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**REPORT OF THE PUBLIC CONSULTATION ON THE PROCEDURE
FOR DESIGNATION OF UNIVERSAL SERVICE PROVIDER(S)
- Final Report* -**

July 2008

*The original Portuguese version of this document, published on 18 September 2008, was subject to editorial changes.

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I. FRAMEWORK

By joint order of the Minister of State and for Finance and of the Minister for Public Works, Transport and Communications, of 28 January 2008, it was determined that a public consultation be held in order to sound out positions on a range of issues related to the procedure for the designation of universal service provider(s) and to collect expressions of interest on the part of various market agents as regards the provision of this service and ways in which this service is provided.

According to that order, approval was given to the document setting out the questions to be submitted to the market, while ANACOM was charged with launching and conducting the whole consultation procedure and, in this respect, with receiving and analysing the positions stated by the various bodies in their responses.

Subject to the conditions described above, the referred consultation was launched on 2008.02.19, having been carried out over a period of thirty working days.

As the joint order determined, following the consultation ANACOM was responsible for drawing up a final report with a summary of the responses and for preparing a document with recommendations to the Government on a tender procedure to select the universal service providers.

Therefore, this document contains a summary of positions received in the scope of the public consultation: APRITEL, Cabovisão, Ericsson, OniTelecom, Infocomunicações, S.A, Sonaecom SGPS, S.A., Vodafone Portugal – Comunicações Pessoais, S.A., ZON Multimédia. Contributions were also received from the *Sindicato dos Trabalhadores do Grupo Portugal Telecom (STPT)* as well as from Mr. Antonio Santos, however they have not been included in the section of specific comments. In fact, the first mentions that provision should be made for a universal access to broadband, the Government and ANACOM being responsible for the establishment of rules focusing on the interests of extended citizenship and social responsibility of operators; the second refers to a complaint concerning the Internet service.

II. SPECIFIC COMMENTS

Question 1 – Do you consider the designation of US provider(s) to be necessary in the current Portuguese context?

All entities who replied to this question¹ were of the opinion that **the designation of the US provider(s) is justified**, in situations where the market *per se* is not able to meet appropriately and effectively the US objectives, that is, whenever it is not able to provide services at affordable prices and with the specified quality.

Vodafone also notes that the designation of the US provider(s) is justified only for places where the market and available service or technology solutions clearly fail to meet the objective of social inclusion of these citizens. The first step for the assessment of the need for a US provision must be the analysis of competition and market dynamics that may be addressed to ensure the accessibility of services to consumers and market growth.

According to Sonaecom, the concept of affordable prices underlying the US provision should in no case be understood as corresponding to the provision of tariffs with prices below the

¹ Only Ericsson failed to reply to this question.

respective costs. On the other hand, it also refers that the support to citizens with special social needs should be extended to citizens who opt for services provided by other operators, on account of the existence of a competitive market, the support provided by the State not being thus limited.

Question 2 – Do you agree with the preliminary position that it is necessary to further designate US provider(s) for the following minimum set of services: connection to the public fixed telephone network and access to publicly available fixed telephone services; provision of a comprehensive directory and of a comprehensive telephone directory enquiry service; adequate provision of public payphones? If you disagree, please indicate which service or services you consider not to require designation, giving reasons.

All entities except for Vodafone deemed that it is necessary to further designate US provider(s) for the minimum set of services.

Thus, and according to comments to question 1, APRITEL, Cabovisão and Oni highlighted that the designation must be preceded by the scope to be applied to the US.

Contributions received also pointed out the principle of technological neutrality, as the US provision should not be conditional on specific technologies. In this respect, Vodafone states that the US provision should opt for the solution that reduces costs and makes a better use of operator and country resources, in terms of provision deadlines and costs.

Vodafone mentions that the telephone service already provides market solutions, which allow the conclusion that there is a general access at residential level. Therefore, only for specific remote or outermost areas, where there is no market competition (fixed or mobile), will it be necessary to designate a US provider. On the other hand, the company also refers, as far as the guaranty of affordable prices is concerned, that this social target has already been achieved, given the tariff options available on the market by several electronic communications providers (fixed or mobile). Vodafone goes on to say that it agrees with the consultation document as regards the guaranty of service accessibility to citizens with special needs, meaning that it will be difficult to provide these needs under normal commercial operation conditions.

According to Cabovisão, Internet (or email) is at least as important as the fixed telephone service, being a basic service of the Information Society, thus considering that a new US concept should be defined, including basic services of the Information Society, the consumption of which must be encouraged. In fact, this company deems that in the absence of such an encouragement, there is no guarantee that these services are available in equal conditions for all citizens. It also considers that beneficiaries of the services, namely broadband Internet, should be identified.

Ericsson [SCI]² [ECI]³.

² Start confidential information.

³ End confidential information.

As regards each of the three elements of the minimum set of services, the following specific comments must be stressed:

↳ Connection to the fixed public telephone network and access to publicly available fixed telephone services

APRITEL and Sonaecom are of the opinion that it is necessary to further designate US provider(s) so that, under monitored conditions, the connection to the public telephone network and access to publicly available telephone services to all population, with an extended geographic coverage, are made available.

