

Relevant market analysis – Summary table of adopted measures

	Adopted Measures											
Markets	SMP assessment			Obligations to be imposed to operators identified with SMP in each relevant market								
	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To ensure transparency through the publication of tariffs, levels of quality of service and other offer conditions	Not to show undue preference for specific end-users	To ensure the cost-orientation of prices	To maintain an analytical cost accounting system	To provide for accounting separation	To maintain accessible prices	To publish a proposal for the subscriber line resale offer (SLRO)	To implement selection and pre-selection	To manage the numbering plan according to the provisions laid down by ANACOM
Narrowband retail markets												
M1 - Access to the public telephone network at a fixed location for residential customers		X		X	X	X	X	X	X a)	X	X	-
M2 - Access to the public telephone network at a fixed location for non residential customers		X		X	X	X	X	X	-	X	X	-
M3 - Publicly available local and/or national telephone services provided at a fixed location for residential customers		X		X	X	X	X	X	X b)	-	-	-
M4 - Publicly international telephone services available at a fixed location for residential customers		X		X	X	X	X	X	-	-	-	-
M5 - Publicly available local and/or national telephone services provided at a fixed location for non-residential customers		X		X	X	X	X	X	X c)	-	-	-
M6 - International telephone services publicly available at a fixed location for non-residential customers		X		X	X	X	X	X	-	-	-	-
M19 - Telephone services for non-geographic numbers publicly available at a fixed location (outside the scope of European Commission Recommendation)		X		X d)	X	-	X	X	-	-	-	X

	Adopted Measures								
Markets	SMP assessment			Obligations to be imposed to operators identified with SMP in each relevant market					
Narrowband wholesale markets	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To ensure transparency on the provision of information, including reference proposals		Not to discriminate in the access and interconnection offer and in the respective information provision	Accounting separation concerning specific access and/or interconnection activities	To meet reasonable request for network access	Price control and cost accounting
M8 - Call origination in the public telephone network at a fixed location		X		X e)		X f)	X g)	X h)	X i)
M9 - Call termination in individual public telephone networks at a fixed location	X			-		-	-	X j)	X
		X		X e)		X f)	X g)	X j)	X i)
M10 - Transit services in the public fixed telephone network	No companies with SMP were identified			Ex-ante regulatory obligations shall not be maintained or imposed					
Broadband wholesale markets	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To allow the access to, and the use of, specific network resources	Financial report	Not to discriminate in the access and interconnection offer and in the respective information provision	Accounting separation concerning specific access and/or interconnection activities	To ensure transparency on the provision of information, including reference proposals	Price control and cost accounting
M11 - Wholesale provision of unbundled access (including shared access) to metallic loops and sub-loops to provide broadband and voice services		X		X k)	X l)	X m)	X n)	X o)	X p)
M12 - Wholesale provision of broadband access		X		X q)	X l)	X r)	X n)	X s)	X t)
Leased lines retail markets	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To allow the access to, and the use of, specific network resources	Financial report	Not to discriminate in the access and interconnection offer and in the respective information provision	Accounting separation concerning specific access and/or interconnection activities	To ensure transparency on the provision of information, including reference proposals	Price control and cost accounting
M7 - Minimum set of leased lines		X		-	-	X u)	-	X v)	X w)

Adopted Measures									
Markets	SMP assessment			Obligations to be imposed to operators identified with SMP in each relevant market					
Leased lines wholesale markets	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To allow the access to, and the use of, specific network resources	Financial report	Not to discriminate in the access and interconnection offer and in the respective information provision	Accounting separation concerning specific access and/or interconnection activities	To ensure transparency on the provision of information, including reference proposals	Price control and cost accounting
M13 - Wholesale market for leased line terminal segments		X		X x)	X y)	X z)	X n)	X aa)	X bb)
M14 - Wholesale market for leased line transit segments		X		X x)	X y)	X z)	X n)	X aa)	X bb)
Mobile wholesale markets	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To meet reasonable requests for access	Not to discriminate in the access and interconnection offer and in the respective information provision		To ensure transparency in the publication of information	Accounting separation	Price control and cost accounting
M15 - Call access and origination in public mobile telephone networks									
M16 - Voice call termination in individual mobile networks			X	X		X	X	X	X
M 17 - Wholesale national market for international roaming services in public mobile networks									
Broadcasting wholesale markets	All operators of the fixed network	Companies of the PT Group	TMN Vodafone Optimus	To allow the access to, and the use of, specific network resources	Financial report	Not to discriminate in the access and interconnection offer and in the respective information provision	Accounting separation concerning specific access and/or interconnection activities	To ensure transparency on the provision of information	Price control and cost accounting
M18 - Broadcasting services for the delivery of content transmitted to final users		X		X cc)	X y)	X dd)	X g)	X ee)	X ff)

