLOs must submit forecast for N+2 and N+3, forecasts for N+3 being purely indicative.
26. Therefore, PTC is of the opinion that according to the RUO version in force at the time (14.01) SONAECOM should have presented by 30 June 2005 its forecast plans for 2006 and 2007.
27. However, SONAECOM did not submit these forecasts, and as such, PTC considers that SONAECOM failed to comply with obligations imposed thereon by the RUO.
28. PTC adds (supported on document no. 9 attached to the initial application) that, under RUO version 15.00, which in the meanwhile had come into force, SONAECOM presented planning information for 2006, which was incomplete and was concluded only one month later.
29. PTC stresses that document no.10, attached to the initial application, only presents new co-installation forecasts. The remaining information was so incomplete that no mention is made concerning the application of the forecast plan for the half-year N+2, that is from 1 July 2006 to 31 December 2006, or for the half-year N+3, that is from 1 January 2007 to 30 June 2007.
30. As regards the first half-year of 2006 – “half-year N+1” – it should have been submitted previously under RUO version 14.01, which was not the case.
31. Specifically on SONAECOM’s allegations on the initial application, PTC clarifies that the failure to challenge the number of event occurrences listed by NOVIS does not mean that PTC in any way agrees with them.
32. PTC goes on to say that it is not accurate nor true that, as SONAECOM declares, forecast plans have no impact on PTC’s ability to comply with eligibility deadlines, a position which is supported on the information on the evolution of the rate of eligibility requests and of installed loops, which is referred to evidence a direct correlation between loop unbundling orders and the number of eligibility requests.
33. Based on this correlation, PTC justifies that the volume of eligibility requests conditions the dimensioning of human and system resources necessary to the respective handling, this being the reason for the establishment of rules on the timely presentation of forecasts and planning.
34. On the other hand, PTC denies that the verification of eligibility is always an automatic process, in view of the fact that, for some types of loops these requests must be handled manually, and for others, the process is only automatic if it is

submitted through the application API RUO, which is 2006, was not the case for all requests submitted by SONAECOM.

35. Moreover, every request verification system requires the dimensioning of computer systems.
36. As regards non-active loops, PTC states that not only does the eligibility verification requires different tasks but also, in most situations, there is a need to locate the loop manually, namely to locate the infrastructure serving the address under consideration.
37. Contrary to the arguments put forward by SONAECOM, PTC states that the volume of eligibility requests may be induced from forecast plans of effective orders. As such, these plans are relevant so that PTC may prepare what it deems to be the specific eligibility analysis service that, in most cases, turns into an effective order in case the loop is eligible.
38. PTC deems that SONAECOM failed to comply with its obligation to submit forecast plans – both by June 2005, under RUO version 14.01 and by December 2005, under RUO version 15.00.
39. The RUO makes the payment of compensation subject to the sending of forecast plans with the foreseen information and detail of the offer. It is not because eligibility requests are not included in the elements to be supplied in forecasts that the payment of compensation ceases to depend on the sending of forecasts.
40. The sending of forecast plans aims to enable PTC to adjust its resources to the expected service demand, which includes the eligibility verification service, deemed to be a concrete service, the processing power of which is not independent from the volume of loop unbundling requests.
41. The eligibility verification request is a concrete service engaged by an operator to PTC. This service requires the dimensioning of means and thus, contrary to SONAECOM's allegations, the processing power of these requests is not independent from its volume. As such, it does not follow from eligibility requests not being included in the elements to be supplied in forecasts that the payment of compensation does not depend on the sending of forecasts, but only that PTC may infer its volume from other data.
42. PTC takes the view that a request for eligibility verification is a sign of interest in the unbundling of the loop under consideration, and a pre-order until the moment when, automatically, it converts into an order in the case of active loops, without portability and with positive eligibility.
43. Accordingly, PTC sustains that the payment of compensation requires the supply of appropriate forecasts, consistently with the method laid down in the RUO, except for compensation due for inaccurate unbundling.
44. PTC adds that in case SONAECOM had submitted forecast plans on time, which was not the case, the compensation claimed by SONAECOM would amount to very different figures.

