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Determination of 3.2.2005

Minimum elements to be comprised in the Reference Offer for the Subscriber Line Resale Offer and specifications applicable to Beneficiaries of the Offer

Draft decision

Preamble

I. General considerations

By determination of 14.12.2004¹, that defines the obligations applicable, pursuant to Law no. 5/2004², of 10 February, to undertakings with significant market power in narrowband retail markets, ICP - ANACOM determined that the undertakings of the PT Group which are active in retail markets of access to the public telephone network at a fixed location for residential customers and for non-residential customers (hereinafter referred to as “undertakings of the PT Group”) are bound to make available a subscriber line resale offer (SLRO) as well as to publish a Reference Offer for such offer.

The SLRO consists in a wholesale offer of the right to bill the telephone line of the operator with significant market power in the relevant market under consideration. The development of this offer enables the beneficiary therefrom to render available its own innovative retail offers, thus adding value to the final user through the establishment of diversified services, and to compete with the offers of the PT Group that aggregate access and other services in optional plans.

In other countries wherein this offer has been or is currently being implemented, and where the approach thereto has been highly participated and transparent, the implementation periods have been fairly extensive. This follows not only from the little interest that this offer holds for historic operators, but also from its own technical and operational complexity.

Within this context, the present document defines the minimum elements to be comprised in the Reference SLRO Offer, which include specifications intended for the undertakings of the PT Group, and also establishes occasionally specifications applicable to beneficiaries of the offer, aiming at the appropriate implementation of the SLRO. The present document covers: (i) beneficiaries; (ii) comprised accesses; (iii) comprised services; (iv) prices; (v) process of implementation; (vi) billing and collecting of the comprised services; (vii) parameters and levels of quality of service and penalties for non-compliance; (viii) relationship with the end-user; (ix) definition of liabilities / dispute resolution; and (x) relationship between the SLRO and other wholesale services.

1 Vide <http://www.anacom.pt/template20.jsp?categoryId=139583&contentId=249408>

2 Vide <http://www.anacom.pt/template20.jsp?categoryId=105319&contentId=180332>

The document emphasizes the analysis carried out by ICP – ANACOM concerning the replies to the public consultation on the SLRO, launched on 24.07.2003³, the report of which was published on 22.01.2004⁴, the replies to the public consultation on obligations in the area of narrowband retail markets and the experience of other Member-States.

Undertakings of the PT Group shall therefore submit to ICP – ANACOM, together with an accurate reasoning, a Reference SLRO Offer, at the most thirty days following the Final Determination of ICP – ANACOM on the minimum elements to be comprised in the Reference Offer and specifications applicable to entities beneficiaries of the offer.

II. Beneficiaries

The determination of the entities that may benefit from the SLRO must be carried out based on the purposes established for that offer and on its possible advantages, as well as on the applicable regulatory principles and on the promotion of competition. Within this context, it is appropriate to ensure that all agents who provide services on a certain subscriber line benefit from equivalent possibilities of aggregating of services, so that they may compete in the same conditions.

Undertakings that provide a telephone service at a fixed location through a pre-selection service seem, in principle, the first entities benefiting from the SLRO, having regard to its relationship with the final user. It must be pointed out that the pre-selection functionality enables operators without a direct access to the end user to provide a telephone service at a fixed location, thereby making them direct competitors of the undertakings of the PT Group as far as that service is concerned.

Moreover, undertakings that provide broadband Internet access services should also have the possibility of providing to their end users in the same bill the aggregation of the subscriber line and broadband services. The establishment of a specific wholesale offer that aggregates, at retail level, an Internet service supported in ADSL technology and the access to a telephone service at a fixed location, is a way to surpass the indissolubility verified in practise between the ADSL service and the telephone service at a fixed location. This situation, in the opinion of several entities, is an important obstacle to the development of the ADSL service, at least in those cases where the end user does not show any interest in the telephone service at a fixed location.

Lastly, some of the agents who provide services over a specific subscriber line, such as those undertakings that provide call-by-call selection services and undertakings that provide narrowband Internet services, may maintain with the end user a bond which is not necessarily periodical and/or representative of the total sum paid by the end user. Thus, if such agents started benefiting from the SLRO, the advantages related to the offer would not be fully enjoyed. In an extreme situation, the undertakings under consideration could bill the subscriber line without having provided any communications services in the respective period.

3 Vide <http://www.anacom.pt/template15.jsp?categoryId=37877>

4 Vide <http://www.anacom.pt/template15.jsp?categoryId=95899>

In the light of the above, the beneficiaries of the SLRO should be defined as those who, being duly qualified for the purpose, provide the following services in a specific subscriber line: (i) telephone service at a fixed location in a pre-selection regime; and/or (ii) Internet access services in ADSL broadband.

III. Comprised accesses

Following the public consultation on the SLRO, wherein the possibility of a phased introduction of the different types of access was presented, ANACOM took the view that the procedural and technical experience concerning the implementation of the SLRO over analogue accesses should be the basis for a subsequent expansion of the scope of offer to the ISDN accesses, as the former can be less complex. Thus, ANACOM considers that the undertakings of the PT Group should redraft the Reference SLRO Offer up to the first quarter of 2006, so that it is broadened to encompass the basic ISDN accesses and the primary ISDN accesses.

The inclusion of non-active network lines and of public pay phones managed by the undertakings of the PT Group in the scope of application of the SLRO is not deemed appropriate, on account of the definition of the offer, as the accesses under consideration do not originate the monthly payment associated to the telephone line on the part of the end-users, and would not contribute in a significant way towards the pursuit of SLRO purposes. Therefore, non-active network lines and public pay phones are excluded from the scope of application of the SLRO.

