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Determination of 13.4.2006

DETERMINATION OF ICP-ANACOM REGARDING PRICES OF THE LOCAL LOOP UNBUNDLING TO ENTER INTO FORCE AS FROM 01.01.2006

1. FRAMEWORK

The intervention of ICP-ANACOM has been developed at various levels in the scope of the Local Loop Unbundling (LLU), deeming this offer to be fundamental to promote competition in the local access market. These interventions have increased the confidence and certainty of competing operators and service providers (OSP), which have demonstrated wider interest and invested significantly in the offer. This interest may be inferred from the evolution, over 2005, of the number of:

- (a) unbundled accesses, which showed a seven-fold increase (see **Chart 1**);
- (b) co-installed operators, which tripled; and
- (c) exchanges where operators are co-installed, which increased by 80% (see **Chart 2**).

Chart 1 – Evolution of the number of unbundled loops

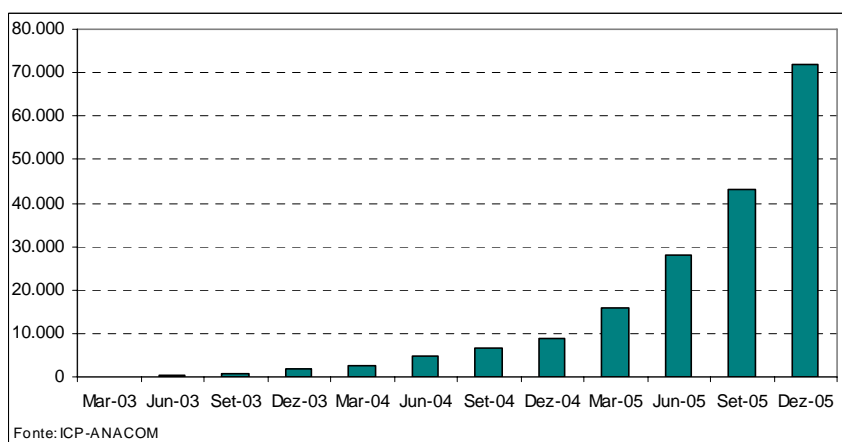
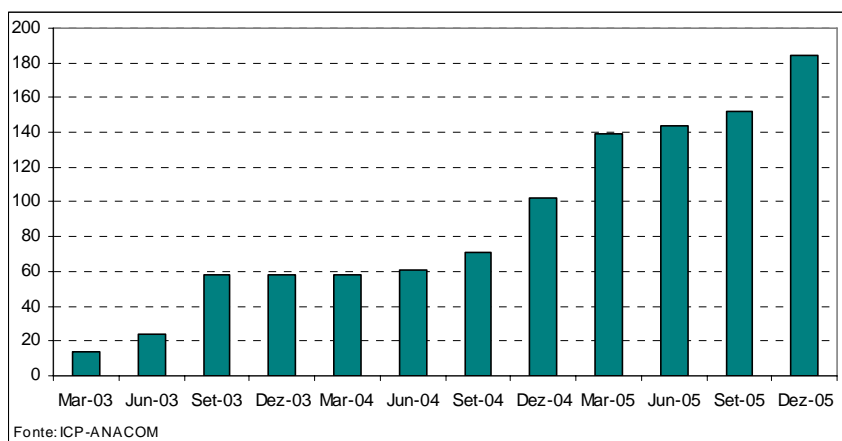


Chart 2 - Evolution of the number of exchanges with at least one co-installed operator



Among interventions made¹, the significant reduction of the local loop installation price² and of the monthly local loop payment³, which took place on 13.04.2005⁴, should be stressed.

Note that following the assessment of the local loop unbundled access market, ICP-ANACOM maintained the obligation of cost orientation of prices.

In order to make the electronic communications market more predictable and secure for agents intervening therein, ICP-ANACOM, by determination of 20.09.2005, determined that PT Comunicações, S.A., should publish within a 20-day time limit, a reference unbundling offer (RUO) to enter into force on 01.01.2006, taking into account the principle of cost-orientation of prices, as defined in the analysis of the unbundled access wholesale market, as well as ICP-ANACOM's assumptions stated in previous analysis and price settings for these services.

