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Determination of 26.12.2002

DRAFT DECISION OF ANACOM RELATED TO CHANGES TO BE INTRODUCED IN THE REFERENCE UNBUNDLING OFFER

On 28.06.01, the Board of Directors of ANACOM decided the maximum prices to be practised by PT Comunicações, S.A. in Local Loop Unbundling (LLU). Namely, the local loop maximum monthly fee was fixed in €11.96, for narrowband service provision, and in €13.78, for broadband service provision.

Later, by decision of 17.01.02, the Board of Directors of ANACOM decided to change the prices of the shared access service provided within the scope of the Reference Unbundling Offer (RUO). At that time, in cost estimation process, one has decided to choose the common elements sharing costs principle for the fixed telephone and broadband services. At that time, the incurred costs principle, adopted by some regulators, was also considered and was deemed to need a sort of stabilization requiring an analysis of possible evolutions that may take place, inclusively, at European level.

Taking into account the time that meanwhile elapsed, the existence of new data associated with the costing model of the notified operator and the occurrence of price reductions in the remaining Member States, it is urgent to revise the prices currently in force. In fact, according to the most recent data, the local loop monthly fee for the broadband service provision is about 7% above the average and the shared access monthly fee is about 40% above the average.

Thus, in view of the evolutions that meanwhile took place in the national and community markets as well as the experience acquired by market agents, the Board of Directors of ANACOM decides, in accordance with subsection a), paragraph 2 and 3 of article 4 of the EC Regulations no. 2887/00 of the European Parliament and the Council:

1. To request PT Comunicações, S.A. to carry on an integrated duly-founded price revaluation according to the principle of cost orientation, taking into account:
 - (a) The experience meanwhile obtained by PT Comunicações, S.A., both in local loop unbundling and similar offers, and the productivity gains arising out from there;
 - (b) The expected cost evolution, based on efficiency criteria;
 - (c) The capital cost calculation method (which should consider the accounting values).

For that purpose, PT Comunicações, S.A. will have to send to ANACOM, till January 20, a price proposal and the respective basis.

The basis of the proposal to be evaluated by ANACOM must contain sufficient details so as to allow identification and explanation of all estimated values, disaggregating the several activities and sub-activities contained in the statements of income of the cost accounting system and specifying material, equipment, contract jobs, manpower, tasks costs and other possible costs. The proposal must also identify, based on the cost accounting system, all and any cost or activity items which are avoided or added to the offer of a full or shared access.

2. To carry on the previous hearing of the interested parties, pursuant to articles 100 and 101 of the Rules of Administrative Procedure, granting a deadline till January 20, for them to give their opinion, in writing, on the determination to be adopted with the following content:

PT Comunicações, S.A. must change RUO, within 10 days, taking into account the following:

1. RESPONSIBILITY ON THE INSTALLATION OF SUBSCRIBER SPLITTERS

Taking into account that the evolution in technology enables final users to install subscriber splitters, PT Comunicações, S.A. will have to submit, within the scope of RUO, a proposal excluding the obligation to install, by PT Comunicações, S.A., subscriber splitters in the shared access service, saving, consequently, the respective associated costs. Note that said possibility was introduced by PT Comunicações, S.A. in the “PT ADSL network” offer, being one of the factors for the significant growth in demand.

2. DEVELOPMENT OF THE INFORMATION SYSTEM

Following ANACOM’s request, dated 25.01.02, for PT Comunicações, S.A. to submit a schedule for the implementation of an information system for access and automatic processing of information, PT Comunicações, S.A. informed that they did not have a prepared registration system to meet the requirements identified in LLU. This entity, considering that the specification, development and implementation of an information system should be based on a sufficiently characterised and stable definition of requirements, requested ANACOM to evaluate the expected parameter quantification related to the use of the system.

For that purpose, ANACOM requested the interested parties to submit their comments on the proposal submitted by PT Comunicações, S.A. and called them to have a meeting with the LLU Consulting Working Group, which agenda consisted of just one point, the discussion of this matter.

Only one operator sent the requested comments to ANACOM but did not focused the quantification of the parameters proposed by PT Comunicações, S.A. The discussion held in the Consulting Working Group concluded that those parameters could depend on the future LLU evolution and, namely, on an ANACOM’s determination on the collocation conditions.

It should be emphasized that the development of said information system, apart from being useful within the scope of the LLU, will also be beneficial for PT Comunicações, S.A. even in a context of broadband efficiency and development.

Specifically for LLU, and in view of the uncertainties in the evolution in supply, ANACOM does not have additional data that would allow them to oppose, on a well-founded basis, the submitted proposal. Taking into account that supply is in an incipient phase and that any forecast as to the evolution in demand is necessarily limited, flexibility of the system should be provided so as to be adapted to any evolution in demand and needs of information.

Thus, PT Comunicações, S.A. should implement an information system for access to information and respective processing taking into account the recitals submitted in the letter dated 18.02.02, and:

- (a) the development of the access to information system must be concluded within 6 months and the update and load of registrations must be concluded within 9 months;
- (b) the development and implementation of the system related to the automatic processing of the several types of requests foreseen within the scope of RUO must be concluded within 9 months.

The system should, mainly, foresee:

- (a) the possibility for the OLOs that enter into RUO agreements with PT Comunicações, S.A. to ask for information about specific metallic pairs;
- (b) the possibility for the OLOs to access the registration of metallic pairs requests, exchange infrastructures, repair and maintenance and circuits made available;
- (c) the possibility of automatic processing of the several requests foreseen within the scope of LLU.