45. In this case, and purely for hypothetical purposes, PTC, taking as reference the failure to comply with response time limits for eligibility requests corresponding to the second half of 2006, and taking only into account exchanges where there was a deviation lower than 50% between loop orders and the number of loops forecasted by SONAECOM, deems that the compensation would amount to only [SCI] [ECI].
46. As regards the application for payment of default interest, PTC considers that article 102, paragraph 3 of the Commercial Code does not apply to the case under consideration as there is no credit in favour of SONAECOM, and even if there was a compensation, it would not turn automatically into a credit.
47. PTC concludes that SONAECOM failed to comply with annex 12 of the RUO, version V14.01 (17.05.2005), regarding the sending of order forecasts for 2006, as well as with annex 12 of version V15.00 (25.11.2005), a fact clear from the documents supplied by SONAECOM itself.
48. Based on these elements, PTC considers that ANACOM should declare that (a) SONAECOM failed to comply with the RUO, (b) the application presented by that company is devoid of any legal basis, (c) pursuant to annex 13 of the RUO, PTC incurs no liability to SONAECOM in respect of compensation, and that consequently, (d) this case should be dropped without any type of decision unfavourable towards PTC.
49. Summarizing the position of both parties, SONAECOM declares that:
- a. It submitted to PTC on 30.12.2005, a forecast plan for 2006, within the deadline provided for in the RUO in force at the time;
 - b. In the forecast plan, the company informed that it would confirm later the information on loops and that the planning of requests for modules and signal transportation was being completed. The definitive elements on forecast plans for 2006 were notified to PTC on 06.02.2006.
 - c. Its right to the claimed compensation in full is not prevented by this fact, as demand forecast plans do not have any impact on PTC's ability to comply with response deadlines to eligibility requests, and because there is no correlation between the information content of demand forecasts and the dimensioning of PTC's resources necessary to meet the referred requests;
 - d. The eligibility verification service does not require the engagement of specific means by PTC, because it merely entails a database validation of information in order to reply to the question "*is the loop, the unbundling of which is requested, eligible*", and this process does not require any manual action;
 - e. Being aware of a demand forecast does not affect, as a result, neither directly or indirectly, the capacity to comply with the eligibility verification service, or the quality of the service provision. Therefore, PTC should not refuse to pay compensation for failure to comply with response time limits for eligibility verification requests based on an alleged nonconformity of demand forecast plans.

- 50.** In summary PTC sustains the following:
- a.** SONAECOM did not submit by 30 June 2005 any forecast plan for 2006 as provided for in version 14.01 of the RUO;
 - b.** Plans for 2006 were partially presented on 30 December 2005. In February 2006, SONAECOM submitted additional elements to PTC, however even then the forecast plan was not complete;
 - c.** SONAECOM did not refer (not even in February 2006) how would the forecast plan apply to the half-year N+2 and the half-year N+3, as the plan for the half-year N+1 should have been presented earlier, which was not the case anyway;
 - d.** It is not up to PTC, nor is it entitled, to interpret SONAECOM's intentions, with incomplete information first and totally irregular information after;
 - e.** Only by communication of 05.04.2007 SONAECOM informed PTC that the forecast plan submitted in December 2005 should be considered to be allocated by 50% to each half-year;
 - f.** Based on the above, and on the challenge, point by point, of allegations put forward by SONAECOM to support the irrelevance of forecast plans for the compliance of eligibility verification deadlines, PTC contends that the application for payment of compensation should be dismissed as unfounded.
- 51.** By letter of 24 March 2008⁴, after having analysed the documents in this file, SONAECOM requested, under paragraph 2 of article 88 of the Code of Administrative Procedure (CAP), **(1)** the attachment to the file of a CD-ROM including a detailed list of response delays to eligibility requests presented in 2006 regarding which it claimed the payment of compensation and **(2)** that ANACOM ordered PTC to reply in full, adducing evidence, to each of the questions reproduced below:
- a.** Active loops – for how many requests in the list (and specifically which) was there “insufficient record information”?
 - b.** Non-active loops - for how many requests in the list (and specifically which) was the address indicated by SONAECOM “not in line with PTC’s roadmap”?
 - c.** Non-active loops - for how many requests in the list (and specifically which) was the address indicated by SONAECOM incomplete, with the consequent need for a “field trip to verify the respective location”?
 - d.** Having PTC invoked situations where it lacks sufficient record information on active loops, and corresponding an active loop (according to the definition provided for in point 3 of the RUO) to a “Local loop used by an FTS subscriber”, how does PTC bill and manage services subscribed by these subscribers in case of insufficient records (namely, when such management requires the technical knowledge of loops in use).

⁴ Received on 25.03.2008 and registered with reference ANACOM-E20490/2007.

