

DECISION

definition of the procedure for sharing facilities and equipment in areas affected by means of complementary coverage (DTH) within DTT

Following the public tender opened by Regulation number 95-A/2008 of 25 February (hereinafter referred to as Tender Regulations) by determination of the Management Board of ICP - Autoridade Nacional de Comunicações (ANACOM) (National Communications Authority), of 20 October 2008, was awarded to PT Comunicações (PTC) the right to use frequencies, on a national basis, for the digital terrestrial television (DTT) broadcasting service to which Multiplexer (MUX A) is associated.

According to the provisions of the Tender Regulation and in the respective Specification, PTC is committed, in a tender *"To ensure that the population whose coverage is provided only through the use of complementary resources, specifically in DTH (...) – at most 12.8% of the population in the areas indicated in the tender – to make available at least the same services of the areas covered by land, as well as service levels and access conditions of end users comparable to other areas"* In this context, PTC committed itself to *"(...) subsidize, including manpower, equipment receiving terminals, antenna and cabling, the clients of areas not covered by terrestrial digital broadcasting so that they do not have any additional costs, as compared to other users."*

This obligation is an integral part of the Frequency Usage Right ANACOM number 6/2008, issued on 9 December 2008, for the purposes both under point d) of paragraph 1 and paragraph 2, both of article 9 of the title issued either under article 32, paragraph 1, point g) of Law number. 5/2004, of 10 February.

Such solution also follows from article 21, paragraph 1 of the Tender Regulations and article 17 of the qualifying title, stating that the obligations arising from the terms of the tender and the commitments made in the winning proposal are an integral part of the assigned title of usage rights.

Specifically concerning the option by resources to means of supplementary coverage, article 21 of the Tender Regulations admitted that coverage obligations contained therein were provided '(...) *through the use of complementary coverage replacing terrestrial broadcasting provided that, the same services of television programmes are available, that the levels of service and access conditions for end users in the areas concerned are comparable to those of the areas covered by land and that the population covered exclusively by such means does not exceed 14% of the national population*".

On 22 September 2010, PTC submitted¹ to this Authority the process of granting subsidies for decoder receiving equipment in areas with DTH complementary coverage, aiming to achieve, specifying, the commitment to which it is bound, particularly the principle of equivalence bound in this field.

Regarding the grant of subsidies for the purchase of DTT equipment by people with special needs, disadvantaged population groups and institutions of a proven social value, the matter is subject to autonomous decision².

In regard the definition of the eligibility criteria, procedures for allocation and implementation of obligations assumed on the sharing of equipment and facilities for DTH, additional clarification was provided by the PTC³, having held several briefings.

Given the spread of several documents of relevant information regarding this process and the need to incorporate in the frequency usage right ICP-ANACOM number 06/2008 the implementation of the commitment undertaken, ICP-ANACOM deemed necessary to clarify the obligations undertaken by PTC regarding the sharing of DTH facilities and equipment.

¹ PTC's letter with reference 20149047, of 22.09.2010.

² Determination of the Management Board of ICP-ANACOM of 24 March 2011, available at <http://www.anacom.pt/render.jsp?contentId=1079309>

³ Specifically through a letter with reference 20153446 of 08.10.2010, in reply to ANACOM-S70568/2010, of 30.09.2010, of *email* of 29.12.2010 and of letter with reference 20181312, of 14.02.2011, in reply to ANACOM-S15990/2011 of 07.02.2011.

The analysis performed by ICP-ANACOM to the documents in question showed that there is need to review some of the aspects contained therein particularly with regards to the following:

- 1) Cost of one DTH;
- 2) Maximum price of the first Set-Top-Box (STB) **of each DTH user**;
- 3) Period of subsidy application;
- 4) Price of additional STBs;
- 5) Request handling;
- 6) Delivery method of equipment;
- 7) Response time and installation;
- 8) Eligible users.

In this context, by determination of 9 March 2011, ICP-ANACOM approved a draft decision (DD) on the definition of the procedure for sharing installations and equipment in areas covered by complementary means (DTH), determining that the same shall constitute an integral part of the frequency usage right ICP-ANACOM number 6/2008, issued on 9 December 2008, as such binding the company to its compliment.

