DECISION

OBLIGATION TO CONTROL PRICES

Wholesale markets for voice call termination on individual mobile networks

ICP-ANACOM
May 2010

1. FRAMEWORK

Law No 5/2004 of 10 February (hereinafter LCE) approved the legal regime governing electronic communications networks and services and associated facilities and services, defining the powers of the National Regulatory Authority (NRA) in this area.

This legislation transposes Directives Nos 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC, all of the European Parliament and of the Council of March 7 and EC Directive No 2002/77/EC of 16 September.

The NRA - ICP-ANACOM - is charged with defining and analyzing the relevant markets, identifying undertakings with significant market power (SMP) and determining appropriate measures to companies which offer electronic communications networks and services (Article 18 of LCE).

This process is carried out according to the following stages (articles 55 to 61 of the LCE)[1]:

- Definition of the relevant market (article 58 of the LCE)
- Analysis of the relevant market (article 59 of the LCE)
- The imposition, amendment or withdrawal of regulatory obligations (art 55 and 59 of the LCE).

1.1. The 2008 decision to Control Prices

In June 2008, ICP-ANACOM adopted a decision to control prices (Hereinafter 2008 Price Control Decision), based on the Market Analysis Decision of 25.02.2005. In this decision, ICP-ANACOM decided that it remained important to follow a progressive evolution of termination rates by means of a new glide-path, in order to allow operators to make the necessary adaptations and avoid approaches that might be deemed unduly disruptive. Additionally, ICP-ANACOM also decided that, in the absence of any reduction in termination rates on mobile networks since 01/10/2006, with harm caused to other operators and consumers, there are grounds for enacting a steeper drop at the outset.

[1] Articles 7 and 14 to 16 of the Framework Directive.

ICP-ANACOM also considered a longer transition period for Sonaecom, over two quarters, resulting in a moderate and transitory tariff differentiation in termination rates, primarily to reduce the problems arising from the existence of market failure due to high on-net and off-net price differentiation, exacerbating the effects of network externalities, which causes a level of traffic imbalance which is unfavourable to that operator.

ICP-ANACOM took the decision with basis in the exception to the general symmetry of the ERG Common Position[2] which states that "*a transitory asymmetry in favour of the smaller operator(s) may be applied under the following cumulative circumstances:*

- *There are high traffic imbalances and thus important interconnection financial imbalances, as a result of operators' strategies (high differentials between on-net price and off-net price);*
- *MTR tariffs are significantly above MTR costs;*
- *Where the NRA considers that there are benefits of setting transitory asymmetric termination rates (such as potential increases in retail competition) and that these outweigh any short term disadvantages of doing so*."

Bearing in mind the analysis conducted, ICP-ANACOM deemed that the three cumulative conditions mentioned are found in the national market.

The prices stated in that decision were the following:

[2] Available at http://erg.eu.int/doc/publications/erg_07_83_mtr_ftr_cp_12_03_08.pdf

Table 1 - Downward movements in mobile termination rates (Decision of 02.07.2008)

	Fixed-Mobile, Mobile-Mobile and International Mobile Termination	
	TMN and Vodafone	**Sonaecom**
15 Jul 2008[3]	**0.0800 €**	**0.0960 €**
1 Oct 2008	**0.0750 €**	**0.0900 €**
1 Jan 2009	**0.0700 €**	**0.0840 €**
1 Apr 2009	**0.0650 €**	**0.0780 €**
1 Jul 2009	**0.0650 €**	**0.0720 €**
1 Oct 2009	**0.0650 €**	**0.0650 €**

Source: ICP-ANACOM

ICP-ANACOM then decided to review the 2008 Price *Control Decision*, in the second half of 2009, taking into account the developments occurring in this context at the level of the European Regulators Group (ERG) and the European Commission (EC) and given the evolution of the structural problems identified in these markets in terms of traffic imbalances and the differentiation of tariffs between the *on-net* and *off-net calls.*

In this decision, ICP-ANACOM also announced that the value of 30 percent of the average price in force in the market for so-called on-net could be considered as the best proxy available for determining the termination costs of mobile operators, and that "*it will use this information in a direct and immediate review of the termination rates of each operator, to take place at the end of the period now covered (December 2009)*".

In this context, the following chapters present the analyses of these international developments, and in the chapter 3 the analysis of the behaviour of the operators in the retail market, including in particular in terms of the structural problem identified.

[3] Required only as of 23 August 2008.

1.2. Obligations imposed on operators with SMP in wholesale markets of voice call termination on individual mobile networks

In a separate decision, ICP-ANACOM concluded the definition of product markets and geographic markets, the assessment of SMP and imposition, maintenance, amendment or withdrawal of regulatory obligations in the wholesale markets for voice call termination on individual mobile networks.

The analysis made shows that the product market consists of wholesale voice call termination services on each of the existing mobile networks, while its geographical dimensions correspond to the dimensions of each of the networks (GSM and UMTS in conjunction) of the active mobile operators.

Following the evaluation of competition, ICP-ANACOM concluded in this decision on "Wholesale Markets of Voice Call Termination on Individual Mobile Networks", that in Portugal there are three relevant markets on which the respective network operators have Significant Market Power on their respective mobile networks[4]:

- **TMN - Telecomunicações Móveis Nacionais, S.A.**
- **Vodafone Portugal, Comunicações Pessoais, S.A.**
- **Sonaecom - Serviços de Comunicações, S.A.**

The obligations imposed remain unchanged compared to the previous market analysis *as* set forth in the 2005 Market Analysis Decision, and are as follows:

Respond to reasonable requests for access	ICP-ANACOM takes the position that the ex-ante regulatory obligation should be maintained, whereby operators with SMP in the markets of voice call termination on individual mobile networks are bound to respond to reasonable requests for provision of voice call termination on their networks, whereas the terms and conditions governing such response shall be reasonable.
Non-discrimination in the offer of access and	Mindful of the problems of competition identified and the capacities and incentives for the practice of discriminatory conduct, ICP-ANACOM takes position that operators with SMP in the markets for voice call termination on individual mobile networks should be prohibited from discriminating between different purchasers of termination voice call services on mobile

[4] On this date ICP-ANACOM adopted a decision on the Market Analysis - Wholesale voice call termination on individual mobile networks - Definition of product and geographic markets, assessment of SMP and the imposition, amendment or withdrawal of regulatory obligations - in which the present decision has basis.

interconnection and in the respective provision of information	networks which are in comparable circumstances, regardless of the origin of calls.
Transparency in the disclosure of information	Mindful of the objectives underlying this obligation, ICP-ANACOM considers that the obligation of transparency in the publication of information should be maintained and this should entail the submission to the sector regulator, by operators with SMP in these relevant markets, of a copy of all interconnection agreements which are concluded or amended, within a period of ten working days, and should further entail the prior publication of the prices of the services of voice call termination on their mobile networks. The period of this notice may be defined by ICP-ANACOM at a later date if necessary. It is also considered that these operators should also provide interconnection applicants, upon request, with all the information and specifications required for interconnection, including changes with significant impact, whenever their execution is planned.
Price control and cost accounting	Considering that the existence of termination rates which exceed cost is a fundamental problem identified in these markets, generating various distortions and inefficiencies, it is deemed essential to maintain the obligation of price control, embodied in the cost orientation of prices, and the obligation of cost accounting. The process of defining the costing methodology is currently underway, which methodology will determine the efficient incremental costs of mobile terminations, taking into account the Commission Recommendation on the regulatory treatment of fixed and mobile termination rates (Recommendation on Terminations), which when concluded will enable the establishment of efficient termination prices which are effectively orientated to costs.
Accounting separation	The obligation to maintain accounting separation, including the obligation to report financial information allows the verification of compliance with the obligations of non-discrimination and transparency. It is also important in terms of the implementation of the cost accounting system.

2. INTERNATIONAL DEVELOPMENTS

2.1. ERG Developments

The international debate on the regulation of mobile termination rates has intensified with the publication of the ERG's public consultation on the Common Position on Symmetry of Mobile/Fixed Call Termination Rates[5], which took place between 17.12.2007 and 25.01.2008, and which saw participation from about 30 entities, including operators and consumer associations. The final version of the Common Position was adopted on 28.02.2008[6], and was already referenced in the 2008 *Price Control Decision*.

More recently, the ERG began a new draft, in which context a preliminary version was prepared of a Common Position[7] on Next *Generation Networks Future Charging Mechanisms - Long Term Termination Issues,* which was in public consultation from 14.10.2009 until 10.12.2009, whereas a final position on the matter is still pending. This document focuses in particular on the Bill-*and-Keep* (BaK) model[8], as an alternative to the classic interconnection model. In this context, an analysis was made of BaK and its implications for business models, competition and consumers, with discussion of the various ways of resolving the practical problems associated with its implementation.