IV. Comprised services

By definition, the SLRO includes the access, and in this sense, the access billing and collecting shall be carried out by the beneficiary of the SLRO, under the terms provided for in the Reference Offer for the offer. Obviously, it must be taken into account that only the beneficiary of the SLRO may charge the end user participating in the SLRO for that access.

It is also important to assess whether it is possible to integrate the following services in the SLRO: (i) selection and pre-selection services; (ii) service of calls for ineligible numbers; (iii) narrowband and broadband Internet access services; (iv) additional services/service facilities provided by the undertakings of the PT Group; and (v) leasing of terminal equipment of the telephone service at a fixed location. This assessment is a complement to the main purpose of the SLRO, which is to enable the beneficiary to aggregate the access and other services it provides.

Thus, in general, ANACOM deems that the beneficiary of the SLRO, when so requested by the undertakings of the PT Group, should bill and charge the end-users for the services under consideration that are provided by the undertakings of the PT Group, these services being comprised within the SLRO. In the remaining cases, the beneficiary of the SLRO is not bound to bill and charge for services provided by undertakings other than the undertakings of the PT Group, where such services are not comprised within the SLRO. If it decides to enter into an agreement with other undertakings, regarding the billing and collecting service, it shall offer such service under reasonable conditions.

In particular, under the Reference Interconnection Offer (RIO), and unless otherwise agreed, the selected or pre-selected operator shall determine the price to be paid by the end user, billing and collecting the latter directly.

Therefore:

(i) Selected or pre-selected undertakings may request of the beneficiary of the SLRO that it bills and charges for the services it provides, under the terms agreed between them both, these services not being comprised within the SLRO. The conditions of these agreements shall be reasonable.

(ii) Calls for ineligible numbers, as is the currently the case of non-geographical numbers, may be provided both by undertakings of the PT Group and by other undertakings. Nevertheless, such calls shall be billed and charged to originating end-users by the respective direct access provider, which in the case of the “SLRO” accesses shall be the undertakings of the PT Group.

The beneficiary of the SLRO, when so requested by the undertakings of the PT Group, shall bill and charge the end-users for calls to ineligible numbers currently billed and charged to originating end-users by undertakings of the PT Group, at retail prices defined by undertakings providing services, under the terms provided for in the Reference SLRO Offer, these services being comprised in the SLRO.

(iii) As regards the narrowband Internet access, the billing and collecting of such services to direct end-users of the undertakings of the PT Group are governed by the Reference Internet Access Offer (RIO), pursuant to which Internet Service Providers (ISPs) may request of undertakings of the PT Group that the latter bill and charge for the Internet services they provide. In case they choose to do so, also according to the RIO, the undertakings of the PT Group shall not undertake the non-collecting risk, and the cases where the collecting of the bill issued by the undertakings of the PT Group is incumbent upon the ISPs have been provided for.

As a general rule, ISPs have requested of undertakings of the PT Group that they bill and charge for the narrowband Internet services they provide. In parallel, they have provided the market with a pre-paid access modality, which does not require any billing and collecting process. In fact, this obligation upon the undertakings of the PT Group ceases to be justified in a context where such undertakings do not bill or charge for other services, namely for access.

As regards broadband Internet access, currently, the suppliers of such services bill and charge end-users themselves.

Thus, as regards the narrowband or broadband Internet access subject to the SLRO, the undertakings of the PT Group are not bound to bill or charge the end-users of those services where these are provided by undertakings other than the undertakings of the PT Group. The undertakings providing such services should in turn have the possibility of requesting of the beneficiary of the SLRO that it bills and charges for the services, under terms to be agreed between them both, these services not being comprised within the SLRO. The conditions of such agreements shall be reasonable.

In case undertakings that provide narrowband Internet access services do not reach an agreement with the beneficiary of the SLRO as regards the billing and collecting issue, they shall dispose of a transitional period of time, of up to four months from the date of adoption of the final Determination of ICP – ANACOM on the minimum elements to be comprised in the Reference SLRO Offer and specifications applicable to beneficiaries of the offer, in order to implement their own billing and collecting systems. ANACOM takes the view that up to the end of such transitional period of time, the billing and collecting of the services under consideration shall be carried out by the undertakings of the PT Group under the terms currently established by law.

It must be stressed that as regards accesses over which the SLRO is not been implemented, the billing and collecting of narrowband or broadband Internet access services shall also be carried out under the terms currently established by law.

(iv) The additional services/service facilities provided by the undertakings of the PT Group may concern: calling line identification services; services relating to call management, such as call forwarding and barring; services for the consultation and management of the voice mailbox; short message service (SMS).

It is currently a right of the undertakings of the PT Group that it charges the end-user for the provision of additional services/service facilities. However, such services may have a residual nature and, may not justify per se, in terms of efficiency and simplicity of relationship with the end-user, the issue of bills by the undertakings of the PT Group. It must be taken into account that the undertakings of the PT Group may make a loss with the billing and collecting of additional services/service facilities in case the consumption of services is sporadic and occasional.

ANACOM deems that the beneficiary of the SLRO, when so requested by the undertakings of the PT Group, should bill and charge end-users for the additional services/service facilities provided by the undertakings of the PT Group, at the retail prices defined by the latter, under the terms defined in the Reference SLRO Offer, these services being comprised within the SLRO.

(v) The undertakings of the PT Group provide their end-users with the possibility of leasing terminal equipment of the telephone service at a fixed location. Notwithstanding the fact that this service does not fall within the scope of Law no. 5/2004, its intrinsic relationship with communications services justifies that it is included in the scope of the SLRO. The leasing of terminal equipment of the telephone service at a fixed location is of a low value compared to the total value of electronic communications services spent by end-users and, for this reason, the undertakings of the PT Group may make a loss in case they billed or charged such services in separate.

