

**DECISION ON THE PRICING OF THE (TERRESTRIAL) TELEVISION SIGNAL DISTRIBUTION AND (ANALOGUE) BROADCASTING SERVICE, AS CHARGED BY PT COMUNICAÇÕES, S. A.**

Pursuant to paragraph 3 of article 16 of the Concession Bases for the telecommunications public service, approved by Decree-Law number 31/2003 of 17 February, it is incumbent upon ICP-ANACOM, having heard the then Institute for Social Communication (ICS) - now Gabinete para os Meios de Comunicação Social - GMCS (Media Services Office) -, to ensure that the price regime for access to the (terrestrial) television signal transport and (analogue) broadcasting network complies with the principles of transparency, non-discrimination and cost orientation.

By ICP-ANACOM determination of 02.08.2007, approval was given to a decision on the definition, assessment of significant market power, and imposition, maintenance, amendment or suppression of regulatory obligations in the wholesale market for broadcasting transmission services, to deliver broadcast content to end users.

As regards the (terrestrial) television signal distribution and (analogue) broadcasting service, and further to the above-mentioned market analysis and resulting imposition of obligations, PT Comunicações, S. A., (PTC) maintains at the present the obligation for cost orientation of prices.

By determination of 10.09.2008<sup>1</sup>, ICP-ANACOM imposed on PTC the reduction of prices of each of the individual features which form part of the (terrestrial) television signal distribution and (analogue) broadcasting service, by at least 23%, in order to guarantee compliance with the principle of cost orientation.

It should be noted that on 18.04.2008, PTC concluded Memoranda of Understanding (MoU) with television operators (Radio e Televisão de Portugal, S. A. [RTP], Sociedade Independente de Comunicação, S. A. [SIC] and Televisão Independente, S. A. [TVI]) which describe the commercial conditions agreed upon, divided into two different periods of time:

- (a) During the simulcast period (which is taking place now);
- (b) After the country's full DTT coverage.

In this context, SIC requested of ICP-ANACOM, by letters dated 25.01.2010, 28.01.2011 and 02.02.2011, the reduction of prices of the television signal distribution and analogue broadcasting service charged by PTC, having presented a new request on 09.06.2011, considering that this Authority should state its opinion on the referred price in the framework of this decision.

It should be recalled that in the scope of the allocation of a right of use for frequencies for the terrestrial digital television broadcasting service (for Multiplexer A), a price for the provision of the terrestrial digital television broadcasting service was presented, which must be observed by PTC pursuant to article 16 of the right of use for frequencies No 6/2008<sup>2</sup>, allocated by ICP-ANACOM determination of 20.10.2008.

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<sup>1</sup> Vide <http://www.anacom.pt/render.jsp?contentId=656180>.

<sup>2</sup> Vide [http://www.anacom.pt/streaming/TDT\\_delib91222008.pdf?contentId=764139&field=ATTACHED\\_FILE](http://www.anacom.pt/streaming/TDT_delib91222008.pdf?contentId=764139&field=ATTACHED_FILE)

PTC argued, in the scope of the prior hearing relatively to the draft decision of 23.07.2008 on the price of the television signal distribution and analogue broadcasting service, that in case the reduction by 23% imposed by ICP-ANACOM took effect, PTC's capacity to recover future investment costs (subsequent to 2007) would be undermined. Notwithstanding, it was found that the margin of the terrestrial television signal (analogue) broadcasting service achieved by PTC both for 2009 and 2010 was positive.

In fact, after an analysis of the available costing data<sup>3</sup>, concerning results of PTC's cost accounting system (CAS) for 2010, ICP-ANACOM verified that the terrestrial television broadcasting service presents a margin by [Start Confidential Information] [End Confidential Information], given that costs decreased relatively to 2007, which was the basis for the decision taken in 2008. This margin is not compatible with the principle of cost orientation.

