



DRAFT DECISION

ON PRICES OF INTERCONNECTION SERVICES PRACTISED BY MOBILE TELEPHONE SERVICE OPERATORS

1. Background Facts

1.1. On 03.08.2000, upon determination of ICP's Board of Directors, under the terms of article 16 of Decree Law no. 415/98, ICP determined that the maximum average termination prices of fixed to mobile calls shall be 47\$50 per minute for calls with a duration of 100 seconds, with the per second tariff being applied, utmost, after the first minute. This substantiates a maximum reduction, which, depending on the operator, may be up to -27% when compared with 1999 prices.

The assessment of the average price should be made on the basis of the traffic pattern of the first quarter of 2000.

This ruling took into consideration that, under the terms of nr. 1 of article 16 of Law no. 91/97 and article 4 of Decree-Law no. 415/98, ICP is responsible for safeguarding the interests of end users, guaranteeing a competitive market and contributing to its correct and appropriate development.

In this context, definition of fixed-to-mobile termination prices to be implemented after alteration in the traffic ownership regime on 01/10/2000, and an initial decrease in these prices are important regulatory measures in order to achieve established public interest objectives, in that:

- a. they represent the first step towards an evolution which aims to establish a more balanced relative price structure, namely in regards to intra and inter-network traffic assessed within a global context of the interconnection market;
- b. they contribute to the protection of consumer interests, by limiting or avoiding the development of barriers to the full use of network externalities, including mobile networks, by end users, particularly clients of fixed telephone networks;
- c. they promote conditions, which will encourage the development of balanced competition between fixed and mobile networks.

This ruling is to apply, as was stated at the time, despite recognition of the fact that sound competitive dynamics in the mobile market will lead to average penetration levels and prices which will compare favourably with EU practices.

In the abovementioned determination of 03.08.2000 it was concluded that, in the future, and still within the framework of gradual definition of a more balanced relative price structure, consideration should be made of the evolution of the various termination prices currently practised in mobile networks.

1.2. On 30.07.2001, ICP issued a further determination, after a request for ICP to intervene under the terms of article 16 of Decree Law no. 415/98, presented by OniTelecom - Infocomunicações, S.A. (Oni), in order to set origination and termination prices in mobile networks for the respective year. ICP ruled that mobile telephone service operators must:

- a) under cover of and within the terms of paragraph c) of no. 1 of article 16 of Decree Law no. 415/98, conclude negotiation of the interconnection agreements to be celebrated with interested entities within a period of 30 days;
- b) in compliance with paragraph c) of article 22 of Decree Law no. 415/98, submit to ICP a complete copy of agreements already signed but not yet communicated to the Institute and/or those agreements that are to be signed, within 10 days after the respective signing date.

On the same date, ICP also recommended, in accordance with the aforementioned determination of 03.08.2000 that the prices resulting from the negotiation process should evolve in such a way as to establish a more balanced relative price structure, namely as regards to intra-network and inter-network traffic, as well as upholding consumer interests, limiting or avoiding the development of obstacles that may not be beneficial to network externalities in end-user terms, particularly fixed network clients, and help create conditions that motivate the development of balanced competition between fixed and mobile networks.

Following this determination, Vodafone and Optimus informed ICP that Oni was the only operator to request revision of the price for fixed-to-mobile traffic to apply in the current year, and had done so during the first quarter, and at that time the respective two mobile service operators had informed ICP that given the amount of the reduction established on 03.08.2000, applicable from October onwards, they were unwilling to

make a further reduction. It was also stated that Vodafone and Optimus had not been contacted by Oni since that date in order to negotiate interconnection conditions.

Vodafone, TMN and Optimus submitted various documents to ICP that led to an agreed price for fixed-to-mobile traffic that is compatible with the determination of 03.08.2000.

2. Present situation

To date no agreement has been established between Oni and mobile telephone service providers concerning the price of interconnection services to apply in 2001 and 2002. On 13.11.2001, Oni requested ICP's intervention under the terms of Decree Law no. 415/98, in order to define prices for 2001 and 2002.

It should also be noted that, on 06.11.2001, Optimus requested ICP's intervention in the negotiations of interconnection agreements with TMN, under the terms of paragraph b) of nr. 1 and paragraph c) of nr. 2 of article 16 of Decree Law no. 415/98, in regards to termination prices in TMN's mobile network for calls originated in Optimus' mobile network, to apply from 01.01.2001 onwards.

