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Autoridade Nacional de Comunicações
Avenida José Malhoa No. 12
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PORTUGAL

For the attention of:
Mr Álvaro Dâmaso, Chairman of the Board
Fax: +351-21-721-10-04

Dear Mr Dâmaso,

Subject: Case PT/2004/0060: call origination on the public telephone network provided at a fixed location in Portugal

Case PT/2004/0061: call termination on individual public telephone networks provided at a fixed location in Portugal

Article 7(3) of Directive 2002/21/EC¹: No comments

I. PROCEDURE

On 26 May 2004, the Commission registered two notifications by the *Autoridade Nacional de Comunicações* (“ANACOM”) concerning respectively the markets for call origination on the public telephone network provided at a fixed location and call termination on individual public telephone networks provided at fixed location.

Pursuant to Article 7(3) of the Framework Directive, national regulatory authorities (“NRAs”) and the Commission may make comments on notified draft measures to the NRA concerned.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (“Framework Directive”), OJ L 108, 24.4.2002, p. 33.

II. DESCRIPTION OF THE DRAFT MEASURE

II.1. Market definition

In defining the product markets, ANACOM relies on the Commission Recommendation on relevant markets² (“the Recommendation”). ANACOM has nevertheless carried out a test of the three criteria identified by the Commission in the Recommendation, with a view to justifying *ex ante* regulation.

As regards the relevant geographic market for call origination on the public telephone network at a fixed location, ANACOM concludes that the competitive conditions are sufficiently homogeneous to support a finding of a nationwide market. Consequently, the relevant geographic market comprises the entire territory of Portugal.

As regards the markets for call termination, the relevant geographic market is defined as consisting of each individual public telephone network within the national borders.

II.2. Finding of Significant Market Power (SMP)

ANACOM’s market review concludes that PTC and PT Prime companies (PT Group) have SMP in the market for call origination. The main criteria considered by ANACOM in reaching its conclusion are high market shares (PT Group’s market share has consistently been above 90%), market concentration on the basis of the Herfindahl-Hirschman Index (“HHI”), the overall size of the market leader (PT Group), barriers to entry and expansion, absence of countervailing buying power, and the profitability of PT Group as shown by the cost accounting system.

In the markets for call termination, ANACOM designated all individual network operators as having SMP, namely Cabovisão, Coltél, Jazztel, Novis Telecom, OniTelecom, PT Group, Refer Telecom and Vodafone Telecel. The main criteria relied on by ANACOM for SMP designation are: monopoly position enjoyed by each operator, level of prices and their reduction only as a result of regulation and not as a result of competition, profitability of PT Group as shown by the cost accounting system and the absence of countervailing buying power.

II.3. Regulatory remedies

ANACOM has decided to split its market analysis process into two stages and the current notifications are limited to the market definition and the SMP assessment. In its summary notification, ANACOM states that the regulatory obligations will be defined and imposed according to the policy objectives set out in national and Community legislation and taking into account the ERG Common Position on remedies. According to its work plan, ANACOM should launch a national public consultation during the month of July 2004 and subsequently notify the draft measures to the other NRAs and the European Commission no later than August 2004. The final decision is scheduled to be taken in September 2004.

² Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L114, 8.05.2003, p. 45.

III. NO COMMENTS

The Commission has examined the notifications and has no comment³. It notes ANACOM's statement in respect of remedies and recalls that all measures falling within the scope of Articles 15 or 16 of the Framework Directive, Articles 5 or 8 of Directive 2002/19/EC ("Access Directive") or Article 16 of Directive 2002/22/EC ("Universal Service Directive"), are subject to the procedure referred to in Art. 7(3) Framework Directive. Accordingly, ANACOM will have to notify the remedies it intends to impose in the markets concerned.

Pursuant to Article 7(5) of the Framework Directive, ANACOM may adopt the resulting draft measures and, where it does so, shall communicate it to the Commission.

The Commission's position on these particular notifications is without prejudice to any position it may take vis-à-vis other notified draft measures.

Pursuant to Point 12 of Recommendation 2003/561/EC⁴ the Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. You are invited to inform the Commission⁵ within three working days following receipt whether you consider, in accordance with Community and national rules on business confidentiality, that this document contains confidential information which you wish to have deleted prior to such publication. You should give reasons for any such request.

Yours sincerely,
For the Commission,
Mario Monti
Member of the Commission

³ Pursuant to Article 7(3) of the Framework Directive.

⁴ Commission Recommendation 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC, OJ L 190, 30.7.2003, p. 13.

⁵ Your request should be sent either by email: INFSO-COMP-ARTICLE7@cec.eu.int or by fax: +32.2.298.87.82.