

Determination of 8.1.2004

## DRAFT DECISION

# RESTRUCTURING OF CONDITIONS RELATED TO LEASED LINES SERVICES PROVIDED BY PT COMUNICAÇÕES

## I. Previous and present situation

Following the determination by the Board of Directors of ICP-ANACOM of 26 December 2002, it is in force, as from March 2003, a tariff table concerning leased line services provided by PT Comunicações which embodies the following discount structure:

### INVOICING DISCOUNT

Monthly gross invoicing	% of discount
Grade A: equal or superior to 19.951.916 EUR	32.0%
Grade B: [12.469.947 EUR; 19.951.916 EUR[	26.5%
Grade C: [7.481.968 EUR; 12.469.947 EUR[	21.5%
Grade D: [3.990.383 EUR; 7.481.968 EUR[	17.0%
Grade E: [1.995.192 EUR; 3.990.383 EUR[	13.0%
Grade F: [748.197 EUR; 1.995.192 EUR[	9.5%
Grade G: [249.399 EUR; 748.197 EUR[	6.5%
Grade H: [99.760 EUR; 249.399 EUR[	4.0%

### FIDELITY REWARD<sup>1</sup>

Annual leased line invoicing net of discounts	% of discount
1st YEAR	2.0%
2nd YEAR	4.0%
3rd YEAR	6.0%
4th YEAR	8.0%
5th YEAR	10.0%

<sup>1</sup> Credit on line annual invoicing (net of invoicing discount). To be attributed, line by line, on the following 12 months of the year concerned, for as long as the leased lines stay installed and unaltered throughout that period.

As a result of the mentioned determination, ICP-ANACOM has compromised itself to revise the adequacy of the new discount system to applicable regulating principles and the conditions promoting a sound market competition.

Since the date of that determination, OniTelecom, Jazztel and SonaeCom have revealed<sup>2</sup> concerns on the conditions of leased line market competition, in particular, concerning the different costs incurred by several operators contracting similar circuits to those of PT Comunicações. Those operators also referred the existence of other specific discounts applied by PT Comunicações.

Questioning PT Comunicações on this matter, that entity informed that:

- (a) it has negotiated with Vodafone, commercial conditions - subject to some commitments - characterized by the application of tariffs by routes and geographic zones, by the application of debit aggregation discounts (reaching 50% for links within the same route) and by the application of rewards (reaching 30%, attributed by each link and according to number of years)<sup>3</sup>; and
- (b) there is a 10% discount on the SDH technology lines, applicable to clients whose annual invoicing volume coming from this type of lines exceeds 25 million euros (the beneficiary of that discount is PT Prime).

According to statistic information sent by PT Comunicações<sup>4</sup>, in September 2003, the average granted discount in the scope of leased lines offer was about 17%, and the discount granted to PT Prime, significantly superior to the discount granted to remaining operators.

In addition to the discount matter, in the determination of 26 December 2002 it was clearly shown that the supervenient evolution of leased lines park, both in terms of volume and capacity intervals and branch length, would have an impact on the operators expenditure and on PT Comunicações revenue, being advised to have a periodic re-evaluation of the tariff adequacy in force, as opposed to the applicable regulating principles, with evidence for the principle of cost oriented prices.

In this context, besides the discounts structure revision and according to information and most recent data reporting on results of the cost accounting system of PT Comunicações, related to 1st semester of 2003 exercise, sent by that entity on 22 December 2003, it is identified margin for reduction of net prices for leased lines.

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<sup>2</sup> By letter or through held meetings

<sup>3</sup> PT Comunicações informed that, given the characteristics of this solution answering exclusively to typical needs of the mobile operators, presented similar solutions to TMN and OPTIMUS.

<sup>4</sup> And, according to PT Comunicações, might have some discrepancies, as the management information systems are not prepared to supply the information with detail degree required by ANACOM

## **II. Reasoning and decision**

The leased lines constitute an essential product in a wholesale market controlled essentially by one only leading company (PT Comunicações) on one side, coexisting in the market companies of PT Group and other companies, on the opposite side.

The application of the new discount structure, defined by PT Comunicações in the scope of the reformulation of its leased circuits offer, originated:

- a) the attribution of higher discount percentages to companies of Grupo PT (TMN and PT Prime), comparatively to discount percentages attributed to the remaining service providers;
- b) the positioning variation towards some operators in relation to the obtained discount, evidencing that the current discount structure has benefited PT Prime in prejudice of the competing service providers.

The questions above identified resulted in an aggravation of the competitive conditions as opposed to PT Prime, incurring the remaining operators, in a much higher relative wholesale costs.

The exercise of quantity discounts (valued either by the number of lines or invoicing volume) and the offer of fidelity rewards is current practice in European Union. However, it is verified that the minimum and maximum levels for the purpose of attribution of quantity discounts are, in Portugal, among the highest in the European Union, and the maximum discount rate, the highest in the European Union. As far as the fidelity reward is concerned the discount rates practised by PT Comunicações are in line with the ones practised by the remaining incumbent operators from the European Union countries.