ZON supports that this US element should be maintained; otherwise, this would entail the absence of operators interested in providing the service in the more depopulated areas, as it would not be economically feasible or the price of the service would not be affordable to some users. It refers also that the guarantee of connection to the fixed telephone network and of access of any user to publicly available fixed telephone services entails an important social dimension, being an important element of social cohesion and of the fight against info-exclusion, and should thus be preserved.

Vodafone restated its comment, referring that the land mobile service is the one that better meets the underlying objectives of the US concept, particularly as regards the access at affordable prices to citizens with a lower income.

↳ Provision of a comprehensive directory and of a comprehensive telephone directory enquiry service

APRITEL sustains that appropriate conditions must be guaranteed to ensure the competitive provision of the telephone directory enquiry service.

Sonaecom considers that these services would be best provided by a body independent of any operator of the electronic communications sector, having to be ensured that the information on each operator's database is not subject to any type of illegitimate or abusive use. This company is also of the opinion that the comprehensive directory should be provided according to the following criteria:

- The directory should be available online, in the website of the designated body;
- Upon request, residential customers should be granted free access to the printed version of the directory;
- Corporate customers should incur a cost when requesting access to the printed version of the directory.

Vodafone states that a US provider should be designated for this purpose for a limited period of time, deeming that mechanisms should now be established so that in a near future (3 years time) there is a competitive market providing directory and enquiry services. These mechanisms would include the compulsory provision of access in transparent technical and commercial conditions to PTC's directory service. However, given available technological options, the company considers that the US provider should not be subject to publish and distribute printed directories, suggesting that this printed version be delivered only to citizens who specifically request it. Last, it refers that this service will only be cost-effective *per se* through economically viable business models (such as advertising revenues).

Oni agrees with the maintenance of the directory service and the comprehensive telephone directory enquiry service.

ZON considers that the designation of a US provider for the “white pages” directory service and for the telephone directory enquiry service is justified. Notwithstanding, the possibility of providing directories commercially to specific market sectors should not be excluded.

↳ Adequate provision of public payphones

APRITEL feels that in some rural and isolated areas of the country it would be necessary to assess the existence of an appropriate public payphone network, which would enable the access to publicly available telephone services.

Cabovisão considers that the provision of public payphones should be upgraded, to include for example internet access points. As regards current payphones, public authorities should be held responsible for alternatives such as emergency contact points, public services deemed to be essential in certain areas, or specific places.

On the other hand, Oni refers that it would be important to carry out a close study on the amount and location of public payphones to be maintained in the scope of the US. In fact, although they are fundamental in emergency situations, they require a very expensive maintenance service, and attention should be drawn also to the increasing penetration of mobile communications.

Sonaecom and ZON agree with the maintenance of this US element, the latter stressing that the appropriate provision of payphones remains necessary in specific locations (such as hospitals, prisons, highway emergency stations, airports, public transport stations, places with no mobile coverage or where the use of mobile equipment is forbidden or discouraged) and for specific population segments for whom this service is particularly important (such as persons who are temporarily away from their residence or citizens with a lower income).

Vodafone considers that the present and expected use of public payphones does not justify its inclusion in the set of minimum set of US services, thus the possible need for public payphones should be dealt with by local authorities at local or regional level, in places with poor accessibility or where other telephone services are not available.

Question 3 - Do you consider that it is necessary to designate a provider or providers of US for the entire national territory or just for certain geographical areas? If you consider that designation should only concern certain geographical areas, which areas should be covered?

As regards the designation of US provider(s) for the entire national territory or just for certain geographical areas, **there were two main opposite positions: some consider that the designation should cover the entire national territory (Sonaecom and ZON) and others support the designation for certain geographical areas only (APRITEL, Cabovisão, Oni and Vodafone).** The main aspects referred by each of these positions are set out below:

↳ Entire national territory:

- Sonaecom and ZON consider that it is necessary to designate US providers for all areas of the national territory, in order to ensure the provision of all services to any consumer/citizen, thereby ensuring that, even in areas where the market does not make available the provision of basic communications services by several providers, at least the US provider does so.

↪ For certain geographical areas:

- APRITEL, Oni and Vodafone deem that the US provider designation should concern only areas and services where the market does not meet the need for access properly. APRITEL refers also that this situation relates mainly to remote areas or people with special needs; Oni, to situations where the absence of a US provision enhances info-exclusion; and Vodafone, to remote or outermost areas, excluding from the outset all urban areas and the coastline of mainland Portugal.
- Cabovisão is of the opinion that the US should be divided into regions and possibly into types of service, contrary to the present national level. This company refers that the designation at national level of US providers should correspond to exceptional situations: only where, justified by important grounds, the US operators-providers are unable to guarantee in the short term the non-exclusion of US users, namely, i) when providing services to citizens with special needs; ii) when the area concerned is geographically remote, leading to technical difficulties which cannot be surpassed in the short term. As far as the geographic structure of the US provision is concerned, it supports the division of this provision by the different Districts and Islands, to avoid the concentration of a single US operator-provider in the regions deemed more desirable in terms of business strategy. The company states that this delimitation enables the operator/provider to act more closely to each geographic area, with technical advantages at the level of quality, economic effectiveness and accessibility, in line also with the Community purpose of ensuring a technologically neutral US provision.

