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Determination of 23.10.2006

**Conformity analysis of Version v.2 of the Reference Conduit Access Offer of PT Comunicações, S.A, clarifications on the determination of 26.5.2006 and the correction of the determination of 26.5.2006**

**I - Preamble**

**A. Framework**

By determination of 26/05/06<sup>1</sup>, ICP-ANACOM gave approval to a set of alterations that are to be made to the Reference Conduit Access Offer (RCAO) of PT Comunicações, S.A. (PTC) and the processes involved in the construction, maintenance and updating of a descriptive database of conduits and associated infrastructure.

PTC requested, by fax of 09/06/06, clarifications on the following aspects of the determination: i) the maximum monthly capacity for processing plans and assessments of requests for occupation feasibility; ii) route deflection; iii) the time limit permitted for replying to requests for information on infrastructure; iv) supervision of non-urgent interventions; v) the time limit permitted for the presentation of quality performance reports; vi) maximum prices for monitoring and supervision; vii) the prices to be applied for the removal of cables; viii) construction of new infrastructure; ix) responsibility for damage occurring during the removal or maintenance of cables by beneficiaries; x) the description of space in conduits and associated infrastructure; xi) prices to be applied for the occupation of space in conduits and subconduits; and xii) oversights in parameter PSQ1 (period permitted for the reply to an infrastructure request) and PSQ4 (period permitted to schedule the monitoring of urgent interventions). Version V.2. of the RCAO was then published on 14/06/06<sup>2</sup>

OniTelecom - Infocomunicações, S.A. subsequently reported to ICP-ANACOM, by letter of 06/07/06, that it detected alleged irregularities and omissions in version V.2 of the RCAO in relation to ICP-ANACOM's decision of 26/05/06. These concerned, in particular: i) the publication on the *Extranet* of the forecast of new conduit construction; ii) PTC's entitlement to cancel the construction of new conduits; iii) the period permitted for replying to feasibility requests depending on the necessity of an alternative route; iv) the addition of new price categories; v) the insistence of placing monthly limits on the maximum capacity for the assessment of segments; and vi) half-yearly notification of indicators in place of monthly notification. OniTelecom - Infocomunicações, S.A. requested that the provisions that did not conform to the

decision be corrected.

Accordingly, ICP-ANACOM seeks to: (a) identify and correct any irregularity between version V.2 of the RCAO and the determination of 26/05/06; (b) clarify certain aspects of the determination of 26/05/06 where there have been queries; and (c) make corrections to the determination of 26/05/06 where oversights have been reported. Where, following clarification, there are irregularities between the RCAO and the determination of 26/05/06 and/or oversights, these are dealt with, respectively, as irregularities or corrections to determination of 26/05/06.

## **B. Irregularities in version V.2 of the RCAO with determination of 26/05/06**

### **Terms and Definitions**

In accordance with point 2 of the determination of 26/05/06, the expression "underground infrastructures" shall be replaced by "conduits and associated infrastructure", according to the wording adopted in the determination of 17/07/04<sup>3</sup>.

In the RCAO the expression "*underground infrastructures*" was replaced by "*conduits and associated infrastructure*" except in table 3 (on page 22) and in the table of clause 9 (Quality of Service) of the Standard Contract with respect to PQS1 (Period permitted for replying to requests for information on underground infrastructures).

Accordingly in table 3 and in the table of clause 9 (Quality of Service) of the Standard Contract, the phrase "Time limit to reply to requests for information on underground infrastructures", should read "time limit to reply to requests for information on conduits and associated infrastructure".

### **General Conditions**

In accordance with point 7 of the determination of 26/05/06, PTC shall publish and keep updated, in annex to the RCAO, a list of accredited bodies, in order to promote transparency as regards the conditions of access to conduits.

In annex 6 of the RCAO it states "*The list of accredited staff is published, with access restricted by beneficiary, on the internet site <http://ptwholesale.telecom.pt/GSW/PT> after such time as the accreditation system set out in the PT RCAO comes into force. Information on how to access this site is made available to the beneficiary upon their request*".

PTC should have published a list of accredited bodies to coincide with the publication of the RCAO. Failure to publish this list does not conform to the determination of 26/05/06.