ANACOM deems that the beneficiary of the SLRO, when so requested by the undertakings of the PT Group, should bill and charge the end-users for the leasing of terminal equipment of the telephone service at a fixed location, at the retail prices defined by the undertakings of the PT Group, under the terms defined in the Reference SLRO Offer, these services being comprised within the SLRO.

V. Prices

By determination of ICP – ANACOM of 14.12.2004, the undertakings of the PT Group are bound, among other obligations, to comply with the principle of cost orientation of prices in the access retail markets. Within this context, the most adequate methodology as regards the establishment of prices concerning the SLRO must be determined, the main methodologies being now put forward: (a) long run incremental costs (LRICs); (b) costs related to the unbundled access to the local loop (LLU); (c) historic costs; (d) European established practises; and (e) attainment of a wholesale price of a specific service based on the retail price of such service or of a similar service. This issue was analysed in the report of the public consultation on the SLRO, and the view expressed therein is now reaffirmed.

In fact, the methodology according to which the wholesale price of a specific service is based on the retail price of such service or of a similar service gathers a set of advantages which confirm the adoption thereof, such as: (i) a relatively easy implementation; (ii) its proportionality in view of the problem under consideration; (iii) its adequacy towards the promotion of competition; (iv) the incentive provided for the minimisation of costs, by limiting the remuneration of the operator who owns the network; (v) the possibility offered to the operator who owns the network to recover the costs of the service under consideration; and (vi) reasonable requirements as to information on costs, as it is only necessary to use information already existent and duly audited. Furthermore, this approach ensures that the wholesale price is lower than the retail price, thereby avoiding in principle situations of margin narrowing and reducing the risk associated to the market.

It must be taken into account, moreover, that the approach under consideration was adopted, within the SLRO, by the national regulatory authorities (NRA) of Denmark (retail – 21%) and Ireland (retail – 10%). The prices in Norway result from commercial agreements between the entities concerned and in the United Kingdom the prices are calculated according to the methodology of costs regarding the LLU, the SLRO price in the United Kingdom being 16% higher than the retail value charged by the British Telecom in 2004⁵.

The avoidable costs associated to the SLRO, that is, the costs in which the undertakings of the PT Group cease to incur with the implementation of the SLRO, are related, in principle, with the following activities regarding the monthly payment of the telephone service at a fixed location: (i) to know the clients and the market; (ii) to improve products and services; (iii) to commercialise and to sell; (iv) to charge; (v) revenue assurance; (vi) information service and supported communications; and (vii) to manage the image and external relations of the undertaking. Moreover, with the implementation of the SLRO, it is possible to avoid a part of the costs of the undertakings of the PT Group which concern the following activities regarding the monthly payment of the telephone service at a fixed location: (i) billing systems and processes; (ii) billing; and (iii) claims on bills.

⁵ Vide “Cross Country Analysis” report from Cullen International of December 2004 and “Tarifica” of August de 2004.

The price concerning the right to bill of a specific telephone line of the undertakings of the PT Group shall be calculated by subtracting to the monthly payment of analogue accesses of the telephone service at a fixed location the avoidable costs associated to the SLRO, considering, where relevant, the specific costs associated to the offer. Having due regard to these aspects, the price under consideration is cost orientated, having also as reference the corresponding retail price. Thus situations of margin narrowing are avoided and the degree of certainty verified in the market increases.

Without prejudice, ICP - ANACOM is entitled to review the wholesale price of the SLRO, having regard, namely, to the specific costs of the implementation process of the SLRO, following the assessment and possible acceptance of estimates duly grounded by the undertakings of the PT Group.

In case the system of implementation of the SLRO is shared with other services of the undertakings of the PT Group, the latter shall present to ICP – ANACOM, together with the respective reasoning, the methodology used for the allocation of costs of the system development among the services that use the system.

The specific situation of retired users and pensioners the monthly household income of which is equal to or less than the amount of the national minimum wage should also be highlighted. Pursuant to Clause 9 of the Price Convention for the Telecommunications Universal Service⁶, PT Comunicações, S.A., was bound to present provision conditions of the telephone service at a fixed location not lower than the following: (a) a reduction of 50% on the monthly price associated to the subscriber line; and (b) an additional reduction of 10% on that same price and a credit for national telephone communications, which combined should be, at least, €3,53 euros (VAT excluded). Although this regime was over when the obligations applicable to narrowband retail markets entered into force, obligations which were defined in the Determination of 14.12.2004 of ICP – ANACOM, point a) arises from Decree-Law no. 20-C/86, of 13 de February, as amended by Decree-Law no. 18/2003, of 3 February, which remains in force.

Thus, the undertakings of the PT Group shall reflect in the price associated to the SLRO the 50% discount on the monthly payment associated to the subscriber line allocated to end users who are retired users and pensioners and the monthly household income of which is equal to or less than the amount of the national minimum wage. The beneficiary of the SLRO, in its turn, shall ensure that this amount is reflected in the amount paid by the end users under consideration.

VI. Process of implementation

⁶ Vide <http://www.anacom.pt/template20.jsp?categoryId=56834&contentId=90023>

The type of services provided by the beneficiary of the SLRO has no implications at the level of the procedures for the implementation of the SLRO; on account of their general nature, such implementation procedures should be applicable to any beneficiary of the offer. In this context, the position taken by ANACOM in the public consultation report on the SLRO should be reaffirmed, in the sense that the SLRO implementation procedures are close to the pre-selection implementation procedures, thereby facilitating the implementation of the SLRO, namely by reinforcing the accumulated experience in the scope of the pre-selection process, which currently is generally stabilized. Without prejudice, ICP - ANACOM is reassessing aspects concerning the pre-selection, having regard to the fact that a possible alteration of the terms associated to the implementation process of that offer may be reflected in the conditions concerning of implementation process of the SLRO.

