

FINAL DECISION ON

MAXIMUM RETAIL PRICES

FOR CALLS TO

“707” AND “708” (UNIVERSAL ACCESS SERVICES) AND

“808” AND “809” (SHARED COST CALL SERVICES) NUMBERS

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1. DRAFT DECISION AND CONSULTATION PROCEDURES

By decision of the Management Board of 6 June 2019, the draft decision has been approved on *“Maximum retail prices for calls to “707” and “708” (universal access services) and “808” and “809” (shared cost call services) numbers”*.

This draft decision was submitted to the prior hearing of the interested parties, under the terms and for the purposes of the provisions of Articles 121 et seq. of the Code of Administrative Procedure, as well as the general consultation procedure established in Article 8 of Electronic Communications Law, establishing, in both cases, a period of 30 working days for interested parties to comment.

The public consultation took place until 31 July 2019 and, within the established time frame, a number of contributions were received, as well as one after the deadline.

Following this, the corresponding report was prepared, which forms an integral part of this decision and includes a summary of the positions expressed in the draft decision submitted to the prior hearing of the interested party, as well as ANACOM's understanding of them.

2. BACKGROUND

2.1. ANACOM DETERMINATION OF 16.01.2004 (SETTING OF MAXIMUM RETAIL PRICES)

By determination of 16.01.2004¹, ANACOM defined the maximum retail prices for calls to “707” and “708” (universal access services) and “809” (shared cost call services) numbers, to be applied from 01.02.2004.

Pursuant to this determination, ANACOM, within the scope of the attributions provided for in Article 6 (1) (b) and (h) of the Statutes in force at that time (as approved by Decree-Law 309/2001, of 7 December), and pursuant to Article 28 (2) (a) and (b) of Decree-Law 415/98, of 31 December (likewise in force at that time), determined as follows:

“1. The maximum prices payable by the calling user for calls to “707”, “708” and “809” numbers shall be as follows:

¹ Available on the ANACOM website, at <https://www.anacom.pt/render.jsp?contentId=420676>.

- “707” and “708”: € 0.10 per minute for calls originating on fixed networks and € 0.25 per minute for calls originating on mobile networks, charged per second from the first minute;
 - “809”: price of a national call after the 10-second initial time credit, during peak hours under the universal service tariff, currently € 0.0738 per minute, charged per second from the first minute.
2. ANACOM shall monitor the development of market conditions with regard to the prices charged under the provision of universal access services and shared costs in order to assess the need for further interventions.
 3. This determination shall be mandatory from 1 February 2004, notwithstanding the possibility that it may be implemented earlier on the initiative of the providers bound by it”.

In accordance with ANACOM determination of 28.01.2004², the deadline for the execution of this determination was then deferred by 15 (fifteen) working days.

In the specific case of telephone calls made to the “808” range, the NNP itself already included a tariff regulation that defined that the maximum price to be borne by the caller shall be that of a local call under the Universal Service (US).

The “8” range is designated in the NNP for “Free Calling, Shared Cost Calling, Virtual Calling Card, Personal Number Services”, specifically defining that the “808” and “809” ranges support shared cost calling services.

Numbering ranges “7” are defined in the NNP as “Private Voice Networks, Non-Public Private Networks, Universal Access, Premium Rate Utility, Flat Rate Tariff Per Call and Inter-Operator Routing Numbers Services”, with “707” and “708” ranges support universal access services.

It should be noted that the services accommodated in all these numbering ranges - “707”, “708”, “808” and “809” - the respective maximum retail prices of which are regulated as indicated, are also characterised by always allowing access by the end-user (the callers) in

² Available on the ANACOM website, at <https://www.anacom.pt/render.jsp?contentId=420721>.

the same manner and at the same price by dialling a unique number from anywhere in the country.

