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Determination of 8.11.2005

DECISION OF ICP-ANACOM CONCERNING THE IMPLEMENTATION OF LOCAL LOOP UNBUNDLING (LLU)

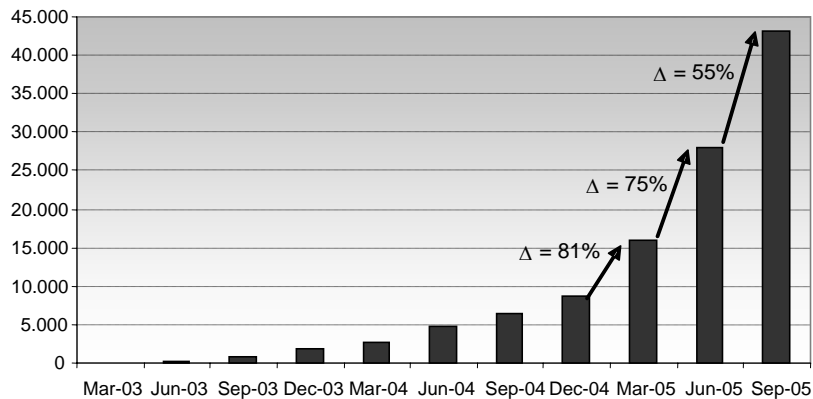
1. BACKGROUND

ICP-ANACOM's fundamental objectives are (i) to promote competition in the supply of electronic communications networks and services, (ii) to ensure that users derive the maximum benefit in terms of choice, price and quality and (iii) to encourage efficient investments in infrastructure and (iv) to promote innovation. The regulation and interventions carried out on the LLU are, naturally, in conformity with the above-mentioned objectives.

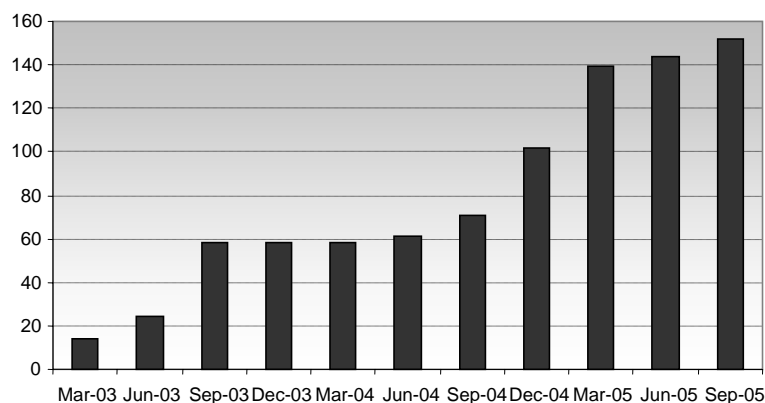
ICP-ANACOM recently intervened in the scope of the RUO, concentrating mainly on the reduction of the maximum time limits associated to the supply of loops and the decrease of prices of services provided within that offer, aiming to ensure coherent conditions between the different wholesale and retail offers of the PT Group and bring these into line with current practices in the European Union. This line of action guaranteed the improvement of the competitive conditions of the operators and service providers (OSPs) as compared to those of the PT Group companies.

All in all, the regulatory intervention carried out by ICP-ANACOM has contributed to the increase in confidence of the OSPs in their investment decisions, which has, in turn, been reflected in the increase in the diversification of offers and services, with more favourable prices for the consumers. This increase in confidence is confirmed, for example, by the increase in the number of unbundled loops and MDFs (Main Distribution Frames) in places where there are co-mingling operators (See Graphs 1 and 2).

Graph 1 – Evolution in the number of unbundled access points to the local loop



Graph 2 – Evolution in the number of MDFs with co-mingling



Source: ICP-ANACOM

Notwithstanding these interventions, ICP-ANACOM identifies in the offers the existence of some restrictions which have put operators and end users at a disadvantage. These restrictions are essentially to be found in the maximum time limits with which PTC is to comply regarding services associated with LLU. ICP-ANACOM, at the time of its determination of 17 February 2005 concerning the alterations to be introduced in the RUO, communicated that it would pay special attention to these situations and that, should it identify the need for intervention, it would take the appropriate measures to ensure compatibility with market needs and to safeguard consumers' interests. It is, in fact, not sufficient to establish coherent and non-discriminatory time limits unless there is a strong incentive for PTC to comply fully with these.