The main conclusions of the document, in draft form, are summarized in the text which is transcribed below:

> *"Weighing the pros and cons summarized above the ERG concludes that the expected higher usage and lower price under BaK outweighs the cons in general if BaK is introduced gradually through a sufficiently long glide path. The lower regulatory cost and uncertainty is an extra benefit of BaK. This is the more relevant in the longer term where the cost per minute decreases, the difference in effects of CPNP [calling Party Network Pays] and BaK decrease and the cost of determining a cost oriented tariff becomes relatively more important. (u2026)*

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5 Available at http://erg.eu.int/documents/cons/index_en.htm

6 Available at http://erg.eu.int/doc/publications/erg_07_83_mtr_ftr_cp_12_03_08.pdf

7 Available at http://erg.eu.int/doc/publications/2009/erg_09_34_draft_cp_ngn_future_charging_mechanisms_final.pdf

8 System which, in practice, corresponds to the application of zero termination payment, where each operator charges the value of the communication to the end customer and does not for the termination on the destination network operator.

Therefore, BaK is more promising than CPNP as a regulatory regime for termination for the long term and based on national circumstances (including legal issues) NRAs could set a glide path to BaK within the regulatory period related to the next market analysis they carry out for voice termination. However, for the short and medium term CPNP can also be an appropriate choice based on national circumstances, so NRAs can also continue the CPNP regime at least in the next regulatory period."

This document, even while in draft, shows that there is a move in favour of BaK becoming the future interconnection mechanism, as part of future NGN networks, and so applying to fixed, mobile and Internet traffic. Furthermore there is greater awareness of the need for significant reductions, in a relatively short time, in mobile termination rates as a way of reducing existing competitive distortions - particularly between mobile and fixed operators, exacerbated in a scenario of convergence. These reductions will facilitate the transition to the BaK regime if and when its implementation is decided.

The intense debate within the ERG about mobile termination rates, which could materialize into a Common Position, underlines the need, in terms of the regulation of termination rates, for sustainable competition to be guaranteed between fixed and mobile networks with benefits for final consumers. That is because the position is taken that the existence of call externalities[9] implies that it is inefficient that all costs are borne by the caller customer.

These relevant developments at the level of the ERG must be taken into account by ICP-ANACOM in the present document, and they reinforce the need to continue to promote significant reductions in the values of termination rates.

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[9] "*call externalities*" is the term used in academic literature to the reflect the utility that consumers derive from receiving calls. The literature that examines the effects of the "*call externalities"* includes:

Armstrong, M., and Wright, J., "Mobile Call Termination", mimeo, available at http://else.econ.ucl.ac.uk/papers/uploaded/255.pdf;

Calzada, J. and Valletti, T., "*Network Competition and Entry Deterrence*", Economic Journal, Vol. 118 (2008), pp. 1233-1244;

Harbord, D., and Pagnozzi, M., "*On-Net/Off-Net Price Discrimination and 'Bill-and-Keep' vs. 'Cost-Based' Regulation of Mobile Termination Rates*," MPRA Paper 14540, 2008;

Hoernig, S., *"On-net and Off-net Pricing on Asymmetric Telecommunications Networks",* Information Economics and Policy, Vol. 19 (2007), pp. 171-188.

2.2. Developments in the European Commission - Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

On 26/06/2008, the European Commission (EC) launched a public consultation on a draft Recommendation on prices of Fixed and Mobile Termination in the EU. The consultation ended on 10/09/2008, with comments received from 52 entities, including 30 operators, three consumer groups and seven independent entities[10].

In addition to the debate at Commission level, the Recommendation on Terminations[11], which came to be adopted on 07.05.2009, along with the respective "Explanatory Note"[12] and the document on "*Implications for Industry, Competition and Consumers*"[13], was also widely discussed, both in the context of the ERG and in the Communications Committee (COCOM).

The European Commission justified the publication of the Recommendation on Terminations in the light of the high degree of inconsistency in the enforcement of the obligations in the mobile termination markets, the differences between termination rates, particularly in terms of mobile terminations, within the European Union, the introduction (or continuation) of asymmetric termination pricing by certain NRAs, and finally, the high value of these rates, reflected in high retail prices to the detriment of consumer welfare.

The Commission considers that the lack of harmonization in the application of common accounting principles demonstrates the need for guidelines and a common approach that will ensure greater legal certainty, providing the right incentives to potential investors, and reducing the regulatory burden on operators working in several different Member States.

Considering that differences in the regulatory treatment of fixed and mobile termination rates create significant competitive distortions, that prices established in excess of costs generate transfers between the fixed and mobile markets and consumers, and also that in

[10] The contributions of the various entities are available in http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/termination_rates/index_en.htm

[11] Available at http://ec.europa.eu/information_society/policy/ecomm/library/recomm_guidelines/index_en.htm

[12] Available at http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/sec_2007_1483_2.pdf

[13] Available at http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/working_doc.pdf

markets with operators with asymmetric market shares, such high prices can lead to significant payments by small operators to their larger competitors, the Commission takes the position that establishing a common approach based on a standard model of efficient costs and on the application of symmetrical pricing will promote efficiency, sustainable competition and will maximize the benefits for consumers in terms of prices and offers. The consistent application of this new standard model should begin as soon as possible.

The system currently used in the European Union is based on the "*Calling Party Pays*" principle and so the termination service is not billed to the customer called (the customer receiving the call). However, the Recommendation on Terminations reflects on a different approach. Call termination is a service that generates benefits for both the caller and the party receiving the call (*call externality*), which implies that both parties should be responsible for the costs arising from the service. Given this nature of the market of call termination with two sides ("*two-sided*"), not all termination costs need to be recovered based on the regulated wholesale price charged to the operator that originates the call. Therefore, for the purposes of this Recommendation, the Commission proposes that only avoidable costs be recovered through the wholesale price, whereas other costs should not be recovered through the application of termination rates[14].

With respect to the existence of asymmetric termination rates, the Commission considers that any deviation from the calculation of the costs of an efficient operator should be justified by objective cost differences which are beyond the operator's control. These cost differences only exist in the case of mobile termination and due to imbalances resulting from the allocation of spectrum, and should be applied for a maximum period of four years after the operator benefiting from this asymmetry enters the market.

The Recommendation on Terminations sets out that NRAs should ensure that termination rates will be implemented at the level of efficient costs, and will be symmetrical, until 31 December 2012, whereby, the determination of this effective cost should be based on current costs and by applying a "*bottom-up*" model[15] as a costing methodology (in what has became known as a "pure LRIC" approach).

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[14] Avoidable costs are taken as being the difference between the total long-term costs of an operator providing all the services and the total long-term costs of an operator providing the same services except for wholesale termination provided to third parties (in accordance with recital 14 and article 6 of the Recommendation).

[15] Long Run Incremental Costs (LRIC)

It appears therefore that the Commission adopts a regulatory policy with regard to termination rates which is focused primarily on eliminating the distortions of competition and on benefits for consumer well-being, choosing to prioritise the rapid decline of prices of mobile terminations[16]. Note is made of this passage from the Explanatory Note mentioned above: "*Above-cost termination rates can give rise to competitive distortions between operators with asymmetric market shares and traffic flows. Termination rates that are set above an efficient level of cost result in higher off-net wholesale and retail prices. As smaller typically have a large proportion of off-net calls, this leads to significant payments to their larger competitors and hampers their ability to compete with on-net/off-net retail offers of large incumbents. This can reinforce the network effects of larger networks and increase barriers to smaller operators entering and expanding within markets.*"

Commissioner Viviane Reding said she expected that the implementation of the Recommendation on Terminations would reduce the level of mobile termination rates in 2012 to range between 1.5 and 3 euro cents[17], implying gains to European Union consumers of at least 2 billion euros in the 2009-2012 period. It is in this context that the Commission has commented, pursuant to article 7, on the notifications which it has received concerning the market 7 following the publication of the Recommendation on

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[16] In this regard, see the following passage from the press conference given by Commissioner Viviane Reding which marked the publication of the Recommendation on Terminations:

"*The Recommendation adopted by the Commission today will help eliminate price distortions between big and small operators across the EU and also distortions between fixed and mobile operators.*

The Commission Recommendation will also lower consumer prices for voice calls - remember that termination rates are ultimately included in everyone's phone bill.

