

DECISION

changing the value of the Complementary DTT (DTH) Kit and clarifying the respective Subsidy Programme

I - Change in the value of the Complementary DTT (DTH) Kit

By determination of the Management Board of ICP - Autoridade Nacional das Comunicações (ICP - ANACOM), of 7 April 2011¹, this Authority accepted a programme for granting subsidies for installation and equipment in areas covered by means of complementary coverage (DTH), in the scope of DTT (hereinafter the Programme), which integrated the Right of Use for Frequencies No 06/2008², thus binding PT Comunicações, S.A. (hereinafter PTC for short) to compliance therewith.

This determination has ensured compliance with the principle of equivalence which PTC must observe under paragraphs 1d) and 2 of article 9 of the mentioned right of use for frequencies.

The Programme established that the value of the Complementary DTT (DTH) Kit, first STB³ - hereinafter DTH Kit - to be borne by the subsidy applicant, after having received the reimbursement, would be €55, which corresponds to the average price per DTT STB⁴.

Moreover, taking into account the likely evolution of costs of DTT equipment, it was also determined that this figure could be adjusted every six months, upon ICP-ANACOM's initiative, *«should the price (...) fixed face a variation of over 10% in the average six month price of STBs for DTT reception»*, thus ensuring that the principle of equivalence would be appropriately observed for the entire duration of the Programme⁵.

Six months on the approval of the Programme, it is now time to check the evolution of the average price of STBs for DTT reception and to assess whether it is necessary to adjust the value of the DTH Kit to be borne by the applicant after being reimbursed, in order to guarantee an appropriate implementation of the referred principle of equivalence.

Evolution of the average price of STBs for DTT reception and assessment of the condition established for adjusting the DTH Kit value

To analyse and monitor the evolution of STB prices, ICP - ANACOM concluded with GfK PORTUGAL - MARKETING SERVICES, S.A., a contract covering the regular provision of data on the TV and decoder retail market (PTV and set-top-boxes market).

This adjustment is thus based on Reports for the 2nd and 3rd quarters of 2011 submitted by that company. Collected data were obtained by GfK's retail panel team, through a sample of around 2350 points of sale, representative of a set of 6000 stores. GfK estimates that its retail

¹ <http://www.anacom.pt/render.jsp?contentId=1080844>

² <http://www.anacom.pt/render.jsp?categoryId=303315>

³ Including decoder, remote control, connection cables and smartcard.

⁴ According to the price and volume of units sold for each type of equipment.

⁵ Cfr. Point 4, 2nd paragraph of the Programme.

panel team covered around 92% of the market for sales of these products to final consumers in 2010.

On the basis of data collected by GfK, it is verified that, for the six-month period between April and September 2011, the average price of a DTT STB is now around 40€.

This means, in the present case, that the value achieved by reference to the April-September period shows a downward change by more than 10%⁶ of the price currently set for the DTH Kit, which is 55€.

ICP - ANACOM thus deems it appropriate to change the DTH Kit value to be borne by the user, after being reimbursed, to €40, in line with the average price of DTT reception equipment during the last six months, in order to maintain the equivalence of conditions of access between DTT and Complementary DTT (DTH) end users.

As conditions that justify this determination⁷ exist since 7 October 2011, that is, since the end of the first six-months during which the €55 value was in force, this Authority believes that this new value should be applied to applicants whose (copies of) bills proving the purchase of the DTH Kit show a date subsequent to the one referred earlier.

PTC, within 10 days from reception of notification hereof, must update the information made available at the DTT website, call centre and stores to where people interested in the programme are directed, in conformity herewith.

II - Clarification of the procedure defined in ICP - ANACOM's determination of 7 April

In the scope of the follow-up of the Programme under consideration and so that an appropriate compliance with determination of 7 April is fully achieved, ICP - ANACOM deems it fundamental to clarify the following:

1. Procedure for verifying the type of DTT coverage available

Under Point 1. 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.

Subsequently, Point 2. goes on to say that 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 complementary DTT coverage.

However, certain areas of the country are identified in the DTT website as follows: «You live in an area with partial DTT coverage». This information is supplemented as follows: «Please consult a qualified installer to verify the coverage conditions of the location».

Informing the interested party that he/she lives in an area with partial DTT coverage, forcing him/her to search for the missing information (by consulting a qualified installer, whose visit to the location for assessment purposes implies a cost which the applicant must bear) is plainly not a clear way of providing information, as PTC was bound to do.

⁶ In fact, this corresponds to a variation by 27.3%.

⁷ Although GfK's results for the 3rd quarter of 2011 were only conveyed to ICP - ANACOM by the end of October.

As such, in case the signal level fails to provide full assurance of a proper DTT reception, although in theory it meets the standard provided for the purpose (the “partial coverage” referred to by PTC), ICP - ANACOM believes that the user should be clarified that he/she lives in an area where DTT coverage is available in theory, according to the network planning, however the signal level is close to the threshold.