NB: Does not replace consultation of the information available at ANACOM's website.

- a) With price-cap. The indicated price-cap covers installation, monthly charge and local, regional and national calls, combining the guarantee of accessibility with tariff flexibility, also applicable to markets of a residential nature (Markets 1 and 3).
- b) With price-cap on intra-network calls, efficient cost-orientation in the fixed-mobile retention and maintenance of the current rule for inter-network fixed calls.
- c) Efficient cost-orientation in the fixed-mobile retention and maintenance of the current rule for inter-network fixed calls.
- d) This information shall be published, particularly on the website of the provider.
- e) Publication of an Interconnection Reference Offer; publication of prices, terms and conditions; publication of technical information; publication of quality of service information.
- f) No undue discrimination in the provision of network access, including the offer of flat tariff interconnection.
- g) Costing system and accounting separation.
- h) Allow network access based on fair and reasonable conditions to operators of public networks of electronic communications; respond to reasonable requests for network access.
- i) To set cost-oriented prices and price controls.
- j) Allow network access based on fair and reasonable conditions to operators of public networks of electronic communications.
- k) Access to local loops and sub-loops and to associated facilities, to negotiate in good faith with undertakings requesting access and not to withdraw access to facilities already granted.
- l) Availability of accounting records (Customs Accounting System), including data regarding revenue from third parties.
- m) No undue discrimination in the provision of access to local loops and sub-loops and to related resources.
- n) Costing system and accounting separation.
- o) Publication of the RUO; 30-day notice of any alteration to the provisions thereof.
- p) To set prices on the basis of cost orientation; to maintain the adopted method to estimate costs and the possibility of moving towards prospective long-run incremental cost models.
- q) Access to the Public Switched Telephone Network at different points; to negotiate in good faith with undertakings requesting access and not to withdraw access to facilities already granted.
- r) No undue discrimination in the provision of network access; 30-day notice of any alteration to wholesale offers – in the event of significant alterations to wholesale offers, the notice period shall be 2 months; launch of retail offers restricted to the existence of equivalent wholesale offers in “PT ADSL Network”; send information with respect to maximum, average and minimum periods for delivery and for the repair of malfunctions and the degree of availability (separated by means of installation and by operator).
- s) Publication of the broadband access reference offer (“PT ADSL Network”), with alterations between versions clearly identified, and inclusion of SLAs and compensation for non-compliance.
- t) To set prices on the basis of cost orientation (broadband access services supported by the public switched telephone network); price controls (“retail minus”).
- u) Apply similar conditions in similar circumstances to companies and final clients.
- v) Disclose the following information on the minimum set of rented circuits:
 - Technical characteristics, including physical and electrical characteristics, as well as technical specifications and details of performance applicable to the terminal point of the network;