Question 4 – Do you consider it necessary to review the set of facilities and services made available by the US provider to disabled users?

APRITEL and Oni are of the opinion that **this is a subject matter for social policy**, which should be ruled by the Government and financed by State funds.

Cabovisão, Sonaecom and ZON consider that the **current set of facilities and services meets the needs** of disabled end-users. ZON refers as well that a permanent process of consultation of relevant associations representing citizens with special needs should be set up, in order to promote as much as possible a continuous adjustment of ongoing services and facilities to the respective needs.

Vodafone deems also that some segments of citizens with special needs may still not have achieved means of access to communications services, therefore in such cases **it would be justified to analyse means to ensure their social inclusion**. It refers as well that the review of the set of facilities should be assessed in the light of the proposal to review the electronic communications regulatory framework, declaring that the solution that best meets the interests of a significant part of disabled citizens would entail:

- The provision of at least one offer (tariff plan, terminal, accessory) on the part of all providers of communications services, aiming to meet the needs of a predefined set of citizens with special needs;
- The provision of additional network services, wherever necessary, by at least one provider, the respective costs being borne by public funds.

Ericsson [SCI] [ECI].

Question 5 – Do you consider that a single US provider should be designated for the whole national territory?

APRITEL and Cabovisão believe that a **single US provider should not be designated** for the whole national territory, having ZON declared the **opposite view**.

Sonaecom considers that the **most appropriate solution would be the one that involves the lowest Universal Service Net Cost (USNC)**, thereby requiring the lowest financial compensation, and that most likely the designation of several providers would contribute towards reducing the USNC.

ONI feels that **the designation should take account of a geographic and service division by lots, selecting for each lot the provider with the most competitive proposal**.

Vodafone sees no reason to exclude the possibility of the minimum set of provisions being provided by one or several providers in each of area or region or for each identified provision.

Question 6 – In the event the possibility of designating more than one US provider is laid down: (a) Do you consider the designation by type of service to be appropriate? At what level of breakdown? (b) Do you consider the designation by geographical areas to be appropriate? If so, should this apply to all US services or to some only? What geographical criteria should be followed? (c) Do you consider the designation by type of user to be appropriate? What criteria should be followed?

As far as this set of questions is concerned, **it must be stressed that most entities supported the option of a US provider designation by type of service**.

Sonaecom admits any type of segmentation, insofar as the provision of the various services by several US providers results in an increased level of economic efficiency and in the reduction of the USNC, supporting the idea of designating a sector independent entity for the provision of the comprehensive directory service and the comprehensive directory enquiry service. Vodafone states that one of the criteria supporting the decision for one or more providers per region or provision should be the principle of technological neutrality, taking into account the quality of the service provided and the respective cost, having regard to the need for an effective use of resources.

In terms of specific comments to each sub-question, entities have presented the following contributions:

(a) Designation by type of service and level of breakdown:

- APRITEL, Cabovisão, Oni and ZON agree with the option of designating the US provider by type of service. APRITEL raised some doubts as regards a possible integrated concession of the public payphone service with the public telephone network access service and the access to publicly available telephone services. Cabovisão mentions, as regards breakdown, that the public payphone provision and the provision of directories and enquiry services should not necessarily be associated to the US provider designated to fulfil other obligations (especially if the latter are redefined). ZON stresses that the breakdown per type of service is justified as the market can benefit from the designation of providers for the provision of directories and enquiry services other than the ones designated for the remaining US services.

(b) Designation by geographical areas (criteria) covering which US services:

- APRITEL and Oni agree with a provider designation according to geographic areas, however not necessarily for all US services, having Oni declared that as regards the directory service, the designation would not have to correspond to geographic areas. Both entities indicate the large geographic regions of the country as regions to be considered for this purpose (Ex: Greater Lisbon, Greater Oporto, Coastline, Interior, South and Islands).
- Cabovisão supports the stratification by district option for all types of US services except for the directory service, which should be assigned to an independent entity.
- ZON believes that a designation by geographic areas should not take place, as drawbacks would arise as far as territorial disaggregation is concerned. The fragmentation of the country in different regions would be contrary to the interests of providers in some areas of the country, with a limited viability in an economic point of view, which goes against the US logic.
- Vodafone is of the opinion that in case the minimum set of provisions to be offered in the scope of the US covers directory services, directory enquiry services, public payphones and services for disabled users, the geographic unit concerned should correspond to the national territory, in order to ensure a scale and dimension that contribute towards its profitability.

(c) Designation by type of user:

- APRITEL, Oni and ZON feel that the designation by type of user is not necessary. Oni and ZON justify their position stating that the practical implementation of this designation option would involve quite many complex difficulties.

Question 7 – Do you accept the possibility of extending the provision of the telephone directory service to other companies which do not provide electronic communication networks or services?

All entities viewed favourably the possibility of extending the provision of the telephone directory service to other companies which do not provide electronic communication networks or services.

In fact, two entities (Cabovisão and Sonaecom) opt for this solution.

Question 8 – What designation period do you consider to be best aligned with the interests of the various market players, including operators and consumers?