Nevertheless, the efficiency and swiftness of the implementation process of the SLRO should be taken in consideration, as they may justify the occasional adoption of procedures which shall represent improved adaptations of the procedures associated to the pre-selection. In this respect it should be highlighted that suggestions were made by several entities in the scope of the pre-selection implementation procedures, such as the debureaucratization of the process and the autonomy of the contractual relations between the end-user and the pre-selection provider and between the end-user and the direct access provider.

According to the public consultation report on the subscriber line resale offer, the SLRO should be provided to beneficiaries in non-discriminatory conditions.

It is up to the end-user to choose the beneficiary of the SLRO, which in its turn should initiate the implementation process of the offer. Based on a recording of a telephone call originated by the end-user, the beneficiary of the SLRO may electronically request the offer implementation of the undertakings of the PT Group.

It should be emphasized that, over the telephone call aimed at choosing the beneficiary of the SLRO, the end-user should supply sufficient information on his/her own identification as user of a specific subscriber line, in particular his/her telephone number and full name.

In case more than one entity requests the SLRO, for a specific subscriber line, based on a recording of a telephone call originated by the end-user, the undertakings of the PT Group shall comply with the request of the entity which was last reached by the end-user.

Subsequently, the end-user may alter the beneficiary of the SLRO or go back to paying the line rental to the undertakings of the PT Group. In such cases, based on a recording of a telephone call originated by the end-user, as described above, the new beneficiary of the SLRO shall electronically inform the undertakings of the PT Group of the decision on alteration. The latter undertakings, on their turn, shall carry out the necessary changes, in order to comply with the requested alteration. In case the end-user intends to change the beneficiary, it shall contact the former beneficiary in order to cease the SLRO.

The maximum time limit for the provision of a SLRO access by the undertakings of the PT Group to the beneficiary, which runs from the date of submission of the request by the latter, shall be the same as the time limit established in the scope of the pre-selection for an equivalent process (provision of the service by the direct access provider to the pre-selected provider), which corresponds to five working days, according to the Pre-selection specification by providers of the fixed telephone service⁷. In fact, as this time limit is meaningful in case the SLRO coexists with the pre-selection, there are no reasons to establish a different time limit in the remaining situations. It is also incumbent upon the beneficiary of the SLRO to enter into an agreement with the end-user as regards the time limit for the beginning of the provision of the respective service, being responsible for the fulfilment thereof.

The SLRO implementation process should be as swift and efficient as possible. In this context, the systematised and automatic treatment of the information necessary thereto should be ensured. To promote swiftness and efficiency, it is convenient that the SLRO implementation process is based on electronic files, thus the undertakings of the PT Group should develop a computer system that receives and handles requests automatically, which should be fully operational at the time the Reference SLRO Offer is published, without prejudice to a subsequent improvement thereof.

The undertakings of the PT Group shall not undertake any undue action designed to win back a client, after the latter has joined the SLRO, as the end-user should make a free and reasoned choice of the desired service, trying it out and maintaining the freedom to remain a client or to terminate the contract with the beneficiary of the SLRO.

For this purpose, it is not deemed necessary to establish a withdrawal period, as it is expected that, often, the request for the implementation of the SLRO and request for the activation of the pre-selection take place at the same time, and the latter already carries a withdrawal period with it⁸. Without prejudice, ICP – ANACOM shall closely monitor the commercial practise of the undertakings of the PT Group, in order to assess whether a specific withdrawal period is necessary in the scope of the SLRO.

In order to make the procedural issues more transparent, the undertakings of the PT Group shall define in advance all the necessary standard forms in the scope of the SLRO, ensuring that these are compatible with the particulars specified in the present document, and include them in the Reference SLRO Offer.

VII. Billing and collecting of the comprised services

⁷ Vide <http://www.anacom.pt/template12.jsp?categoryId=36510>

⁸ Vide <http://www.anacom.pt/template12.jsp?categoryId=78950>

The implementation of the SLRO eliminates the need for contact between the undertakings of the PT Group and the end-user for the purpose of billing and collecting of the monthly payment associated to the telephone line. A similar situation is verified when the undertakings of the PT Group request of the beneficiary of the SLRO that is undertakes the billing and collecting of the remaining services they provide in the subscriber line under consideration, these services being comprised within the SLRO: selection and pre-selection services; service of calls for ineligible numbers; narrowband and broadband Internet access services; additional services/service facilities provided by the undertakings of the PT Group; and leasing of terminal equipment of the telephone service at a fixed location.

As regards the services provided by undertakings other than the undertakings of the PT Group, and not comprised within the SLRO, such services shall be billed and charged by the respective providers, unless otherwise agreed between the latter and the beneficiary of the SLRO.

The costs and the risk concerning the billing and collecting of the end-user of the monthly payment associated to the telephone line of the undertakings of the PT Group shall be undertaken by the beneficiary of the SLRO. To render the billing and collecting concrete, the undertakings of the PT Group shall provide every thirty days, all relevant information to the beneficiary of the SLRO. The latter is under the obligation of submitting to the undertakings of the PT Group the payment associated to the SLRO within thirty days at the most from the reception of the payment from the end-user.

In case the beneficiary of the SLRO does not comply, at the least three times per year, with the time limit for the payment to the undertakings of the PT Group of the price associated to the SLRO, the former shall automatically lose the right to the SLRO following the third non-compliance, and it is again incumbent upon the undertakings of the PT Group to bill and charge the subscriber line. In such cases, pursuant to point c) of paragraph 1 of article 39 of Law no. 5/2004, the beneficiary of the SLRO should give adequate notice to the end-user, not shorter than 15 days, ahead of the termination of provision of the SLRO. It must be also stressed that the termination of the SLRO, representing only the termination of the right to bill the subscriber line, shall not have consequences at the level of the remaining services to which the end-user may have adhered. In particular, in case the beneficiary of the SLRO provides the end-user with telephone service at a fixed location in a pre-selection regime, the contract under consideration shall remain valid.