- Prices, including initial connection charges, periodic rental charges and other charges, with indication given whenever there is price differentiation (including discounts);
 - Conditions of supply, including obligatorily, order procedures, normal period taken for delivery, contractual period, typical repair time and degree of availability, and refund procedures where applicable.
- w) Set up and implement an appropriate cost control system; set prices on the basis of cost orientation.
- x) Respond to reasonable requests for access, with transparent, equitable and non-discriminatory conditions; forecast the possibility of co-installation in their installations; negotiate in good faith with undertakings requesting access and not to withdraw access to facilities already granted.
- y) Provide accounting records (Cost Accounting System), including data on revenue derived from third parties.
- z) Provide to alternative operators, information, facilities and services in time limits, on a basis and with a quality which shall be at least as good as that offered to the retail department and companies of Grupo PT; periods taken for the contractual delivery and repair of malfunctions applicable to the wholesale supply of leased circuits (including partial circuits of leased lines) shall be less than the periods taken for delivery in the retail markets; to not apply any loyalty discount and/or bulk and/or capacity discount. Any proposal in this context shall have due basis and grounds and shall be previously sent to ICP-ANACOM; to send on a quarterly basis, information in respect of the periods taken for delivery and repair of malfunctions and on the degree of availability, separated by capacity and by operator.
- aa) To publish an analogue and digital leased circuits reference offer up to and including 155 Mbps (including partial circuits of leased lines (and interconnection support components), to wholesale clients, including:
- The technical and performance characteristics of the various types of leased circuit segments;
 - Prices, duly specified by component;
 - Binding SLAs, including conditions of supply and migration, communication and malfunction repair, and the respective non-compliance penalties;
 - Specific conditions applicable to the conditions associated with routes, CAM circuits, to the service of partial circuits of leased lines (and interconnection support components), to the service of access to submarine cables and to the offer of symmetric xDSL technologies (if and when provided to retail or to the companies of Grupo PT).
- bb) Set prices on the basis of cost orientation; price control – minimum difference between the wholesale prices of leased circuits and the retail prices of the corresponding leased circuit, as practised by the companies of Grupo PT, shall be 26%.
- cc) Access to the terrestrial television broadcasting service; negotiate access to posts and other installations and locations for the installation and maintenance of systems, equipment and other resources.
- dd) No undue discrimination in the provision of access to services and to the network.
- ee) Availability to all interested parties of all relevant information necessary for access to terrestrial broadcasting wholesale services.
- ff) Set prices on the basis of cost orientation.

ACCESS TO THE CONCESSIONAIRE CONDUITS

Determination of 17.7.2004¹

Decision on the offer for access to the PT Comunicações, S.A. concessionaire conduits

Preamble

Pursuant to the Electronic Communications Law – Law no. 5/2004, of 10 February – the public telecommunication service concessionaire should provide, through an agreement, the companies that offer electronic communications networks and services accessible to the public the access to conduits, posts and other installations and locations they own or which management falls under their responsibility, for installation and maintenance of their systems, equipment and further resources (art. 26, no. 1).

In accordance with the same Law, it is the responsibility of the concessionaire to provide an offer for access to these resources containing the access and use conditions, under such terms defined by ICP - Autoridade Nacional de Comunicações (ICP-ANACOM) (article 26, no. 4).

Within this scope, the concession agreement guaranteed the access to the functionalities of the basic telecommunication network, including conduits (article 7 of the Concession Bases approved by Decree-Law no. 31/2003, of 17 February).

In many cases, the entities that offer electronic communications networks and services accessible to the public are facing difficulties in doing further investments in conduits in certain geographic areas, in an economically efficient manner, existing also physical limitations to the feasibility in investing in conduits, the latter being conditioned, on certain conditions, by restrictions of occupation of the underground due to saturation of the same or, further more, by municipal restrictions.

In this context, investment in conduits should be compatible with economic efficiency criteria, avoiding any inefficient duplication in infrastructures or inconveniences for citizens and economic activities due to the frequent and extensive realization of soil and subsoil works, with consequent disturbances at traffic and territory planning level, apart from the repercussions of environmental order arising out from it.

Under the terms of subsection c) of paragraph no. 2 of article 5 of Law no. 5/2004, it is the responsibility of ICP-ANACOM to encourage efficient investments in telecommunications infrastructures.

In this sense, both the access to the already installed conduits and the share of necessary investments in the installation of new conduits will contribute to avoid the undesired duplication of infrastructures and to reduce the global amount of investment supported by each company, reducing consequently the costs. Therefore, it is important to make the access to the concessionaire's conduits compatible with the appropriate investment planning by the same,

¹ Does not replace consultation of the information available at ANACOM's website, in particular the subsequent determinations.

ensuring that the beneficiaries' interests in the future concessionaire conduits be released in advance.