The draft decision was submitted to the prior hearing of PTC⁴, which provided its response within the time prescribed set for the purpose, by letter⁵ received by ICP-ANACOM on 25 March.

The reasoning put forward by PTC, as well as ICP-ANACOM's views thereon, have been reflected in the prior hearing report, which is an integral part of this decision and to the terms of which it is hereby referred.

Thus, taking into account the contents of the letters previously submitted by PTC and analysis made on the subject, as well as the reasoning presented in the prior hearing report, ICP-ANACOM's views on the sharing of DTH equipment and facilities is based on the following assumptions:

⁴ Notified by the letter ANACOM-S025365/2011 of 11 March

⁵ Letter with reference 20190106, of 25.03.2011

1) Cost of one DTH installation

PTC shows that an estimated 40% of the houses **should** not have facilities prepared for DTT. Recognizing that, it is not easy to objectively assess the exact number, or to dispose of any basis for estimating different values. Reaffirming this way its estimate for an average cost of a DTT installation of 66 Euros.

Admitting that 40% of all houses **may** not have facilities prepared for DTT in terms of antennas, ICP-ANACOM questions the basis of population, as a significant percentage dispose of subscription television services and do not even use analogue television service for reception on additional television sets.

ICP-ANACOM considers that it can only be justified to question the equivalent cost of an installation between DTT and DTH among interested users on the service, as they will bear the burden of this transition. On the other hand, believes that the average estimated cost of installation to a user with terrestrial coverage should consider two types of situations: in cases where it is necessary to install a new antenna and in cases where the existing antenna only needs reorientation.

In this context, given that to properly receive terrestrial analogue television (either as a main or secondary means) it is necessary that the reception facility be equipped for this purpose and considering that most receiver antennas installed can be harnessed for DTT, it is ICP-ANACOM's understanding that the percentage of potentially users who want to receive DTT and do not dispose of suitable antennas or that do not even have terrestrial antenna is around 5 % of the residual value,

In addition, taking into account that the percentage of DTT stations sharing analogue TV stations is around 48%, it is estimated that about 52% of the receiving antennas need to be re-oriented.

Therefore and based on a cost of 170 Euros for a DTT installation of and a cost of 100 Euros to undertake a re-orientation of a receiving antenna, ICP-ANACOM considers it acceptable in cases where users wish that, the installation be performed by agents of their choice or PTC partners who will directly charge the end user a maximum of 61 Euros for installation (net value of installation PTC's grant), regardless of the situation, for requests made by 6/30/2012. For this purpose PTC will provide a list of recommended installer agents by area.

The installer can still freely negotiate with the user the reception characteristics (i.e. number of LNB's) by specific proposal. In cases of buildings with more than one fire, a collective reception should be considered according to the existing infrastructures, in which case the installation cost per fire may not exceed the amount previously mentioned, i.e. 61 Euros.

2) Maximum price of the first STB of each DTH user

PTC refers that, according to the latest joint study of DECO/ANACOM, the minimum value for the average price of DTT Set-Top-Box (STB) is of 75.20 Euros. In addition, according to the same study the most economical STB will be discontinued, which will have an impact on the average price.

ICP-ANACOM believes that the form of measuring the average price of digital TV decoders cannot be indifferent to the volume of sales of each type of equipment, which reflects the trends of consumer options. As for the sales discontinuity of more affordable equipment, it is recognized that, if confirmed, it will naturally reflect the average price. For this reason, a periodic review mechanism is being considered for the most significant fluctuations.

ICP-ANACOM deems to be suitable for the user to withstand a maximum price of 55 Euros, in line with the average price of DTT reception equipment in the last semester, being acceptable that for the purpose of controlling the risk of fraud when a higher value is charged to the user, provided that reimbursement of the difference is processed over a period not exceeding 30 days in 95% of the cases.

PTC can however also provide to the users equipment with specific features or capacities at market prices.