As a result, the RCAO shall include a list of bodies with whom PTC has been working and who shall be suitably qualified and of the technical competence to access the conduits for the purposes of installing, maintaining, repairing and removing infrastructure. Considering, however: i) the intervening period of time between the alteration of the RCAO in accordance with this determination and the date forecast for the accreditation system to enter into force (26/11/06); and ii) that the simultaneous publication of the list and the entry into force of accreditation system permits a greater level of articulation and coherence between the two, there is not currently considered to a significant advantage in publishing this list of bodies prior to the date on which the accreditation system enters into force. However this should take place no later than 26/11/06.

### **Maximum monthly Capacity for Processing Plans**

Page 9/35 of the RCAO contains a table detailing the maximum monthly capacity for processing plans with respect to Information on Conduits and associated infrastructure, by geographic zone, during the first year of the offer, where reference is made incorrectly that this is subject to a pending ICP-ANACOM decision.

This question is not subject to any pending decision by ICP-ANACOM. It has already been determined in point 23 of the determination of 26/05/06, where it is set out that the maximum monthly capacity for processing plans shall take into account the foreseeable requests of beneficiaries and are not subject to the limits proposed by PTC.

Furthermore, as stated in the prior hearing<sup>4</sup> which forms an integral part of the determination of 26/05/06, PTC did not provide any justification for imposing capacity limits in the RCAO, except for the need to define the maximum number of segments per feasibility request (and the number of segments per alternative route). As such the setting of limits for the processing of plans is not considered justifiable, given that doing so could contribute to an unsatisfactory result by delaying or hindering planning by beneficiaries. Accordingly the limits given on page 9/35 of the RCAO for the processing of plans with respect to information on conduits and associated infrastructure shall be removed.

Finally, it is considered that charging for providing information on conduits and associated infrastructure in paper form, could also contribute to a rationalisation of the volume of beneficiary requests for processing plans.

## Occupation Feasibility Requests

- **Maximum monthly capacity for analysing feasibility requests**

Page 12/35 of the RCAO includes a table giving the maximum monthly capacity for processing feasibility assessments on access to conduits and associated infrastructure, by geographic zone, during the first year of the offer, where reference is made incorrectly that this is subject to a pending ICP-ANACOM decision.

This question is not subject to any pending decision by ICP-ANACOM. It has already been determined in point 34 of the determination of 26/05/06 that the maximum monthly capacity limits for the assessment of occupation feasibility requests by geographic zone shall be removed from the RCAO.

Furthermore, as stated in the prior hearing<sup>5</sup> PTC did not provide any justification for imposing capacity limits in the RCAO, except as regards the maximum number of segments per feasibility request (and the number of segments per alternative route). As such the setting of limits for the processing of Occupation Feasibility assessments in the RCAO is not considered justifiable, given that doing so could contribute to an unsatisfactory result by delaying or hindering access by beneficiaries to such infrastructure as is necessary for the deployment of their services. Accordingly the limits for processing assessments of feasibility on access to conduits and associated infrastructure, as given on page 12 of the RCAO, shall be removed.

Finally, it is considered that charging for the provision of occupation feasibility assessments could also contribute to a rationalisation of the volume of beneficiary feasibility requests.

- **Basis for the reservation of space for future use**

Point 32 of the determination of 26/05/05 permits the concessionaire to reserve space for its own future use in the conduits and associated infrastructure that they operate for a maximum period of one year. This permission is given provided that such reservation has due grounds in the guarantee of the appropriate future development of the concession services. ICP-ANACOM may annul this reservation of space where it is shown to be without grounds.

Page 12/35 of the RCAO states that PTC may reserve, for a maximum period of one year, space for their own future use, provided that this reservation has due grounds in the guarantee of the appropriate future development of the PTC services, and that this reservation of space may be annulled where such need is shown to be without grounds.

Point 32 of the determination of 26/05/06 permits the concessionaire to reserve space for a maximum period of one year, but subjects this entitlement to reserve space to a set of minimum criteria that were approved on 17/07/04. Under the terms of these criteria PTC is bound to ensure that 20% of the free space in each conduit is set aside for the use of the RCAO beneficiaries. This obligation shall be waived only where it is deemed to be incompatible with the capacity hitherto installed by the concessionaire or, in the future, where there are due grounds that demonstrate that additional space is required to satisfy needs arising from the provision of concession services.

