

DETERMINATION ON THE PRICE CHARGED BY PT COMUNICAÇÕES S.A. FOR THE TELEVISION SIGNAL DISTRIBUTION AND BROADCASTING SERVICE

Pursuant to paragraph 3 of article 16 of the Bases of the Concession of the Telecommunications Public Service, approved by Decree-Law no. 31/2003 of 17/02, it is incumbent upon ICP-ANACOM, having sounded out the opinion of the then *Instituto da Comunicação Social* (I.C.S.) – now the *Gabinete para os Meios de Comunicação Social* (GMCS) - to ensure that the price system for access to the television signal transport and broadcasting network complies with the principles of transparency, non-discrimination and cost orientation.

It should be noted that pursuant to article 21 of the referred Bases of Concession, the negative operating margins that might result from compliance with obligations established in the concession contract for the provision of the telecommunications signal distribution and broadcasting service, among other services, must be compensated every year, through a direct compensation of the part of the State.

By determination of ICP-ANACOM dated 02.08.2007, approval was granted to a final decision on the definition, significant market power assessment and imposition, maintenance, amendment or suppression of regulatory obligations in the wholesale market of broadcasting services for the delivery of content transmitted to final users, which took into consideration the comments sent by the European Commission under the terms of paragraph 3 of article 7 of Directive 2002/21/EC.

Consequently, as regards the television signal transport and broadcasting service, as following the above-mentioned market analysis and consequent imposition of obligations, PT Comunicações, S.A. (PTC) currently maintains a cost orientation obligation.

By determination of 01.09.2005, ICP-ANACOM determined that PT Comunicações must lower the price of each of the individual items which form part of the television signal distribution and broadcasting service, by at least 17%, in order to guarantee that the price system of the service in question complies with the principle of cost orientation.

At the time this decision was taken, PTC's regulatory costing model presented a margin that amounted to **[Start Confidential Information [SCI] End Confidential information [ECI]**, which allowed for this significant price reduction.

By letters dated 10.01.2007, 20.04.2007, 20.07.2007 and 15.05.2008, RTP – Rádio e Televisão de Portugal, S.A. (RTP) has requested ICP-ANACOM to review prices charged by PTC for the television signal transport and broadcasting service. It should be stressed that already in its letter of 25.09.2006, RTP had referred that given the extension of the analogue network lifetime, at least up to 2012, there were arguments indicating the need for such a price review.

Sociedade Independente de Comunicação, S.A. (SIC) also requested of ICP-ANACOM to lower the prices charged by PTC for the television signal transport and broadcasting service, by letters of 01.02.2007 and 04.03.2008.

After analyzing costing data available at the time, concerning PTC's cost accounting system (CAS) for the first half of 2007, ICP-ANACOM reached the conclusion that removing curtailment costs and considering a 10% mark-up on direct and joint costs to remunerate ongoing common costs¹ would result in a margin of [SCI] [ECI] as regards the television signal transport and broadcasting service.

Based on information available at the time, the Board of Directors of ICP-ANACOM, at its meeting of 18.06.2008, decided to approve a decision ordering that additional up-to-date data was gathered.

In fact, at the time ICP-ANACOM was provided only with data on the first half of 2007, and information for the whole of the year (which under normal conditions would be gathered together with the remaining information on the costing system) was deemed to be fundamental. As a result, PTC was requested, on 23.06.2008, to provide up-to-date costing data for 2007, so that subsequently, in case the possibility of price reductions was confirmed, a prior hearing of interested parties was held on this subject.

Costing data for 2007 was submitted by PTC by communications of 30.06.2008 and 11.07.2008.

On the basis of gain and cost data of the terrestrial broadcast television service conveyed by PTC for 2007, it was found that this service showed a significant margin by [SCI] [ECI] (see table 1), which failed to comply with the principle of cost orientation. Note that this margin is the same, both in relation to the whole of common costs as established in PTC' regulatory costing system, and in relation to a 10% mark-up on direct and joint costs to obtain common costs. Resorting to this mark-up is thus not relevant in this particular situation.

As referred above, according to the Bases of Concession and to the assessment of the wholesale market of broadcasting services for the delivery of content transmitted to final users, PTC has the obligation to charge cost-orientated prices.

¹ Note that it is commonly recognised at international level that common costs represent around 10% of other costs, as provided for in Commission Recommendation of 08.04.1998, which refers that a well defined cost-allocation system will enable at least 90 % of the costs to be allocated on the basis of direct or indirect cost-causation, in efficient terms and in a long-run approach.

Table 1 – Gains, costs and margin of the television signal transport and broadcasting service referred in PTC’s CAS

[SCI]

| | 2004 | 2005 | 2006 | 2007 |
|---------------------|------|------|------|------|
| Gains | | | | |
| Costs | | | | |
| Absolute margin | | | | |
| Relative margin (%) | 17 | 10 | -5 | 23 |

[ECI]

Unit: Thousands of Euros

Therefore, whereas:

1. Pursuant to paragraph 3 of article 16 of the Bases of the Concession of the Telecommunications Public Service, prices of the television signal transport and broadcasting service must comply with the principles of transparency, non-discrimination and cost orientation;
2. Compliance with the principle of cost orientation of prices of the television signal transport and broadcasting service has been weighted by means of PTC’s cost accounting system;
3. The price of the television signal transport and broadcasting service must take into consideration direct and joint costs only, allowing for a final margin able to remunerate ongoing common costs, which should not exceed 10%, according to an EC Recommendation;
4. The margin of the television signal transport and broadcasting service, based on available data on the results of the cost account system for 2007, is quite significant;
5. The prices charged by PTC for the television signal transport and broadcasting service have not been updated since August 2005;
6. PTC enjoys significant market power in the market for wholesale supplies of television broadcasting services through terrestrial analogue networks;
7. On 23 July 2008, the Board of Directors of ICP-ANACOM approved a draft decision on the price charged by PT Comunicações for the television signal distribution and broadcasting service, having determined to submit the draft decision to the opinion of the GMCS and to a prior hearing of interested parties pursuant to article 100 and 101 of the Code of Administrative Procedure; comments received and the opinion provided by the GMCS, the respective analysis and grounds for the decision are included in the “Report of the prior hearing on the draft decision on the price charged by PT Comunicações, S.A. for the television signal distribution and broadcasting service”, which is an integral part hereof,

The Board of Directors of ICP-ANACOM, in the scope of powers granted under article 6 b), e), f) and n) of the Statutes approved by Decree-Law no. 309/2001, of 7 December, to pursue assignments provided for in article 9 b) and g) of these Statutes, taking into consideration regulation objectives provided for in paragraph 1 c) and paragraph 2 a) of article 5 of Law no. 5/2004 of 10 February, and pursuant to paragraphs 2 and 3 of article 16 of the Bases of the Concession of the Telecommunications Public Service, approved by Decree-Law no. 31/2003 of 17 February, and to implement targeted measures following the assessment of the wholesale market for broadcasting transmission services, to deliver broadcast content to end users, hereby determines as follows:

- (a) PTC must lower the price of each of the individual items which form part of the television signal distribution and broadcasting service, by at least 23%, in order to guarantee that the price system of the service in question complies with the principle of cost orientation;
- (b) New prices take effect as from 01.09.2008;
- (c) PTC must also submit to ICP-ANACOM a copy of the amended pricing within 10 days from the approval hereof.