2.2. REASONS FOR SETTING MAXIMUM RETAIL PRICES

The setting of maximum retail prices for calls to “707”, “708” and “809” numbers was introduced in 2004, within a context in which a maximum tariff ceiling for the “800” and “808” ranges had already been established under the NNP. Although these ranges are based on a rationale of sharing the cost of calls between the originating user and the customer of the non-geographic number, in the specific case of calls to the “800” range, the number customer bears all the costs, as the call is free of charge for the caller.

Retail pricing also emerged within a context in which audiotext services accommodated in the “601”, “607”, “608”, “646” and “648” ranges were already subject to specific regulation, and were subject to automatic barring for all subscribers who had not explicitly requested access to these codes.

However, over the course of 2003 and 2004, a number of complaints were made by end-users and the respective telephone service providers both regarding the high prices being charged for calls, in particular for the “707” and “708” ranges and regarding the use of numbering resources themselves.

With regard to the latter, it should be noted that this was geared towards the provision of audiotext services, for which there were (and still are) specific numbering ranges and regulations, which users expected to be barred by default. This tampering with the genesis of these numbering ranges was harming not only end-users, who were surprised by excessive bills for calls to these numbers, but also the providers of the electronic communications services themselves, who were often faced with high uncollectible or bad debts.

ANACOM therefore considered that it was facing a situation that lacked transparency, generating doubt among end-users and potentially resulting in distortions in the electronic communications market.

Other complaints that arose in this context related in particular to the prices of calls made to the “707” range for the provision of “call centre” services, which were set at very high levels in relation to the type of service provided.

Accordingly, while the year 2003 was still underway,³ the market was consulted on the possibility and necessity of setting a tariff ceiling for calls to “707”, “708” and “809” numbers. Following this consultation, it was found that there was some consensus on the need to regulate the maximum prices of calls originating for the aforementioned numbers, in particular given the importance for end-users of knowing the maximum amount to be paid for the respective calls. This price regulation also appeared to be important for the telephone service providers of the originating customers, given that, as mentioned above, they often struggled with situations of uncollectible or bad debts, as well as with numerous user complaints regarding the amounts to be paid.

Thus, in order to ensure a more transparent process and provide end-users with “*more reliable and clearer information on the conditions of use of such numbering resources*”, ANACOM considered it necessary to fix maximum retail prices for calls to “707”, “708” and “809” numbers, which as mentioned above, occurred by means of its determination dated 16.01.2004.

3. LEGAL FRAMEWORK

Pursuant to the Electronic Communications Law (ECL) ⁴, among other purposes of regulating electronic communications, it is incumbent upon ANACOM to protect the interests of citizens, in particular by “*Encouraging the provision of clear information, especially requiring transparency in the tariffs and conditions of use of publicly available electronic communications services*”⁵.

Within the legal framework applicable to electronic communications, ANACOM defines the guidelines and general principles of the National Numbering Plan (NNP)⁶, which were

³ Consultation regarding the NNP, available on the ANACOM website, at <https://www.anacom.pt/render.jsp?contentId=789339>.

⁴ Law 5/2004, of 10 February, in its current wording, available on the ANACOM website, at <https://www.anacom.pt/render.jsp?categoryId=323676&tab=&a=324015&b=324016&c=>.

⁵ Pursuant to Article 5 (1) (c) and (4) (d) of the Electronic Communications Law and Article 8 (1) (h) of the ANACOM Charter, as approved by Decree-Law 39/2015, of 16 March.

⁶ Available on the ANACOM website, at <https://www.anacom.pt/render.jsp?categoryId=5355>.

approved following Ministerial Order 5872/99, of 23 March, of the Minister for Infrastructure, Territorial Planning and Management, published in the Diário da República (2nd Series), No. 69, of 23.03.1999⁷.

Pursuant to Article 17 (2) (b) of the ECL, it is also incumbent upon ANACOM, to manage the NNP *“in accordance with the principles of transparency, efficacy, equality and non-discrimination, including the definition of conditions for the allocation and use the of national numbering resources”*, and the NNP is defined in accordance with ITU-T Recommendation E.164⁸ and aims to ensure that access to electronic communications services is provided from differentiated numbers according to the type of service, i.e. structured by tiers of numbering. In this context, the NNP includes codes that identify services with which maximum caller rates are associated, as occurs with the “707”, “708”, “808” and “809” ranges.