3) Period of subsidy application

PTC does not consider reasonable and proportional an unlimited sharing throughout the duration of the title, pointing out that the tender is based on assumptions of revenue, investments and costs that led to certain profitability presumably adequate, but not observed (being that PTC practices prices of the variant tender, occurring changes in relation to known success factors). In this context, PTC does not consider it reasonable that, in addition to the reduction of revenue set out in the tender submitted, "it will further encumber the project, increasing costs of subsidies, given what was expected (...)" in the initial proposal.

In this connection one must remember that the use of complementary means was a PTC option, within the conditions of the Tender Regulations, and that this is not subsidization, but a reimbursement that aims to provide concerned users access conditions comparable to areas of terrestrial reception, naturally throughout the duration of the title.

ICP-ANACOM underlines that reasonableness can only be measured in terms of impact on DTH users, which cannot be more burdened than other users. What is in the tender and therefore in the title constitutes an obligation throughout the term of the frequency usage right.

ICP-ANACOM also notes that the late disclosure of DTT also generate, on the other hand, potential savings of the total amounts to be allocated either through reimbursement to users in DTH areas or through subsidization of the needy population and institutions of proven social value, particularly in relation to the reduction of equipment prices and the universe of potential DTT users, given the increasing number of television subscriptions.

In a preliminary hearing PTC proposed the introduction of a process for reviewing obligations imposed for a maximum period of three years from the date of switch off, according to the results obtained during the course of this period.

ICP-ANACOM considers that this proposal is consistent with the possibility of reviewing the implementation of the terms of compliance of the referred principle of equivalence.

To reiterate without prejudice that this reimbursement cannot fail to be allocated throughout the duration of the right of usage, admitting the express provision of a reassessment process of the terms for its achievement, within a maximum period of 3 years from the date of switch-off, in light of the experience arising from its implementation and expected downward trend in the number of reimbursements after switch-off.

4) Price of additional STBs

PTC states that there is no market price for DTH STB and that the value of about 80 Euros being charged for pay TV services includes subsidies in view of future gains, representing a commercial approach not applicable to DTT complementary coverage and that it is not comparable nor legitimate to establish any comparison of prices in this matter.

ICP-ANACOM understands that the reasonableness of the price is to be measured considering the impact on DTH users, since it is the principle underlying the condition under the Tender Regulations for complementary coverage, common to all issues raised around it.

In a preliminary hearing PTC states that it is free to determine prices of the equipment it sells, according to criteria of cost and profit margins common in a free pricing market system, accepting that an absolute value of 96 Euros be determined.

It is ICP-ANACOM's understanding that the fixation of an absolute maximum of 96 Euros for complementary DTH STB is reasonable in accordance with the underlying principles, for which the possibility of a reassessment by the end of 2012 is already envisaged.

This reimbursement will be maintained during the entire duration of the title and subject to revision.

5) Request handling

PTC claims to be unaffordable to absorb the handling cost (budgeted at 6 Euros per request), though previously declared to be willing to support it at an early stage of adhesion to DTT. In this regard stresses having made this statement in the context of STB subsidization / price, different from the now presented by ICP-ANACOM, not considering it fair that this Authority wants PTC to bear the burden.

ICP-ANACOM understands that users in DTH areas, eligible under this reimbursement programme, cannot be burdened with a cost of request handling resulting from a technological option of the operator. Serves this to say that affecting this or any other cost to the processing of these requests is a PTC's internal option, irrelevant to the monitoring of the obligations to which it is subject, since that in no case will ICP-ANACOM accept this cost to be borne by the user.

6) Delivery method of equipment

On this point, PTC said it would examine the possibility of providing a point of sale in each municipality partially covered by DTH or, alternatively, delivered by post to the user without shipping costs. PTC also noted that, with few exceptions, it will not be their own teams to make the DTH installations, but partners, consequently, should not be possible for the technician to bring the equipment.