PTC, in a fax of 09/06/06, requested clarification from ICP-ANACOM concerning the procedures governing services outside the concession remit and the compatibility of the provisions of point 101 of the determination of 26/05/06 with the formation of the development plan, in annex to the RCAO, which encompasses all services provided by PTC.

Neither in the determination of 26/05/06, nor in the minimum criteria, is their provision for the reservation of space in the conduits for needs arising from the provision of those services that fall outside the concession. Any such reference in the RCAO to the services of PTC as opposed to the services of the concession, as set out in the determination, do not follow the meaning of the determination. Since such references would imply that PTC may reserve space for non-concession services with basis in the associated provisions, they shall be corrected.

The procedures applicable to non-concession services shall be the same as that applied to the beneficiaries, in particular with consideration to a forecast plan, covering a period of two years that is in line with the promotion of the suitable planning and optimisation of the resources necessary for the evolution of the offer, as cited in the report on the prior hearing.

While reference is made in the RCAO that the reservation of space shall become void where the necessity on which it is based is shown to be groundless, the determination of ICP-ANACOM states that the reservation may be lifted, if it proves to be unfounded. Accordingly, and because there could be cases in which the necessity may have basis whereas the reservation itself is groundless, the wording adopted by PTC restricts the option of ICP-ANACOM to intervene. PTC's wording is therefore considered as being contrary to that which was set out on 26/05/06, and as a consequence the wording adopted by PTC requires alteration in order to bring it into conformity with the adopted decision.

### **Monthly Maximum Capacity for the installation and removal of cables**

The RCAO contains tables detailing maximum monthly capacity, during the first year of the validity of the offer and by geographic zone, for the installation (page 15/35) and for the removal (page 17/35) of cables, with further reference that this issue is subject

to pending ICP-ANACOM decision.

In a prior version of the RCAO (RCAO V.1), PTC had set capacity limits for the installation and removal of beneficiary cables in the conduits, whereas it was the position of ICP-ANACOM, as set out in point 2.1.3 (page 4) of the report on the prior hearing, as approved by the determination of 26/05/06, that "*PTC did not justify the imposition of the capacity limits established in the RCAO, except as regards the need to define a maximum number of sections per request for occupation feasibility (...). It must thus be restated that the remaining limits should be removed.*"

In particular, it is considered that, given that the installation of beneficiary cables, as set out on page 15/35 of the RCAO, is carried out by the beneficiaries themselves (under the supervision of PTC), the imposition of limits for these works is without justification. Therefore such limits shall be removed from the RCAO.

Furthermore it is reiterated that PTC did not justify the imposition of limits regarding the removal of beneficiary cables where such removal falls within the capacity of PTC (where such cables are "dead" or demonstrably obsolete). Accordingly such limits shall be removed from the RCAO.

### **Route Deflection and Alteration of Occupation**

In accordance with point 45 of the determination of 26/05/06, PTC shall state the reasons which may lead to the need to eliminate or to deflect a certain route, where this has been imposed by a third party, presenting concrete examples thereto.

In conformity with point 46 of the determination of 26/05/06, the provision for cases in which, after PTC has deemed a request as feasible and granted access to the beneficiary entity for the installation and/or maintenance of the respective systems, equipments and other resources, this company invokes the restructuring of the network to impose on the beneficiary entity the need to remove the means and to release space in conduits and associated infrastructure, shall be removed.

The RCAO further included the provision that where there was deemed to be a need to deflect a route, PTC shall send to the beneficiary the basis of said need. The RCAO also maintained the option of eliminating or deflecting Routes due to network restructuring. PTC indicated, in their fax of 09/06/06 and in their response to the Draft Decision <sup>6</sup> (DD), that the adoption of the RCAO (with the necessary adaptation) in conformity with point 46 of the determination of 26/05/06 would remove the company's freedom to manage its own network effectively. PTC therefore proposed that the RCAO (with

the necessary adaptation) adopt criteria similar to those set out in the RUO, as regards the ceding of space for co-installation: where the reconfiguration of the PTC network results in the impossibility of maintaining the availability of space, PTC shall terminate the provision of the co-installation services in the exchange in question, and shall satisfactorily inform the OLOs, giving prior notice as soon as is operationally possible.

It is hereby reiterated that there is no justification for a provision permitting PTC to invoke the restructuring of the network as a reason for imposing on the beneficiary the need to remove the means and to release space in conduits and associated infrastructure, once PTC has deemed a request as feasible and granted access to the beneficiary for the installation and or maintenance of the respective systems and equipment.