Taking into account the existence of systematic complaints by the OSPs as well as the fact that PTC, following the request of ICP-ANACOM, submitted information concerning some services provided in the scope of the RUO. This information confirms the existence of problems and service quality levels that do not conform with the deliberation of this Authority, causing harm to the end user. It is thus important to analyse the situation concerning certain services, provided by PTC in the scope of the RUO, which are considered essential for the development and good functioning of that offer, with a view to guaranteeing (i) the protection of the interests of the end users and (ii) suitable conditions for the existence of competition in the market.

The present analysis does not deal with certain aspects of the offer which the OSPs have complained about, namely, the simplification of the bureaucratic processes associated with the termination of the contract and separation of the local loop and the improvement of the quality of the available service. However, ICP-ANACOM does consider the above-mentioned topics to be relevant to the improvement of the services made available to the end user and for the development of the RUO, and is planning to carry out a more detailed and wide-ranging analysis of these topics, and possibly even introducing inspections, in the context of the competence of this Authority, in order to guarantee the suitability of the RUO for market needs and to safeguard the interests of consumers.

2. HISTORY AND CURRENT SITUATION

2.1 Incorrectly Unbundled Local Loops

Between the end of January and the end of May 2005, OniTelecom – Infocomunicações, S.A. (OniTelecom) informed ICP-ANACOM of more than 96 cases of irregularities in the transfer of local loops which "resulted in prolonged service interruptions for the end customers for several hours (or even days). PT Comunicações, S.A. (PTC) was solely responsible for those interruptions".

In a letter sent on 2 June 2005, OniTelecom confirmed that since the beginning of 2005, cases of irregularities have been verified – these having been confirmed and acknowledged by PTC - in the

transfer of approximately 100 local loops. These irregularities have caused service interruptions for customers lasting as long as 11 days. Accordingly, that company requested ICP-ANACOM to take steps to stop these irregularities. It also proposed to sanction PTC and to define really dissuasive compensation amounts to be paid in the case of non-compliance. OniTelecom suggested establishing a compensation penalty payment corresponding to a minimum value of at least 2 or 3 times the transfer price, augmented by the value of the monthly fees for each day (or fraction) in which the maximum supply time has been exceeded.

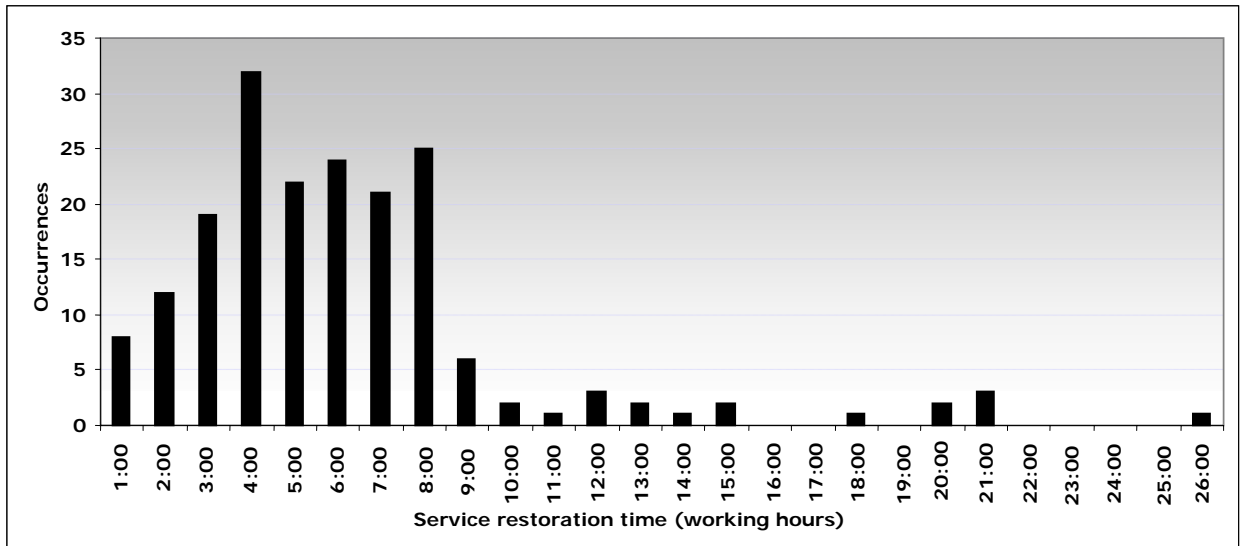
In the context of this topic, ICP-ANACOM requested PTC to provide the Authority with relevant information. A study of the information sent by PTC shows that, between October of 2004 and the first week in February of 2005, approximately 4.2 % of the unbundled local loops had problems for which PTC was responsible. These problems resulted in average non-availability of approximately 6 working hours. Table 1 and graphs 3 and 4 sum up the information provided by PTC.