In addition, ICP-ANACOM has received claims from operators of fixed telephone networks and from operators of cable distribution networks related to the use of the concessionaire's infrastructures. The received claims refer, namely: (a) the impossibility for the operators to go on with the respective expansion plans through imposition of restrictions, by the concessionaire, in the infrastructure assignment conditions, namely sub-conduits, conduit space and visit chamber space and (b) pricing of too high fees and conditions that may be considered discriminatory.

Furthermore, the promotion of transparency in the conditions of access to conduits and associated infrastructure will contribute to a better market operation, notwithstanding the duties of inspection that pertain to ICP-ANACOM.

Within the scope of this decision the conditions of access to the concessionaire's posts and masters are not included, regarding which the above-mentioned problems did not take place, or the sharing conditions regarding other concessionaire's installations and places, which are foreseen in the Reference Interconnection Offer and in the Reference Offer for Local Loop Unbundling and which application is subsidiary as to this determination.

Taking into account these concerns, there is a need to create a set of mechanisms intended to promote the offer of an open network, contributing to ensuring conditions of a sound and effective competition and transparency in how the market operates.

This determination, in this context, fixes the general principles and conditions that should be followed in case of use and access to pipes and infrastructures of the concessionaire.

Thus, the interested parties being heard, the Board of Directors of ICP-ANACOM, pursuant to article 26 of Law no. 5/2004, of 10 February, determines:

1. For the purposes of the provisions contained in this determination and notwithstanding the definitions contained in article 3 of Law no. 5/2004, of 10 February, the following expressions will have the meaning set out opposite to it:

- a) «Access», provision of access to conduits and visit boxes and respective use;
- b) «Visit boxes», boxes for access to the cables installed along the conduits, which are integral part of the electronic communications network;
- c) «Conduits», pipes or sets of pipes, mostly underground or disposed alongside roads, which support, condition and protect other pipes (sub-pipes) or electronic communication cables;
- d) «Associated infrastructure», visit boxes and remaining infrastructures which will be indispensable for the installation, removal, maintenance or repair of electronic communication cables in conduits and sub-conduits;
- e) «Concessionaire», PT Comunicações, S.A;
- f) «Beneficiary entities», companies that offer electronic communications networks or services accessible to the public;
- g) «Electronic communications networks offer», setting, operation, control or provision of said network;

h) «Electronic communications network», such as contained in subsection x) of article 3 of Law no. 5/2004;

i) «Public communications network», the electronic communications network used, in full or in part, to the supply of electronic communications services accessible to the public;

j) «National Regulatory Authority (NRA)», ICP - Autoridade Nacional de Comunicações (ICP-ANACOM), which statutes were approved by Decree-Law no. 302/2001, of 7 December;

k) «Electronic communications service», such as contained in subsection cc) of article 3 of Law no. 5/2004.

2. The concessionaire should provide, upon request of the beneficiary entities, use and access to the conduits and visit boxes that are its property or which management is its responsibility, complying with the principles of transparency, non-discrimination and cost orientation.

3. As to the access conditions:

3.1 The concessionaire must provide, by agreement, when requested by the beneficiary entities, access and use of conduits and associated infrastructure which are their property or which management falls under their responsibility, for the installation, maintenance and removal of systems, equipment and further necessary resources to the offer of electronic communications networks and services accessible to the public. Exceptions of physical and technical impossibility are accepted and or which may be a threat to the health and safety of the personnel who works in infrastructures, provided that duly reasoned and as such accepted by ICP-ANACOM.

3.2 Agreements that are the result of the negotiation referred to in paragraph 1 should be reported by the concessionaire to ICP-ANACOM, by sending a copy of the agreement, within 10 days as from the date of the signature of the contract.