In response, on 12.10.2005, PT Comunicações, S.A., arguing that no relevant modification had occurred, namely with impact at the level of service provision costs, since the date of publication of prices which resulted from the Determination of ICP-ANACOM dated 13.04.2005, the legality of which it had contested, proposed that RUO prices currently in force should be maintained.

In this scope, LLU prices are assessed below, having regard to available data and taking also into account price alteration proposals concerning the RUO put forward by OniTelecom – Infocomunicações, S.A

On 14.12.2005, a prior hearing on the draft decision regarding prices of the local loop unbundling to take effect as from 01.01.2006 was carried out, this prior hearing report being an integral part hereof.

¹ Highlight should be given to determinations concerning procedures and time limits (available at <http://www.anacom.pt/template20.jsp?categoryId=574&contentId=261862>) and also compensation, still at a draft decision stage (available at <http://www.anacom.pt/template20.jsp?categoryId=574&contentId=308807>)

² In the full access and shared access modalities.

³ In the full access modality.

⁴ Available at <http://www.anacom.pt/template20.jsp?categoryId=574&contentId=271167>

2. ASSESSMENT OF THE PROPOSAL MADE BY PT COMUNICAÇÕES, S.A.

As regards the application of the principle of cost orientation of prices, ICP-ANACOM has taken into consideration criteria of economic efficiency, pursuant to the Regulation (EC) 2887/2000 of the European Parliament and of the Council, of 18 December, and to Law no. 5/2004, of 10 February, and has based its cost estimates on:

- (a) Network elements or activities which may be identified in the cost accounting system of PT Comunicações, S.A., or on other cost particulars submitted by that entity;
- (b) Information presented by PT Comunicações, S.A. on budgeted rates and running costs of resources consumed and activities required to supply services;
- (c) Current practises in the European Union; and
- (d) Practises of PT Comunicações, S.A. at retail services level.

As regards co-installation services, information access services and visits to exchange buildings, one has to take into account that the prices of these services are a result of budgets based on cost estimates submitted by PT Comunicações, S.A. as far as the necessary equipment and manpower are concerned.

2.1. Local Loop installation prices

By determination of 13.04.2005, approval was granted to the decision on the alterations of prices to be introduced by PT Comunicações, S.A., in the RUO. In particular, ICP-ANACOM defined a maximum price of € 38 for local loop installation, including the assessment of eligibility, an amount which was identical to the installation price practised in the scope of the wholesale “PT ADSL Network” offer. In this decision, the concern of ICP-ANACOM was, namely, to ensure a global tariff consistency between the different wholesale and retail offers.

As the installation price practised in the scope of the wholesale “PT ADSL Network” offer was not altered, and there being no additional data to justify its review, there are no grounds for altering the maximum price for local loop installation, both in the full access modality and in the shared access modality, currently at €38.

According to the provision in point b) of paragraph 2 of article 74 of Law no. 5/2004 of 10 February, restated in the assessment of the local loop unbundled access market⁵, ICP-ANACOM, when imposing price control obligations, may also take account of prices available in comparable competing markets. In this context, **Chart 3** and **Chart 4** present a comparison of prices practised in EU15 regarding local loop installation, both in the full access modality and in the shared access modality. It is thus concluded that Portugal presents a competitive price.