In case the undertakings of the PT Group request of the beneficiary of the SLRO that it bills and charges the end-user for the remaining services comprised within the SLRO, the former shall provide compensation for the costs and collecting risks sustained by the latter, as far as the billing and collecting of services under consideration are concerned, in the conditions defined in the Reference SLRO Offer. In such situations, the beneficiary of the SLRO shall pay the undertakings of the PT Group the retail price associated to these services, having subtracted the costs which it incurred in billing and collecting such services, within thirty days at the most from the reception of the payment from the end-user.

VIII. Quality of service parameters and levels and penalties for non-compliance

The definition of parameters of quality of service and respective performance targets as to the Reference SLRO Offer is of a significant importance, as it will influence the definition of retail offers from beneficiaries of the SLRO. Likewise, the same emphasis should be given to the definition of penalties for non-compliance with the performance targets associated to those parameters, which discourage deviations to the quality of service as far as the defined objectives are concerned.

In addition, in order to make the assessment of the operational performance more transparent, the undertakings of the PT Group shall periodically publish and submit to ANACOM the levels achieved concerning the parameters of quality of service defined in the Reference SLRO Offer, with monthly particulars and per beneficiary, including the levels regarding the undertakings of the PT Group, with sufficient detail in order to enable the assessment of whether the undertakings of the PT Group provide to other undertakings a quality of service equivalent to that which they provide the undertakings of their own group.

As the implementation of the SLRO shall not imply any changes at the level of access proper, the SLRO should not result in the discrimination of accesses under consideration in favour of accesses the monthly payment of which is billed and charged by the undertakings of the PT Group.

Therefore, and given that PT Comunicações, S.A. (PTC) holds the status of universal service provider, the parameters and objectives of quality of service defined in the scope of the universal service, in particular those regarding the telephone service at a fixed location, shall be also applicable in the scope of the SLRO and, thus, the undertakings of the PT Group should include them in the Reference SLRO Offer, with the adaptations deemed necessary, namely those resulting from the fact that the SLRO is a wholesale offer and the universal service is a retail offer.

Nevertheless, it must be taken into account that the parameters and objectives of the quality of service defined in the scope of the universal service may develop, in the light of the revision thereof by ICP – ANACOM. In fact, ICP – ANACOM is currently examining the parameters of quality of service of the universal service and possible correspondent performance targets. In the meanwhile, pursuant to paragraph 2 of article 8 of the draft quality regulation applicable to services of access to the public telephone network at a fixed location and publicly available telephone service at a fixed location, approved by Determination of ICP – ANACOM of 23.11.2004⁹, the entity responsible for the provision of the universal service, in addition to being bound to the quality parameters and to the information obligations established in the regulation under consideration, is also bound to continue to submit to ANACOM the information on the quality of service provided, established pursuant to the former Bases of Concession of the Telecommunications Public Service, attached in annex to Decree-Law no. 40/95, of 15 February.

⁹ Vide <http://www.anacom.pt/template12.jsp?categoryId=139443>

From the parameters defined in the draft quality regulation applicable to services of access to the public telephone network at a fixed location and publicly available telephone service at a fixed location, which temporarily apply to the universal service, the following may be highlighted:

(a) Fault repair time

Period of time, in consecutive hours, from the instant a valid fault in the network of the providing undertaking (or in any interconnected public network involved in eligible communications for calculation purposes) has been reported to the services of the providing undertaking to the instant where the service has been restored to full normal working order.

(b) Fault rate per access line

Number of valid fault reports made by users to the services of the undertakings of the PT Group, for reasons of disrupted or degraded service attributable to the network of the undertakings of the PT Group or any interconnected public network involved in eligible communications for calculation purposes.

(c) Bill correctness complaints

Number of bills claimed by users, where they do not agree or understand values billed.

In addition, the Reference SLRO Offer shall include quality of service parameters specifically defined for the offer, the following being deemed as essential:

(d) Time necessary to meet the requests on implementation, alteration or termination of SLRO

Number of hours elapsed from the reception by the undertakings of the PT Group of the request on implementation, alteration or termination of SLRO, and the information given to the beneficiary of the SLRO of the respective implementation, alteration or termination.

(e) Period of time for submitting the necessary data for billing and collecting of access

Number of days elapsed from the date agreed for the sending by the undertakings of the PT Group of the necessary data for access billing and collecting.

(f) Response time to bill claims

Number of hours elapsed from the reception by the undertakings of the PT Group of the claim deemed justified on the bill's inaccuracy and sending of correct information.

(g) Degree of availability of the subscriber line

Ratio between the functioning hours of the subscriber line and the respective possible functioning hours (the subscriber line is deemed unavailable during the period of time which elapses from the sending of a notice on a problem over the network line for

which the undertakings of the PT Group are responsible and the resolution thereof, the periods for which the end-user is responsible being deducted, in particular as regards the scheduling of the visits to its own place).

The Reference SLRO Offer shall comprise non-discriminatory minutes from the Service Level Agreements (SLAs), including the respective penalties for non-compliance, which shall represent a compromise of the undertakings of the PT Group, in the sense that they shall ensure a certain level of quality of service, integrating, in particular, quality of service objectives, specifying the conditions to ensure that the defined conditions are strict and complied with and putting forward the respective penalties for non-compliance.

In this context, the undertakings of the PT Group should take under consideration the performance targets associated to the parameters of quality of service established in the scope of the universal service, to which they must comply in case ICP – ANACOM decides to settle them. In addition, the undertakings of the PT Group should present a reasonable proposal concerning penalties for non-compliance applicable in the scope of such parameters. In case ICP – ANACOM defines performance targets applicable to the parameters of quality of service established in the scope of the universal service, the parameters and levels of quality of service associated to the SLRO and respective penalties for non-compliance may be revised.