Finally, the Recommendation will help the creation of a level-playing field and more consistent regulation on the European Telecoms Market, thereby triggering investment and innovation in the entire telecoms sector." (http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/222)

The press conference held by Commissioner Neelie Kroes likewise points in the same direction:

"*Mobile termination rates are still ten times higher than fixed line termination rates, and four to five times above the cost of providing the connection. (u2026) by forcing prices down, we are levelling the playing field in particular for small mobile operators, but also between fixed and mobile operators, and ensuring that more competition is possible.*

We estimate that eliminating price distortions between phone operators across the EU will lower consumer prices for voice calls within and between Member States, saving business and household consumers at least 2 billion euros in 2009-2012.

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(http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/218&format=HTML&aged=0&language=EN&guiLanguage=en)

[17] In the document "*Implications for Industry, Competition and Consumers*", in which the Commission presents its estimates for the calculation of the impact on operators and consumers resulting from the application of the Recommendation on Terminations, the value of 2.5 cents per minute is presented as the estimated average value of terminations in Europe once Member States have applied the recommended cost model.

Terminations, applauding those NRAs who have made a commitment to achieving significant price reductions.

Finally, special note is made of the publication of a study conducted by the WIK consultancy company at the European Commission's request, entitled "*The future of IP interconnection: technical, economic and public policy aspects*"[18]. In this study it is argued that:

> *"… we think that societal welfare would be substantially enhanced if mobile termination rates were much lower than they are today, ideally zero, and preferably no higher than the rates that prevail today for fixed termination rates.*
>
> *(...)*
>
> *A reduction in termination fees, especially in mobile termination fees, could be implemented by (1) accelerating the speed with which the maximum call termination rate declines from year to year under existing CPNP arrangements, so as to reasonably quickly achieve levels much lower than those that pertain today; or (2) by requiring all fixed and mobile operators to eliminate call termination fees altogether; or (3) by permitting negotiated termination fees subject to an obligation that the fees be reciprocal (the same in both directions) between each pair of interconnected (fixed or mobile) networks.*
>
> *(…)*
>
> *What we concretely recommend instead is that the Commission mandate that fixed and mobile call termination rates "fast glide" to pre-specified target levels over a predefined number of years (somewhere between three and five). This corresponds to option 1. This fast glide path gives the operators time to adjust their business plans, and allows for mid-course corrections if necessary."*

The present decision of ICP-ANACOM fits naturally into this European context, which has become far more consolidated since the adoption of the previous decision, and gives special emphasis to the elimination of competitive distortions, especially between fixed

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[18] Available at http://ec.europa.eu/information_society/policy/ecomm/doc/library/ext_studies/future_ip_intercon/ip_intercon_study_final.pdf

and mobile operators but also between mobile operators, and to increasing consumer well-being.

3. EVOLUTION OF BEHAVIOUR OF OPERATORS IN THE RETAIL MARKET

In its decision of July 2008, ICP-ANACOM noted that available data pointed to the existence of market failure associated with price discrimination as a strategy of foreclosure, particularly in view of verification of the following factors:

- the weight of traffic covered by tariffs with on-net /off-net discrimination remains high;
- Differentials in average on-net prices compared to off-net prices were particularly significant in TMN and Vodafone;
- the market share of Sonaecom, in the years between 2005 and 2008 continued to decline, whereas at the time of the decision it comprised less than half and less than a third of the two other operators;
- clients pointed to their "network of contacts" as the main reason for their choice of mobile operator;
- the traffic imbalance continued to be very unfavourable to the smaller operator.

Fixed on resolving the same structural competition problem which had already been previously identified in the *2005 Price Control Decision*, ICP-ANACOM then considered that it was important to intervene with a view to establishing a competitive market, which in the interests of consumers, would provide Sonaecom with the possibility of a more level competitive situation compared to its competitors in the acquisition and retention of customers.

ICP-ANACOM stated then that, in reviewing the *2008 Price Control Decision* (which is now proceeding) it would pay particular attention to the evolution of the structural problem identified in terms of traffic imbalances and the tariff differentiation between on-*net* and *off-net* calls. In the Report[19] of the public consultation which accompanied this decision, it was added that "*to [this] purpose, during the next year, ICP-ANACOM will collect information from operators and will evaluate their behaviour in the wholesale markets, particularly with regard to further reductions in prices that bring them closer into line with*

[19] Available at http://www.anacom.pt/streaming/rel16_04072008.pdf?contentId=600887&field=ATTACHED_FILE

the actual costs, and retail markets, in particular with regard to the practices of on-net and off-net differentiation by larger operators".

It is this analysis which is made below, starting with the identification and characterisation of the most important tariff developments that have occurred in this period, then presenting the analysis on the evolution of the referenced competition problem.

3.1. More recent developments in the retail market

Since the adoption of the Draft Decision of ICP-ANACOM on the price control obligation, on 24.10.2007, note has been made of the launch of two groups of products whose impact on the retail market is considered more relevant.

The first group of products, which we will call the "on-net sub-group", encompasses the TAG tariffs of Sonaecom, Moche of TMN, and Yorn Power Extravaganza/Vita 91 Extreme of Vodafone[20]. These tariffs may be considered as being pre-paid, although compared to "traditional" pre-paid tariffs there is a significant difference with the inclusion of a monthly fee in the TMN and Vodafone product.

TMN's Pack t tariffs, and Vodafone's new Best 91 tariff, all of which are post-paid, constitute the second group of relevant products which emerged subsequent to the last decision of ICP-ANACOM, which we call "new post-paid products"[21].

3.1.1. *On-net* sub-group products

Between the approval of the Draft Decision on the price control obligation, on 24.10.2007, and the determination of 7.2.2008, three national mobile operators launched on-net sub-group tariffs. In March 2008, Sonaecom Launched the TAG product. A few days later, TMN and Vodafone responded by launching very similar products, almost simultaneously. TMN launched Moche, and Vodafone launched Yorn Power Extravaganza (and Vita 91 Extreme, virtually identical to Yorn Power Extravaganza). These products have assumed significant importance in the market, acquiring around 1.3 million customer subscriptions

[20] More information can be found on the official product *websites* : www.optimustag.pt, www.tmn.pt/moche.html and www.yorn.net/Tarifario/extravaganza, respectively.

[21] More information is available at www.tmn.pt/portal/site/tmn/menuitem.de21baa5d0875ba241a377107368e84b/?vgnextoid=0a9b7cc46254b110VgnVCM1000005401650aRCRD&vgnextchannel=1193f3f56df1b110VgnVCM1000005401650aRCRD&vgnextfmt=default7 and https://loja.vodafone.pt/tarifarios/planobest, respectively

by the end of the first quarter of 2009, corresponding to around 9 percent of all mobile service customers within the space of less than one year.

These products are targeted primarily at the youth segment[22], and with tariffs which are practically identical, with a structure distinguished from "traditional" pre-paid tariffs The *on*-net sub-group tariffs are differentiated in the sense that the price per minute for calls terminated on the same network (*on-net*) is less than the price per minute for calls terminated on other networks (*off-net*). However, in addition to this differentiation, a further disaggregation is introduced within calls made to the same network This further disaggregation consists of free voice calls between customers with the same on-net sub-group tariff, with other calls made to the same network charged.

The only substantial difference between the tariffs of the three operators is that the products of TMN and Vodafone require payment of a monthly fee (around 10 euros), unlike the TAG product, which requires only one obligatory monthly balance charge that is fully converted into traffic and messages[23]. This difference explains, in large part, the relative success of TAG in relation to its competitors, especially when measured by the difference (in percentage points) between the market shares of this type of product and the market shares[24] of the respective operators - shown in the graph below.

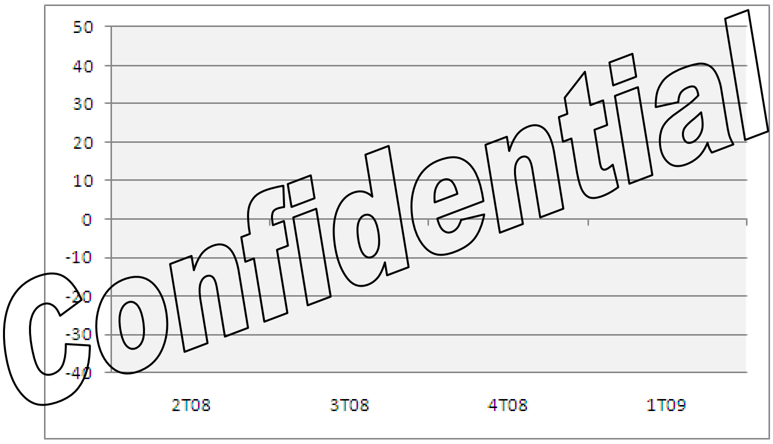
"Start of Confidential Information (SCI)"

[22] As can be read, for example, in the press release issued by Sonaecom announcing the launch of the TAG product. This press release can be consulted at: www.optimus.pt/Particulares/SobreaOptimus/PressReleases/2008/04/04/A9C71858-55B7-43BA-A1CE-E6F25351C1BC

[23] This obligatory balance charge is also 10 euros.