Chart 3 - Installation in the full access modality (February 2006)

⁵ See <http://www.anacom.pt/template15.jsp?categoryId=152424>

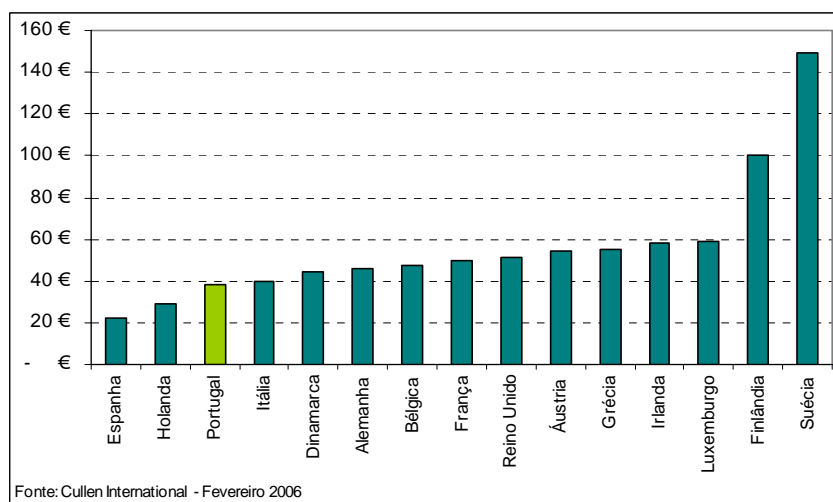
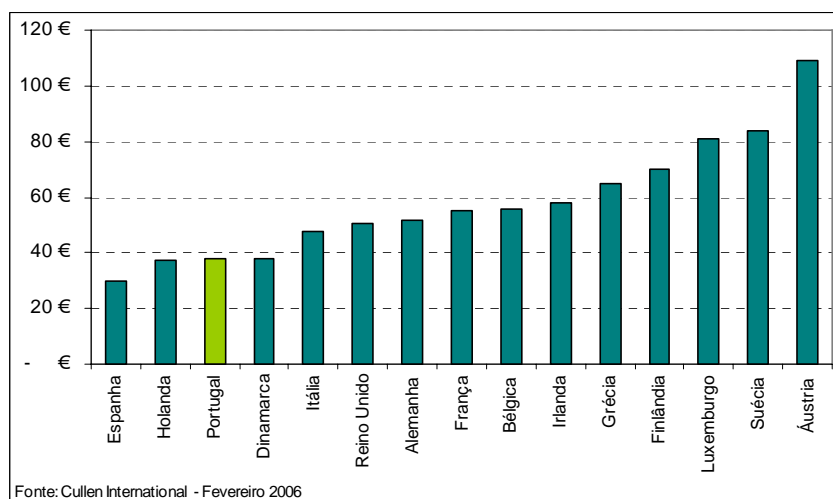


Chart 4 - Installation in the shared access modality (February 2006)



2.2. Monthly Payment for Local Loop Full Access Service

In the determination dated 13.04.2005, the maximum price of €0.72 was established for the monthly local loop payment in the full access modality. The total costs⁶ of the monthly local loop payment were estimated based on ICP-ANACOM's provisional data for 2005⁷ concerning costs included in the PT Comunicações, S.A. analytical accounting system for analogue accesses, deducting costs not incurred in the local loop unbundling – identified as costs connected to the following activities: “To Know Customers and the Market”, “To Develop/Improve Products and Services”, “To Commercialise and to Sell”, “Billing Systems and Processes”, “To Charge”, “Revenue Assurance”, “Information Service and Supported Communications”, “To Manage the Image and External Relations of the Company”, “Switching - Network Card” and “Others”.

⁶ Direct and joint costs, as well as common costs without curtailment.

⁷ Provisional data based on unaudited information of PT Comunicações, S.A. analytical accounting system, for the financial year of 2003 (annual and 1st semester) and the 1st semester of 2004.

Based on assumptions mentioned above, and provided with updated cost information (unaudited) of PT Comunicações, S.A. for the financial year of 2004– namely cost information submitted in the scope of the SLRO conditions – and admitting an annual reduction by 5% of direct ad joint costs, estimates were made for unit costs of the local loop monthly payment, in the full access modality, presented in **Table 1**.