However, ICP-ANACOM recognizes that, in accordance with the report on the prior hearing to the decision of 26/05/06, ensuring continuity of services provided by beneficiaries does not depend solely on PTC where routes have been deflected or eliminated through the imposition of a third party (whose conditions for imposing an alteration to a route must be clearly stated and communicated to the beneficiaries). It is also considered, however, that PTC must undertake all reasonable efforts together with the beneficiaries in order to re-establish the service in an optimal form.

Moreover, where a dispute arises in this context and where PTC has not presented reasons or concrete examples that justify the elimination of a certain route as a consequence of the imposition of a third party or reconfiguration of the network, resolution to such disputes may be sought from ICP-ANACOM.

## **Indicators and Quality of Service Levels**

- **Time limits for replying to feasibility requests**

The determination of 26/05/06 (point 57) sets a single “time limit for replying to a request for feasibility” of fifteen calendar days. The report on the prior hearing to the determination of 26/05/06 (point 2.2.12.2) clearly states that the maximum time limit for access requests, irrespective of whether an alternative route is necessary, is fifteen calendar days.

In table 3 on page 22/35, the RCAO continues to state that the time limit for replying to feasibility requests depends on whether an alternative route is necessary.

As set out in the determination of 26/05/06, the maximum time limit permitted for replying to feasibility requests, irrespective of whether an alternative route is necessary, is fifteen calendar days, and the RCAO shall be altered accordingly.



- **Period for calculating indicators**

Point 56 of the determination of 26/05/06, states that *"PTC shall submit to ICP-ANACOM the reports on quality performance, broken down by beneficiary entity and by months, no later than fifteen days after the end of the quarter concerned"*.

In the RCAO (page 23/35) it states that the calculation of indicators shall take place at intervals of six months.

Notwithstanding that the reports on quality performance are to be sent on a quarterly basis, these reports shall be broken down by month, as determined by ICP-ANACOM. Therefore the RCAO shall be corrected accordingly.

#### **Pricing of Services Provided in the RCAO**

- **Maximum prices for monitoring and supervision**

Point 65 of the determination of 26/05/06 sets out the maximum prices for monitoring and supervision, but does not index them to a period of time as set out in the proposal of PTC (where prices are based on a 4 hour period).

The prices for monitoring and supervision services have been established by ICP-ANACOM based on the evidence presented by PTC (according to whom a normal schedule is from 09.00 to 18.00 on working days). In the proposal for prices for inclusion in the RCAO, the normal schedule shall be defined as that set out in the evidence and the report on the prior hearing (point 2.2.14.2.6).

Accordingly PTC shall alter the normal schedule stated in the RCAO (which is currently set out on page 26/35 as being from 09.00 to 12.30 and from 14.00 to 17.30 on working days) in order to correspond to a period from 09.00 to 18.00 on working days, as stated in point 2.2.14.2.6 (page. 50) of the report on the prior hearing approved by the decision of 26/05/06 and as also proposed by PTC - see page 48/54 of PTC's response to the draft decision of 02/09/05.

- **Addition of new price categories**

Point 65 of the determination of 26/05/06 sets out the maximum prices applicable to services available through the RCAO.



Two new price categories have been added to the RCAO (page. 25/35): "Monthly charge for space occupation by LE" and "Monthly charge for space occupation by excess cable".

Given that no grounds were presented by PTC with respect to such categories in the proposal for prices for inclusion in the RCAO (letter of 24/10/05), these price categories shall be removed from the RCAO.

## **Construction of New Infrastructure**

- **Responsibilities of PTC in the construction of new infrastructure**

In accordance with point 49 of the determination of 26/05/06, PTC is entitled to cancel the construction of new conduits and associated infrastructure, provided that the RCAO states the reasons therefor, and the grounds are presented in subsequent notification to the beneficiary. Moreover, point 79 of the same determination states that "taking into account the commitment demanded from the beneficiary as compensation for the reservation of space in new infrastructures, PTC shall undertake the construction of the infrastructures under consideration".