Table 1 – Unbundled loops with problems for which PTC was responsible (between October 2004 and the first week of February 2005)

PTC explanation given	Novis				OniTelecom			
	No.	%	Avg. Non-avail. (w.h.)	Worst case (w.h.)	No.	%	Avg. Non-avail. (w.h.)	Worst case (w.h.)
Problem in the jumper	33	1,4%	5:46	20:49	65	3,0%	4:32	13:43
Cable deteriorated, disconnected or badly installed.	15	0,6%	5:46	10:43	16	0,7%	8:00	19:20
Incorrectly unbundled local loop	7	0,3%	3:02	7:20	8	0,4%	5:51	7:30
Other	13	0,6%	8:46	20:22	30	1,4%	6:23	19:20
TOTAL	68	2,9%	6:05	20:22	119	5,4%	5:19	19:20

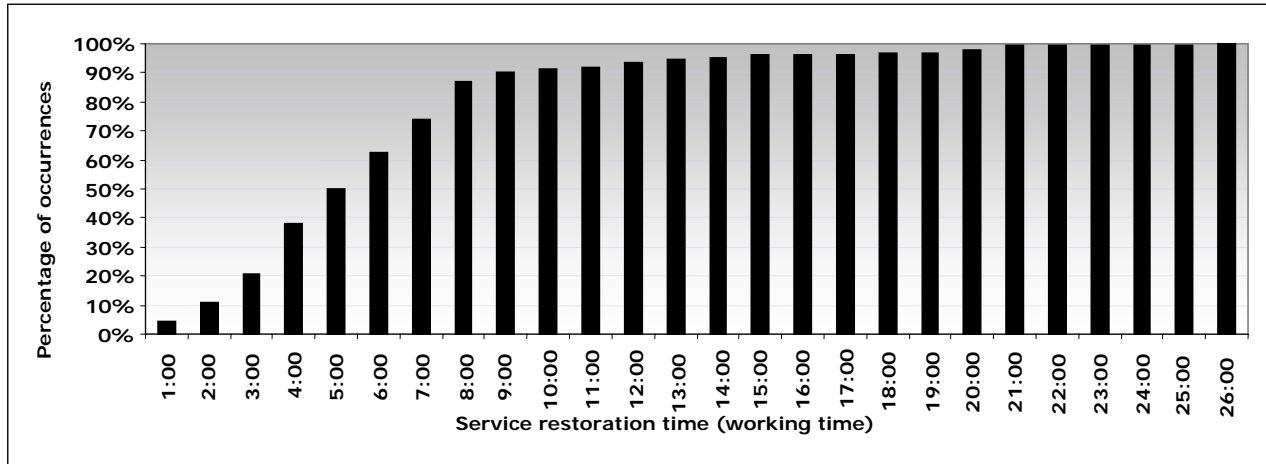
Source: ICP-ANACOM (based on data provided by PTC)

Graph 3 – Distribution of the frequency of the non-availability periods of local loops which presented anomalies which were the responsibility of PTC (between October 2004 and the first week in February 2005)



Source: ICP-ANACOM (based on data provided by PTC)

Graph 4 – Accumulated frequency of the periods of non-availability of the local loops which presented anomalies which were the responsibility of PTC (between October 2004 and the first week in February 2005)



Source: ICP-ANACOM (based on data provided by PTC)

An analysis of the above graphs shows that only a very small percentage of the loops which were poorly unbundled were repaired in less than 2 working hours, which for most of the final users, and in particular for business users, is serious. The highest percentage of cases were resolved within 4 to 9 working hours. Taking into account that these anomalous situations result from planned and scheduled activities and that about half of the anomalies are due to problems in the jumper it is considered that their resolution can and must be concluded within a shorter time period.