It should be taken into account that the European Commission, in the scope of the reply to the draft decision on the assessment of the unbundled access wholesale market, suggested that ICP-ANACOM “pursued a detailed follow-up of the market evolution and weighted whether or not a model of forward-looking long-run incremental costs (FLLRIC) would be more appropriate, specially in terms of tariffs, excessive potential costs and incumbent inefficiency, to make up for the lack of effective competition”. Moreover, the EC suggested that, in case ICP-ANACOM deemed unlikely the duplication of local loops in the medium term, this Authority “should adjust parameters to the referred FLLRIC model, in order to avoid potential additional gains for the incumbents”.

In this sense, considering that a FLLRIC model would be more appropriate when compared to the fully distributed historic costs methodology (FDHC), ICP-ANACOM, taking into account criteria of efficiency, deems that curtailment costs should not be considered for this service.

Table 1 – Estimates of unit costs for monthly local loop payment (full access) and comparison with retail FTS costs (considering an annual reduction by 5% of direct and joint costs) [start confidential information – hereinafter SCI]

(unit costs in €)

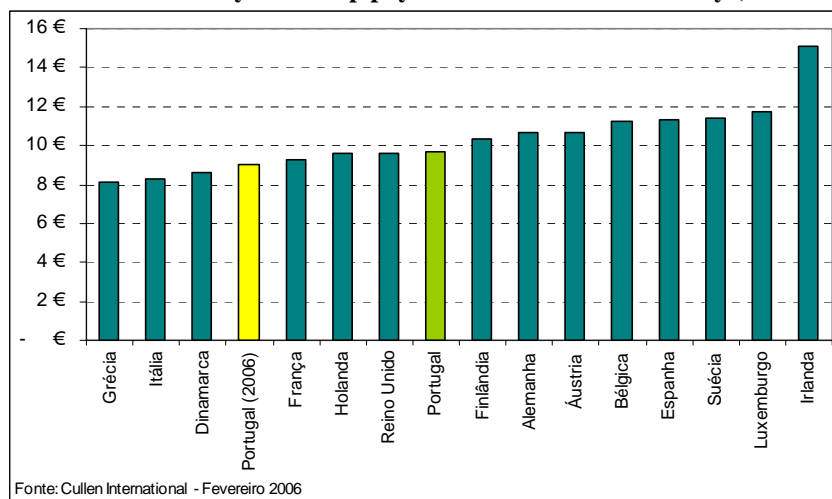
Activity	LLU- Full access ICP-ANACOM	Retail FTS PT Comunicações, S.A.
A To Know Customers and the Market		
B To Develop/Improve Products and Services		
B1 To Develop New Products		
B2 To Improve Products and Services		
C To Commercialise and to Sell		
D To Provide the Service to the Customer		
E To Maintain the Service to the Customer		
F To Bill and to Charge		
F1 Billing Systems and Processes		
F2 To Bill		
F3 Billing Complaints		
F4 To Charge		
F5 Revenue Assurance		
S To Manage Information Systems		
SI Information Service and Supported Communications		
W To Manage the Image and External Relations of the Company		
Access Network		
Switching - Network Card		
Others		
Total Direct and Joint Costs		
Common Costs Without Curtailment		
Total Without Curtailment		

[end confidential information – hereinafter ECI]

An analysis of the figures of **Table 1** leads to the conclusion that the monthly payment for the full access service in force as from 01.01.2006 is not cost-orientated, and thus a reduction of the respective price should take place, having regard to estimates of service costs.

An analysis of figures of **Chart 5** leads to the conclusion that the monthly local loop payment to be in force in Portugal as from 01.01.2006 falls within the price practised within countries of the EU15. Moreover, price reductions are expected for this service in several Member States of the EU15.

Chart 5 - Prices of monthly local loop payment in full access modality (February 2006)



It should be referred that Oni proposes a reduction to €8,60 of the monthly local loop payment, in the full access modality, an amount it considers to be in line with the best European practises.

2.3. Monthly Payment for Local Loop Shared Access Service

By determination of 19.06.2003, approval was granted to the decision on the alterations of prices to be introduced by PT Comunicações, S.A., in the RUO. In particular, the maximum price for the monthly local loop payment, in the shared access modality, was set at €2,95.