52. SONAECOM supports this application on the fact that PTC, in its reply, stated that, as a rule, the verification of eligibility is an automatic process insofar as “requests are submitted through the API RUO application”.
53. With the CD-ROM list, SONAECOM aims to show that “all eligibility verification requests listed therein were submitted and replied to by PTC through the “API RUO” application” and that only concerning them is the company claiming compensation payment for delays in the response to eligibility requests for 2006.

III. HEARING OF INTERESTED PARTIES

54. On 16.04.2008, ANACOM’s Board of Directors approved a draft decision (DE012508CA), having determined, in the scope of these administrative dispute settlement proceedings, provided for in article 10 of the ECL, as follows:
 - “...1. Arguments and grounds attached to the request for administrative dispute settlement being deemed to be unfounded, not to grant the application to determine the obligation on PTC to pay SONAECOM [SCI] [ECI] for compensation for non-compliance in 2006 with response deadlines established in annex 13 of the RUO as quality of service targets, as well as the request to pay payable and future default interest on that amount, under article 102, paragraph 3 of the Commercial Code.
 2. To dismiss, pursuant to article 57 of the CAP, the measures of inquiry applied for by SONAECOM on 24.03.2008, which were deemed not to be useful or necessary to clarify the material facts of the case, contrary to paragraph 2 of article 88 of the same Code.
 3. According to articles 100 and 101 of the Code of Administrative Procedure, to submit point 1 and 2 hereof to a prior hearing of interested parties, that are given 10 working days to assess the matter in writing.”
55. This draft decision was submitted to the prior hearing of interested parties, pursuant to articles 100 and 101 of the Code of Administrative Procedure, PTC and SONAECOM having been given 10 working days to assess the matter in writing (communications S17822/2008 and S17823/2008, both of 18.04.2008).
56. Both interested parties sent their comments on the draft decision. Contributions received, ANACOM’s views thereon and grounds of options taken by the Regulatory Authority are comprised in the Prior Hearing Report, attached hereto and being an integral part hereof.
57. Having analysed comments received by there two companies, ANACOM deems that there are no new facts or elements that lead to conclusions and decisions other than those supported in the draft decision.

Therefore, a decision must be taken:

IV. FRAMEWORK

58. To assess the dispute between SONAECOM and PTC, consideration should be given to **provisions** on (i) **payment of compensation** for failure to comply with response deadlines provided for in quality service targets and (ii) to the presentation of forecast plans concerning local loop demand, laid down in each of the **RUO** versions which may be applied to the situation under consideration: version 14.01, of 17.05.2005, and version 15.00, of 24.11.2005.
59. As regards **compensation for non-compliance** with response deadlines, **annex 13 of version 14.01 of the RUO** provides that “*Where targets of service quality, as defined in Annex 12, are not met for a given OLO, for reasons directly attributable to PTC or to its subcontracted companies, and except for reasons of force majeure, PT Comunicações shall compensate the OLO...*” (paragraph 2). This provision was not amended in the RUO version currently in force.
60. There is an **exception** in the scope of the **payment of compensation**. Under **point 2.4 of annex 13 of RUO version 14.01 dated 17.05.2005** “*...PT Comunicações is deemed to be bound to make the payment to an OLO of compensations referred in this annex insofar as the OLO has provided forecast plans of services to be engaged, according to this Offer*”.
61. This provision was amended in RUO version 15.00 (24.11.2005), which established that “*...Where the misalignment between services effectively engaged by an OLO and figures it has indicated in forecast plans is equal to or higher than 50%, or where the OLO does not hand in such figures within the deadlines and under the conditions provided for in this offer, PT Comunicações shall not be bound, as regards exchanges and services for which forecasts were inadequate and services for which the OLO has not submitted forecast plans, to give to the OLO the compensations referred in this annex...*” In this scope the following is added “*Any inadequacy of forecast plans submitted shall not affect compensations due for inaccurate unbundling*”.
62. As far as **planning and forecasts** are concerned, point 3.1. of **annex 12 of RUO version 14.01** (17.05.2005) provides that “*To ensure a correct planning and optimization of resources owned by PT Comunicações, necessary to the evolution of the Local Loop Offer, the OLO must present a demand forecast plan for local loops, in the two modalities provided for in this offer, as well as forecasts of co-installation and signal transport requirements.*” In this scope the following is added “*The plan must cover a two-year period and follow the method presented below.*”
63. On this method, point 3.2 of the same RUO version determines the following:
“*By the last week of June of the year N, the OLO shall provide the plan regarding years N+1 and N+2, indicating specifically:*
- *Areas of PT Comunicações’s exchange for which it expects to request offers of unbundled access to the local loop, physical co-installation and signal transport;*

- Amount of local loops in the Full Access modality, per zone of PT Comunicações's exchange;
- Amount of local loops in the Shared Access modality, per zone of PT Comunicações's exchange;
- Areas of PT Comunicações's exchange for which it expects to request offers of physical co-installation and signal transport, as well as the respective modalities.