PTC stated, by fax of 09/06/06, that whereas point 49 of the determination of 26/05/06 states that "*PTC is entitled to cancel the construction of new conduits and associated infrastructure*", although subject to certain conditions, in point 79 it is stated that "PTC shall undertake the construction of the infrastructures under consideration", which would appear to mean that PTC is not permitted to cancel the construction of new conduits and infrastructure.

As stated in point 79 of the determination of 26/05/06, PTC shall undertake the construction of the infrastructures under consideration. However, PTC may cancel construction under consideration where it is impossible to proceed, provided that the grounds for this cancellation are presented as stated in point 49 of the determination of 26/05/06. Accordingly, no contradiction is seen to exist between the provisions of points 49 and 79 of the determination. Therefore, the standard contract shall also be altered in order to explicitly set out that, in cases where PTC cancels the construction of new conduits and associated infrastructure, PTC shall accept responsibility as regards the beneficiaries affected by losses resulting from said cancellation (no. 6 of clause 5 of the standard contract).

## **C. Clarifications of the Determination of 26/05/06**

### **Quality of Service Indicators**

- **Monitoring of Urgent Interventions**

PTC also stated, in their fax of 09/06/06, that the indicator on the monitoring of non-urgent interventions includes actions such as: installation, maintenance, repair and removal of infrastructure. However in the setting of time limits, only "repair intervention" is mentioned. PTC sought clarification on this situation, considering the definition "repair intervention" to be more suitably aligned with the time limit objective defined for this indicator in point 57 determination of 26/05/06, since the time limits defined for scheduling supervision were not compatible with the service in question, in particular with respect to the installation and removal of cables, which do not require immediate action and which are normally associated with previously planned scheduling by the beneficiaries. Therefore PTC sought for these indicators to be separated, allowing longer time limits for the installation and removal of cables.

Due to an oversight, the setting of time limits in the determination refers, as pointed out by PTC, only to "repair intervention requests". However, the definition of the indicator in point XI. (iv) of the decision of 26/05/06, refers explicitly to the installation, maintenance, repair and removal of infrastructure. Although the setting of the time limit in the determination refers, as pointed out by PTC, only to "repair intervention requests", it should be understood that the context permits it to be concluded that this refers to all mentioned interventions.

Taking into account: (i) that the defined time limit (24 consecutive hours) is considered sufficient for PTC to be able to schedule the necessary interventions, guaranteeing further that beneficiary works are carried out with the speed necessary to make services available to potential customers; and (ii) in all cases the activity of PTC is of a similar nature, resulting in the mere monitoring of the installation, maintenance, repair and removal of infrastructure, the separation of the indicator, as requested by PTC, is not considered to have justification.

Accordingly, it is hereby clarified that the definition of the time limit that PTC referred to shall apply to all interventions of a non-urgent nature: installation, maintenance, repair and removal of infrastructures.

- **Time limit for the presentation of reports on quality performance**

Point 55 of the determination of 26/05/06, states that the reports on the quality performance for each beneficiary entity shall be sent to the beneficiary, broken down by months, no later than fifteen days following the end of the quarter concerned.

PTC, in a fax of 09/06/06, alleged that that the compilation and processing of the data

in question would be time consuming, and requested that the time limit for sending reports be extended to the fifteenth day of the second month following the end of the quarter concerned.

It is considered that the time limit proposed by PTC is too long to allow the timely monitoring of the quality performance of the services provided by PTC, in particular during the initial phase of the offer being available, when monitoring needs to be close and detailed in order to ensure its appropriate development, notwithstanding the recognition that the compilation and processing of the statistical information required could entail complex processes.

It is further stated that ANACOM decided not to set penalties for some of the quality performance indicators (in particular the time limit to schedule the monitoring of urgent interventions and the degree to which the monitoring service is available). This decision was taken in view of the fact that the offer is in the initial phase of its development, but without detriment to the monitoring of the development of the offer with a view to fixing compensatory values for non-compliance with these quality indicators. Accordingly and in order to ensure that the offer is closely monitored, timely access to all pertinent information on Quality of Service is essential.

It is further noted that, with respect to the time limits defined in other offers (particularly RIO or RUO) there is no uniformity, and that instead the limits depend on factors that are specific to each offer, including the stage of development of each offer and expected demand.

Accordingly and in view of the factors referred to above, it is not considered appropriate, at this time, to revise the time limit for making the quality performance reports available.