There is no data available about loop situations having associated requests for portability and in which the local loop unbundling did not occur within the agreed upon portability window. It should be noted that, in this case, as mentioned in the prior hearing report of the deliberation of 17 February 2004, the customer is rendered unable to receive calls. That is to say, the damages originating from a delay in the unbundling of a loop with an associated request for portability are similar to the damages resulting from irregularities in the transfer of local loops. As such, taking into account that the negative aspects for the end consumer and the consequent damages caused to the OSP and to the market itself are identical, ICP-ANACOM considers that the irregularities in the transfer of local loops and unbundling situations in which the unbundling does not occur within the agreed portability time frame should be treated in the same manner.

2.2 Delays in the Supply of Non-Active Loops

Since several complaints had been received from operators about the time periods associated with the supply of non-active loops, on 17 September 2004, ICP-ANACOM requested PTC to provide information on the supply time associated with this type of loops in the first half of 2004. From the assessment of the information provided by PTC, it was determined that the period which elapsed between the pre-order and the information on termination of the installation was 119 working days (for 95% of cases). ICP-ANACOM considered that a time period of almost half a year to supply a non-active local loop was unacceptable and thus sought, through the intervention made through the deliberation of 17 February 2005, concerning the alterations to be carried out in the RUO, to resolve the identified problem.

The above-mentioned deliberation altered the time limits and processes associated with the supply stages of non-active loops which, up to then, were carried out on a case-by-case basis, thus guaranteeing the existence of non-discriminatory supply times relative to the retail services of PTC and bringing these times into line (without imposing disproportional measures) with current practices in other Member States of the European Union concerning the supply time for local loops.

On 2 June 2005, OniTelecom claimed that PTC has not complied with the application of the defined time periods and procedures, especially as far as the eligibility assessment, loop analysis and scheduling phase is concerned. In the above-mentioned deliberation, ICP-ANACOM defined a maximum time limit for the eligibility assessment, loop analysis and scheduling phase of 4 days with RUO IS, and 5 working days without RUO IS. It should be noted that PTC agreed with the definition of the indicated time limits given in the deliberation.

The data submitted by OniTelecom concerning orders of non-active loops placed at the end of April and during the month of May prove the existence of significant delays in the eligibility assessment, loop analysis and scheduling phase. Indeed, taking into consideration the 102 loops concerning which PTC submitted eligibility information, according to OniTelecom's data, the average time taken by PTC for the assessment of eligibility was approximately 13 working days. PTC is supposed to fulfil 95% of the orders within 5 working days.

Although a direct comparison is not possible, since, at the present time, with respect to the situation prior to the determination of 17 February 2005, there are more activities involved in the eligibility supply stage (loop analysis and scheduling), the present data seem to show a worsening of the delays, in so far as the average time period for assessment of eligibility is concerned. We observe that, according to the data analysed regarding the first half of 2004, PTC presented the results for eligibility assessment of the local loop in an average time of 6 working days and, at the maximum, within 9 working days for 95% of the orders.

Table 2 – Evolution of the maximum supply time in the eligibility assessment stage of non-active loops

	Maximum time ¹	Average time taken by PTC ²	Average delay	Difference between average delay and the maximum defined time ³
Before the deliberation of 17 February 2005	3 working days	6 working days	3 working days	100%
After the deliberation of 17 February 2005	5 working days	13.2 working days	8.2 working days	164%

Source: ICP-ANACOM (based of data provided by OniTelecom)

These systematic and non-justified delays call into question the objectives of the deliberation of 17 February 2005, i.e. to ensure a non-discriminatory supply time for alternative operators in relation to PTC's retail customers.

At present there are no data available on the times taken by PTC in the other local loop supply stages. It is the opinion of ICP-ANACOM that the damages deriving from situations of non-respect of the maximum time limits defined for the various stages of the local loop supply are the same. Thus, in accordance with current practice, it is the opinion of ICP-ANACOM that, when PTC exceeds the maximum time limits established for the various stages of the local loop supply, the compensation that PTC must pay to the OSPs should be identical.

¹Maximum time in 95% of cases

²Taking 100 % of cases into account.

³Average delay percentage in relation to the maximum time limit defined in the RUO.

2.3 Delays in the supply of co-mingling and signal transport service

In a communication dated 26 January 2005, OniTelecom requested the intervention of ICP-ANACOM in the matter of observed delays concerning requests for the increase of internal connection cables. The service quality indicator for this service is 6 working days (for 95% of cases) and, according to OniTelecom, there were 31 orders with no scheduling whatsoever 19 days after the order date. In the same communication, OniTelecom makes reference to the existence of delays in satisfying orders for internal connection of co-mingling modules.