In this scenario, ICP – ANACOM shall monitor the development of the SLRO, in particular as far as the quality of service is concerned, and according to the verified evolution, it shall assess the current option taken on the matter.

IX. Relationship with the end-user

In order to simplify its relationship with the undertakings of the PT Group and with the service provider, any contact of the end-user with the undertakings of the PT Group, as far as the subscriber line is concerned, shall be carried out through the beneficiary of the SLRO. The same applies as regards the services provided by the undertakings of the PT Group comprised by the SLRO where they request of the beneficiary of the SLRO the billing and collecting thereof.

Following the implementation of the SLRO, the management, maintenance and repair of the network line and of the associated infrastructure shall remain incumbent upon the undertakings of the PT Group, which shall ensure the levels of quality of service in appropriate and non-discriminatory conditions, in compliance with the present document. In case problems arise which concern the quality of service associated with the services comprised by the SLRO, the end-user shall contact the beneficiary of the SLRO which, in its turn, shall contact the undertakings of the PT Group, in order to solve the identified problems as soon as possible.

Although it is likely that, for most end-users, the SLRO shall be sufficient to ensure a single-bill situation, there may be cases where this may not happen, as the undertakings of the PT Group may not be able to request of the beneficiary of the SLRO that it bills and charges for services comprised by the offer that exceed the monthly payment associated to the telephone line. Likewise, the end-user shall dispose of services which are not comprised by the SLRO, in particular of functionalities associated to indirect

access and to the Internet, which shall be billed and charged by the undertakings directly responsible, unless otherwise agreed with the beneficiary of the SLRO.

X. Definition of liabilities / dispute resolution

The undertakings of the PT Group and the beneficiary of the SLRO shall develop all possible efforts in order to solve any dispute associated to the Reference SLRO Offer. One of the parties shall submit to the other in writing the object and grounds for the dispute, and it is appropriate that the other party submits a reasoned response, also in writing, within twenty days at the most.

The disputes in the scope of the Reference SLRO Offer which are not solved by agreement between the undertakings of the PT Group and the beneficiary of the SLRO may be solved by ICP – ANACOM, at the request of the parties, pursuant to article 10 of Law no. 5/2004.

XI. Relationship between the SLRO and other wholesale services

The imposition of the SLRO has implications in areas such as the pre-selection and the LLU. On the one hand, it is likely that pre-selected undertakings have a particular interest in being the beneficiary of the SLRO, being thus able to aggregate in a single bill the monthly payment associated to the network line rental and the amount concerning the communication services. On the other hand, operators may change from the SLRO to the Reference Unbundling Offer (RUO) and, subsequently, to the direct access, by means of their own infrastructures, as they strengthen their position in the market.

XII. Determination of ICP - ANACOM: Draft Decision

In light of the above, the Board of Directors of ANACOM hereby determines to grant a prior hearing to interested parties, pursuant to articles 100 and 101 of the Code of Administrative Procedure, and to submit to the general consultation procedure, under article 8 of Law no. 5/2004, of 10 February, and to the consultation procedures approved by ICP – ANACOM on 12.02.2004, the determination that intends to adopt the following content, which these entities are entitled to assess in writing within a twenty-day time limit:

1. The undertakings of the PT Group declared to be provided, by determination of ICP – ANACOM of 14.12.2004, with significant market power in narrowband retail markets of access to the public telephone network at a fixed location for residential customers and for non-residential customers, shall submit to ICP – ANACOM, together with an accurate reasoning, a Reference SLRO Offer, at the most twenty days following the Final Determination of ICP – ANACOM on the minimum elements to be comprised in the Reference Offer and specifications applicable to beneficiaries of the offer, which complies with the minimum elements established therein.
2. The minimum elements to be comprised in the Reference SLRO Offer shall be as follows:

2.1. The beneficiaries of the SLRO are those who, being duly qualified for the purpose, provide the following services in a specific subscriber line: (i) telephone service at a fixed location in a pre-selection regime; and/or (ii) Internet access services in ADSL broadband.

2.2. The types of access comprised by the SLRO are analogue accesses, basic ISDN accesses and the primary ISDN accesses, and undertakings of the PT Group shall redraft the Reference SLRO Offer up to the first quarter of 2006, in order to include the basic and the primary ISDN accesses therein.

2.3. The access billing and collecting shall be carried out by the beneficiary from the SLRO, under the terms provided for in the Reference Offer for the offer.

2.4. As regards the narrowband or broadband Internet access subject to the SLRO, the undertakings of the PT Group are not bound to bill or charge the end-users of those services where these are provided by undertakings other than the undertakings of the PT Group. The undertakings providing such services should in turn have the possibility of requesting that the beneficiary of the SLRO bills and charges the services, under terms to be agreed between them both, these services not being comprised within the SLRO. The conditions of such agreements shall be reasonable.

2.5. In case undertakings that provide narrowband Internet access services do not reach an agreement with the beneficiary of the SLRO as regards the billing and collecting issue, they shall dispose of a transitional period of time, of up to four months from the date of adoption of the final Determination of ICP – ANACOM on the minimum elements to be comprised in the Reference SLRO Offer and specifications applicable to beneficiaries of the offer, in order to implement their own billing and collecting systems. ANACOM takes the view that up to the end of such transitional period of time, the billing and collecting of the services under consideration shall be carried out by the undertakings of the PT Group under the terms currently established by law.

2.6. Following an assessment, in particular, of relevant costs associated to services under consideration, of European established practises and of the advantages for the promotion of competition, the price associated to the right to bill a specific telephone line of the undertakings of the PT Group shall be calculated by subtracting to the monthly payment of analogue accesses of the telephone service at a fixed location the avoidable costs associated to the SLRO considering, where relevant, the specific costs associated to the offer.