### **Pricing of Services Provided in the RCAO**

- **Price applicable to the removal of cables**

PTC stated, in their fax of 09/06/06, that while the base price for the removal of cables is defined, the cable length price component is omitted in the determination of 26/05/06. PTC, supposing this to be an oversight, therefore sought information on the maximum price that shall be applied, by metre of cable to be removed.

As set out in the determination of 26/05/06, the service of cable removal is not an obligatory service and is applicable only where the beneficiaries fail to remove "dead cables" within the set time limits. In the determination ICP-ANACOM set a maximum base price of €2.9 for the removal of cables from conduits and associated infrastructure.

As indicated in the basis of the draft decision, the estimated per metre costs of removing cable were equal to those presented by PTC (figures given in table 1), and

accordingly the values are maintained.

<b>Table1: Cost of Removal per Metre</b>		
<b>Removal of Cables from Underground Infrastructure</b>	<b>With profit</b>	<b>Without profit</b>
Base Price	2.90 €	2.90 €
Price per metre of removing monotube	0.60 €	-
Price per metre of removing optic fibre cable	0.60 €	0.55 €
Price per metre of removing other types of cable with diameter > 50mm	1.45 €	1.00 €

- **Maximum prices for monitoring and supervision**

In point 65 of the determination of 26/05/06, maximum values are set for monitoring and supervision. These values are not indexed to a period of time as they are in the proposal of PTC (where they are indexed to a period of 4 hours). As a result PTC sought clarification from ICP-ANACOM on the maximum amount to apply by period of time (morning or afternoon).

It is hereby clarified that the maximum prices set by ICP-ANACOM for these services refer to a period of four hours (€120 in peak hours and €205 in remaining periods), taking into account the bases given by PTC for the prices proposed for this service, in particular the average duration of monitoring and supervision services (four hours).

In particular and as set out in the determination of 25/05/06, a price should be set for the first hour (which besides one hour of supervision includes 10 minutes for the processing of the request and travel) and another price for subsequent hours. In accordance with the report on the prior hearing (point 2.2.14.2.6), the determination of a price structure based on the price of the first hour and of subsequent hours owes itself to the impossibility of precisely determining the period of time necessary to perform monitoring and supervision services.

### **Construction of New Infrastructure**

- **Availability of information on forecast of construction of new conduits in the Extranet**

In accordance with point 48 of the determination of 26/05/06, *"The way beneficiary entities may access information on plans for the construction of new conduits and associated infrastructure shall be made clear, being recommended that such information be provided in the Extranet. In addition, the information on the forecast construction of new conduits may be informed to the beneficiary entity, by registered letter with acknowledgement of receipt or by any other established means"*.

In the RCAO (page. 18/35) it states that PTC shall send information on the forecast of new conduit construction and associated infrastructure within a minimum time limit of two months prior to the date on which notice of the same is given to the municipal authority, by registered letter with acknowledgement of receipt. However ONI pointed out in their letter of 06/07/06 that PTC omitted to mention the possibility of making information on the forecast of new conduit construction available through the *Extranet*.

It is considered that the determination in point 48 of the decision was accepted by PTC, while the provision of information on the forecast of new conduit construction by *Extranet* was a recommendation of ICP-ANACOM, and that as set out in point 2.2.11.1 of the report on the prior hearing it is left to PTC to choose the best way of informing the beneficiaries of the construction of new conduits, for example by registered letter with acknowledgement of receipt. However it remains incumbent upon PTC to demonstrate that notification has been made. It is also reiterated that it is recommended that information on the forecast of new conduit construction also be provided by *Extranet*.

### **Responsibilities for Damage Caused by the Beneficiary During the Maintenance and Removal of Cables**

The determination of 26/05/06 states that the following shall be added to clause 19 of the Standard Contract: "during the installation or removal of cables".

PTC, in their fax of 09/06/06, pointed out that in point 88 of the determination of 26/05/06, ICP-ANACOM had not included, by oversight, intervention for the maintenance and repair of cables, given that the beneficiary should also be held responsible for damage caused during these types of interventions.

It is considered that the beneficiary shall be held responsible for damage arising from work carried out in the conduits, irrespective of whether such work relates to installation, removal, maintenance or repair. As such ICP-ANACOM does not oppose the additional specification by PTC in clause 19 of cases related to interventions for the maintenance and repair of cables.