Therefore, on 7 February 2005, ICP-ANACOM requested PTC to provide all relevant information on the aforementioned delays and, given that there were no technical constraints to speak of, that PTC take steps to resolve the situation as quickly as possible.

On 11 February 2005, PTC commented that the large increase in demand for co-mingling services associated with the absence of forecasts from the OSPs did not allow for the timely provision of the necessary resources. Furthermore, PTC stated that a task force had been created with the objective of minimizing and/or making up for the observed delays and that contact had been initiated with the OSPs involved in order to ensure efficient allocation and utilization of the resources necessary for the execution of the work.

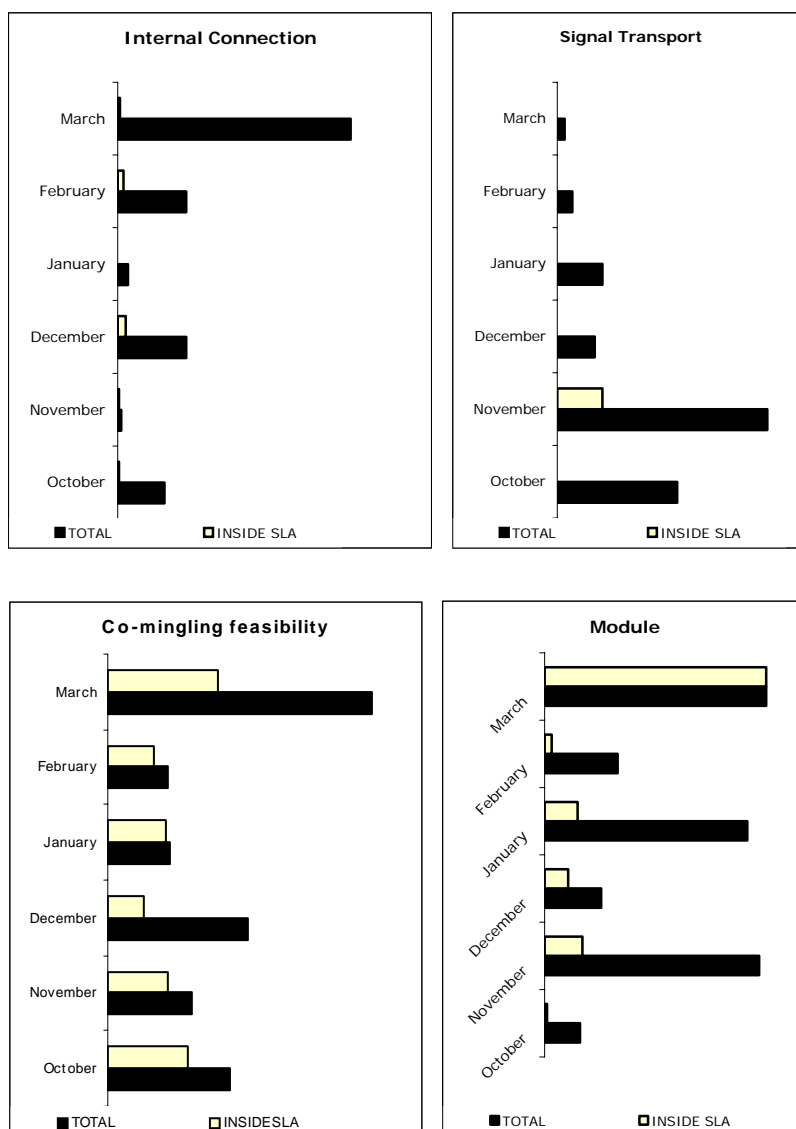
ICP-ANACOM, taking into account the arguments presented by PTC to justify the observed delays and the fact that PTC's reply showed it was making real efforts to involve the operators in the process and to resolve the identified problems, sent OniTelecom a fax on 04 March 2005, informing the latter of the willingness of PTC to smooth out all the existing faults and asking that OniTelecom keep ICP-ANACOM informed of the development of the situation.