ICP-ANACOM believes that PTC should proceed to finalize the operational model that would allow the receipt of applications and delivery of equipment by one of the

following procedures: (i) at a point of sale in each municipality covered, all or in part, by complementary means, or alternatively, (ii) by post with payment of the equipment upon receipt and, in the case of the first STB, at no cost to the user.

In a preliminary hearing, PTC describes the process of sale and assignment of reimbursements that will try to implement operationally.

Regarding the proposed procedure and ICP-ANACOM's understanding of the same, reference is made in this connection to the prior hearing report, which is an integral part of this decision, including the reimbursement programme for installation and equipment in areas covered by complementary means DTT, approved in point 1 of this decision, having been adapted, when applicable, in accordance with the understanding expressed in the report.

PTC must assume the burden of all users by having been wrongly informed by PTC, have incurred costs for terrestrial reception equipment in areas found to be covered by reception of complementary means.

7) Response time and installation

PTC plans to set up a reimbursement procedure for the purchase of equipment through bank transfer, for users who present proof of purchase and of eligibility. It is also stated that it will ensure the delivery of equipment for the period of a month (in 95 percent of the cases), unless when out of stock.

As in the previous point, ICP-ANACOM considers that PTC must proceed to finalize the operational model permitting the delivery of reimbursement, allowing in addition to the bank transfer that in exceptional circumstances, specifically when the applicant does not have a bank account and consequently a NIB, dully justified and treated case by case basis, payment of the reimbursement to be made by check or money order.

Furthermore, it considers that in cases where users wishes that installation be made by an agent of their choice or partners of PTC, the deadline for making the same should be equal to that of delivery of DTH STB, being that it is reasonable that after receiving the STB the user should not have to wait for more than a month for the antenna DTH to be installed.

Equal time for delivery of reimbursement should also be provided.

8) Eligibility of users with complementary means for reception by the Programme for granting subsidies aimed at people with special needs, disadvantaged population groups and institutions of proven social value.

PTC does not understand the way the issue is presented, considering that there is obligation arising from the proposal to cumulate contributions and subsidies.

ICP-ANACOM understands that reimbursement allocated to users in areas covered by complementary means (DTH) does not affect the granting of subsidies to them, in accordance with the commitment undertaken under point f) of paragraph 1 of article 12 of the qualifying title, provided that those concerned meet their eligibility requirements.

In fact, both situations (reimbursement DTH / subsidies) should be understood as complementary and the goals that gave (and give) rise to the origin to two situations are distinct and easily detectable.

Thus, under the Tender Regulations the option for DTH coverage was conditional, if adopted, the obligation to guarantee end-users in the areas concerned access conditions of comparable to those in areas covered by land (Article 21 of Regulation number 95-A/2008). The possibility of investigating the application of programmes to subsidize equipment for people with special needs was optional (would certainly be appreciated) and aimed at contributing to the rapid spread of DTT (up to the amount defined by the proponent).

The operative events in both situations are also distinct: in the first case, the grant stems from the location of the beneficiary in areas not covered by DTT and in the second, stems from the beneficiary integrating one of the previously defined by PTC in its proposal for the subsidy allocation for the purchase of DTT equipment.

ICP-ANACOM does not recognize the basis for the exclusion of users who, while meeting the eligibility conditions of the grant, live in DTH areas. In fact, the DTH grand puts them on equal footing with the users who have to migrate from analogue to digital at their expense. The possibility of subsidies for belonging to groups with special needs adds to that necessarily. The two realities serve as distinct and complementary objectives. Moreover, the combination of the two situations does not lead PTC to incur any additional costs, thus not changing the commitments to which it subscribes.

Therefore, taking into account the contents of the letters submitted by PTC and the analysis made on them, and the reasoning presented in the prior hearing report, the Management Board of ICP-ANACOM, pursuant to article 32, paragraph 1, point g) of Law number 5/2004, of 10 February, of point d) of paragraph 1 and paragraph 2, both of article 9 of the frequency usage right ICP-ANACOM number 06/2008 and under point l) of paragraph l) of article 26 of its Statutes, published in annex to Decree-Law 309/200, of 7 December, determines as follows:

1. To accept the allocation programme for sharing facilities and equipment in areas covered by means of complementary coverage (DTH) within DTT, which consists of the following:

"Process for DTT Complementary (DTH)

1. General description

The programme for assistance in areas covered by recourse to complementary means (DTT Complementary - DTH) to replace terrestrial broadcasting, allows the assignment of a reimbursement for the purchase of equipment and

installation DTH decoder to a universe of eligible users in accordance with the conditions of the programme.