[24] In both cases, shares are measured according to the number of subscribers.

Graph 1 - Difference between the share of the products of sub-group *on-net* and the operators' overall shares



Source: ICP-ANACOM

"End of the Confidential Information (ECI)"

Note should be made, due to the nature of this type of tariff, that for a given contact network to decide to choose, collectively, one of three available products, it is necessary that a significant proportion of the members of this network has individual advantage in switching to the operator offering the chosen product. Since, on average, the contact networks of the majority of customers are mostly with the operators who have the largest shares, and since, as indicated earlier, the price of on-net calls outside the sub-group is lower than the *price of off-net calls*, there is less likelihood that a given contact network will collectively decide to sign up to the product of the smaller operator. The factor that seems to have offset this more likely outcome, given the relative success of the TAG product, is that the monthly fee of 10 euros is not charged for that product.

It is noted that the TAG product seems precisely designed to combat the network effect described in the *2008 Price Control Decision*. In fact, by offering free calls to all customers TAG is trying to incentivise calls within the Sonaecom network (*on-net*), and seeks to influence the customers of its competitors (family and friends) to move on mass to that product.

Meanwhile, and as a means of tackling the network effect associated with incoming calls (*call externality*), Sonaecom needs to have an off-net price which is competitive enough so that customers who switch to TAG can continue to make calls to their contact networks[25]. It is this phenomenon that explains the increased traffic imbalance seen, which will be analyzed later, while note must be made of a significant reduction in the financial imbalance. This effort by the smaller operator was facilitated by developments seen in the market as a consequence of the 2008 *Price Control Decision*, which significantly reduced termination rates.

When ICP-ANACOM adopted the *2008 Price Control Decision*, the expectation, as stated in the previous section, was "*to create conditions for increased competition in the mobile market by allowing the adverse effects resulting from the benefits of network externalities by larger operators to be offset, enabling the smaller operators to adopt more aggressive competitive positions for the benefit of end-consumers*".

The sign up of customers to the TAG product, while mitigated by the immediate response of its competitors, allowed Sonaecom to increase its market share in each quarter between the third quarter of 2008 and third quarter of 2009. It is a significant fact, if we consider that Sonaecom had not reported sustained annual increases in market share year in previous years.

Overall, the creation of this type of product, which drives new conditions of competition in the retail market, illustrates the benefits of lower termination rates with particular clarity, reflected in a reduction in the impact of network effects. In turn, these conditions of increased competition, translate into benefits for consumers, thereby confirming the appropriateness of the 2008 *Price Control Decision*, and the need to continue with

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[25] **(SCI)**

(ECI)

additional declines that will bring greater competitively and increase the well-being of consumers[26].

3.1.2. New post-paid products[27]

In August 2008, TMN introduced a revamp of its post-paid tariffs, which included three new tariffs (Pack t M, L and XL) in which voice calls to the same network are free. Additionally, these tariff include packages of minutes of off-net voice calls and/or SMS, which increase with the value of the monthly fee. Moreover, the price per minute of off-net voice calls not included in the package decreases as the amount of monthly fee increases (as does SMS not included in package). Accordingly, by way of example, and according to information provided on the operator's website[28], the package included in the Pack t M tariff, which has a monthly charge of 30.65 euros, does not include any off-net minutes while the price of calls per minute is 0.308 euros. The Pack t L and Pack t XL tariffs, in turn, have monthly fees of 51.15 and 102.4 euros, and include packages of 100 and 500 off-net voice minutes, respectively. Outside of these packages, the price per minute of off-net voice calls is 0.205 and 0.103 euros, respectively.

In October, Vodafone also renewed its post-paid Best 91 tariffs, including four new tariffs (Best 91 Base, Plus, Max and Top). As with TMN, under the new tariffs the price of calls to the same network is null[29], with the exception of the Best 91 Base tariff, where the 1st minute of an on-net voice call is charged. Furthermore, in line with the TMN post-paid tariff, as the monthly charge increases, the packages of minutes and/or SMS also increases, while the prices per minute of off-net voice calls fall. For example, the Best 91 Plus tariff has a monthly charge of 30.65 euros, and the price per minute for off-net calls is 0.296 euros, whereas the package of this tariff does not include any free off-net voice minutes. The Best 91 Max and Top tariffs have monthly charges of 51.15 and 71.65

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[26] In this regard, see the following transcript of the press conference given by Commissioner Neelie Kroes at the presentation of the recommendation: "*If termination rates were lower, they could use these funds to finance investment in new infrastructure and could also make more aggressive retail offers to attract more customers*". The behaviour of the national mobile operators, in response to the 2008 drop in prices, allows absolute confirmation of the appropriateness of this assertion.

[27] Note should be made that the prices referred to in this section saw an increase of approximately 1% in April 2010.

[28] Available at http://www.tmn.pt/portal/site/tmn/menuitem.de21baa5d0875ba241a377107368e84b/?vgnextoid=0a9b7cc46254b110VgnVCM1000005401650aRCRD&vgnextchannel=1193f3f56df1b110VgnVCM1000005401650aRCRD&vgnextfmt=default7

[29] More information available at https://loja.vodafone.pt/tarifarios/planobest/

euros, and offer 200 and 500 minutes of off-net voice calls, respectively. Outside the package, the price per minute of off-net voice calls is 0.153 and 0.101 euros respectively.

In both cases, these tariffs have relatively high monthly fees and therefore tend to be competitive only for high levels of consumption. Although the tariffs tend to include *off-net traffic minutes,* once these have been exhausted, the price per minute of these voice calls could, at the margin, discourage the making of calls to other networks, since, by comparison, the price of voice calls to the same network is null. It could be concluded therefore that TMN and Vodafone continue to encourage the making of *on-net calls* among customers with the highest monthly spend levels, as opposed to those with the lower spend levels (see section 3.1.1).

3.1.3. Conclusion

The analysis conducted by ICP-ANACOM concluded that neither TMN or Vodafone have introduced tariffs which would reduce the retail on-net and off-net price differentials (It can even be said that they have introduced tariffs with greater differentials, as is the case of the post-paid tariffs presented here). Meanwhile, they have not, on their own initiative, made any reductions in wholesale prices, which have been at the same level since April 2009.

3.2. Structural problem associated with the imbalance of traffic and tariff differentiation between on-net and off-net calls

In the first market analysis, ICP-ANACOM identified a market failure called "*price discrimination as a strategy for closing the market (foreclosure)*". This competition problem involves the larger operators charging on-net retail prices which are much lower than the retail off-net prices, associated with termination rates which are excessively above cost, thereby amplifying the network effects.

This is a practice that places the smallest operator in a situation of clear competitive disadvantage when it comes to the acquisition and retention of customers, with greater impact in mature markets, where relevant increases in market share are essentially associated with the change of operator.

ICP-ANACOM, both with the publication of the Draft Decision, and with the publication of the Final Decision of 2008, alerted the two largest mobile operators as to the importance of reducing the on-net and off-net price differential in their tariffs. As shown above, the behaviour of these operators in terms of introducing new tariffs was not conducive to reducing this gap which instead was increased.

In the Market Analysis, published simultaneously with this decision, ICP-ANACOM shows that there remains a high level of differentiation in terms of revenue per minute between on-net and off-net calls [30] (although this has been lower than in the past[31]).

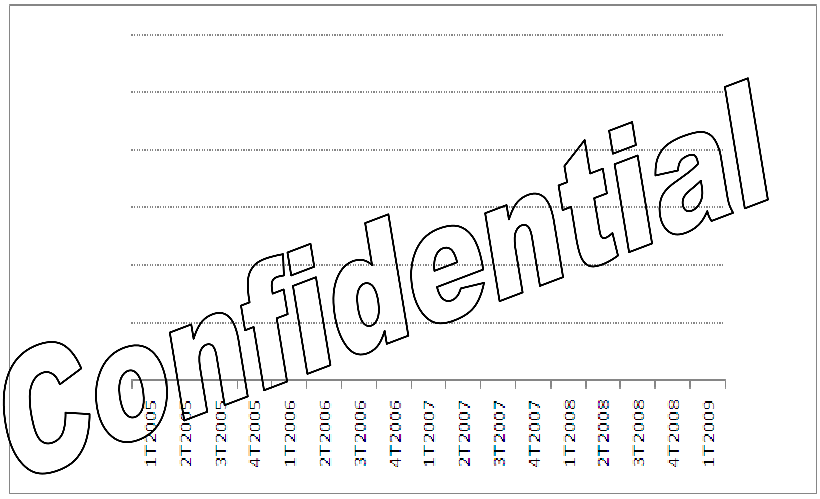
The imbalance in the termination payments made by Sonaecom to other operators declined significantly after the *2008 Price Control Decision*, as was to be expected, despite the high values of imbalance recorded by Sonaecom, due to lower termination rates and the transitory asymmetry applied in the last two quarters of 2008 and the first three quarters of 2009. Graph 2 gives a view of the reduction of the imbalance up to the end of the first quarter of 2009.