2.7. The undertakings of the PT Group shall reflect in the price associated to the SLRO the 50% discount on the monthly payment associated to the subscriber line allocated to end users who are retired users and pensioners and the monthly household income of which is equal to or less than the amount of the national minimum wage.

2.8. In general, the procedural aspects associated to the SLRO shall follow the equivalent points regarding the pre-selection, as provided for in the Pre-Selection Specification by providers of the fixed telephone service¹⁰. Without prejudice, there may be justification for the occasional adoption of procedures different from those associated to the pre-selection, which shall represent improved adaptations of the latter. The SLRO shall thus be provided to beneficiaries in non-discriminatory conditions, being up to the end-user to choose the beneficiary of the SLRO, which in its turn shall initiate the implementation process of the offer.

2.9. Where the end-user requests the alteration of the beneficiary of the SLRO, the undertakings of the PT Group, having been informed thereof by the new beneficiary of the SLRO, shall carry out the necessary changes, in order to comply with the requested alteration. The end-user shall in this case contact the former beneficiary in order to cease the offer.

2.10. In case more than one entity requests the SLRO, for a specific subscriber line, based on a recording of a telephone call originated by the end-user, the undertakings of the PT Group shall comply with the request of the entity which was last reached by the end-user.

2.11. The maximum time limit for the provision of a “SLRO” access by the undertakings of the PT Group to the beneficiary, which runs from the date of submission of the request by the latter, shall be the same as the time limit established in the scope of the pre-selection for an equivalent process (provision of the service by the direct access provider to the pre-selected provider), which corresponds, according to the Pre-selection specification by providers of the telephone service at a fixed location, to five working days. It is also incumbent upon the beneficiary to enter into an agreement with the end-user as regards the time limit for the beginning of the provisions of the respective service, being responsible for the fulfilment thereof.

2.12. The SLRO implementation process is based on electronic files, and thus the undertakings of the PT Group shall develop a computer system that receives and handles requests automatically, which should be fully operational at the time the Reference SLRO Offer is published, without prejudice to a subsequent improvement thereof.

2.13. The Reference SLRO Offer shall include all the necessary standard forms in the scope of the offer, defined by the undertakings of the PT Group so that these are compatible with the particulars specified in the present document.

¹⁰ Vide <http://www.anacom.pt/template12.jsp?categoryId=36510>

2.14. In case the undertakings of the PT Group request of the beneficiary from the SLRO that it bills and charges the end-user for the remaining services comprised in the SLRO, the former shall provide compensation for the costs and collecting risks sustained by the latter, as far as the billing and collecting of services under consideration are concerned, in the conditions defined in the Reference SLRO Offer. In such situations, the beneficiary from the SLRO shall pay the undertakings of the PT Group the retail price associated to these services, having subtracted the costs which it incurred in billing and collecting such services, within thirty days at the most from the reception of the payment from the end-user.

2.15. The undertakings of the PT Group shall publish, namely in the respective Internet website, and submit to ICP – ANACOM every three months, up to the twentieth day following the end of each quarter, the levels achieved concerning the parameters of quality of service defined in the Reference SLRO Offer, with monthly particulars and per beneficiary, including the levels regarding the undertakings of the PT Group, with sufficient detail in order to enable the assessment of whether the undertakings of the PT Group provide to other undertakings a quality of service equivalent to that which they provide the undertakings of their own group.

2.16. The implementation of the SLRO shall not result in the discrimination of accesses under consideration in favour of accesses the monthly payment of which is billed and charged by the undertakings of the PT Group. Therefore, and given that PT Comunicações, S.A. (PTC) holds the status of universal service provider, the parameters and objectives of quality of service defined in the scope of the universal service, in particular those regarding the telephone service at a fixed location, shall be also applicable in the scope of the SLRO and, thus, the undertakings of the PT Group should include them in the Reference SLRO Offer, with the adaptations deemed necessary, namely those resulting from the fact that the SLRO is a wholesale offer and the universal service is a retail offer. Nevertheless, it must be taken into account that the parameters and objectives of the quality of service defined in the scope of the universal service may develop, in the light of the revision thereof by ICP – ANACOM.

2.17. The following parameters of quality of service shall be comprised in the Reference SLRO Offer:

(a) Fault repair time

Period of time, in consecutive hours, from the instant a valid fault in the network of the providing undertaking or in any interconnected public network involved in eligible communications for calculation purposes has been reported to the services of the providing undertaking to the instant where the service has been restored to full normal working order.

(b) Fault rate per access line

Number of valid fault reports made by users to the services of the undertakings of the PT Group, for reasons of disrupted or degraded service attributable to the network of the undertakings of the PT Group or any interconnected public network involved in eligible communications for calculation purposes.

(c) Bill correctness complaints

Number of bills claimed by users, where they do not agree or understand values billed.

(d) Time necessary to meet the requests on implementation, alteration or termination of SLRO

Number of hours elapsed from the reception by the undertakings of the PT Group of the request on implementation, alteration or termination of SLRO, and the information given to the beneficiary of the SLRO of the respective implementation, alteration or termination.

(e) Period of time for submitting the necessary data for billing and collecting of access

Number of days elapsed from the date agreed for the sending by the undertakings of the PT Group of the necessary data for access billing and collecting.

(f) Response time to bill claims

Number of hours elapsed from the reception by the undertakings of the PT Group of the claim deemed justified on the bill's inaccuracy and sending of correct information.

(g) Degree of availability of the subscriber line

Ratio between the functioning hours of the subscriber line and the respective possible functioning hours (the subscriber line is deemed unavailable during the period of time which elapses from the sending of a notice on a problem over the network line for which the undertakings of the PT Group are responsible and the resolution thereof, the periods for which the end-user is responsible being deducted, in particular as regards the scheduling of the visits to its own place).