All entities, except for ZON (that proposed a 5-year period) suggested a designation period between 3 and 5 years, on the following grounds:

- It takes consideration of international best practice;
- It ensures a sufficient period for return on investments made for the provision of services;
- It allows for the consideration of the need to monitor the technological evolution which characterises this sector;

- It guarantees a stable US provision;
- It ensures competition as far as the access to the US provider designation is concerned.

Question 9 – In case the US provider designation is broke down by service and/or geographic area and/or type of user, do you consider that different designation periods should be set? If so, please specify the periods to be defined and the reasons for the differences.

As regards this issue – **possibility of setting different designation periods – two contrary positions were put forward:**

↳ In support of a single designation period:

- Oni and ZON believe that a single designation period should be set, Oni considering that there are no strong reasons for establishing differences, the application of a single period enabling the same breakdown freedom.

↳ In support of different designation periods:

- APRITEL considers that different designation periods could be established, however acknowledges that if similar periods were set, it would be possible to ensure the same freedom to break down concessionary services.
- Vodafone has not justified why designation periods should be similar.

↳ Different designation periods depending on specific conditions:

- Cabovisão refers that the definition of periods depends on governmental options which are taken into account as regards the designated provider(s), technology supporting the designated provider(s), the level of implementation of the platform supporting the US provision, the designation by geographic areas, and the respective scope.
- Sonaecom admits all types of segmentation, with different designation periods of time, insofar as the chosen solution contributes to greater economic efficiency and to the reduction of USNC.

Question 10 – Should provision be made for mandatory designation of the US provider? Based on what criteria?

Two contrary positions were put forward on this issue.

On the one hand, Cabovisão, Sonaecom and ZON consider that where no interest is shown in providing some or all of the US elements, or in the absence of acceptable or reasonable proposals, **provision should be made for the mandatory designation** of the entity that is to be held responsible for the provision. ZON mentions that the US provider should be designated among operators with significant market power in the markets of access to the public telephone network, by means of a prior legislative intervention to this effect. Cabovisão adds that conditions to be established by the Administration should enhance and capture the interest of several market operators (mobile or fixed) so that the public tender does not end

up in a total absence of interested parties or in unpractical proposals, resulting from conditions unable to ensure the necessary economic efficiency of market players. It highlights also that the outlines of the mandatory designation should be clearly set out in the scope of the public tender, «... *thereby avoiding the establishment of mechanisms that keep operators away from investments in innovation, extension and development of services, and consequently, contributing towards dissemination and an increasing competition*».

APRITEL, Oni and Vodafone take the view that a mandatory designation of the US provider **does not comply with legal provisions**, both at national and international level. The designation process must be preceded of a public tender, the conditions of which must be attractive in order to encourage applications and avoid an empty tender. APRITEL states that «...*the requirement for any financial reward for the US provision must be duly justified taking into account, specifically, all direct and indirect, tangible and intangible benefits enjoyed by the respective provider, particularly those associated to the general network coverage, the detailed knowledge of all customer data and the respective corporate image.*»

Question 11 – In case the “mandatory” designation of the US provider is not accepted, under what terms and in which way can the provisions included in that service be guaranteed, in the event no undertaking applies to the tender or proposals received fail to comply with the terms established in the tender regulation?

APRITEL and Oni believe that the tender should be preceded by a stage of declaration of interest as soon as the US “breakdown structure” is made available. This will minimize the possibility of no one applying to the tender.

Vodafone refers that the absence of applications for a tender or of an appropriate proposal does not imply that the provider designation can be exempt of a transparent and non-discriminatory procedure. The US provider designation must resort to other procedures to choose a contracting partner, according to the principle of succession of pre-contractual procedure and to the decreasing order of the degree of procedure strictness provided for in the Law. It is also of the opinion that the terms of the proposal should be restated so that wishes of the Administration meet those of individuals.

Question 12 – Should a company pre-qualification stage be required, in the scope of the tender for the selection of the undertaking responsible for the US provision? Which requirements should there be?

Except for Ericsson, which does not reply to this issue, **all entities that replied to this question consider that there should be no pre-qualification stage in the scope of the tender for the selection of the undertaking responsible for the US provision.**

APRITEL, Oni and Sonaecom add that a pre-qualification stage implies that qualification criteria do not exclude, at the outset, any operator able to apply to the tender, avoiding any possibility of discrimination in the US provider designation procedure, under national and Community law.

ZON deems there is an imperative need for minimum conditions to be complied with by applications, failure to do so resulting in their inadmissibility. Vodafone states that public tenders have a qualification stage and a second application assessment stage. The mere requirement that only entities holding a previous authorization (*lato sensu*) for the provision of the service intended to be provided are allowed to join the tender may be determined in the scope of the applicant qualification, thus a pre-qualification stage is not necessary.

At the level of the US provider financial capacity, Vodafone refers that candidates to the US provider designation must present evidence of their financial ability and structure, that ensures their maintenance in the market for the period they have been designated, Cabovisão taking the view that the US obligations may fall on any operator that proves to hold the economically effective means to provide access to services.

Question 13 – What type of juridical-administrative relationship should be established between the US provider and the State? Administrative contract? Or should the designation be made by administrative act?