The user should verify if he is an area covered by DTT or Complementary DTT, using for this purpose, the phone number or DTT's Website.

If the user is in an area without DTT coverage, he should go to a point of sale that will be posted on the website and at the call centre to get a Complementary Kit DTT (DTH).

At the point of sale the applicant of DTT Complementary must provide proof that he has no DTT coverage, subject to submission of a proof of address.

In specific situations, particularly in cases where a point of sale is unavailable, the selling process can be made by post.

In cases where eligible users wish, installation will be made by an agents of their own or PTC partners who will directly charge the end user a maximum value of DTH installation. In these situations the installation process will be settled directly between the user and the installer of a recommended list who will ensure the installation price for a STB, defined by ANACOM.

The reimbursement for users in areas covered by complementary means of DTH does not affect the allocation of grants under the subsidy programme aimed at people with special needs, disadvantaged population groups and institutions of proven social value, provided the applicants meet the conditions for eligibility. In cases where both are applicable, PTC will enable their joint request.

2. Conditions for eligibility

Eligible users for the purchase Supplemental Kit (DTH) DTH and installation are people in an area not covered by DTT (terrestrial broadcast). Such verification can be made by the user through the Website dedicated to DTT or via a toll-free for

DTT Services and validated by PTC. PTC must clearly inform the user if he is an area with DTT coverage or DTT complementary coverage.

Each user can only purchase one Complementary Kit DTT (DTH) per household. In addition, it is essential that there are no contracted pay-TV services (Pay TV). Any user in a DTH area, despite the availability of pay-TV services, should however be able to acquire the number of STBs decoders needed, as specified in point 4 for additional STBs.

Applications shall be accepted only where the following requirements are met:

- i) Legible copy of Identity Card, Citizen Card or passport (in case of a foreign person living in Portugal) and copy of Tax Number of the resident (for applicants who do not hold a Citizen Card) or, in the case of non-residential buildings, proof of applicant status;*
- ii) Proof of address (electricity bill, water, gas, etc.);*
- iii) Copy of proof of purchase of Complementary Kit DTT (DTH)*
- iv) Subsidy application form, available at the DTT website and PT stores, signed by the applicant (according to the Identity Card, Citizen Card or passport);*
- v) BIN (Bank Identification Number) for transfer of the reimbursement, where applicable;*

3. Implementation deadline

Applicants may purchase a Complementary Kit DTT (DTH) and additional STBs until 9 December 2023.

Applicants may benefit from installation conditions established in this programme until 30 June 2012.

4. Value of Complementary Kit DTT (DTH), additional STBs and installation costs

The current value of the Complementary Kit DTT (DTH), which includes decoder, remote control, connection cables and smartcard, to be borne by the applicant, is 55 Euros after receiving the reimbursement, corresponding to the average price per DTT STB (depending on price and volume of units sold of each type of equipment).

Bearing in mind the foreseeable developments in the rise of costs of DTT equipment, this figure may be revised every six months, upon ICP-ANACOM's initiative, should the price now fixed face a variation of over 10% in the average six month price of STBs for DTT reception.

The price of additional STBs (also including remote control, connection cables and smartcard) for the same house is 96 Euros. The conditions for additional STBs equally apply to all STBs, including the first, when requested for houses having pay-TV services.

In addition, STBs may be made available with specific features or capabilities at market prices to interested users for accessing DTT services in DTH areas.

In the cases where users wish to install DTH on their own, this installation will be made by agents of their choice or partners of PTC, who will charge a maximum of 61 Euros (VAT included). To this end, PTC will provide a list of recommended agent installers by area.