Taking into consideration costs incurred with broadband adopted in the referred determination of 19.06.2003, resorting to the same assumptions made to calculate estimate costs of monthly local loop payment, in the full access modality, referred to in the previous section, withdrawing costs resulting from the access network and adding quality of service costs⁸, the following unit costs are estimated for the monthly local loop payment, in the shared access modality.

Table 2 – Estimates of unit costs for monthly local loop payment (shared access) and comparison with retail FTS costs (considering an annual reduction by 5% of direct and joint costs)) [SCI]

(unit costs in €)

Activity	LLU- Shared access ICP-ANACOM	Retail FTS PT Comunicações, S.A.
A To Know Customers and the Market		
B To Develop/Improve Products and Services		
B1 To Develop New Products		

⁸ Quality of service costs are those which result from the adjustment of the maintenance cost inherent to a reduction of average fault repair period of time, in order to maintain to the final customer a similar level of quality of service.

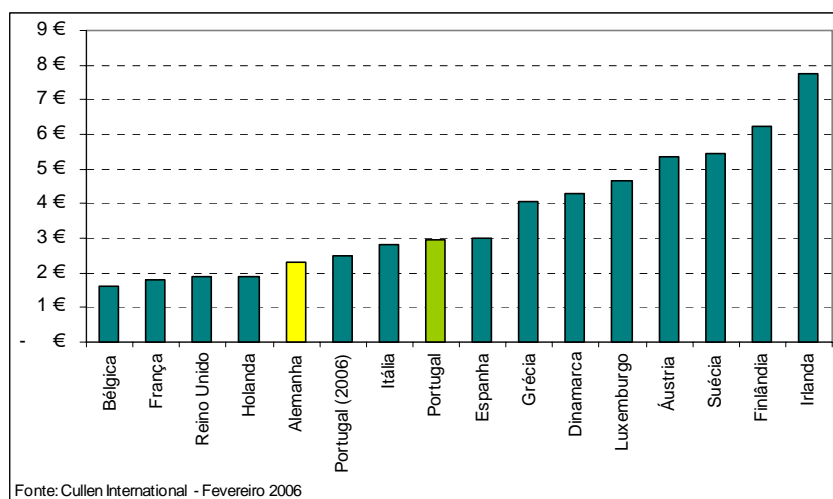
B2 To Improve Products and Services		
C To Commercialise and to Sell		
D To Provide the Service to the Customer		
E To Maintain the Service to the Customer		
F To Bill and to Charge		
F1 Billing Systems and Processes		
F2 To Bill		
F3 Billing Complaints		
F4 To Charge		
F5 Revenue Assurance		
S To Manage Information Systems		
SI Information Service and Supported Communications		
W To Manage the Image and External Relations of the Company		
Access Network		
Switching - Network Card		
Others		
Total Direct and Joint Costs		
QoS costs		
Total Direct and Joint costs and QoS costs		
Common Costs Without Curtailment		
Total Without Curtailment		

ECI

An analysis of the figures of **Table 2** leads to the conclusion that the monthly payment for the shared access service in force as from 01.01.2006 is not cost-orientated, and thus a reduction of the respective price should take place, having regard to estimates of service costs.

In the case of shared access monthly payment, it is necessary to take due regard of specificities of shared access offers in Member States (e.g. in some Member states, the incurred costs approach has not been adopted, in some cases the monthly payment does not include splitter costs and in Ireland costs resulting from faults are paid in separate). Without prejudice, follows a price comparison (see **Chart 6**), the assessment of which leads also to the conclusion that, at the level of monthly local loop payment in the shared access modality, the price practised in Portugal is in line with those practised in the EU15. Portugal, nonetheless, reaches a better position in case estimates for 2006 are considered.