Except for Ericsson, which does not reply to this issue, **all entities that replied to this question consider that the relationship between the US provider and the State should be based on an administrative contract.**

Sonaecom mentions a set of issues, such as net costs of US provision and levels of service, which, also on account of the effective relevance of the principle of technological neutrality, should be framed and met within the scope of a contractual relationship. Thus, the resort to a contract will be crucial even if the public tender includes a stage for negotiating proposals put forward by previously selected applicants. APRITEL reaches the same conclusions.

Without moving away from the views stated by other entities, Vodafone raises doubts on the qualification of the administrative contract as “*assignment*” or “*collaboration*”.

ZON is of the opinion that the requirements of objectivity, transparency and non-discrimination compel that the situations and assumptions for the designation of the US provider are made known at the outset. Consequently, the full knowledge of relevant contract conditions is fundamental, namely the definition of the concessionary’s contractual obligations, being convenient that tender documents include the draft concession contract.

Question 14 – What type of guarantees should there be for ensuring the maintenance and continuity of the service? And does it make sense to include special clauses on issues such as the abnormal change of circumstances, restoring of balance, power of inspection and direction, unilateral amendment, etc.?

APRITEL and Sonaecom take the view that the concession regime should not be treated as equivalent to the legal-administrative relationship. To ensure the continuity of the service provision, it would be reasonable to establish penal clauses and the introduction of the rule of compulsory continuity of the service provision even in case of disputes on the contract and respective clauses.

These companies also declare that the powers of inspection and direction of the awarding authority should be increased, and that the conditions that apply to the achievement and restoring of the economic balance of the contract and abnormal change of circumstances should be set out, as well as the causes and conditions for the unilateral amendment of contract on the part of the State.

By the same token, ZON believes that it is fundamental that the awarding authority is provided with the appropriate means to ensure that the concessionaire complies with the contract and legal provisions on the minimum set of provisions it must offer. As a result, the awarding authority must be endowed with monitoring powers that enable an accurate supervision of the concessionary’s course of action, imposing transparency and information duties on the latter. It also highlights the need to ensure an effective direction power, and to establish, relatively to a set of situations with impact on the concession, that the US provider action is

dependant on the awarding authority's authorization. As far as non-compliance is concerned, provision should be made for fines and for the resort to sequestration in particularly serious situations. At the level of amendment or extinction of contract, termination and recovery of the concession should be admitted, as well as the possibility of unilateral amendment of the contract, provided that specific requirements previously established are met.

Oni agrees with the sanctioning mechanisms defined on this matter in the Electronic Communications Law (ECL) and the Code of Administrative Procedure (CAP).

Cabovisão suggests that the US provision must not be interrupted without a timely justification, save for situation of force majeure or well defined circumstances. It adds that the US scope must follow the technical and technological progress, as well as social changes, namely as regards user needs. Any related amendment must be followed by a coordinated action to amend the scope of the concession, able to be implemented, or by the launching of a new tender opened to all providers. In this context, it draws attention to cases where these amendments lead to a change in the economical-financial balance of the contract, an aspect which must be reflected in the rules of US financing.

Cabovisão considers also that the concepts of abnormal change of circumstances and direction and monitoring powers of the State/awarding authority should be clearly defined. Likewise, the adoption of unilateral action by the State should be explicitly framed and provided for clearly and transparently, enabling a high degree of predictability as regards the practise of such actions.

Vodafone takes the view that the fair and balanced negotiation of the type of services to be provided will enable the consideration of whether targets should be established and adjustments should be made, and of ways for the Administration to amend the US subject matter in each case. It points out that «... *it is impossible to reply in a more concrete manner to this question, with absolutely no knowledge of (i) the subject-matter of the contract, (ii) the type of services which will integrate the US, (iii) the means of selection the US providers, (iv) the remuneration conditions proposals (or equivalent). Without prejudice, it can be said that guarantees legally provided for (namely article 180 of the Code of Administrative Procedure) must be the starting point in the scope of negotiations, and parties must analyse which of these guarantees are insufficient to guarantee the objective proposed*».

Question 15 – Do you agree with the preliminary position with regard to the concept of “functional Internet access”? Do you consider that a specific speed should be set? If so, which would be an appropriate speed?

As far as this matter is concerned, there were **three different currents of opinion: agreement with the current concept of functional Internet access; disagreement and defence of this access within the US scope.**

Thus, APRITEL, Oni, Sonaecom and Vodafone agree with the current concept of functional Internet access, considering that a specific speed should not be established.

Cabovisão shows a different opinion, considering that the concept of functional Internet access must be redefined for the purpose of extension of the scope of the US provision.

Vodafone considers that the narrowband access must be excluded from the US scope, and that the regulator must ensure the establishment of all necessary conditions to improve free competition among technologies of access to the Internet service.

Question 16 – In what manner should the terms of the tender safeguard the evolution of the US scope?

On the one hand, APRITEL, Cabovisão, Sonaecom and Oni take the view that **any extension of the US scope should lead necessarily to the opening of a tender to select the provider which is to be held responsible for this new element.**

Sonaecom declares that the US evolution cannot undermine the continuity of the service provision on the part of designated operators and that the specifications should provide that any extension of the US scope should lead necessarily to the opening of a tender to select the provider which is to be held responsible for the new element.