[30] In this regard reference is made to graphs 10 and 11 of the Market Analysis Decision

[31] Since for this purpose of reducing the level of differential, in terms of the revenue per minute, there will have been some impact resulting from the evolution of consumer traffic profiles, particularly switching to new tariffs with less reduced off-net prices (for example low cost tariffs), and less impact from changes promoted by the larger operators. In addition, it is noted that if the value of the elasticity of demand for minutes off-net of customers who subscribe to different tariff were sufficiently high, a higher degree of differentiation (i.e. the relative off-net /on-net price increase) of this type of tariff could lead to a reduction in the average off-net revenue per minute of a given operator.

(SCI)

Graph 2 - Evolution of Sonaecom's Financial Imbalance



Source: ICP-ANACOM

(ECI)

The analysis performed here of the competition problem identified in 2005 and 2008, in terms of traffic imbalance and the tariff differentiation between on-net and off-net calls leads to the conclusion that these factors remain applicable today. Another conclusion that is drawn from this analysis is that ICP-ANACOM's intervention in July 2008 to reduce termination rates from 11 cents per minute to 6.5 cents per minute (associated with a limited and transitory asymmetry) had the desired effects in terms of increased competitiveness and benefits for the end-consumers, in terms of mobile-mobile traffic. Since the structural problem previously identified remained evident, there remained a need for a sharp reduction in mobile termination rates in order to further and effectively combat this problem.

Since the analysis performed by ICP-ANACOM with respect to international developments, at the ERG and the European Commission, described in the previous section, also the analysis of the behaviour of operators in the retail market, and the European benchmarking of termination rates examined in section 5, point to the need for further reductions in mobile termination rates during the next period of application of price control.

4. COMPETITIVE DISTORTIONS BETWEEN FIXED AND MOBILE MARKETS

The practice of excessive termination rates which are well above the level of efficient costs leads to distortions in consumer choices. If the price of a fixed-mobile call is too high, as a result of excessive prices charged for termination on mobile networks, and if mobile operators use this excess revenue to reduce the price of their own retail calls (including *on-net* calls), this change in relative prices will lead to an excessive use of the asset whose price is subsidized - mobile service - at the expense of the asset whose relative price has increased - fixed service.

This change in relative prices does not reflect changes in the real marginal cost of the two services, whereby the distortion in consumer choice generates a static inefficiency. Since the termination price is about 10 times higher than the fixed termination price, this distortion is certainly one explanation for the greater use of mobile services compared to fixed services in Portugal (see section 5.2.2. of the Market Analysis Decision document).

As already noted in previous decisions, ICP-ANACOM considers that there is no justification for such a significant price difference between termination on the mobile networks and on the national fixed networks, the negative impact of which difference is further exacerbated by increasing take-up of the fixed products introduced by mobile operators, using their GSM and UMTS networks (Homezone products).

Assuming that fixed and mobile termination rates remain at the values currently in force, ICP-ANACOM estimates that, over a one year period, a net transfer would take place between the fixed and mobile operators totalling about 67 million euros.

By reducing mobile termination rates, bringing them closer into line with the level of efficient costs, the prices of both types of termination will gradually converge, thereby reducing the net transfer mentioned above and helping to eliminate the competitive distortions that have occurred and intensified between the two markets. This objective is of crucial importance given the growing trend towards convergence across networks and services which exists in today's electronic communications markets. The incentives of these convergent products will only be in line with the interests of the end-consumer when termination rates are more closely aligned and, as a result, there is a level playing field in terms of competition

In this respect reference is made to the following passages in the Explanatory Note accompanying the Recommendation on Terminations:

"*Furthermore, with the evolution of fixed-mobile hybrid services and a move towards convergence, a different regulatory treatment of fixed and mobile termination rates raises a possible inconsistency issue. The regulatory model underlying the FTR regulation assumes that operators will recover the cost of the local loop via retail subscription charges, and that these costs are not included in the FTR paid by other operators, including mobile operators. This is not the case in mobile networks where the access network costs are largely recovered via the termination rate. This needs to be considered in order to ensure that competitive distortions do not arise and that allocative-efficiency concerns as described above are addressed.*

(…)

"*In an environment of increasing convergence between fixed and mobile networks and with a view to promoting sustainable competition and investment within and across all telecoms markets, it is important that regulation is, as far as is practicable, technology neutral and ensures that there is no distortion or restriction of competition and that efficient investment and innovation is encouraged. These principles are enshrined in Article 8 of the Framework Directive and include the development of the internal market through consistent regulatory practice and consistent application of the regulatory framework. The above considerations imply that in similar circumstances and where similar market failures have been identified, similar costing principles should be applied."*

It is estimated that, by introducing a new reduction in mobile termination rates as referred to in section 6 of this document, the present decision will have an impact totalling about EUR 30 million in transfers between fixed and mobile operators, which will revert to the benefit of end-consumers, given that the retail prices of PT Comunicações (which still has a significant market share) are regulated by this Authority.

It is noted that the reduction in termination rates achieved in 2008 resulted in a significant reduction in the fixed-mobile retail tariff, which saw a cumulative decline of 26 percent in the period after the *2008 Price Control Decision*, constituting a transfer of approximately 64 million euros to the end-consumer.

5. BENCHMARK ASSESSMENT

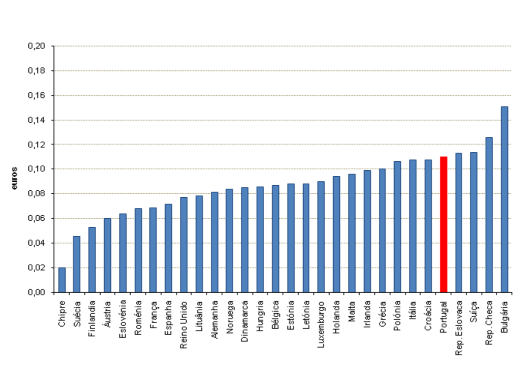
5.1. *European Benchmark* between 2008 and 2009

As can be seen from the *benchmark* of the ERG of 01.07.2008 (Graph 3), before the beginning of the glide path of price declines determined by *2008 Price Control Decision*, Portugal was placed in 27th place among 31 European countries.

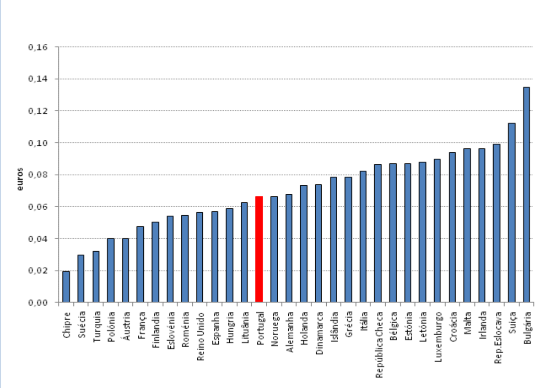
It is noted that, in January 2009, after the *2008 Price Control Decision* entered into force, Portugal moved up to joint 13th place among 32 countries.

Meanwhile, in the latest *benchmark* published by the ERG, of July 2009 (Graph 4) - Portugal has moved to 14th position (out of 32 countries), stressing, however, that this benchmark does not completely reflect the reductions in termination rates imposed by ICP-ANACOM in the 2008 decision.

Graph 3 – Average mobile termination rates – July 2008



Graph 4 – Average mobile termination rates – July 2009

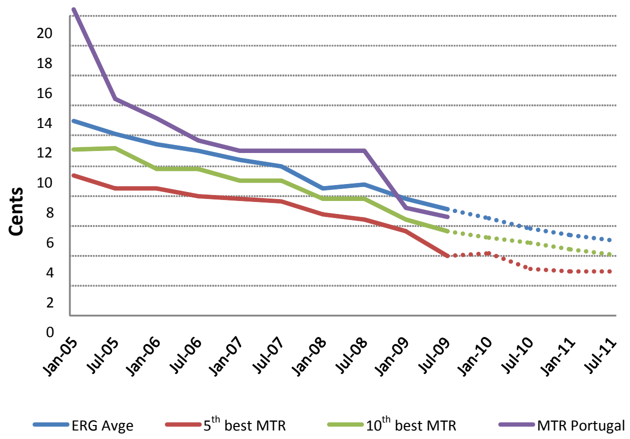


Source: ERG http://erg.eu.int/documents/docs/index_en.htm

5.2. Prospective Benchmarking

Graph 5 shows a comparison between the average termination values resulting from *benchmarks* of the ERG, published every six months, the average values practiced in Portugal, and the 5th and 10th best prices in each of the periods considered. An estimation is also made of the evolution in average termination rates between July 2009 and January 2011, as well as the 5th and 10th best prices, on the basis of decisions already known or announced by various regulatory authorities in respect of terminations which regularly comprise the *benchmarks* (Shown in the graph as dashed).