The user may negotiate with the installer the reception characteristics (i.e. number of LNB outputs) by specific proposal and in case of buildings with more than one fire, collective reception should be considered depending on the

existing infrastructure, in which case the installation cost per fire will not exceed the prescribed amount, i.e. 61 Euros.

The share of the installation cost on to install an additional STB (i.e. when beyond the installation of the antenna, cabling and other infrastructure for STB reception), may be budgeted on a case-by-case basis, between user and installer.

5. Place of receipt of applications and equipment delivery

PTC must ensure:

- i) In each municipality with coverage, in whole or in part, by complementary means and at least one retail store of television sets, including, as appropriate, a place for receipt of installation requests and for delivery of Complementary Kit DTT (DTH) or additional STBs to users. The list of points of sale will be available on the website dedicated to and a toll-free for DTT service.*
- ii) In specific situations, particularly in cases where there is no point of sale available, the possibility of receiving requests and delivery of equipment by mail with payment at the time of receipt and at no cost to the user for the first STB.*

6. Procedure

The procedure for acquisition of a Complementary Kit DTT (DTH) or additional STB and DTH installation must meet the following assumptions:

- i) The applicant verifies the location, through the Website dedicated to DTT or toll-free service for DTT, the need for receiving DTH;*

- ii) *The applicant acquires the Complementary Kit DTT (DTH) or additional STB at a point of sale designated by PT for the corresponding municipality or, in specific situations, through the post office box for DTT Services;*
- iii) *The applicant may also indicate, at the same time and by the same means, as in the previous point, the preference of an agent or partner of PC to install DTH.*
- iv) *At the point of sale the applicant shall submit, in person, personal and tax identification, as well as data confirming that the area is covered by complementary means, which are validated at the time of presentation. In exceptional situations of doubt as to the conditions for eligibility, PTC can send the request received to a centralized back office for assessment;*
- v) *The user takes the Complementary Kit DTT (DTH) or additional STB or, in case of local stock shortage, orders the equipment which will be delivered within the period not exceeding one month in 95% of the cases.*
- vi) *After purchasing the equipment and for the purpose of reimbursement, the applicant submits the documentation specified under "Conditions for eligibility" to the post office box of DTT Services;*
- vii) *Following receipt of documentation, PTC will proceed with verification of eligibility to allocate the reimbursement:*
 - a. *If the request is accepted:*
 - *If the equipment has already been purchased, reimbursement will be made through bank transfer through the BIN indicated by the applicant within one month after the date of receipt or dispatch of documentation in 95% of the cases. Proof of the bank transfer will be sent by registered post with acknowledgement;*
 - *Under exceptional circumstances, specifically where the applicant does not have a bank account and therefore lacks a BIN, the reimbursement*

duly justified and handled on a case-by-case basis, will be processed through check or money order;

- If the equipment has been requested by mail, it will be sent to the applicant within a month of the receipt or dispatch of documentation in 95% of the cases, at which time the user pays an amount discounting the value of the applicable reimbursement;

b. If the request for reimbursement is not accepted, the reason for ineligibility will be sent by letter or email (depending on what has been requested by the applicant) will be communicated to the applicant within a month of the date of receipt or dispatch of documentation in 95% of the cases.

viii) In cases where the user has requested PTC for an agent or partner for DTH installation, the installation must be done within a month from the date of request in 95% of the cases."

- 2.** *To determine that the reimbursement programme, referred to in the preceding paragraph, shall become an integral part of the frequency usage right ICP-ANACOM number 06/2008, issued on 9 December 2008, binding as such the company to its compliance.*
- 3.** *Achieving compliance with the terms of the principle of equivalence, article 9 that PTC is required under point d) of paragraph 1 and paragraph 2 both under the frequency usage right ICP-ANACOM number 06/2008, may be reviewed within a maximum period of three years from the date of switch-off, by reasoned request from PTC.*
- 4.** *To determine that PTC must conform to the information provide on the programme for assistance in areas covered by recourse to complementary means (DTT Complementary - DTH) to the terms herein.*

Lisbon, 7 April 2011