Chart 6 - Prices of monthly local loop payment in shared access modality (February 2006)



2.4. Other Services

In its proposal for price alteration, Oni suggests a reduction to €20 of the monthly payment associated to the co-installation space in a co-mingling regime, a price reduction for the internal connection service – a reduction by half as regards the installation price and application of 1% of the new installation price, in the case of the monthly payment, as is already the case for the signal transport service – and reduction to €35, for the signal transport service, of the price of the portion between the permanent visit chamber and the exchange entry.

As referred above, prices for co-installation services, information access services and visits to exchange buildings are a result of budgets based on cost estimates submitted by PT Comunicações, S.A. as far as the necessary equipment and manpower are concerned.

Figures regarding costs of equipment used in 2003, when the price of these services⁹ was reviewed, are as follows:

COMPONENT	COST	UNIT
5m² metallic division		
Mesh	54,87	per m ²
Sliding door	411,51	unit
Boards and cables		
Individual board and DC meter	1 525,82	unit
Earthing	66,34	unit
Cable and duct from general board to individual board	331,70	unit
Router blocks		
100 pairs block Siemens type	140,29	unit
Router protection tapes	366,33	unit
OLO transfer chamber		
NR2 box measuring 1.2mx0.60m	265,36	unit
Conduits		
PVC dedicated conduit	10,81	per meter
Joint box		
Joint box dividing 24 o.f. cable in 4 groups of 6 o.f.	199,02	unit

⁹ See determination dated 19.06.2003 at <http://www.anacom.pt/template20.jsp?categoryId=574&contentId=123551>.

Optic cables		
24 fibre TOMG1HE L6X4U4ST cable	5,65	per meter
6 fibre TOMG1HE L6U4ST cable (3 pairs)	3,08	per meter
ODF Components		
19" rack	729,75	unit
Subracks	398,05	unit
Fibre patches	79,61	unit
Adaptors	9,29	unit
Pigtails	19,91	unit
Patchcords	39,81	unit
Ducts		
Regiband ducts measuring 100mm×60mm of 6 cm	6,38	per meter
Regiband ducts measuring 200mm×105mm	6,38	per meter
Ducts for coaxial cables	6,38	per meter
Hardware		
Hardware for rulers/verticals	364,87	unit
Terminal box		
Optic fibre terminal box	132,69	unit
Internal cable		
TVHV cable measuring 100×2×0.5 for 100 pairs	3,79	per meter
External cable		
TIEG1HE cable measuring 600×2×0.6 for 600 pairs	24,21	per meter
TIEG1HE cable measuring 300×2×0.6 for 300 pairs	17,09	per meter
Visit chamber and building entrance		
Visit chambers	106,14	unit
Entrance to the tube mirror	65,27	unit
Coaxial cables		
Coaxial cables	0,27	per meter
Plugs		
Male plugs	1,13	unit
Double plugs	1,82	unit
Rulers		
Rulers	391,41	unit
E/O STM1 equipment over SDH		
E/O STM1 equipment over SDH dedicated by OLO	15 295,00	unit

and figures for costs of equipment and manpower, used in 2003¹⁰, were:

[SCI]

CLASSES	YEAR 2003	
	<i>Normal Working Hours</i>	<i>Overtime Hours</i>
ELT		
ETP		
TPJ		
TSE		
TSL		
TTL		
Odd-man Bricklayer		

[ECI]

¹⁰ In the scope of Determination dated 19 June 2003, available at <http://www.anacom.pt/template20.jsp?categoryId=574&contentId=123551>.

In view of these equipment and manpower base costs, ICP-ANACOM deemed that:

- Common costs should not be included in the price calculation of services that correspond to investments fully borne by OLOs, at a single stage, thus at no cost for PT Comunicações, S.A.;
- Common costs were included in the price of remaining prices, applying a coefficient of 1,22.

To these equipment and manpower base costs, thus calculated, were added project costs and supply costs amounting respectively to 10% and 6% of equipment costs. In the case of contracts concluded, common costs were not included, and to the equipment and manpower costs were added costs of contract management, which represent 4% of equipment cost and 9% of equipment and manpower base costs.