Graph 5 - Evolution of average prices of termination in Europe

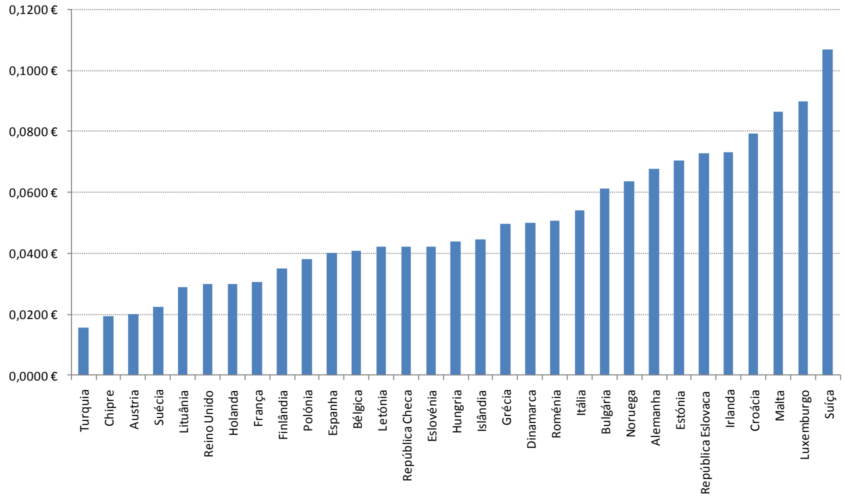


Source: ICP-ANACOM and ERG

The following chart shows the average termination rates which will be applied in November 2011, for each of the countries included in the ERG *benchmark*[32].

[32] This graph includes the values of the countries for which rates have already been announced for November 2011, whereas for the other countries the values used are the last known before this date.

Graph 6 - Average termination rates (estimated November 2011)



Source: ICP-ANACOM, notifications and decisions of the European NRAs

It should be noted, however, that several NRAs have not reached final decisions on this matter. Additionally, the Recommendation on Terminations, referenced above, urges NRAs to set prices based on the costs of an efficient operator, with the aim of significantly reducing the prices in question to levels in the range of 1.5 to 3 cents per minute. These two facts, taken together, will certainly mean that the estimate presented overstates the termination rates which will be charged in 2011.

Following the approval of its draft decision, OFCOM submitted the new termination rates for the United Kingdom to public consultation, in accordance with the Recommendation on Terminations. The glide-path proposed ends up at around 0.006 euros in 2014/2015. In June 2011, the price proposed is around 0.03 euros, higher than shown in Graph 6. Additionally, the Turkish Regulator decided to cut termination rates to values of around 0.015 euros in April 2010. More recently the Dutch regulator has also announced new termination rates. In September 2011 prices of 0.030 euros must be applied. The previous graph has been modified compared to the version included in the draft decision in order to reflect the new decisions and draft decisions notified to the European Commission, subsequent to the draft decision's publication.

5.3. Countries which have adopted best practices

The Recommendation on Terminations states that:

"In exceptional circumstances where an NRA is not in a position, in particular due to limited resources, to finalise the recommended cost model in a timely manner and where it is able to demonstrate that a methodology other than a bottom-up LRIC model based on current costs results in outcomes consistent with this Recommendation and generates efficient outcomes consistent with those in a competitive market, it could consider setting interim prices based on an alternative approach until 1 July 2014. Where it would be objectively disproportionate for those NRAs with limited resources to apply the recommended cost methodology after this date, such NRAs may continue to apply an alternative methodology up to the date for review of this Recommendation, unless the body established for cooperation among NRAs and the Commission, including its related working groups, provides sufficient practical support and guidance to overcome this limitation of resources and, in particular, the cost of implementing the recommended methodology. Any such outcome resulting from alternative methodologies should not exceed the average of the termination rates set by NRAs implementing the recommended cost methodology."

Even while the situation alluded to in the text above may not be fully applicable to the current case, given that the timeframe envisaged by the Commission for the development of cost models has not yet elapsed, in the absence of precise knowledge about the countries that have already finalized and implemented a new cost methodology, it is appropriate to consider, as a *proxy* for the establishment of termination rates, a relevant sample of countries that have recently announced these prices to apply in their markets. In this context, at the press conference that marked the publication of the Recommendation on Terminations, Commissioner Viviane Reding said:

"… despite efforts made by some national telecoms regulators to bring down mobile termination rates so as to reflect the real costs incurred by the operators - I mean by this in particular the Swedish, Finnish, French, Italian, Austrian and Romanian regulator who have started to go in the right direction as regards mobile termination rates -, we still face a situation with rates varying considerably from Member State to Member State"[33]

[33] Statements available at http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/222

The Commission looked favourably on the decisions taken by these countries, which represent a commitment to align the regulation of termination prices with European legislation and best practice at European level, as well as a firm intention to develop a model in accordance with the Recommendation on Terminations[34]. It appears therefore, according to the Commission, that these six countries (Sweden, Finland, France, Italy, Austria and Romania) are on the right track when it comes to the regulation of termination rates. As such, it becomes particularly important to analyze the pricing decisions that these countries have already decided to apply in the near future.

In this context, note is made of the following decisions or intentions which have already been declared by the six NRAs of these countries with respect to intervention on mobile termination rates, with application during the years 2010 and 2011:

- Notification by Sweden[35] which sets out termination rates to the order of 2.50 cents from July 2010 and 2.18 cents from July 2011;

- Memorandum of Finland[36] with guidelines setting out that the maximum termination rates should not exceed 4 cents in 2010 and 3.5 cents in 2011;

- Notification of France[37] to the EC, which indicates termination prices of 4.5 cents and 6 cents by the end of June 2010 and 3 cents and 3.5 cents thereafter[38];

- Decision of Italy[39], in which termination rates are determined at around 6.60 cents for the two largest operators, 7.20 cents for the third operator and 9.0 cents for the

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34 See list of FAQs relating to Recommendation on Terminations, available at http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/222

35 Available at http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/sweden/registeredsnotifications/se20090941/se-2009-0941_enpdf/_EN_1.0_&a=d

36 Available at http://www.ficora.fi/attachments/suomi_R_Y/5z1XFNECJ/Files/CurrentFile/Viestintaviraston_arviointiperiaatteet_matkaviestinverkon_laskevan_liikenteen_hinnoittelusta.pdf

37 Available at http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/france/registeredsnotifications/fr20080812&vm=detailed&sb=Title

38 In response to lawsuits, the State Council, although having rejected the complaints made against the costing *standard* applied and against the need for asymmetry in a transitory period, eventually decided against implementing the specific level of asymmetry established for the last period of the *glidepath* (i.e. from 01.07.2010), considering that the level of compensation decided by ARCEP was excessive. ARCEP announced a new price for Bouygues for the period between July and December 2010, continuing to maintain a degree of of asymmetry until the MTR acheived the same level of efficient costs

fourth operator, as of July 2010, and termination rates of 5.3 cents for the three largest operators and 6.3 cents for the fourth operator, from July 2011;

- Decision of Austria[40], in which termination rates are established at around 3.50 cents from January 2010, 3.01 cents from July, 2.51 cents from January 2011 and 2.01 cents from June 2011;

- Notification of Romania[41] to the EC, which indicates termination rates to the order of 5.03 cents for the two largest operators during 2010, of 5.67 cents and 5.03 cents for the two smaller operators, respectively in January and July 2010, and 6.4 cents and 5.67 cents for the new entrant, respectively, on the dates specified.

If we calculate the average of the mobile termination rates that these six countries will have in November 2011, we arrive at a figure of 3.5 cents per minute.

Finally, notwithstanding the *benchmarking* considered above, it is noted that, after the statements of Commissioner, Lithuania has established termination rates to the order of 2.89 cents, to apply in 2011. Likewise, note is made to the referenced cases of the United Kingdom and the Netherlands, whose termination prices in mid-2011, should be to the order of 3 cents.