3.3 The concessionaire may foresee in the reference offer for access to conduits and associated infrastructure, booking of space intended to maintenance or repair of conduits and associated infrastructure and or cable installation maintenance or repair works, this booking forecast having to be duly reasoned.

3.4 Notwithstanding the space intended to the maintenance and repair works of conduits and associated infrastructure and or intended to cable installation maintenance or repair works, the concessionaire should leave, to be used by the beneficiary entities, in each pathway, an area corresponding to at least 20% of the internal area of each conduit (or of each pipe in the cases where the conduits accommodate several pipes, or of each sub-conduit in the cases where the conduits or pipes accommodate sub-conduits). Therefore, and of course without prejudice of the situations where the capacity installed by the concessionaire is incompatible with the above-mentioned limit of 20%, the concessionaire should not install cables or equipment that exceed said limit, except as in the duly reasoned cases showing that the use of additional space is necessary to meet the needs associated to the provision of the concession services.

3.5 In any case, the concessionaire is not allowed to install, in the conduits, pipes, sub-conduits and associated infrastructure, cables or any equipment that do not correspond to the current or foreseeable needs in terms of service rendering and which, as a result of the undue excessive space occupation, prevent or limit the access to infrastructures by the beneficiary entities.

4. Entities that offer electronic communications networks or services accessible to the public have access to the infrastructures referred to in the previous paragraph.

5. The concessionaire must submit to ICP-ANACOM, for verification of its conformity with the minimum determined requirements, within 90 days, calculated as from the final determination of ICP-ANACOM, on the “offer for access to PT Comunicações, S.A concessionaire conduits”, a reference offer for use and access to conduits and associated infrastructure that are its property or which management is its responsibility, which must comply with the principles of transparency, non-discrimination and cost orientation. This reference offer should be published at least 30 days in advance as to the respective date of entry into force.

6. The reference offer referred to in the previous paragraph should be delivered every year, notwithstanding another periodicity to be defined by ICP-ANACOM, in view of the evolution occurred in terms of market needs and development of infrastructures, containing the following minimum data:

a) Detailed conditions related to the access to conduits and associated infrastructures, whereby the concessionaire, except for what is foreseen in part I of the Annex to this determination, should ensure as follows:

i) taking into account the legitimate interests of all parties involved, that those conditions are not discriminatory, the technical and operational quality of access to conduits and visit boxes being equivalent to the one they offer to themselves or to the entities with whom they maintain a group relation or dominance;

ii) that the beneficiary entities receive access, or reasoning should access be impossible, within a reasonable period of time equivalent to the one they offer to themselves or to the entities with whom they maintain a group relation or dominance;

iii) whenever it is physically or technically unfeasible to meet the access requests put forward by the beneficiary entities, that proposals of alternative pathways similar to the initial request are sent, together with the reasoning referred to above, in accordance with Part I of the Annex to this determination.

b) Draft of a contract to be entered into between the concessionaire and the beneficiary entities, which must foresee quality of service indicators and levels and clauses that foresee any breach thereto;

c) The indicators to be included in the draft of the contract should cover, namely:

i) The time required to reply to a request to use and have access to the conduits and visit boxes – time, in calendar days, that elapses between the time the concessionaire receives from the beneficiary entity a request to use and have access to the conduits and visit boxes until the time the beneficiary entity receives a reply as to the feasibility for the request to be met;

ii) Time required to install the infrastructures – time, in calendar days, that elapses between the confirmation date of the feasibility for the desired installation and the date for which is requested the beginning of the necessary physical tasks;

- iii) Time to remove infrastructures – time, in calendar days, between the confirmation date of the feasibility for the desired removal and the date for which is requested the beginning of the necessary physical tasks;
- iv) Time for maintenance and repair operations – time, in calendar days, between the confirmation date of the feasibility for the desired maintenance operation and the date for which is requested the beginning of the necessary physical tasks.
- d) Prices that include the different items of the use and access to the conduits and visit boxes and the different items of the services to be provided, notwithstanding the provisions contained in Part II of the Annex to this document;
- e) Sizes of conduits and volume occupied for purposes of the assignment of the space and respective pricing;
- f) Description of the space available in the conduits and associated infrastructure, considered necessary for the development of the own infrastructures and that will probably be used during the validity of the reference offer;
- g) Sequence of procedures and interactions to be established with the beneficiary entities in the provision of information and opening of files, related, namely, to:
 - i) availability of space in the desired conduits and visit boxes, pursuant to the terms referred to in the annex;
 - ii) installation or removal of infrastructures in pipes and visit boxes;
 - iii) procedures to request, accept and book maintenance and repair operations.