PT Comunicações, S.A. must also submit to ANACOM a proposal for cost sharing and payment of the system, through the beneficiaries of this system. For this purpose, “disclosure, in a timely and centralized manner, of the information in question” is considered to also benefit PT Comunicações, S.A., namely from the broadband offer point of view.

During the offer’s starting phase, and taking into account the cost-benefit commitment, any commercial contact between operators will have to be made using the currently available means, letter, fax or e-mail.

3. VERIFICATION AND DISCLOSURE OF TESTS RESULTS

Considering the need for immediate disclosure of the results of possible tests that may have been made, as referred to in determination of 17.01.02, regardless, during this phase, of the development of a support computer system, PT Comunicações, S.A. will have to define the quality of service parameters and indicators applicable to the disclosure of the above-mentioned information.

Should simultaneous test requests be made for the same loop, the request put forward first will prevail, PT Comunicações, S.A. undertaking to disclose later the results of the tests, meanwhile made, to the interested parties who have already requested them or to those who will request in the future.

Should the OLO choose to make the tests using its own means, the obligation for the OLO to inform PT Comunicações, S.A. of the obtained results should be eliminated.

4. ACTIVE LOOPS THAT HAVE NOT BEEN USED BY PT COMUNICAÇÕES, S.A. SUBSCRIBER FOR A MINIMUM PERIOD OF 12 MONTHS

PT Comunicações, S.A. will have to eliminate from the RUO their interest in being compensated through Other Licensed Operators (OLOs) for the costs incurred and not recovered with the installation of loops that have not been used by a PT Comunicações, S.A. subscriber for a minimum period of 12 months.

5. ACCESS TO THE LOCAL SUB-LOOP

PT Comunicações, S.A. will have to eliminate all the restrictions related to the access to the local sub-loop, which do not meet objective criteria related to the technical workability or to the need to maintain the network integrity, pursuant to the EC Regulations no. 2887/00.

The conditions and procedures associated with the availability of Access Points to the local sub-loop will also have to be clearly defined, and mainly PT Comunicações, S.A. should submit a proposal with the applicable prices, indicators and quality of service levels.

Finally, the several types of requests from the OLOs within the unbundling of the local sub-loop should be duly characterised, namely as to the quality of service objectives, including deadlines for supply and reply to the OLOs' requests, and to the respective compensations in case of breach, which should be in line with the ones defined in due time for the unbundling of local loop and MDF's collocation.

6. SYNCHRONIZATION BETWEEN NUMBER PORTABILITY AND LOCAL LOOP UNBUNDLING

PT Comunicações, S.A. will have to change the RUO so as to foresee a shared access to full access unbundling and number portability coordinated action, similar to the one that already exists for the full access and number portability transfer. The conditions and the procedures to be privileged, should it be necessary to request a new schedule for purposes of unbundling the loop and number portability will have to be clarified in the RUO.

7. DECLARATIONS TO BE SIGNED BY THE FINAL USER

The content of the declarations to be signed by the final user, namely for purposes of tests, will have to be as clear as simple as foreseen in "PT ADSL Network" offer and the existence of just one document to be signed by final users for purposes of tests, transfer of local loop and/or number portability will have to be foreseen.

8. LIMIT FOR PROCESSING OF REQUESTS

PT Comunicações, S.A. introduced, in RUO, the restriction of meeting only 150 booking requests for access supply to the local loop, distributed equitably into the two daily periods (75 during the morning and 75 during the afternoon), although they may change the capacity according to the growth in demand in the future.

Should demand increase in the future, PT Comunicações, S.A. should necessarily and in due time adjust their capacity to this demand and therefore the above-mentioned restriction introduced in the RUO should be eliminated.

9. PLANNING OF WORKS TO BE MADE IN THE NETWORK

PT Comunicações, S.A. should change the RUO taking into account, namely, that any of the parties should previously communicate any provisional service interruptions or suspensions arising out of foreseeable actions to be undertaken within the scope of any maintenance in their network, regardless of the duration of those actions.

10. STATISTIC INFORMATION

Given the need to collect up-to-date information on the LLU evolution, PT Comunicações, S.A. will have to send to ANACOM the following information, in paper and electronic format, every quarter (information related to the end of month n sent on the 15th days of the month n + 1), pursuant to subsection b), no. 2, of article 4 of the EC Regulations:

- (a) Information disaggregated by OLO and by exchange, related to the number of:
 - i. Unbundled accesses, disaggregated by modality of access (full access or shared access) and by use (for the provision of narrowband and broadband services);
 - ii. Orders under processing related to the loops unbundling, disaggregated by modality of access (full access or shared access) and by use (for the provision of narrowband and broadband services);
- (b) Identification of the MDFs where the OLOs have installed equipment (whatever the type of collocation), identifying the respective providers;
- (c) Identification of the MDFs to which the OLOs put the orders for physical collocation and that are not yet available for supply.

Furthermore, they should also send to ANACOM, when they send the first list of information as mentioned above, and later, every six months (sent till two months after the end of the six-month period), information, disaggregated by MDF, on the number of (i) local loops in use, (ii) metallic pairs in the distribution frame, (iii) metallic pairs in operation and (iv) surplus lines.