To this effect, in a letter dated 02 June 2005, OniTelecom confirmed that there were still delays in the supply of internal connection cables, with *"supply times being, in the vast majority of cases, since the beginning of the year, 3 to 6 times longer than those defined by ANACOM."*

Sonaecom, S.G.P.S. (Sonaecom) also informed us, on 29 April 2005, that there were systematic delays in the provision of the service to supply internal connection cables, co-mingling installation or Operators' Rooms and signal transport. Sonaecom informed ANACOM that the delays and the problems in question are beginning to create difficulties for the normal functioning of the RUO, being responsible for (i) the existence of waiting lists for the activation of new customers, (ii) the suspension of the process to attract new clients in certain areas in which the company had the potential to initiate services provided for in the RUO and (iii) the postponement of television advertising of their offers for as long as they could not meet new subscription requests within acceptable time periods on account of the delays caused by PTC.

The following graphs show the evolution of completed orders within the time periods set for the services in question. The graphs are based on data provided by Sonaecom for the period between October 2004 and March 2005. In this regard, it is appropriate to note that OniTelecom has also informed ICP-ANACOM that there are still delays in supplying internal connection cables. As far as this matter is concerned, PTC itself recognized, in February 2005, that there were delays in the provision of this service in the last quarter of 2004. Thus ICP-ANACOM determined that the information and comments provided by the operators, including PTC, were generally consistent with the existence of delays in the supply of internal connection cables.

Graph 5 – Evolution of orders satisfied within the time limits for some RUO services



Source: ICP-ANACOM (based on data provided by Sonaecom)

Furthermore, Sonaecom, in a meeting held on 23 May 2005, also informed the Authority that it would be meeting with PTC on a weekly basis in order to collaborate on the resolution of this issue and that it would be presenting an unbundling plan by exchange area.

That is to say, at present and in spite of the time elapsed since the delays in these services were identified and in spite of the supposed attempts to resolve said delays and of the demonstrated willingness by the operators to work together towards a rapid normalization of the delays, these delays continue to exist. In fact they are getting worse and are hindering the OSPs from satisfying the existing demand for the services provided for in the RUO, thus negatively impacting end users and the OSPs. For example, only 4% of the orders for internal connections placed between October 2004 and March 2005 were satisfied within the time period defined in the RUO, with this percentage having decreased to approximately 1% in March. Moreover, the average time periods taken by PTC are substantially longer than the maximum time limits in 100% of the cases defined by the company in the initial version of the RUO, in 2001.

The supply and response times associated with the services of co-mingling and signal transport are defined for 95% of cases. ICP-ANACOM considers that, since these support services are absolutely

essential to the expansion of the provision of services supported in the scope of local loop unbundling, the maximum supply time defined for the same must be applied to all situations (100% of cases)

In addition, bearing in mind that the RUO foresees that the OSPs should make available plans forecasting their requirements for co-mingling and signal transport as well as considering the gains in experience that PTC has acquired with respect to the provision of services associated with the RUO, ICP-ANACOM considers it totally justified and proportional to maintain the maximum time periods currently defined in the offer and associated with the co-mingling and signal transport service, and thereby considers that these should be applicable 100% of the time.

3. CONCLUSIONS

The analysis carried out confirms the existence of anomalies in local loop unbundling and delays in the services associated with co-mingling and signal transport, all of which are the responsibility of PTC. The possibility that some technical constraints may exist does not justify failing to remedy the identified situations.

It is undeniable that the activity of ICP-ANACOM, in the definition of the time periods and service quality levels by which the PTC must abide, has been marked by a gradual and proportional approach, in light of the new regulatory framework, favouring the promotion of competition in the electronic communications market, and duly taking into account the proportionality of its measures. Indeed, the above-mentioned situations serve to confirm the priority that ICP-ANACOM has given to the service quality provided to the alternative operators, whether through the definition of the time periods coherent with other PTC non-discriminatory wholesale and retail offers, or by its close monitoring of the situations identified by this Authority and by the OSPs.

The OSPs have not only shown concern and requested the intervention of ICP-ANACOM on the matter of resolving the identified situations but have also demonstrated an active interest in working with PTC, namely by making available forecasts pertaining to the demand for services by exchange area and by holding weekly meetings to follow up on the situation

The data at hand demonstrate that the issues being assessed negatively impact the end users as the anomalies identified in the local loop unbundling recurrently cause service interruptions for unjustified periods of time. Furthermore, the delays identified in the unbundling of the local loops and the making available of co-mingling and signal transport services mean that many consumers are unable to benefit, in the near term, from the services provided for in the RUO. In addition, this situation is obviously detrimental to the development of competition in the market and of the Information Society, since the operators are unavoidably negatively impacted by the situations in question.