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[39] Available at http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/italia/adopted_measures/it20080802/delibera_conspdf/_IT_1.0_&a=d

[40] Available at http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/sterreich/adoptedsmeasures/at20090910&vm=detailed&sb=Title

[41] Available at http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/romania/registered_notifications/ro20090878&vm=detailed&sb=Date_d

6. PRICES TO APPLY IN THE PERIOD OF THIS REVIEW

6.1. Price reduction decision

ICP-ANACOM will implement a glide-path to take effect from May 2010, involving five price changes spaced over three months, therefore having a duration of six quarters. The choice of the time period is based on the fact that it is envisaged that the costing model of mobile operators to be developed by ICP-ANACOM, will be concluded and ready for adoption at the end of that period.

Given the arguments presented in this document, including developments at the level of the ERG and the EC and additionally the behaviour of the operators in the wholesale (maintenance of termination rates) and retail markets (maintenance or worsening of the price differentials of on-net calls in relation to off-net calls), and considering, on the other hand, the importance of ensuring the predictability of market conditions, and a gradual evolution to prices considered efficient, ICP-ANACOM has decided to maintain the same pace of quarterly reduction as applied in the previous period of reductions, i.e., a decrease of 0.5 cents per minute per quarter.

It is noted that the draft of this decision provided that the trajectory of the decline be initiated in February 2010, with the value of 0,060 euros, which would ensure the continuity of the decline began with the 2008 decision. However, given the exceptional nature that must underlie a retroactive measure, and taking into account the comments made by the European Commission on this matter, as well as the concerns expressed by the DGC - Direcção-Geral do Consumidor (Directorate-General of the Consumer), GRUPO PT and VODAFONE, it was decided to initiate the glide-path on 24 May.

It was also decided that all periods of the glide-path will last for three months, which no longer coincide with the quarters of the calendar year.

To determine the value to be achieved in the last quarter of the present reduction period, the price to be applied from May 2011, ICP-ANACOM has considered the following factors:

- The European Commission, through a communication[42] from Commissioner Viviane Reding, said that she expected Member States to implement decisions on termination rates within the range of 1.5 to 3 Euro cents per minute by 2012 at the latest, to eliminate existing competitive distortions (especially among mobile and fixed operators), establish a level playing field, and encourage investment and innovation for the benefit of end-consumers;

- some European NRAs have already carried out studies and analysis of the costs which will result from the application of the costing methodology advocated in this Recommendation on Terminations, which costs are expected to range from 1-2 cents per minute[43];

- the updated value of the proxy indicated in the decision in 2008 for termination costs, based on the average price of on-net calls, is 2.61 cents per minute;

- the best practice of the set of six European countries that have currently taken the measures deemed appropriate in terms of regulation of termination rates (Sweden, Finland, France, Italy, Austria and Romania) show an average of 3.5 cents per minute in November 2011;

- the national mobile market is characterized, to a greater degree than in most other Member States, by the competitive distortions detailed - especially between fixed and mobile operators - due to characteristics already comprehensively covered in the earlier decisions of 2005 and 2008 and presented again in the market analysis now made;

- the analysis of the behaviour of the mobile operators in the period following the adoption of the draft decision of October 2007, revealed that the behaviour of larger operators with regard the practice of differentiation in on-net and off-net

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[42] In addition to this communication, the range of 1.5 to 3 cents is also mentioned in the FAQ relating to the Recommendation on Terminations, available at http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/222

[43] For example it is noted that ARCEP (sector regulator of France) reports in its latest decision on these markets that the costs of temrinations according to a Pure LRIC will range between 1-2 euro cents (http://circa.europa.eu/Public/irc/infso/ecctf/library?l=/france/registerednotifications/fr20080812/fixation_tarifaires/1_projet_dcision/231008_publiquepdf/_FR_1.0_&a=d), additionally, OFCOM (the UK sector regulator) in the consultation paper on these markets (http://www.ofcom.org.uk/consult/condocs/wmctr/) references even lower values, to the order of 0.006 euros per minute.

retail prices that enhances the network effects, has not changed (and may even have worsened); meanwhile, it was found that the decision of ICP-ANACOM to apply a significant reduction in termination rates, had clearly positive effects on the level of competition and benefited end-consumers.

The combination of the above factors leads to the application of a termination rate for voice calls on the mobile networks of the three operators of 3.5 cents per minute, to be achieved in August 2011. With this value, and the projection of the benchmark of termination rates presented above, unless another NRA decides to cut prices in their country to less than 0.035, the position of Portugal will have 9th position in the rankings, where it is close to being included in the first quartile of termination rates charged by the Countries of the ERG.

Moreover, the value of 3.5 cents per minute in that time frame and even while it is accepted that up to that date decisions leading to lower prices may be taken, it is perfectly compatible with the objective of achieving the values which the European Commission has set for 2012.

Additionally, it is considered that it would be counterproductive to apply the value of 3.5 cents per minute (corresponding to a reduction of 46 per cent) immediately, whereby it is proposed to adopt a transitional period of six quarters, with a gradual reduction of 0.005 euros per quarter, allowing the operators to make the necessary adaptations and avoiding situations causing undue disruption[44].

Furthermore, the immediate application, in this period of price reduction, the value corresponding to the proxy based on the average price of *on-net calls*, would lead to an unreasonably low price in Portugal, taking into account the prices which are expected to be applied in other European countries on the same date. On this matter, it is important to note that it is considered important not to create disproportionate distortions between the prices that the national operators pay and the prices they receive from their European partners with respect to international traffic, although they can of course recover the higher termination rates in other countries from originated calls.

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[44] It is noted that in the *2008 Price Control Decision* a more marked reduction was considered necessary in the first period of the *glide-path*, in light of the fact that no decrease has been seen in termination rates for more than one year, and simultaneously given that the termination rate now in effect is far more out of line with the costs, whereby the current situation is distinct.

In any case, it should be noted that ICP-ANACOM remains concerned about the practice by larger mobile operators *of on-net* prices which are too low, and off-net prices which are very high, values which are inconsistent with the regulated termination rates, which could constitute anti-competitive practice, to be examined separately.

In this context, the following plan of reductions is considered appropriate:

- 0.0600 euros per minute on 24.05.2010
- 0,0550 euros per minute on 24.08.2010
- 0,0500 euros per minute on 24.11.2010
- 0.0450 euros per minute on 24.02.2011
- 0.0400 euros per minute on 24.05.2011
- 0.0350 euros per minute on 24.08.2011

The maximum wholesale prices of the voice call termination rates which will apply between May 2010 and November 2011 shall be billed by the second from the first second.

6.2. Application of symmetric price

As mentioned earlier, in the *2008 Price Control Decision* a longer transition period is considered for Sonaecom, of two quarters, resulting in a moderate and transitory asymmetry in termination rates, primarily to reduce the problems arising from the existence of market failure arising from a high level of on-net and off-net price differentiation and network effects that caused the traffic imbalance.

In the present decision it is not deemed opportune to determine any longer transition period. As mentioned above, the recent Recommendation on Terminations limits the application of asymmetric pricing to the first four years after the entry of a new entrant into the market. Note is made of section 10 of this Recommendation:

"*In case it can be demonstrated that a new mobile entrant operating below the minimum efficient scale incurs higher per-unit incremental costs than the modelled operator, after having determined that there are impediments on the retail market to market entry and expansion, the NRAs may allow these higher costs to be recouped during a transitional period via regulated termination rates. Any such period should not exceed four years after market entry.*."

Considering that Sonaecom entered the mobile market in 1998, and as such has been business for nearly 11 years, according to the principles of the Recommendation on Terminations, no additional period of transitory asymmetry in the prices applicable to that operator should be applied.

It should be added that the assessment that ICP-ANACOM is currently making of the three criteria put forward by the ERG for the application of a transitory asymmetry, is no longer favourable to the application of such an exceptional measure again. In fact, the imbalances in the financial payments made by the smaller operator to the two larger operators have declined substantially, as shown by the analysis of Graph 2. Moreover, the differential between the termination rates and the actual costs incurred by the operators is significantly less than it was in July 2008. Finally, taking into account that this differential will be lower still in August 2011, the assessed benefits that result from the reintroduction of asymmetry at this time no longer outweigh the respective disadvantages. Indeed, the benefit, in terms of increased market competition and the consequent benefits to consumers, of a decline from 11 cents per minute to 6.5 cents per minute, were not sufficient to preclude the need for additional measures. The same does not apply in the decline from 6.5 cents per minute to 3.5 cents per minute, which value is already much closer to being in line with efficient costs, and is therefore sufficient by itself to ensure the benefits for end-consumers.