For the calculation of the monthly payment of these services, the associated cost was estimated by reference to:

- (a) operation, maintenance and preservation costs equivalent to 1% or 5% of installation costs, depending on the components under consideration;
- (b) Cost for space rental, considering a base space rental price of € /m²[SCI] [ECI] ;
and
- (c) Billing, charging and registration costs at 2,5% of the monthly payment established.

ICP-ANACOM is not provided with full data required to review these prices.

3. DETERMINATION

In the light of the above assessment, and:

- (a) Whereas PT Comunicações, S.A. is subject to the principle of cost-orientation of prices;
- (b) Considering that, as regards the application of the principle of cost orientation of prices, ICP-ANACOM has based its cost estimates on:
 - network elements or activities which may be identified in the cost accounting system of PT Comunicações, S.A., or on other cost particulars submitted by that entity;
 - information presented by PT Comunicações, S.A. on budgeted rates and running costs of resources consumed and activities required to supply services;
 - current practises in the European Union; and
 - practises of PT Comunicações, S.A. at retail services level;

- (c) Whereas, in the scope of the definition at €38 as the price for the installation of the local loop, - an identical amount to the installation price practised in the scope of the wholesale “PT ADSL Network” offer - the concern of ICP-ANACOM was to ensure a global tariff consistency between the different wholesale and retail offers, given that both services are installed in a similar fashion;
- (d) Whereas the installation price practised in the scope of the wholesale “PT ADSL Network” offer has not been altered, and there are no additional data that justify the review of the local loop installation maximum price;
- (e) Having regard to the cost information of PT Comunicações, S.A. for the financial year of 2004– namely cost information submitted in the scope of the SLRO conditions –, deducting thereto costs not incurred in the local loop unbundling and admitting an annual reduction of direct ad joint costs by 5%;
- (f) Deeming ICP-ANACOM that curtailment costs should not be considered for this service, in the light of criteria of efficiency and taking into account the view of the European Commission, that a model of forward-looking long-run incremental costs (FLLRIC) would be more appropriate when compared to the fully distributed historic costs methodology (FDHC);
- (g) Whereas the prices of co-installation services, information access services and visits to exchange buildings are a result of budgets based on cost estimates submitted by PT Comunicações, S.A. as far as the necessary equipment and manpower are concerned, and ICP-ANACOM is not provided with data required to review these prices;
- (h) Having regard to the regulation objectives provided for in article 5 of Law no.5/2004 of 10 February, namely to promote competition in the provision of electronic communications networks and services, to ensure that users derive maximum benefit in terms of choice, price, and quality and to encourage efficient investment in infrastructure, and to promote innovation;
- (i) Whereas point a) of paragraph 3 of article 68 of Law no.5/2004 provides that ICP-ANACOM is entitled to determine changes to published reference offers, at any time and where necessary with retroactive effect, to give effect to obligations imposed;
- (j) Having regard to comments received and grounds for the determination comprised in the “Report of the prior hearing on the draft decision regarding prices of the local loop unbundling to enter into force as from 01.01.2006”, which is an integral part hereof,

the Board of Directors of ICP-ANACOM hereby determines, in the scope of assignments provided for in points b) and f) of article 6 of the Statutes thereof, approved by Decree-Law no. 309/2001, of 7 December, and under point a) of paragraph 3 of article 68 of Law no.5/2004 of 10 February, and points b) and g) of article 9 of the Statutes thereof, to submit to the prior hearing of interested parties, pursuant to articles 100 and 101 of the Code of Administrative Procedure, setting up a maximum time limit of 10 working days, so that interested parties assess in writing, if they so desire, the following:

- a) To set out at €8,99 and €2,51 the ceiling prices for the monthly local loop payment, in the full access and shared access modalities, respectively, being incumbent upon PT Comunicações, S.A. to alter the RUO accordingly, within a 10-working-day deadline;
- b) The entry into force of prices is 01.01.2006.