ICP-ANACOM considers that the time elapsed since the introduction of the RUO in 2001 and the experience accumulated in the area of providing services associated to the unbundling of the local loop by PTC should have contributed to improving the quality level of the service offered and can find no justification for the existence of the non-compliance situations that have been identified.

This Authority considers that, taking into account the facts which have been presented, the compensation payments currently defined in the RUO do not have a sufficiently large dissuasive effect to put an end to the non-compliance situations with respect to the agreed service quality. These compensation amounts must be increased so as not to put at risk the goals of the interventions carried out by ICP-ANACOM in the broadband market, the development of competition and the increase in investments by the OSPs, and obviously, the safeguarding of the interests of the end users.

ICP-ANACOM does not have data on all the service quality indicators defined in the RUO. Nevertheless, this Authority considers that, should the need arise for it to intervene with a compensation penalty for non-compliance with a service quality indicator, the non-compliances

with service quality levels that entail similar losses shall have to be changed accordingly, thus ensuring coherence in the RUO.

4. DELIBERATION

Considering that:

- (a) regulation aims (i) to promote competition in the offer of electronic communication networks and services, (ii) to ensure that users obtain the maximum benefit in terms of choice, price and quality and (iii) to encourage efficient investments in infrastructure, as well as (iv) to promote innovation;
- (b) the cases of improper unbundling (included in which are the situations in which the loop becomes non-operational after unbundling or in which the porting of the number and the unbundling do not occur within the same timeframe) are very detrimental to end users as these are rendered unable to access the service or receive calls;
- (c) improper unbundling situations cast doubt on the very development of LLU since the end users typically attribute responsibility to the alternative operator, thus negatively impacting the latter's image as well as competition itself;
- (d) the determination of ICP-ANACOM, of 17 February 2005, establishes that *"once the unbundling is completed, the PTC technicians are must always immediately make a test call to confirm that the unbundling has been properly performed, (...) by calling the toll free number of the OSP (800)"* which should contribute to the swift detection and resolution of improper unbundling situations;
- (e) the contract for provision of PTC's landline telephone service provides for compensation to the customer corresponding to 50% of the price of the installation (corresponding currently to approximately € 36, without VAT) in case of non-compliance, by PTC, of the date scheduled for the installation of the service;
- (f) a reasonable time period must be given for PTC to remedy the improper unbundling situation – these defects mostly occur in components inside the exchange where the unbundling takes place - after which a compensation penalty for the defect plus a compensation penalty for each additional hour spent must be applied;
- (g) the percentage of improper unbundling situations with respect to the total number of unbundlings must be limited. It is reasonable to define a value for this of 5%. Once this percentage has been reached, the initial compensation will be applied from the moment the loop was incorrectly unbundled;
- (h) the amount of the compensation penalties and the respective limits were defined at a time when there was no accumulated experience regarding the provision of services associated with the RUO. This is no longer the case;
- (i) the existence of exceptional occurrences which are beyond PTC's control, when the maximum time limits are defined for 100% of cases and the service remains available for the end user, may justify limits for compensation. These limits must be sufficiently high to act as a dissuading factor against any non-compliances;
- (j) the delays in the response to the verification of eligibility for non-active loops occur after ICP-ANACOM has defined specific time periods for this service. Furthermore, there has been a worsening of the delays recorded for this phase in comparison with the period prior to the deliberation;

- (k) the maximum response time limit for the verification of eligibility for non-active loops as defined by ICP-ANACOM resulted from PTC's own proposal, considering the activities involved in this phase;
- (l) the damages arising from situations of non-compliance with the maximum times defined for the various stages of local loop unbundling are identical;
- (m) operators provide forecasts for the demand of services contracted in the context of the RUO which allow PTC to allocate, in an efficient and timely manner, the resources necessary for the execution of the work to be completed;
- (n) under the terms of the RUO, payment of compensation by PTC is conditioned by the presentation, by the OSPs, of forecasts of the services to be contracted;
- (o) The analysis to received comments and grounds for the decision comprised in the "Report of the prior hearing on ICP-ANACOM's draft determination concerning conditions for the deployment of Local Loop Unbundling" is an integral part of the present determination,