2.18. The Reference SLRO Offer shall comprise non-discriminatory minutes from the Service Level Agreements (SLAs), including the respective penalties for non-compliance, which shall represent a compromise of the undertakings of the PT Group, in the sense that they shall ensure a certain level of quality of service, integrating, in particular, quality of service objectives, specifying the conditions to ensure that the defined conditions are strict and complied with and putting forward the respective penalties for non-compliance.

2.19. In this context, the undertakings of the PT Group should take under consideration the performance targets associated to the parameters of quality of service established in the scope of the universal service, to which they must comply in case ICP – ANACOM decides to settle them. In addition, the undertakings of the PT Group should present a reasonable proposal concerning penalties for non-compliance applicable in the scope of such parameters. In case ICP – ANACOM defines performance targets applicable to the parameters of quality of service established in the scope of the universal service, the parameters and levels of quality of service associated to the SLRO and respective penalties for non-compliance may be revised.

2.20. Following the implementation of the SLRO, the management, maintenance and repair of the network line and of the associated infrastructure shall remain incumbent upon the undertakings of the PT Group, which shall ensure the levels of quality of service in appropriate and non-discriminatory conditions, in compliance with the present document. In case problems arise which concern the quality of service associated with the services comprised by the SLRO, the end-user shall contact the beneficiary of the SLRO which, in its turn, shall contact the undertakings of the PT Group, in order to solve the identified problems as soon as possible.

2.21. The undertakings of the PT Group and the beneficiary of the SLRO shall develop all possible efforts in order to solve any dispute associated to the Reference SLRO Offer. One of the parties shall submit to the other in writing the object and grounds for the dispute, and it is appropriate that the other party submits a reasoned response, also in writing, within twenty days at the most.

3. Beneficiaries from the SLRO are bound to the following obligations:

3.1. In case the undertakings of the PT Group make services available, the beneficiary of the SLRO, when so requested by the undertakings of the PT Group, shall bill and charge the end-users for the following services: (i) selection and pre-selection services; (ii) service of calls for ineligible numbers; (iii) narrowband and broadband Internet access service; (iv) additional services/service facilities provided by the undertakings of the PT Group; and (v) leasing of terminal equipment of the telephone service at a fixed location. In the remaining cases, the beneficiary of the SLRO is not bound to bill and charge for services provided by undertakings other than the undertakings of the PT Group, where such services are not comprised within the SLRO. If it decides to enter into an agreement with other undertakings, regarding the billing and collecting service, it shall offer such service under reasonable conditions.

3.2. Selected or pre-selected undertakings may request of the beneficiary of the SLRO that it bills and charges for the services it provides, under the terms they have agreed, these services not being comprised within the SLRO. The conditions of these agreements shall be reasonable.

3.3. The beneficiary of the SLRO, when so requested by the undertakings of the PT Group, shall bill and charge the end-users for calls to ineligible numbers, as is at present the case for non-geographical numbers, currently billed and charged to originating end-users by undertakings of the PT Group, at retail prices defined by undertakings providing services, under the terms provided for in the Reference SLRO Offer, these services being comprised within the SLRO.

3.4. The beneficiary of the SLRO, when so requested by the undertakings of the PT Group, shall bill and charge the end-users for the additional services/service facilities provided by the undertakings of the PT Group, at the retail prices defined by the latter, under the terms defined in the Reference SLRO Offer, these services being comprised within the SLRO.

3.5. The beneficiary of the SLRO, when so requested by the undertakings of the PT Group, shall bill and charge the end-users for the leasing of terminal equipment of the telephone service at a fixed location, at the retail prices defined by the undertakings of

the PT Group, under the terms defined in the Reference SLRO Offer, these services being comprised within the SLRO.

3.6. The beneficiary of the SLRO shall ensure that the 50% discount on the monthly payment associated to the subscriber line allocated to end users who are retired users and pensioners and the monthly household income of which is equal to or less than the amount of the national minimum wage, which is reflected in the price associated to the SLRO, is likewise reflected in the amount paid by the end users under consideration.

3.7. Based on a recording of a telephone call originated by the end-user, the beneficiary of the SLRO may electronically request the offer implementation of the undertakings of the PT Group. Subsequently, the end-user may alter the beneficiary of the SLRO or go back to paying the line rental to the undertakings of the PT Group. In such cases, the new beneficiary of the SLRO, based on a recording of a telephone call originated by the end-user, shall electronically inform the undertakings of the PT Group of the decision on alteration.

3.8. The costs and the risk concerning the billing and collecting of the end-user of the monthly payment associated to the telephone line of the undertakings of the PT Group shall be undertaken by the beneficiary of the SLRO. To render the billing and collecting concrete, the undertakings of the PT Group shall provide every thirty days all relevant information to the beneficiary of the SLRO. The latter is under the obligation of submitting to the undertakings of the PT Group the payment associated to the SLRO within thirty days at the most from the reception of the payment from the end-user.

3.9. In case the beneficiary of the SLRO does not comply, at the least three times per year, with the time limit for the payment to the undertakings of the PT Group of the price associated to the SLRO, the former shall automatically lose the right to the SLRO following the third non-compliance, and it is again incumbent upon the undertakings of the PT Group to bill and charge the subscriber line. In such cases, pursuant to point c) of paragraph 1 of article 39 of Law no. 5/2004, the beneficiary of the SLRO should give adequate notice to the end-user, not shorter than 15 days, ahead of the termination of provision of the SLRO.

4. The undertakings of the PT Group and the beneficiaries of the SLRO shall ensure the coordination between the SLRO and pre-selection, when both are requested at the same time, namely guaranteeing that the pre-selection service is not interrupted on account of the implementation of the SLRO. It must be taken into account, moreover, that the SLRO may coexist with operator portability, with the "PT ADSL Network" offer and with the RUO in the shared access modality.