It should also be noted that, pursuant to Article 37 (1) (a) of the ECL, ANACOM is responsible for designating the services for which the numbers are to be used and any requirements related to the provision of these services, including *“ (...) pricing principles and maximum prices that may apply in the specific series of numbers with a view to ensuring consumer protection”*.

It is therefore under the above legal framework and within the scope of ANACOM's powers of management of the NNP that it is now intended to fix new maximum retail prices for calls to “707”, “708”, “808” and “809” numbers, as will be explained below. The intention of this intervention is to reduce the maximum prices applicable to calls to “707” and “708” numbers and to define the maximum prices applicable to calls to “808” and “809” numbers.

4. ANALYSIS

4.1. DEVELOPMENTS IN THE APPLICATION OF THE 2004 DETERMINATION

In the case of the “707” and “708” ranges, the tariff ceilings were set taking into account the costs underlying such calls, namely wholesale call origination costs on fixed and mobile networks, as well as the associated wholesale costs of billing, collection and risks of non-

⁷ In accordance with the provisions of Articles 30 and 21 (2) of Decree-Law 415/98, of 31 December. Available on the ANACOM website, at <https://www.anacom.pt/render.jsp?contentId=981659>.

⁸ Available at <https://www.itu.int/rec/T-REC-E.164-201011-I/fr>.

recovery. As such, different ceilings were set depending on whether the call originated on the fixed network (either by customers of the fixed telephone service - FTS) or on the mobile network (or by customers of the mobile telephone service - MTS).

It is recalled that the retail price of calls to these numbers is set by the provider holding the number and not by the provider on whose network the call originates. The former pays the latter a fee for providing call origination service, which differs depending on whether it originates on a fixed network or a mobile network. The provider holding the number also pays the provider of the customer who originated the call a fee for the provision of billing, collection and risks of non-recovery, since it is the latter provider who charges the value of the call to its customer. The call value, which is the maximum of the regulated value, constitutes revenue for the number holder provider, which is forwarded to the number holder.

It should be recalled that calls to “809” numbers correspond to shared cost calls. Considering that the “808” range had already been regulated, in terms of maximum price, according to the price of a local call within the US, the “809” range now became regulated through the aforementioned 2004 determination, also in terms of maximum price, albeit depending on the price of a national call set under the US tariffs, during peak hours.

It should be noted that, from 2007, the then PT Comunicações, SA (PTC), at the time the provider of the US, introduced an alternative US tariff (also referred to in ANACOM decisions as option 2, or the alternative US tariff option). This tariff was equivalent to the main tariff (or option 1), differing only in that it included a discount in the monthly price and, moreover, did not have associated with it any gratuity in the price of traffic during off-peak hours. As a result of this amendment, from 2007 onwards, the maximum call prices for the “808” and “809” ranges became associated with the local and national call prices of the alternative US tariff, as the main tariff included free traffic (where the “800” range already existed for free calls).

Subsequently, in 2010, PTC ceased differentiating between local and national call prices, as a result of which the maximum call prices for the “808” and “809” ranges, in this respect, became aligned with a single tariff reference. However, the latter range also kept as reference the price of a call during peak hours.

During 2014, when NOS Comunicações, SA (NOS) began providing the US services, the US tariff became a single tariff, and option 1 and option 2 ceased to exist. This single option continued not to differentiate between local and national calls, only differentiating between the prices of calls to the same network and to other fixed and mobile networks, and during peak and off-peak hours. Given that, as with previous US tariffs, the price for the same network includes zero-priced traffic, the tariff ceiling that has been used for calls to “808” ranges has generally been the lowest price of calls to another (fixed) network. In other words, it currently corresponds to an amount of 0.07 euros for the first minute, with the price of the following minutes (with billing per second after the first minute) being 0.0277 euros, for calls made on working days between 09:00 AM and 09:00 PM, and 0.0084 euros for calls made during the remaining hours (excluding VAT). In the case of the “809” range, for the most part, prices have been set at 0.0258 euros per minute, with billing per minute after the first minute, which is less than the lowest price of calls to another (fixed) network of the US tariff, during peak hours, after the first minute (excluding VAT).