### **Prices Applicable to the Occupation of Space in Conduits and Subconduits**

In the press release<sup>7</sup> issued on 07/06/06, ICP-ANACOM published an example of the prices for occupation of space in conduits and subconduits, which according to the fax sent by PTC on 09/06/06, would not be wholly correct.

It can be confirmed that the press release would have been clearer, if instead of referring to the occupation of a subconduits by cables with a diameter of 20mm (one cable) and 10mm (two cables), it had referred to the occupation of subconduit by cables with diameters of occupation of 20mm (one cable) and 10mm (two cables). The respective press release is to be corrected accordingly.

#### **D. Corrections to the Determination of 26/05/06**

##### **Indicators and Quality of Service Levels**

The definition of the indicator "Time limit to reply to a request for information on underground infrastructures" refers to working days. Accordingly, where, due to an oversight, point 54 of the determination of 26/05/06 reads "Time limit to reply to a request for information on infrastructures - time duration, in calendar days, from the moment the concessionaire receives the request up to the instant the beneficiary entity receives a comprehensive reply to the information request" (paragraph (ii) of point 54) it should read "Time limit to reply to a request for information on infrastructures - time duration, in working days, from the moment the concessionaire receives the request up to the instant the beneficiary entity receives a comprehensive reply to the information request".

The setting of the time limit PQS5 in the determination refers, due to an oversight, only to requests for monitoring of repairs. Accordingly, point 54 of the determination requires correction in order to make it unequivocally clear that the defined time limit applies to all types of interventions carried out by beneficiaries, with the analysis of ICP-ANACOM having followed this reasoning. Accordingly where it reads "Time limit to schedule the monitoring of non-urgent intervention operations to be carried out by the beneficiary entity (installation, maintenance, repair and removal of infrastructures) - time duration, in consecutive hours, from the hour the concessionaire receives a repair intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service", (paragraph (iv) of point 54) it should read "Time limit to schedule the monitoring of non-urgent intervention operations (installation, maintenance, repair and removal of infrastructures) to be carried out by the beneficiary entity - time duration, in consecutive hours, from the hour the concessionaire receives an intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service."

The designation of the indicator (PQS1) in the table in point 57 makes reference, due to an oversight, to the term "underground infrastructures". This term should be replaced by "conduits and associated infrastructure".

## **II - Determination**

In view of the above, the Board of Directors of ICP-ANACOM hereby determines:

### **1. To correct the Determination of ICP-ANACOM of 26/05/06, under the terms of article 148 of the Rules of Administrative Procedure:**

a) The term "underground infrastructures" shall be amended to read "conduits and associated infrastructure"; [table in point 57 of the determination of 26/05/06].

b) Where it is stated, "Time limit to reply to a request for information on infrastructures - time duration, in calendar days, from the moment the concessionaire receives the request up to the instant the beneficiary entity receives a comprehensive reply to the information request", this shall be amended to read "Time limit to reply to a request for information on underground infrastructures - time duration, in working days, from the moment the concessionaire receives the request up to the instant the beneficiary entity receives a comprehensive reply to the information request" (paragraph (ii) of point 54).

c) Where it is stated, "Time limit to schedule the monitoring of non-urgent intervention operations to be carried out by the beneficiary entity (installation, maintenance, repair and removal of infrastructures) - time duration, in consecutive hours, from the hour the concessionaire receives a repair intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service", this shall be amended to read "Time limit to schedule the monitoring of non-urgent intervention operations (installation, maintenance, repair and removal of infrastructures) to be carried out by the beneficiary entity - time duration, in consecutive hours, from the hour the concessionaire receives an intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service." [point 54 paragraph (iv) of the determination of 26/05/06].

**2. That under the assignments provided for in points b) and f) of paragraph 1 of article 6 of the Statutes of ICP-ANACOM, approved by Decree-Law no. 309/2001, of 7 December, in the exercise of powers provided for in points b) and g) of article 9 of the referred Statutes, with consideration to the regulatory objectives set out in points a) of paragraph 1 and c) of paragraph 2 of article 5 of Law no. 5/2004, of 10 February, and in accordance with paragraph 3 of article 68 of Law no. 5/2004, of 10 February, PTC shall amend and publish within a period of ten working days, the Reference Conduit Access Offer, enacting the following amendments:**



a) With respect to the PSQ1 time limit, where it is stated, "time limit for replying to requests for information on underground infrastructure", this shall be amended to read "time limit for replying to requests for information on conduits and associated infrastructure". [table3 on page 22 and the table in clause 9 of the Standard Contract in version V.2 of the RCAO].