The Board of Directors of ICP-ANACOM, in the context of the powers provided for in paragraphs b), e) and f) of article 6 of the Statutes, approved by Decree-Law no. 309/2001, of 7 December, and pursuant to point a) of paragraph 3 of article 68 of Law no. 5/2004 and to paragraphs b) and g) of article 9 of the Statutes, hereby determines the following:

a. PTC shall alter the RUO within a 10-day time limit, as follows:

1. Where, for reasons for which PTC or a company sub-contracted by PTC is responsible:
 - (a) the final client is without service for more than 30 minutes during or immediately after the loop unbundling process; or
 - (b) the porting of the number and the loop unbundling do not occur in the same agreed time frame,

That company shall compensate the OSP with € 38 and with one twenty-fourth (1/24) of this amount for each additional hour passing (with business hours and non-business hours being counted) when the service is not available or until the loop unbundling or the porting of the number take place, where they do not occur in the same time frame agreed.

This indicator, on account of the seriousness that each situation causes to the final user, is applicable for 100% of cases and not for just 95% of cases.

Should the percentage of incorrect unbundlings with regard to the total number of unbundlings per OSP exceed 5%, the calculation of the compensation to be paid should start at the time of the (incorrect) unbundling and not after 30 minutes have passed.

As regards loop unbundling for shared access, in case the FTS provided by PTC to the customer is interrupted, for reasons for which the OSP or a company sub-contracted by the OSP is responsible, the OSP shall compensate PTC, as defined above.

2. The compensation per loop due for failure to comply with the maximum time periods defined for the various phases related to the local loop access services shall be calculated following this rule:

- (a) for time periods defined in working days:

$d \times 38$ Euros, where d corresponds to the number of working days of delay.

(b) for supply time periods defined in working hours:

$(h_u/8) \times \text{€ } 38$, where h corresponds to the number of working hours of delay.

3. The compensation, per OSP involved and per exchange, due for failure to comply with co-mingling and signal transport services shall follow this rule:

$(d/2) \times (d+1) \times c \times (u/20.000) \times 38$ Euros, where d corresponds to the number of working days of delay, u corresponds to the number of PTC connected accesses at the exchange in question and $c=1$.

4. The time limits defined in the RUO for co-mingling and signal transport services shall apply for 100% of cases.
5. The limits to the compensation amounts defined in the RUO shall be the equivalent of 60 working days of delay for each period, except in the following cases:

(a) incorrect unbundling which results in service interruption for the final user, or where the loop unbundling does not occur in the agreed portability time frame;

(b) where maximum time limits are not defined for 100% of occurrences,

in which cases, taking account of the losses caused to the final user and to OSPs, no limits to compensation shall be set.

6. Each and every phase of a service provided for in the RUO having a deadline or an associated quality indicator (e.g. installation and expansion services for internal connection or signal transport services) shall be compensated.
7. A maximum time limit to promptly confirm the conclusion of the unbundling process by making a call to a free-of-charge number of the OSP, within 30 minutes from the unbundling, for 95% of cases, if hereby determined. The compensation to apply in case the maximum time limit for the prompt confirmation is not complied with shall correspond to:

$(h_c/24) \times 38$ Euros;

h_c – number of hours of delay.

8. PTC shall identify and inform the OSP, as of now, of the GPI exchanges with constraints as regards saturation of the main distribution frame, the capacity of the DC system and the physical space for co-mingling, and which, according to PTC, could imply the need for budgeting and construction. PTC must inform operators of the period of time involved for these activities, which must be as short as possible, giving the OSPs the opportunity to make arrangements and to order the services in question in a timely manner. PTC shall provide OSP with budgets as complete and detailed as possible, in order to identify all costs involved in building material and manpower. As regards non-GPI exchanges, at the most up to 20 working days following the submission of OSP forecasting plans, PTC shall present to OSP precisely the same information and launch the necessary procedures to a timely resolution of constraints.
9. The evaluation of the indicators and the payment of compensation must follow the rules defined in point 2.4 of Annex 13 of the RUO.
10. OSPs shall submit every six months to PTC a demand forecasting plan, up to the last day of the N semester, with forecasts on semesters N+2 and N+3. Forecasts on semester N+3 are merely indicative.

11. PTC shall send a quarterly report to ICP-ANACOM, by the 15th day of the month $n+1$ in relation to the quarter concluded at the end of month n , on the levels of quality provided in the scope of the RUO and the compensation amounts incurred.