7. Whenever conduits, visit boxes and associated infrastructures are designed, the concessionaire must:

7.1 inform ICP-ANACOM and all the other beneficiary entities, before the enforcement of the obligation to previously notify the municipal authority and never less than 2 months before, whenever they will design conduits, visit boxes and other associated infrastructures, so that they can mention their interest.

7.2 the concessionaire should size, whenever technically and physically feasible, the new conduits, visit boxes and other associated infrastructures, taking into account the accommodation of everything reported by the beneficiary entities.

8. In case of litigation related to the obligations resulting from this determination, the administrative dispute resolution applies, under the terms of article 10 of Law no. 5/2004, of 10 February.

ANNEX

I – Description of the infrastructures made available by the concessionaire

For purposes of the provisions contained in subsection a) of paragraph 6 of this decision, the concessionaire should meet the access requests sent by the beneficiary entities. Whenever it is

unfeasible to meet the mentioned request from the physical and technical point of view in a certain pathway, alternative pathways similar to the initial request should additionally be proposed.

In both cases, description of infrastructures which access may be granted shall contain a Global Detailed Project, including a plan, with a scale of at least 1/1000, the description containing:

- a) The number of visit boxes, its type, and distance quotas to reference elements, which can perfectly be identified, namely visit boxes that, due to its nature, or as a result of changes in the surroundings, physical access is difficult;
- b) The type of conduits, length of pieces, number of pipes, occupation of pipes, with explicit reference to the type of calibre of the already installed cables and distance quotas to reference elements which can perfectly be identified.

Should it not be possible to have the above-mentioned detail, the concessionaire should submit the documents that were used to carry out the previous communication procedures for the municipal entities.

In addition, it is important to identify, for each infrastructure, the availability of space to be used by the beneficiary, and which space may be freed both by the concessionaire and by the beneficiary entities.

The need for the description and identification of conduits and associated infrastructure require a complex flow of information between the parties, whereby from the transparency and availability of information to the beneficiary entities point of view, the concessionaire should build, maintain and update a database to provide descriptive information of conduits and associated infrastructure, to be gathered based on the concessionaire infrastructure record constantly updated during the several access requests and which disclosure to most beneficiary entities and to ANACOM should, according to efficiency standards, foresee the real needs of the beneficiary entities.

II - Pricing

In this context, there are two different payment means to be used by the beneficiary entities, according to the nature of the costs that are to be settled:

- **Monthly payments.** The following elements shall be considered in pricing:

- i) remuneration of a fraction, proportional to the space occupied by the beneficiary entity, amounting to the value associated to the infrastructure;
- ii) remuneration of a fraction, proportional to the space occupied by the beneficiary entity, of the amounts intended to keep the ordinary maintenance condition of the infrastructure in question;
- iii) Administrative expenses, ascribable to the beneficiary entities, paid by the concessionaire with the infrastructure in question.

- **Non-periodical payments.** Intended to remunerate the costs associated to:

- i) Location and installation of new infrastructures in the conduits and visit boxes operated by the concessionaire;

- • ii) Change or removal of the infrastructures installed in the conduits and visit boxes of the concessionaire;
 - • iii) Extraordinary repair and maintenance operations, promoted by the beneficiary entity.
- The following elements may namely be considered in the formation of these prices:
- • i) Costs of labour/hour for the above-mentioned actions;
 - • ii) Possible costs supported with building works, material used and other obligations directly related to the infrastructure in question;
 - • iii) Administrative costs, ascribable to the beneficiary entities, supported by the concessionaire with the service in question.