4.2. SETTING OF NEW MAXIMUM RETAIL PRICES

4.2.1. NEED TO UPDATE MAXIMUM RETAIL PRICES

Despite the increasing number of alternatives given to end-users to obtain information or contact the various entities providing services supported by the above non-geographic numbers (e.g. Internet, email and specific applications developed by the various entities), there is still a substantial group of consumers who continue to prefer contact by means of voice calls.

In addition, many entities are also interested in staying in touch through these numbers to develop broader marketing policies or business strategies, or to provide diverse services, not necessarily of a commercial nature.

In this respect, it should be noted that, according to data obtained from operators (for the whole of 2015), call traffic to “707” and “708” numbers amounted to approximately 130 million minutes per year, while for “808” and “809” numbers, it amounted to around 160 million minutes per year, and it is estimated, based on the most recent data for 2017 and 2018, that there has been a very slight fall in this traffic to values that are still clearly over 100 million minutes, both for “707” and “708” numbers and for “808” and “809” numbers.

It is also noted that there is a growing weight of calls (in minutes) made to “707” and “708” numbers originating from MTS customers, which, in 2015 and 2016, approached 40% compared to the total traffic directed to these numbering ranges from fixed and mobile networks. It is estimated that, by 2018, this figure will not differ much from the previous one.

It is therefore appropriate, in the Authority’s view, that the maximum prices set for calls to the numbering ranges concerned should be appropriate and should not undermine the principles underlying their original establishment.

Thus, in the case of calls to “707” and “708” numbers, although ANACOM has set maximum prices, and thus prices below this threshold may be charged, the prices actually charged have remained unchanged over the last 15 years and - it should be noted - have always remained in line with the set maximum prices.

Nonetheless, wholesale call origination and billing and collection prices have evolved, resulting, in particular, in a sharp decline in wholesale prices charged for mobile origination. This trend points to the need to adjust the maximum retail values charged to the end-user and to further approximate the prices charged for calls originating on fixed and mobile networks.

It should be noted that the page on the ANACOM website containing the 2004 determination which set the maximum retail prices for calls to “707”, “708” and “809” numbers has been one of the most visited, reflecting public interest in this regard. Additionally, for calls to “707” and “708” numbers, there have been some complaints from users who believe that the prices set are very high, taking into account the services provided in the ranges concerned. Also, several consumer protection organisations have been making reference in various contexts to the high prices of calls to these numbers. Thus, it is possible that calls to these numbers are being disproportionately and/or ambiguously charged.

In turn, with regard to calls to “808” and “809” numbers, prices have generally followed changes in the US tariff over the recent years. However, bearing in mind the suppression of these tariffs, it is important to detail/specify clearly the maximum values applicable to these ranges.

In view of the above, following the developments witnessed in the electronic communications market, whether due to regulatory intervention or pressure, given the reduction in origination prices charged by operators or changes in the US tariff, or due to

the competitive dynamics observed in retail prices, both in terms of fixed and mobile communications, ANACOM considers it necessary and appropriate to update the maximum call prices for “707” and “708” numbers, and the maximum call prices for the “809” and “808” numbers, as set out below.

Regarding the deadline established for the entry into force of the updates determined herein, ANACOM believes that, as this may result in the renegotiation of many contracts for the implementation of these updates, the initially planned 30-day period should be amended, and a time frame of 9 months should be established for the implementation of this decision.

4.2.2. “707” AND “708” NUMBERS

As foreseen in its determination of 16.01.2004, ANACOM has been monitoring the evolution of the prices charged under the provision of universal access and shared cost services, in order to assess the need for further interventions.