Oni adds that the designation of a provider for a period of 3 to 5 years is the best way to safeguard the US evolution.

In line with considerations made in the scope of question 14, Cabovisão admits that in clearly defined situations, the abnormal change of circumstances may be followed by a contract amendment coordinated act.

On the other hand, ZON acknowledges that the US definition must have a dynamic nature and, as such, the tender for selection of the US provider must provide for the possibility of adjustment of the US concept, particularly as far as the respective extension of included provisions is concerned. The concession contract must refer this possibility and set the conditions under which the change in the US concept may affect the contractual relationship.

Vodafone refers that the *“action and focus of the regulatory policy must converge towards the establishment of a regulatory environment that favours investment and competition in the provision of services, particularly in the regulation of wholesale offers, that enable the sustainable existence of innovative and competitive markets. These markets ensure the expansion of means of access to electronic communications services, both in terms of prices and geographically, contributing towards a universal access. § The terms of the tender must be prepared for a phased removal of the regulation and of US obligations as alternative means of access and services in each region and for each service identified for the designation of US provider(s)are established».*

Question 17 – What consequences do you consider the change in the US scope should have in the designation of the undertaking(s) responsible for its provision? Should this determine a change (extension or reduction) in the designation of the US provider(s) of or should it imply its cancellation? On what grounds, legal and factual, should this change or cancellation be based? And within which situations should the change of the US scope determine the opening of a new procedure for the designation of the entity responsible for its provision?

APRITEL and Sonaecom take the view that any extension of the US scope should imply the opening of a tender to select the provider responsible for this new element. Sonaecom highlights that the evolution of the US scope cannot undermine the continuity of the service provision on the part of designated operators. Oni believes that in case the US provider is designated for a short period of time, the contract is subject to very few changes.

ZON is of the opinion that in case the contract provides for a contractual mechanism concerning the review of the US scope (or even in the absence thereof), the parties should be able to extend or reduce accordingly the scope of the concession. In case the US scope is extended, the company admits the launch of a new tender procedure, in which the designated provider may participate. Cabovisão supports also the launch of a new tender.

Vodafone deems that the legislation provides for the “concerns addressed in this question”, namely as regards the possibility of the Administration «*modifying unilaterally the contents of the provision, insofar as the subject-matter of this contract and its financial contents are complied with, the possibility of the Administration directing and supervising the way provisions are performed and, if deemed indispensable, the possibility of terminating unilaterally the contract, on grounds of duly substantiated public interest*».

Vodafone adds that «*there is nothing to prevent the negotiation, in appropriate fora, of contractual mechanisms that provide for the determination of a periodical review of the level of implementation of the US, and consequently, for the possibility of removing or amending US obligations, so as to ensure (...) that the US is up-to-date and adjusted to their specific needs, in each moment*».

Question 18 – In respect of the measures to guarantee affordable prices for end-users, do you consider that obligations imposed by ICP-ANCOM (currently in force) are a proportional and appropriate measure, the maintenance of which is essential?

APRITEL, Cabovisão and Sonaecom mention that, as a rule, conditions that enable the existence of tariffs which are significantly different from those provided under normal commercial conditions should not be imposed, as this could lead to a distortions in the competitive operation of the market. Cabovisão and Sonaecom declare also that derogations to this rule should be clearly defined, in the respect of consumers with low income (including retired people and pensioners), disabled people or people with special social needs. Sonaecom points out also that the concept of affordable prices should not be understood as corresponding to the provision of tariffs with prices below the respective costs and that it is likely that current mechanisms that assume the maintenance of an analytical accounting system should be reviewed, as they can hardly be maintained in a context where the US is provided by more than one operator. A mechanism of international benchmarks or of prices defined in the scope of the tender and updated subsequently is deemed to be more appropriate.

ZON considers current measures to be proper and proportional, and accordingly they should be maintained, subject to periodical reviews in the scope of regulatory market analyses.

Oni is of the opinion that this issue is a task for the social solidarity policy.

Vodafone supports that there should be no regulatory provisions for retail tariff offers, and that tariff options which competition has already created, among the different electronic communications providers (fixed and mobile), meet the needs of citizens with a low income. In this sense, Vodafone considers that measures currently in force should be removed, and in case a contrary view is adopted, measures should be independent from the associated technology and compensated by fiscal tools or pensions/allowances paid by the State, to support the functioning of the service in terms of social solidarity.

Question 19 – Do you consider that additional measures are needed in this area?

APRITEL, Cabovisão, Sonaecom, Vodafone and ZON take the view that as far as the affordability of prices is concerned, there is no need for further measures.

Oni declares that this issue is a task for the policy of social solidarity.

Question 20 – In your opinion, should current parameters and levels of quality of service governing the USP be adapted, following the principle of technological neutrality? Do you agree with the current ones?