b) The limits stated in the tables of page. 9/35 (Maximum Monthly Capacity for Processing plans with respect to conduits and associated infrastructure, by geographic zone, by total of beneficiaries, during the first year of the offer application), of page 12/35 (Maximum Monthly Capacity for Processing Access Feasibility Assessments to Conduits and Associated Infrastructure, by geographic zone, by total of beneficiaries, during the first year of the offer application), of page 15/35 (Maximum Monthly Capacity for the installation of cables, by geographic zone, by total of beneficiaries, during the first year of the offer application) and of page 17/35 (Maximum Monthly Capacity for the removal of cables, by geographic zone, by total of beneficiaries, during the first year of the offer application) of the RCAO, shall be removed.

c) Where it is stated, "PTC may reserve, for a maximum period of one year, in the conduits and associated infrastructure that it operates, space for its own future use, provided that this reservation has due grounds in the guarantee of the appropriate future development of the services of PTC, such reservation of space being subject to annulment where such need is shown to be without grounds", this shall be amended to read "the concessionaire PTC may reserve, for a maximum period of one year, in the conduits and associated infrastructure that it operates, space for its own future use, provided that this reservation has due grounds in the guarantee of the appropriate future development of the concession services, such reservation of space being subject to annulment by ICP-ANACOM where such need is shown to be without grounds. [page 12 of version V.2 of the RCAO].

d) The maximum time limit permitted for the reply to feasibility requests with or without an alternative route shall be 15 calendar days. [table3 of page in 22 of version V.2 of the RCAO]

e) Where it is stated, "the calculation of these indicators shall be carried out at six month intervals", this shall be amended to read "the calculation of these indicators shall be carried out on a monthly basis". [paragraph 1 of page 23/35 of version V.2 of the RCAO]

f) The price categories "Monthly charge for space occupation by LE" and "Monthly charge for space occupation by excess cable" shall be removed [table 7 of page 25 of version V.2 of the RCAO]

g) Where it is stated, "Working days from 09:00h to 12:30h and from 14:00h to 17:30h", this shall be amended to read "Working days from 9:00h to 18:00h". [table 10 of page 27 of version V.2 of the RCAO]

h) In cases where PTC cancels the construction of new conduits and associated infrastructure, PTC shall accept responsibility as regards the beneficiaries affected by losses resulting from said cancellation (no. 6 of clause 5 (construction of New Conduits and Associated Infrastructure) of the Standard Contract).

i) In conformity with the correction of the determination of ICP-ANACOM of 26/05/06, in paragraph (b) of number 1 of clause 9 (Quality of Service) of the Standard Contract and in table2 (page. 21/35) of the RCAO, with respect to the PQS1 (time limit period for responding to requests for information on infrastructure), the term "calendar days" shall be amended to read "working days".

j) In conformity with the correction of the determination of ICP-ANACOM of 26/05/06, in paragraph (d) of number 1 of clause 9 of the Standard Contract and in table 2 (page. 22/35) of the RCAO, with respect to PQS4, where it is stated, "Time limit to schedule the monitoring of non-urgent intervention operations to be carried out by the beneficiary entity (installation, maintenance, repair and removal of infrastructures) - time duration, in consecutive hours, from the hour the concessionaire receives a repair intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service", this shall be amended to read "Time limit to schedule the monitoring of non-urgent intervention operations (installation, maintenance, repair and removal of infrastructures) to be carried out by the beneficiary entity - time duration, in consecutive hours, from the hour the concessionaire receives an intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service."

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1 <http://www.anacom.pt/template31.jsp?categoryId=195682>

2 <http://ptwholesale.telecom.pt/GSW/PT/Canais/ProdutosServicos/OfertasReferencia/RCAO/RCAO.htm>

3 <http://www.anacom.pt/template12.jsp?categoryId=162883>

4 <http://www.anacom.pt/template12.jsp?categoryId=196662>

5 <http://www.anacom.pt/template12.jsp?categoryId=196662>

6 <http://www.anacom.pt/template12.jsp?categoryId=162784>

7 <http://www.anacom.pt/template20.jsp?categoryId=4599&contentId=370465>