3. Thus:

- (a) Considering the background facts specified in 1 and the current situation identified in 2 regarding interconnection prices practised by mobile telephone service operators;
- (b) Taking into consideration the guidelines defined in article 4 of Decree Law no. 415/98, in particular to uphold consumer interests, foster the establishment and development of national services and networks and the respective access and to promote a competitive market;
- (c) Given that, under the terms of nr. 1 of article 16 of Decree Law no. 415/98, and in light of the above mentioned guidelines and objectives, ICP may at any moment, on its own initiative, and must always, on the request of any party, intervene in the negotiations of interconnection agreements and specifically determine the inclusion of specific issues in the interconnection agreement and/or establish specific conditions that must be observed by one or more parties intervening in the interconnection agreement;

- (d) Considering that the above mentioned conditions may specifically include conditions intended to guarantee fair and effective competition and prices, in accordance with paragraphs a) and c) of nr. 2 of article 16 of the said legal diploma;
- (e) Given that agreements to be in force in 2001 were freely signed between mobile telephone service operators and between such operators and fixed telecommunications network operators in general, as a result of commercial negotiations;
- (f) Considering that given the aforementioned intervention request by Optimus, TMN should be given the opportunity to make a statement regarding the related questions and the arguments used;
- (g) Considering that interconnection agreements generally include a provision specifying that negotiations should begin in the last quarter of each year in order to revise the remuneration conditions to apply in the following year, whereby it is reasonable to assume that the said negotiation procedure is currently underway between interested parties;
- (h) Given that fixed-to-mobile termination prices in Portugal are amongst the highest in the EU;
- (i) Given the need to reduce interconnection prices of the mobile telephone service operators, especially in terms of fixed-to-mobile termination prices that have the greatest relative weight and impact within such operators' revenues, through gradual reductions in order to draw closer to average EU prices, which are currently €0.1816 (PTE 36.41) per minute, for a 3 minutes duration call;
- (j) Considering that there is no technical evidence to support the existence of differentiated prices for traffic terminating in mobile networks (fixed-to-mobile or mobile-to-mobile);
- (k) Considering that an increase in the termination price of international calls in the mobile network may have a negative impact on end users, although indirect and not immediate;
- (l) Taking into consideration that a reduction of call origination prices will have a limited impact on mobile telephone service operators' revenue structure, and that it is desirable to promote competition in indirect access for international calls from mobile networks;

(m) Considering the flexibility provided for the construction of interconnection tariffs as a result of a price-setting rule;

ICP's Board of Directors in a regular meeting held on 04/12/01, ruled as follows:

I. Under the terms of paragraph b) of nr. 1 and paragraphs a) and c) of nr. 2 of article 16 of Decree Law no. 415/98, of December 31:

1 The price of interconnection services practised to date by mobile telephone service providers, included within interconnection agreements already signed and duly communicated to ICP, should also apply to Oni in 2001.

2 The maximum average prices in 2002 for national termination in the mobile network (calls originated in fixed or mobile terminals), per minute and for each call of 100 seconds duration, with per second tariff applied utmost after the first minute, shall evolve as follows:

(a) €0.2270 (PTE 45.50), from 01.01.2002;

(b) €0.2170 (PTE 43.50), from 31.03.2002;

(c) €0.2070 (PTE 41.50), from 30.06.2002;

(d) €0.1970 (PTE 39.50), from 30.09.2002;

(e) €0.1870 (PTE 37.50), from 31.12.2002;

3 Average termination prices of international calls in the mobile network shall be €0.1870 (PTE 37.50) per minute, with per second tariff applied utmost after the first second from 01.01.2002.

4 Average origination prices of calls in the mobile network are €0.1870 (PTE 37.50) per minute, with per second tariff applied utmost after the first second, from 01.01.2002.

5 The terms of paragraph e) of nr. 2, of nr. 3 and nr. 4 do not preclude the possibility that ICP may reassess the referred prices from the last quarter of 2002, if this is warranted by regulatory or market conditions.

6 Reductions in interconnection prices should translate into a reduction in retail prices charged by fixed telephone service providers.

- II. Prior hearing of interested parties is to take place under the terms of articles 100 and following articles of the Administrative Procedure Code, and mobile telephone service providers and fixed telephone service providers should make a written statement within a maximum of 10 days.
- III. Under the terms of nr. 1 of article 55 of the Administrative Procedure Code, TMN is requested to make a statement on the intervention request presented by Optimus on 06.11.2001.