

Determination of 2.11.2006

## **Final Decision on the range of statistical data to be submitted to ICP-ANACOM by providers of Leased Lines Services for the purposes of the definition of relevant markets and SMP assessment**

### **Preamble**

1. Member States of the European Union (EU) agreed on December 2001 to a new regulatory framework for electronic communications.

According to Directives integrating the new regulatory framework, “*the imposition, maintenance, amendment or withdrawal of ex ante regulatory obligations that apply to companies established on relevant electronic communications markets shall be preceded by the identification of relevant markets and the analysis of effective competition, that is, the assessment of whether or not established companies enjoy significant market power (SMP)*”.

2. In this context, ICP-ANACOM launched on 22 September 2003, the second stage of a public consultation on the procedures for defining and analysing relevant markets, comprising the leased lines services<sup>1</sup>.

The Authority received several comments on market definition criteria and on indicators to assess SMP in the referred markets. In addition to data collected in this scope, ICP-ANACOM determined on 6 November 2003 to collect a range of statistical, operational and financial information on leased lines services, having subsequently defined and analysed the respective relevant markets.

Taking into account the experience gained and developments occurred in the meantime, ICP-ANACOM has decided to revise the range of statistical data that providers of leased lines services need to submit, for the purposes of the definition and assessment of relevant markets, and to establish fixed periods for collecting the referred data.

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3. The questionnaire is divided into three parts: leased lines provision to retail customers, leased lines provision to wholesale customers and infrastructure.

Under the points relating to retail market, it is necessary to provide information on revenues, number of customers and number of lines leased to retail customers, per type of line, per route and per geographic area.

Revenues, the number of customers and the number of lines leased to retail customers, per type of line and capacity, broken down per route and geographic area, are data required to define the relevant geographic market.

For the purpose of SMP assessment, revenues, leased capacity and the number of terminal points may be used as indicators to calculate market shares, taking into consideration that, according to the European Commission, *“leased lines revenues, leased capacity or numbers of leased line termination points are possible criteria for measuring an undertaking’s relative strength on leased lines markets [however] ... the mere number of leased line termination points does not take into account the different types of leased lines that are available on the market”*<sup>2</sup>.

4. As regards the leased lines wholesale market, it is necessary to provide information on the number of lines leased to wholesale customers and respective revenues (per type of line), the number of wholesale suppliers and the number of wholesale customers of the leased lines service.

Similarly to the retail market definition process, revenues, the number of wholesale customers and number of lines leased to wholesale customers, per type of line and capacity, broken down per route and geographic area, are data required to define the relevant geographic market.

For the purpose of SMP assessment, revenues, leased capacity, the number of lines and of customers are indicators used mainly to analyse effective competition in the leased lines wholesale market, in particular as far as the market share calculation is concerned.

The number of wholesale suppliers shall be used mainly to assess potential competition and competition between established companies, when assessing wholesale market SMP.

The number of wholesale customers will allow the evaluation of the degree of buyer countervailing power.

5. Data on owned and leased infrastructure, per route and geographic area shall be also used to define the relevant geographical market.

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<sup>2</sup> Cf. Guidelines, §77.

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[http://ec.europa.eu/information\\_society/policy/ecomm/doc/info\\_centre/public\\_consult/review/recommendation\\_final.pdf](http://ec.europa.eu/information_society/policy/ecomm/doc/info_centre/public_consult/review/recommendation_final.pdf)

Data on infrastructure shall be also used to assess competition between established companies, the existence of barriers to entry and the size of the operator.

6. Notwithstanding the fact that Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector<sup>3</sup>, of 28 June 2006, does not refer to the leased lines retail market (minimum set of leased lines), it is necessary to collect information about such service, taking into account that:
  - Conclusions reached on previous market analysis require a new assessment on the existence of effective competition on these markets;
  - The analysis of a specific market implies the consideration of the whole value chain, including downstream retail services.

The recommendation itself refers that National Regulatory Authorities (NRA) are entitled to identify markets which differ from those on the list defined by the Commission.

7. Where the historic information is not available, operators must submit estimates of figures under consideration, stating assumptions made in the respective calculation.
8. Data collected in this scope may be published by ICP-ANACOM on an aggregate basis.

Pursuant to article 108 and to point b) of paragraph 1 of article 109 of Law no.5/2004, of 10 February, this range of indicators must be submitted to ICP-ANACOM by providers of these services no later than 30 May of the year following the year to which they relate, by email to the address [dee.stats@anacom.pt](mailto:dee.stats@anacom.pt) and by post to:

ICP-ANACOM

DEE - Departamento de Estudos e Estratégia

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Please refer to the contacts above to provide any clarifications deemed necessary.