In the light of the principle of technological neutrality in the US provision, entities made the following comments:

- APRITEL, Cabovisão, Sonaecom and ZON consider that **it is necessary to analyze and adjust** current levels of quality of service, without changing significantly the user's experience.
- Vodafone is of the opinion that **is not necessary to the review current parameters** of quality of service set for the US provider, and that ICP-ANACOM should strengthen rules on parameters of quality of wholesale offers necessary to the provision of retail services in competitive and open markets, and criteria for the application of penalties for non-compliance.
- Oni supports the **application of the same regulated levels of quality of service when the service is provided under normal conditions out of the US scope.**

Question 21 – Do emergency communications merit special consideration in the context of the US? How?

Cabovisão, ZON, Vodafone and Sonaecom consider that a special consideration of this issue is not necessary. ZON and Vodafone point out that a particular attention should be drawn to the safeguard of special means of access to emergency services by citizens with special needs, particularly those who are disabled and thus prevented from using means of access generally available.

Relatively to this issue, Cabovisão states that it is incumbent on the Government, under article 100 of the ECL, to decide if further compulsory services should be provided.

APRITEL and Oni take the view that emergency communications are best safeguarded if the US provision is undertaken by more than one operator or technology.

Ericsson [SCI] [ECI].

Question 22 – Are current emergency communications obligations imposed upon US provider(s) appropriate and sufficient? Please specify.

Cabovisão, ZON and Sonaecom consider that a special consideration of this issue is not necessary, Cabovisão restating that it is incumbent on the Government to decide if further compulsory services should be made available.

APRITEL and Oni take the view that emergency communications are best safeguarded if the US provision is undertaken by more than one operator or technology.

Vodafone mentions that, in the scope of the US provider obligations, it is necessary to find services supported in technologies that best meet access needs, at a lower cost, for each specific need of disabled citizens.

Question 23 – Do you think that US provider(s) should provide additional services, under article 100 of the ECL, in order to guarantee emergency communications? Please specify.

Cabovisão, ZON and Sonaecom deem this matter to be a fundamental task to be undertaken by the State, that must decide whether making available additional services is necessary, and in the affirmative, which services should be ensured. ZON adds that pursuant to article 27 d) of the ECL, companies providing electronic communications networks and services may be imposed conditions of use during major disasters which shall ensure communications between emergency services and authorities.

Oni considers that current obligations in matters of emergency communications are appropriate and sufficient.

Vodafone highlights that a set of offers has come up, aiming to meet the communication needs of disabled users, and refers that it is necessary to find, in the scope of the US provider obligations, services supported in technologies that best meet access needs, at a lower cost, for each specific need of disabled citizens.

APRITEL refers on this issue that emergency communications are best safeguarded if the US provision is undertaken by more than one operator or technology.

Question 24 – What are the terms and conditions of the offers to be made available by the US provider(s) regarding specific measures for disabled users, in respect of access to emergency services?

Oni and Sonaecom consider that current obligations in matters of emergency communications are appropriate and sufficient.

ZON mentions the need to implement suitable technical and logistic measures to ensure the access, under non-discriminatory conditions, to communications to emergency numbers by users with special needs, particularly as regards the use of public payphones.

APRITEL refers on this issue that emergency communications are best safeguarded if the US provision is undertaken by more than one operator or technology

Vodafone restates on this matter that it is necessary to find, in the scope of the US provider obligations, services supported in technologies that best meet access needs, at a lower cost, for each specific need of disabled citizens.

Question 25 – Do safety issues merit special consideration in the context of the US? How?

Sonaecom considers that issues related to national safety and defence requirements should be ensured by the State, and exceed the scope of the US. Safety issues must be dealt with within the terms defined at present.

APRITEL and Oni take the view that emergency communications are best safeguarded if the US provision is undertaken by more than one operator or technology.

ZON point out that electronic communications may be crucial in situations of threat to the safety of people and goods. In the US context, a set of obligations must be ensured in situations of emergency or crisis, able to ensure the functioning of services in these situations.

Vodafone points out that this matter has been duly provided for in the ECL, and thus there is no need for a special consideration in the US framework.

Cabovisão refers that obligations resulting from emergency communications have been defined to a large extent and are proportionally suitable, being incumbent on the Government, under article 100 of the ECL, to decide if further compulsory services should be provided.

Question 26 – Do you agree that cost estimates presented by interested parties within the scope of the tender should be used for determining the net cost of US?

As regards the use of cost estimates presented by interested parties within the scope of the tender to determine the USNC, **two positions were declared:**

↳ Agreement with closeness of estimates:

- APRITEL, Cabovisão, Oni, Sonaecom and Vodafone **support the mentioned closeness** insofar as: (i) estimates are duly justified and substantiated (APRITEL, Sonaecom); (ii) the operator putting forward the best price/quality relationship should be chosen, regardless of the support technology for the US provision (APRITEL, Oni); (iii) there is more than one application for the US provision, otherwise the USNC should be calculated according to national legal provisions (APRITEL, Oni). Vodafone mentions that the cost presented by the chosen applicant should be added to any financing need left to be met, deemed to be fundamental to the financial balance of the provision of services defined by ICP-ANACOM as integrating the US.

↳ Disagreement with closeness of estimates:

- ZON is of the opinion that **the USNC determination should be based on incurred costs**. These costs, as well as the respective costing model should be made subject to an audit by an independent body, in order to determine whether the presented model is appropriate, as provided for by article 96 of the ECL.