Therefore, whereas:

- (a) Pursuant to paragraph 3 of article 16 of the Concession Bases for the telecommunications public service, prices of the analogue television signal distribution and broadcasting service must comply with the principles of transparency, non-discrimination and cost orientation;
- (b) Compliance with the principle of cost orientation of prices of the analogue terrestrial television signal distribution and broadcasting service has been weighted through PTC's cost accounting system;
- (c) The margin of the analogue television signal distribution and broadcasting service, based on data concerning results of PTC's cost accounting system (CAS) for 2010, is positive;
- (d) PTC has significant market power in the wholesale market for broadcasting transmission services through terrestrial analogue networks;
- (e) The obligation for cost orientation of prices of the analogue terrestrial television signal distribution and broadcasting service must be complied with until the switch-off;
- (f) This determination involves measures with significant impact on the market under consideration;
- (g) Under paragraph 1 of article 57 of Law number 5/2004, of 10 February, as amended by Law number 51/2011, of 13 September, where decisions to be adopted are likely to affect trade between Member States, the NRA must make the substantiated draft decision accessible to the European Commission, the Body of European Regulators for Electronic Communications (BEREC), and the national regulatory authorities in other Member States, in an appropriate form, indicating the information deemed to be confidential;

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<sup>3</sup> Costing data of 2010 was submitted by PTC on 01.08.2011. It should be referred that by determination of 21.07.2011, ICP-ANACOM approved a final decision on the revision of the cost-of-capital rate calculation of PT Comunicações, for 2010 and 2011. Although 2010 CAS data changed, it is deemed that such changes do not alter conclusions reached herein.

- (h) Pursuant to Commission Recommendation 2008/850/EC, of 15 October 2008, on notifications, time limits and consultations provided for in article 7 of 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, draft measures that change the technical details of previously imposed regulatory remedies and do not have an appreciable impact on the market (e.g. annual updates of costs and estimates of accounting models, reporting times, delivery times), should be made available to the Commission by means of the short notification form contained in Annex II to the above-mentioned recommendation;
- (i) By determination of 07.10.2011, the Management Board of ICP-ANACOM determined to submit the draft decision intended to be adopted to a prior hearing of interested parties and to the general consultation procedure. Comments received, the respective analysis and grounds for the decision are included in the “Report of the prior hearing and general consultation procedure on the draft decision on the price charged by PT Comunicações, S. A. for the (terrestrial) television signal distribution and (analogue) broadcasting service”;
- (j) By determination of 2 February 2012, ICP-ANACOM approved the draft decision to be submitted to the specific consultation procedure before the European Commission BEREC and the national regulatory authorities of other Member States of the European Union, on the price of the (terrestrial) television signal distribution and (analogue) broadcasting service, as charged by PT Comunicações, having also approved the report of the prior hearing and public consultation to which the corresponding draft decision was submitted, further to the referred determination of 7 October 2011.
- (k) By letter dated 06.03.2012, the European Commission, in its observations, urged ICP-ANACOM to carry out as soon as possible a new analysis of the market of television broadcasting and distribution services, notifying the results thereof to the Commission, according to article 7 of the Framework Directive;
- (l) The above-mentioned observations made by the European Commission do not prevent the adoption of measures under consideration;

The Management Board of ICP-ANACOM, in the scope of powers granted under article 6 b), e), f) and n) of the Statutes in annex to Decree-Law No 309/2001, of 7 December, in the pursue of assignments provided for in article 9 b) and g) of these Statutes, taking into consideration regulation objectives provided for in paragraph 1 a) and paragraph 2 b) of article 5 of Law no. 5/2004 of 10 February, as amended by Law No 51/2011, of 13 September, and under paragraph 3 of article 16 of the Concession Bases of the Telecommunications Public Service, approved by Decree-Law No 31/2003 of 17 February, and to implement measures determined following the assessment of the wholesale market for broadcasting transmission services, to deliver broadcast content to end users, hereby determines as follows:

- (a) PTC must lower the price of each of the features which integrate the terrestrial analogue television signal distribution and broadcasting service, by at least 29.6%, so as to guarantee that the price regime of the service in question complies with the principle of cost orientation. This percentage may be adjusted at a future time by ANACOM in the light of results of audits to PTC's cost accounting system;

- (b) New prices take effect on the date of approval of the final decision;
- (c) PTC must submit to ICP-ANACOM a copy of the amended pricing within 10 days from approval of the final decision.