Thus, taking into account that:

- (a) in the determination of 26 December 2002, ICP-ANACOM has considered to revise, according to results, the adequacy of the new discount system to applicable regulating principles and to conditions promoting a sound market competition;
- (b) PT Communications, while entity with significant market power in the leased lines market, is compelled to guarantee, to all users, the open access and in equal conditions, transparency, non discrimination and orientation of the prices for the leased lines costs;
- (c) the commitment between eventual efficiency profits, proceeding from the practice of prices discrimination and the impact of such discrimination in the competing conditions, must be weighed;
- (d) PT Comunicações' is practising discounts specifically defined for some (categories of) entities, in particular, in the cases of Vodafone and PT Prime;

- (e) PT Comunicações considers the invoicing figures coming from lines of capacity higher than 34 Mbps in order to determine the percentage of applicable discount, to be inconsistent with non inclusion of the invoicing in those circuits with same invoice figures resulting from the application of the discount percentage;
- (f) the application of the new discounts structure results from an aggravation of the competing conditions as opposed to PT Prime, incurring the remaining operators, in much higher wholesale costs;
- (g) the prices of the leased lines and the respective discounts benefiting the companies of Grupo PT penalize the competitors exploration conditions, without aggravating the results of the group;
- (h) according to economic theory, vertically integrated companies have incentives to i) practise margin squeeze and ii) to increase the costs of rival companies, making difficult to them competing in the retail market;
- (i) according to information and most recent data from the results of the cost accounting system of PT Comunicações, concerning the exercise of 1st semester of 2003, there is margin for reduction of leased line net prices;
- (j) the current average discount rate, according to information sent by PT Comunicações, is close to 17%;
- (k) the minimum and maximum levels for the purpose of attribution of quantity discounts in Portugal are among the highest in the European Union, clearly showing some lack of adjustment of the same to the dimension of the Portuguese market, having discounts that, in the current conditions, only can be reached by companies of Grupo PT;
- (l) the recommendations 98/322/EC and 1999(C) 3863 identify the existence of costs not incurred in the wholesale offer, in particular, the *marketing* and sale costs, using the 20% reference rate to all costs not incurred with wholesale clients;
- (m) it is advisable the existence of more than one company to benefit from some sort of discount rate, and that companies of Group PT, as well as competing companies, coexist, namely, in a certain level;
- (n) The attribution of fidelity rewards is common practice in European Union as far as the existing offers are concerned,

and in the scope of the attributions foreseen in the article 6, no. 1, paragraphs b) and e) of the Statutes, approved by Decree-Law no. 309/2001, of 7 December and in the article 28 of Decree-Law no. 290-A/99, of 30 July, the Board of Directors of ICP-ANACOM determines the following:

1. PT Comunicações must, within 15 days, replace the current invoice discount structure by the following discount structure:

**INVOICING DISCOUNT**

<b>Monthly gross invoicing</b>	<b>% of discount</b>
<b>Grade A:</b> igual ou superior a 1.000.000 EUR	26.0%
<b>Grade B:</b> [100.000 EUR; 1.000.000 EUR[	13.0%

2. In the determination of the percentage for applicable invoicing discount, PT Comunicações must keep the current rule, i.e., to consider the invoicing amount of the total lines contracted by an operator or service provider. The discount percentage thus calculated must in future, however, fall upon the totality of the contracted lines by an operator or service provider.
3. PT Comunicações must keep the fidelity reward which is the following one:

**FIDELITY REWARD<sup>5</sup>**

<b>Annual leased line invoicing net of discounts</b>	<b>% of discount</b>
<b>1st YEAR</b>	2.0%
<b>2nd YEAR</b>	4.0%
<b>3rd YEAR</b>	6.0%
<b>4th YEAR</b>	8.0%
<b>5th YEAR</b>	10.0%

4. In the scope of the leased line service, PT Comunicações must refrain from practising any additional discount.
5. PT Comunicações must, within 15 days, include in the leased lines tariff table the prices which are applicable to 155 Mbps digital lines and send the tariff table, within the same period, to ICP-ANACOM.
6. ICP-ANACOM will follow the evolution of the market conditions as for the practised prices in the scope of the leased lines service in order to guarantee a sound competition and the respect for the established regulating principles.
7. This disposed in the present draft decision was submitted to the prior hearing of interested parties, who are entitled to assess the issue within 10 working days at the most, pursuant to article 100 and 101 of the Code of Administrative Procedure

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<sup>5</sup>Credit on line annual invoicing (net invoicing discount). To be attributed, line by line, on the following 12 months of the year concerned, for as long as the leased lines stay installed and unaltered throughout that period.