The plan shall be reviewed by December every year, forecasts for the year N+2 being merely indicative”.

64. Point 3.2 of **RUO Version of 24.11.2005 – V15.00** – shows a different wording. According to the method set out therein,

“By the last day of the half-year N, the OLO shall provide to PT Comunicações the demand forecast plan for N+1 and N+2, indicating specifically:

- Areas of PT Comunicações's exchange for which it expects to request offers of unbundled access to the local loop, physical co-installation and signal transport;
- Amount of local loops in the Full Access modality, per zone of PT Comunicações's exchange;
- Amount of local loops in the Shared Access modality, per zone of PT Comunicações's exchange;
- Areas of PT Comunicações's exchange for which it expects to request offers of physical co-installation and signal transport, as well as the respective modalities and amount of modules and connection cables to the main distribution frame.

Forecasts for N+3 are merely indicative”.

V. ASSESSMENT AND CONCLUSION:

A. FACTS ESTABLISHED:

65. In the light of allegations made by the two parties, as well as elements and documents attached to the initial application, the following facts must be **deemed to have been established:**

- a.** SONAECOM did not submit up to 30 June 2005 any forecast plan for 2006, nor for 2007;
- b.** On 30 December 2005 SONAECOM presented an incomplete forecast plan for 2006, undertaking to confirm subsequently the information on loops and to present plans on module and signal transport requests;
- c.** Definitive figures of SONAECOM's forecast plan were handed to PT Comunicações in February 2006;
- d.** The forecast plan submitted by SONAECOM concerned 2006 as a whole;

- e. No mention is made by SONAECOM concerning the application of the forecast plan for the half-year N+2 (1 July 2006 to 31 December 2006), or for the half-year N+3 (1 January 2007 to 30 June 2007);
- f. PTC acknowledges that it did not comply with deadlines laid down in the RUO for response to eligibility verification requests.
- g. On 19 March 2007, PTC informed NOVIS it would not pay any compensation due for 2006 and in July 2007 it notified the applicant of its definitive refusal to pay any compensation for non compliance with eligibility verification deadlines in 2006. These facts were invoked by SONAECOM and were not challenged by PTC.

B. POSSIBILITY OF REQUESTING ANACOM'S INTERVENTION

- 66. Considering the above-mentioned established facts, attention should be drawn to **whether ANACOM may intervene to settle the dispute.**
- 67. Taking into account articles 10 and 11 of the ECL and that:
 - a. The subject-matter of the dispute is related to the compliance of obligations resulting from the ECL;
 - b. The dispute involves two companies operating on national territory, both being subject to the obligations of the ECL;
 - c. ANACOM's intervention was applied for on 3.12.2007, before the expiry of the time-limit set out in paragraph 2 of article 10 of the ECL, whether one takes 19.03.2007 as the date on which the dispute began, or one deems that the dispute only began on July 2007, which SONAECOM refers as being the date of the definitive refusal to pay compensations for non compliance with eligibility verification deadlines in 2006.

Therefore, the **dispute** presented y SONAECOM **may be analysed by ANACOM** so that this Authority provides a ruling thereon.

C. APPLICATION THAT GAVE RISE TO THIS CASE

- 68. Given the facts and elements presented by SONAECOM and comments thereon made by PTC, that does not challenge documents submitted by the applicant, it must be concluded that SONAECOM failed to comply with provisions on the presentation of forecast plans provided for in RUO version 14.01 as well as with those in RUO version 15.00.
- 69. Consequently, one of the conditions on which, according to the RUO, depends the payment by PTC of compensation for non-compliance with response deadlines has not been met.
- 70. In fact, as provided for in annex 13 of the RUO, version 24.11.2005, and even now established in the version currently in force, in case forecast plans are not submitted at all or are not handed in within the time limits or under the conditions provided for in the RUO, PT Comunicações is not bound, as regards exchanges and services for which forecasts were inadequate and services for which the OLO