It is clarified that PTC must not reverse the burden, given that, under the Programme, it is incumbent upon it to provide clear information to users - which means, at no cost for the latter - as to the type of coverage (DTT or Complementary DTT) available to them.

Where this information may not be provided immediately and unambiguously through the DTT website or toll-free number, it must be sent to the applicant within at the most 7 days, for 95% of cases, through the means (telephone, email or post) indicated by the applicant for the purpose at the time of the request.

2. Eligibility conditions

Under Point 2. of the Programme, each user can only purchase one DTH Kit per household, and in addition, it is an essential condition that no pay-TV services have been contracted.

This Authority clarifies that in the cases of the Autonomous Regions of the Azores and Madeira, users of the so-called “0 Package”⁸ may be considered, for subsidy purposes, as non-eligible, however they are entitled to purchase DTH decoders at a non-co-financed price.

To implement this clarification of eligibility conditions, ICP - ANACOM takes the view that a change must be introduced in the statement which applicants for the DTH subsidy must sign testifying that they are not provided with pay-TV services, so that the applicant may also testify that, being a resident in one of the Autonomous Regions, he/she is not a beneficiary of the so-called “0 Package”.

3. Possibility of receiving applications and of delivering equipment by post

Under Point 5., ii) of the Programme, the possibility of receiving applications and of delivering equipment by post is only provided for in specific situations, namely in cases where there is no point of sale available.

In this scope, ICP - ANACOM clarifies that PTC should also privilege the use of these means in those situations which involve applicants with special needs or reduced mobility, where the distance between the residence of the applicant and the point of sale exceeds 5 Km.

By determination of 2 December 2011, the Management Board of ICP - ANACOM approved a draft decision (DD) changing the value of the Complementary Kit (DTH) and clarifying the respective subsidy programme.

⁸ Beneficiaries of protocols for access to national TV channels concluded between the Government of the Portuguese Republic, the respective Regional Governments, ICP - ANACOM and operators of cable distribution networks (Cabo TV Açoreana, SA and Cabo TV Madeirense, SA).

This draft decision was submitted to the prior hearing of PTC⁹, which provided a response within the time-limit set for the purpose, by letters received at ICP - ANACOM on 22.12.2011¹⁰ and 27.12.2011¹¹.

The reasoning put forward in the response, as well as ICP - ANACOM views thereon have been included in the prior hearing report, the text of which is hereby referred to, being the basis for this decision and deemed to be an integral part hereof.

Therefore, in the light of the above, the Management Board of ICP - ANACOM, under paragraph 1g) of article 32 of Law number 5/2004, of 10 February, as amended by Law number 51/2011, of 13 September, and paragraphs 1 d) and 2 of article 9 of the right of use for frequencies ICP - ANACOM No 6/2008, and by virtue of point l) of article 26 of its Statutes, published in annex to Decree-Law number 309/2001, of 7 December, and in conformity with point 4 of the programme for granting subsidies for installation and equipment in areas covered by means of complementary coverage (DTH), in the scope of DTT, hereby decides as follows:

1. To determine that the value of the Complementary DTT (DTH) Kit, first STB, established in Point 4. of the Programme, to be borne by the applicant, after having received the reimbursement, is €40, which corresponds to the average price per DTT STB.
2. The value set out in the preceding paragraph shall apply to all DTH Kit co-finance processes attaching a copy of the bill proving the purchase of the referred equipment, the date of issue of which must be subsequent to 7 October 2011.
3. For the purposes of the preceding paragraph, PTC, on its own initiative, shall reimburse all applicants who, having attached to their reimbursement applications a bill proving the purchase of a DTH Kit with a date between 7 October 2011 and the date of this decision, have already received part of their due reimbursement, using for the purpose the reimbursement method already used under the Programme (bank transfer or, in exceptional cases, cheque or money order).
4. To determine that PTC must adjust procedures for providing users with information on the type of DTT coverage available to them according to clarifications made herein by this Authority relatively to the contents of determination of 7 April 2011.
5. To determine that PTC, within 10 consecutive days from the date of reception of notification of this decision, must update the information provided on the subsidy programme in areas covered by means of complementary coverage (Complementary DTT - DTH), namely the DTT website, call centre and stores to where people interested in the programme are directed, on the basis of contents herein.
6. To determine that PTC must send to ICP - ANACOM, for validation purposes, a proposal for amendment of the eligibility conditions form, to be filed in by subsidy applicants who, in the Autonomous Regions, are beneficiaries of the "0 Package", within 5 days from the date of reception of notification of this decision.

Lisbon, 6 January 2012.

⁹ Letter ANACOM-S099136/2011, of 5.12.2011.

¹⁰ Letter PTC with reference 20244952.

¹¹ Letter PTC with reference 20245915.