Last, it must be referred that **several entities (APRITEL, Cabovisão, Sonaecom) supported the idea that costs presented in the proposal should be established as the maximum limit of the reported USNC.**

Question 27 – Which methodology should be followed? Regarding the first, do you agree with the classification criteria presented and with their order of priority? And in relation to the second, do you agree with the alternatives presented?

On this subject matter, it should be taken into account that the consultation document presented the two following methodologies:

↳ The classification of applicant US provider(s) may be made in accordance with the following criteria in order of importance:

- Proposal presenting least costs for the sector;
- Proposal presenting the best quality/price relation for consumers;
- Proposal which includes the provision of all the services included within the scope of the US.

↳ Alternative methods of selection which include and combine the following may also be set out:

- For the current level of price and quality of service, what level of compensation is required by the operator? The winning proposal will be that which proposes the least compensation;
- For a zero level of compensation, what is the price of the different elements of the US proposed by the applicant, maintaining the current level of quality of service?
- As above, but the applicant may propose the price and quality of service, for a zero level of compensation.

From replies received, the following positions may be stressed:

↳ 1st methodology and the three criteria referred:

- **All entities were in favour of the first methodology, having supported the application of the 1st criterion - least costs, except for Vodafone, that supports also the first methodology but under the conditions proposed in point 3 of methodology 2: “The applicant may propose the price and quality of service deemed suitable, for a zero level of compensation.”**
- **Some entities showed some doubts (Oni) and even disagreement (Cabovisão) with the application of the 3rd criterion of the 1st methodology – “proposal which includes the provision of all the services included within the scope of the US” –** having Oni considered that the fundamental criterion should be the quality/price relation and Cabovisão stated that the possibility enabling the best cost-effectiveness relation should be chosen.
- Vodafone stressed also that ICP-ANACOM must define clearly the different criteria and respective weights.

↳ 2nd methodology:

- Cabovisão is of the opinion that considerations made for this methodology should be taken largely into account and compulsorily presented, to strengthen competitive or comparative selection procedures, and therefore to achieve a more sustained decision.
- Oni **disagrees with this methodology** deeming that alternatives presented fail to guarantee consumer interest.
- ZON shows some **doubts relatively to the third alternative method** in this methodology, not considering the possibility of letting the provider choose the price and quality of service parameters to be appropriate.

Question 28 – Do you consider that other criteria should be taken into account in the classification of the proposals presented? Please identify.

Among the entities that provided an answer, **only APRITEL, Oni and Vodafone considered the application of other criteria to be relevant**, the following having been identified: (i) criteria of technical credibility (APRITEL and Oni), (ii) criteria that enhance the possibility of US provisions being offered using technologies that, while ensuring the quality of service, minimize costs and contribute to their profitability (Vodafone).

Question 29 – Would you be interested at the outset in being designated Universal Service provider? Please indicate how such interest would depend on:

- (a) The designation for the entire national territory or only for certain geographical areas;
- (b) The designation by type of service, indicating the service(s) which in such case you would be interested in providing;
- (c) The way in which the net cost of the universal service is to be determined;
- (d) The possibility of the potential US net cost being compensated through the legally provided mechanisms;
- (e) The possible evolution of the scope of the universal service;
- (f) Any other conditions, indicating which.

All five operators that replied to this question (Cabovisão, Oni, Sonaecom, Vodafone and ZON) showed interest in being designated US providers, without prejudice to this position being subject to the knowledge and accurate definition, at the time of the tender, of a set of aspects deemed essential.

As regards the questions put forward the following comments should be highlighted:

- Cabovisão [SCI] [ECI].
- Oni refers that it is directly and indirectly interested in being designated as US provider, this interest depending on points a), b) c), according to replies given to other questions in the document. The interest of this provider is limited to the provision of the connection to the fixed public telephone network and access to publicly available fixed telephone services.

As regards point d), it mentions that the recovery of USNC should take place by means of public funds (referring in this regard that the Directive considers this option to be “one of the most effective methods”) considering reasonable the idea of sharing these costs with other operators and service providers with SMP.

As regards point e), it deems it is important to redefine the US scope taking into account new technologies that lead to new ways of social exclusion. Last, relatively to point f), it suggests that the public tender should follow the recommendations put forward in its contribution.

- Sonaecom shows interest in being designated US provider for all areas of the national territory and supports the idea that the US must be based on the principle of technological neutrality.

It refers also that in case it is considered that the basic communications network is the only means (a view which it does not share) to ensure the provision of US (except for the provision of a comprehensive directory service and a comprehensive directory enquiry service) in economically effective terms and with defined quality, appropriate public measures should be taken to ensure the access to this network, namely as regards the legal stability of the right of access, in non-discriminatory terms and in order to ensure an effective control of such stability by all operators interested in providing the US.

- Vodafone shows interest in a tender that follows a segmented approach in terms of services and geographic areas, supporting the idea that the US must be based on the principle of technological neutrality, thereby promoting effectiveness and cost reduction and making use of available resources. The company also restates its position, namely as regards the removal or redefinition of the public payphone and directory obligations.