- has not submitted forecast plans, to pay the OLO compensation for non-compliance with response deadlines defined in the reference offer.
- 71.** SONAECOM did not submit, nor by 30 June 2005, nor subsequently, any forecast plan as provided for in RUO version 14.01, make it impossible to PTC to be aware of its forecast plans for the first half of 2006.
 - 72.** With the amendments laid down in RUO version 15.00, forecast plans were no longer made for a one-year period, being prepared on a semi-annual basis.
 - 73.** As a result, even if SONAECOM had thoroughly complied with the obligation to present forecast plans as provided for in RUO version 15.00, the failure to comply with obligations set out in version 14.01 of that offer would make it impossible for PTC to take into account forecasts for the first half of 2006.
 - 74.** SONAECOM acknowledges that forecast plans were not submitted in compliance with RUO version 15.00, and that forecasts of 30 December 2005 refer to the whole year of 2006, figures for the first and second half of 2006 not being broken down.
 - 75.** It follows from the above that SONAECOM could have broken down forecasts for each half of 2006, and failed to do so, and consequently did not remedy the deficiencies resulting from the failure to submit forecast plans provided for in RUO version 14.01.
 - 76.** Not only was PTC not required, nor is it required at present, to include information provided to be aware of forecasts for each half of that year, but it is much less presumable or expectable that figures in the submitted plan should be “allocated” by 50% to each half-year, as SONAECOM clarifies out of time in 5 April 2007 – document 5 attached to the initial application.
 - 77.** However, information provided in 2007 is not useful to remedy a deficiency of a forecast plan for the previous year, and the 35 operational meetings held between SONAECOM and PTC throughout 2006 do not replace, nor do they remedy, the failure to submit forecast plans by 31 December 2005.
 - 78.** This was not the only deficiency of the forecast plan presented by SONAECOM on 30 December 2005.
 - 79.** In fact, data sent to PTC were a mere part of the forecast plan the applicant undertook to confirm and complete later, as evidenced by document 9 in annex to the initial application. In this scope also, SONAECOM clearly acted inconsistently with points 3.1 and 3.2 of annex 12 of RUO version 15.00, which determined that such elements should have been submitted by 31.12.2005.
 - 80.** Only on 6 February 2006 did SONAECOM send new data to PTC (document 10), which did not complete the information on forecast plans that should have been submitted by 31 December 2005.
 - 81.** It is clear that SONAECOM did not meet obligations set out in the RUO as regards the presentation of forecast plans, and as such, one of the conditions on

which according to the RUO depends the payment of compensation for non-compliance with response deadlines provided for in that offer has not been met⁵.

82. It is not because the list of information to be conveyed with forecasts does not entail a specific obligation of information on planned eligibility requests that one should conclude that this information is not included in the elements to be submitted by the OLO to PTC.
83. In fact, the eligibility verification request cannot be isolated from the whole order for effective loop unbundling , and, as PTC stressed in its reply, the elements that integrate the plans enable the company to be aware of the volume of eligibility requests which will probably be presented.
84. On the other hand, in the context of the local loop offer, it makes no sense to consider a “service” isolated from “eligibility verification”. This provision is justified only because it presumes a subsequent order of the loop unbundling service. A loop order cannot be made before it is known whether it is eligible, as referred in RUO in point 4.1.1. “... *the full access supply implies necessarily the previous eligibility verification and a qualification test of the respective metallic pair, as described in Annexes 7 and 9.*”
85. This is all the more so since in the RUO the eligibility verification is not an autonomous service, but a step of the loop pre-order stage (see annex 7 of the RUO) that determines in point 7.2 that PTC must start “*immediately the supply of the local loop...*”.
86. In the light of this aspect of the RUO, it must be concluded that the failure to present the forecast plans in due time determines, in this case, the expiry of the obligation upon PTC to pay compensation for failure to meet objectives of quality of service.
87. It also follows from the above that SONAECOM’s argument, according to which forecast plans are irrelevant to the dimensioning of resources and services owned by PTC to ensure reply to eligibility verification requests is unfounded.
88. It is unquestionable that the presentation of forecast plans is relevant to PTC as far as the dimensioning of offers is concerned, as evidenced by the prior hearing report that preceded the decision issued on November 2005.

“ICP-ANACOM agrees with PTC’s proposal that this company is only bound to pay compensation defined in this determination where the OSP has submitted forecast plans for services to be engaged (this condition, in fact, has been included in the RUO).

In case OSP forecast plans do not correspond to services effectively engaged, PTC cannot be expected to fully comply with deadlines laid down in the RUO, for exchanges and services for which forecasts were inadequate. As referred earlier,

⁵ See version 15 of that reference offer, point 2.4 of annex 13, which excludes the obligation to pay compensation where forecast plans “...are not handed in within the deadlines and under the conditions provided for in the RUO, as regards exchanges and services for which forecasts were inadequate and services for which the OLO has not submitted forecast plans”.

improvements in the RUO may only be achieved in case involved actors develop the best efforts so that the offer operates in an efficient and swift manner.”