ICP-ANACOM therefore considers that there are grounds for the continued application of symmetrical pricing, as already established and in force since October 2009, throughout the whole period of the implementation of this decision, in accordance with EU recommendations. The position is taken that the benefits to competition and to end-consumers resulting from the application of these new prices will be significant in themselves, and that there are no grounds for any additional extraordinary measures, contrary to that occurring at the time of the previous decision.

6.3. Impact of the decision on the market and on consumers

ICP-ANACOM considers that the present decision enacting a gradual decline in mobile termination rates will have the following positive effects in terms of impact on the market and on consumers:

- Reducing the costs incurred by the fixed operators, eliminating the current competitive distortions arising from a difference of around 10 times between the mobile termination rate and the average fixed termination rate; this will allow these operators to create new convergent services and tariffs which are flexible and innovative and meet the needs of users (such as *flat-rate* tariffs which include fixed-mobile calls); it is estimated that benefits to the consumers of fixed-mobile calls which will result from this decision will amount to 30 million over the period considered;

- Enabling the investment capacity of fixed operators to be strengthened, taking into account that, assuming that the demand-price for fixed-mobile calls is not completely inelastic, the margin of fixed operators in this segment will increase, even if all the reductions in mobile terminations are passed to the end-consumer. This strengthened capacity comes at a time when such investment, particularly in next generation networks, is necessary from the perspective of strengthening the information society for the benefit of consumers;

- Contributing to the elimination of inefficient transfers between different sized mobile operators, thereby reducing the corresponding competitive distortion and so creating better conditions for increased competition in innovation and in the level of tariffs, to the benefit of final consumers; using the working assumption adopted by the Commission in the Recommendation on Terminations, in the document "*Implications for Industry, Competition and Consumers",* the value of consumer benefits resulting from the reduction in average retail mobile prices, as a consequence of increased competition, amounts to approximately 24 million euros[45] for the period of six quarters;

- Helping to unlock additional revenue opportunities for fixed and mobile operators, leveraging increased demand from consumers.

- To increase the overall efficiency - static and dynamic - of the electronic communications markets, through the mitigation of situations of cross-subsidization causing inefficient resource allocation.

[45] For this calculation the same premises were used as used by the European Commission in the models considered in the document "*Implications for Industry, Competition and Consumers", (available at http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/working_doc.pdf).* The EC assumes, in this context, that the mobile operators will transfer one-third (0.33) of the changes in the terminations rates of mobile-mobile calls to consumers, a figure which, although while it may be reduced, is assumed in order to consider the fact that retail market are today already very competitive.

7. DECISION

Whereas:

1. According to articles 58 and 59 of the LCE of 10 February, it is incumbent upon the National Regulatory Authority, ICP-ANACOM, to define, analyze and, in the event that it concludes that markets are not effectively competitive, determine which undertakings have significant market power and impose appropriate and specific regulatory obligations on said undertakings or maintain or amend such obligations where they already exist.

2. This decision was subject to the Public Consultation procedure[46] and to prior hearing[47], between 20.01.2010 and 03.03.2010, in conjunction with the decision now approved on the definition of the product markets and geographic markets, the assessment of SMP and the imposition, amendment or withdrawal of regulatory obligations in the wholesale market of call termination on individual mobile networks, pursuant to which responses were received from 12 entities.

3. AdC - Autoridade da Concorrência (Competition Authority) was notified, in the same period and under the terms of article 8 of the statutes of ICP-ANACOM, in annex to Decree-Law No 10/2003 of January 18, in order that it issue an opinion on this decision.

4. In the opinion submitted by AdC, on 26.02.2010, it was deemed that the reduction in voice call termination rates appeared appropriate and a significant reduction in the rates in question was supported.

5. The EC, notified pursuant to paragraph 1 of article 57 of Law No 5/2004, set out its position on 12.04.2010, whereby it positively considered the proposal of ICP-ANACOM to considerably lower mobile termination rates in Portugal, while expressing concern about the measure’s retroactive application.

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[46] Under the terms of article 8 of Law No 5/2004 and in accordance with paragraph 1 of article 57 of the same law and with paragraph 3 of the "Consultation Procedures" of ICP-ANACOM, as approved by determination of 12.02.2004.

[47] In accordance with the provisions of articles 100 and 1001 of the Code of Administrative Procedure.

6. The three mobile network operators - TMN, Vodafone and Sonaecom - have significant market power in the market of call termination on their respective mobile networks.

7. The maintenance of very high prices on the mobile networks is a factor which distorts competition, as recognized by the European Commission and by the ERG, resulting in a net annual transfer which remains very significant, of 67 million euros, from the fixed networks to the mobile networks[48]. It is further considered that, if termination rates remained at 0.065 euros, an annual transfer would result of about 11 million euros from the smaller operator to the two larger operators[49].

8. The recent debate within the ERG, embodied in the draft Common Position on "*Next Generation Networks Future Charging Mechanisms - Long Term Termination Issues",* points towards the assessment of a termination system based on a Bill-and-Keep model as a promising model, whereby the NRAs may adopt a *glide-path* that functions as a transition to this model.

9. On 7 May 2009, the European Commission published a Recommendation on the regulatory treatment of fixed and mobile termination rates in the European Union, proposing the adoption, by no later than 31 December 2012, of symmetrical termination rates based on the costs of an efficient operator, using a Pure LRIC model.

10. The European Commission, according to statements by Commissioner Viviane Reding, expects that the implementation of this Recommendation will result in mobile termination rates which range between 1.5 and 3 cents per minute, which will mean gains of at least 2 billion euros in the European Union in the period 2009-2012.

11. ICP-ANACOM is currently engaged in the work required so that a cost model, which is in accordance with the Recommendation on Terminations referred to in paragraph 6, will be implemented and produce results so as to establish further reductions in termination rates in November 2011.

[48] Estimated annual value based on termination rates currently in force and traffic data from 2008.
[49] Estimates based on 2009 traffic data.

12. The behaviour of the mobile operators in the wholesale market has not changed, insofar as the operators have not made any reductions to prices beyond that required by ICP-ANACOM.

13. The behaviour of the mobile operators in the retail market, particularly regarding the structural problem identified by ICP-ANACOM in 2008 with respect to the practice of on-net and off-net price discrimination, which intensifies the network effects and distorts competition, has not changed insofar as such practices have not been eliminated.

14. ICP-ANACOM considers that this decision involves gains for consumers totalling approximately 54 million euros (mobile-mobile and fixed-mobile calls in conjunction) over the period of its implementation which is 6 quarters.

15. The prices applied by a set of six countries (Sweden, Finland, France, Italy, Austria and Romania) that the Commissioner for the Information Society has designated as being in the on the right path point to average prices of 3.5 cents per minute in November 2011.

16. This proposed figure places Portugal near to being included in the first quartile of the benchmark whereas there is no reason to believe that Portugal cannot remain at this level in the light of the development, penetration level and dynamism of the Portuguese retail mobile market compared with the level of other European markets.

17. A possible proxy for termination costs on the mobile networks in Portugal, according to the method described in *the 2008 Price Control Decision*, would corresponded to a value of 2.61 cents per minute.

18. Certain European NRAs have already conducted studies and analyses of the costs that will result from the application of the costing methodology advocated in the Recommendation of the EC, whereby it is expected that these costs range between 1 and 2 cents per minute, or even below this level.

19. It would be overly disruptive to immediately implement a mobile termination rate of 3.5 cents per minute (particularly given the distortions in international traffic), whereby it is considered appropriate to provide a transition period of six

quarters, allowing the operators to make the necessary adaptation until this value is attained.

ICP-ANACOM takes the position that it is necessary to determine a new downward movement in voice call termination rates in the context of the price control obligation, the maintenance of which obligation is proposed in the context of the Market Analysis conducted simultaneously with this decision.

Taking into account the reasons set out above and in pursuit of the objectives of regulation, especially in terms of the prices in points a) of paragraph 1) and a), b) and c) of paragraph 2 of article 5 of Law No 5/2004 of 10 February, the Management Board of ICP-ANACOM, pursuant to Articles 66 and 74 of the same law determines:

1. To order that, as of 24.05.2010, the maximum termination rates for voice calls on mobile networks to be applied by the three mobile operators notified as having SMP shall be:

    - 0.0600 euros per minute on 24.05.2010
    - 0,0550 euros per minute on 24.08.2010
    - 0,0500 euros per minute on 24.11.2010
    - 0.0450 euros per minute on 24.02.2011
    - 0.0400 euros per minute on 24.05.2011
    - 0.0350 euros per minute on 24.08.2011

    irrespective of the origin of the call, with per second billing from the first second.

2. To review the present decision in 2011, taking into account the results of the cost model, based on the methodology set forth in the Recommendation on Terminations of 7 May 2009, which is in development and which will enable the establishment of new reductions in termination rates from November 2011.

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