89. Consequently, ANACOM deemed the inclusion in the RUO of the rule that makes the payment of compensation subject to the timely presentation of forecast plans to be justified.
90. Moreover, one can imagine what it would be like if every OLO submitted their forecast plans after the expiry of the time limit to do so and/or if such forecast plans were always incomplete or inaccurate. In these circumstances, it would be impossible for PTC to ensure services provided for in the RUO in a timely and efficient manner.
91. In the light of the above, and given that the execution of eligibility requests requires some physical tasks, including field tasks, and that even computer systems must be dimensioned, it is inevitable to conclude that that the failure to present forecast plans is not irrelevant to PTC as regards the dimensioning of resources and services necessary to meet requests for access to the local loop.
92. Delays and gaps of forecast plans according to RUO version 15.00 are also crucial to the conclusion that SONAECOM is not entitled to receive compensation for non-compliance with deadlines for response to eligibility verification corresponding to the second half of 2006.
93. Lastly, and as a logical corollary of the above conclusion, ANACOM hereby decides to dismiss the application to order PTC to pay payable and future default interest until the amount claimed under article 102, paragraph 3 of the Commercial Code, is fully and effectively paid.

D. MEASURES OF INQUIRY REQUESTED BY SONAECOM ON 24.03.2008

94. As regards the application made by SONAECOM under paragraph 2 of article 88 of the CAP on 24.03.2008, it should be stressed that this provision allows interested parties to “...attach documents and opinions or to request the measures of inquiry that are useful to clarify the material facts of the case”.
95. The inquisitorial principle laid down in paragraph 1 of article 87 of the same Code, binding the administration’s action in the scope of the administrative action, establishes that the body responsible for the investigative stage of the proceedings should undertake to carry out all the necessary investigations to substantiate its decision.
96. These two provisions make it evident that the body responsible for the investigative stage of the proceedings is only required to carry out investigations that are useful and necessary to substantiate its decision.
97. In the case under consideration, taking into account the framework and assumptions for the payment of compensation for failure to comply with levels of quality of service established to verify eligibility, as well as demonstrated evidence in the scope of the presentation of forecast plans on the part of SONAECOM, the requested measures of inquiry are nor useful nor necessary to substantiate the decision.

98. What in fact is relevant for this case is whether forecast plans should be deemed to have been submitted in a complete and timely manner, so that, under the RUO, PTC may be ordered to pay compensation.
99. The elements attached by SONAECOM and issues requested by this company to be replied to by PTC do not involve any additional clarification on how the obligation to submit forecast plans was complied with.
100. Therefore, in the light of article 57 of the CAP, that binds the administration bodies to ensure a swift and effective progress in the procedure, rejecting and avoiding any matter likely to disturb or delay proceedings and a fair and timely decision, and considering that, contrary to paragraph 2 of article 88 of that Code, measures of inquiry requested by SONAECOM on 24.03.2008 are nor useful nor necessary for the clarification of the material facts of the case, the application made by SONAECOM for additional clarifications on the part of PTC must be rejected, without prejudice to being admitted the attachment to these proceedings of the detailed list of response delays to eligibility requests.

VI. DECISION

In the light of the above, the Board of Directors of ANACOM, in the pursue of powers conferred thereupon by paragraph 1 q) of article 6 of the Statutes attached to Decree-Law no. 309/2001, of 7 December, and for the purposes of the regulation objective provided for in paragraph 1 a) of article 5 of Law no. 5/2004 of 10 February and assignments conferred thereupon by paragraph 1 of article 10 of the same Law, hereby determines as follows:

1. Arguments and grounds attached to the request for administrative dispute settlement being deemed to be unfounded, not to grant the application to determine the obligation on PTC to pay SONAECOM [SCI] [ECI] for compensation for non-compliance in 2006 with response deadlines established in annex 13 of the RUO as quality of service targets, as well as the request to pay payable and future default interest on that amount, under article 102, paragraph 3 of the Commercial Code.
2. To dismiss, pursuant to article 57 of the CAP, the measures of inquiry applied for by SONAECOM on 24.03.2008, which were deemed not to be useful or necessary to clarify the material facts of the case, contrary to paragraph 2 of article 88 of the same Code.

Lisbon, 4 June 2008.