As with the rationale adopted when setting the maximum call tariff ceilings for “707” and “708” numbers in 2004, it is important to analyse the underlying costs of establishing calls for the provider holding such ranges, including the wholesale prices that are paid to the FTS and MTS providers for call origination services on their respective networks. This analysis should also include the wholesale prices associated with billing, collection and risks of non-recovery paid to those same providers for the corresponding service.

Therefore, the average costs for the years 2003 and 2018 were calculated, considering as a proxy the origination tariffs charged by the main providers of mobile and fixed telephone services operating in those years, and the prices charged for billing and collection provided by those same providers. It should be noted that the 2004 determination was approved taking into account data for 2003, as a result of which these were also considered in the following analysis.

It should be noted that the calculations are made considering the average duration of a call⁹, which, according to data collected by ANACOM on traffic destined for “707” and “708” numbers, is around 3 (three) minutes, a value that has remained relatively stable over the last few years.

⁹ Estimated values shown are rounded to four decimal places, unless otherwise indicated.

It should also be noted that, given the nature and diversity of the services provided in the “707” and “708” numbering ranges, a short call (i.e. less than 1 (one) minute) will not normally be sufficient to satisfy the objective of the person making the call to the aforementioned numbers. Therefore, it is understood that a call to “707” and “708” numbers will tend to last longer than 1 (one) minute, it being assumed that, for the calculation of estimates of average origination and billing and collection costs, a non-parametric approach is appropriate¹⁰.

4.2.2.1. Calls made from MTS customers

For calls made to “707” and “708” numbers by MTS customers, it was estimated that, at the end of 2003, the average cost (of origination and billing and collection) per minute of a call with an average duration of 3 (three) minutes was 0.1995 euros¹¹. Notwithstanding the possible existence of other costs, this figure indicated that the absolute margin for providers holding the numbering ranges under consideration, after deducting interconnection costs, was 0.0505 euros per minute for a call having an average duration of 3 minutes, i.e. approximately 20% of the price of these calls.

In 2018, the three MTS providers with their own network charged different origination service tariffs, as a result of which, for the calculation of the average origination and billing and collection cost, it was necessary to apply the criterion of weighted market shares measured by traffic (minutes) of the MTS.

Alternatively, other criteria could have been used, such as shares of third-party mobile call origination traffic for “707” and “708” numbers or retail traffic originating from the mobile network for “707” and “708” numbers. However, as some of the required data were not complete, it would be necessary to estimate part of the information, and the results obtained would point to only marginal differences from the results obtained using the MTS traffic share (minutes) criterion.

¹⁰ For estimating average call costs and/or prices, it is often assumed that call duration follows an exponential distribution. However, this method tends to be unsuitable for modelling the distribution of this type of data, and may lead to bias in the results. Despite the reservations regarding the use of this distribution, estimates were made using this methodology, and values close to those obtained with the non-parametric methodology were found.

¹¹ The price of mobile origination charged at the time was around 0.1870 euros per minute, while the price of billing, collection and risks of non-recovery was 0.0374 euros per call (excluding VAT).

Therefore, based on the call origination and mobile billing service prices charged in 2018, weighted by means of the criterion of the traffic shares of the MTS providers with their own network, it is estimated that the average cost (origination and billing and collection), per minute for a call with an average duration of 3 (three) minutes to “707” or “708” numbers, from a mobile network, is currently 0.0764 euros. Thus, the maximum retail price set after deduction of interconnection costs incorporates a margin of 0.1736 euros per minute for a call with the aforementioned average duration, i.e. around 69% of the price of such calls.

Therefore, for calls originating from MTS customers and destined for “707” and “708” numbers, there was a decrease of more than half (-62%) of average costs per minute in the period between the end of 2003 and 2018 (related to wholesale origination and billing and collection) of a call with an average duration of 3 (three) minutes, which represents a decrease in absolute terms of 0.1231 euros. This decrease allowed a very considerable increase of around 0.1231 euros per minute for a call with an average duration of 3 minutes, or 49 percent (%), of the margins obtained by the providers holding numbering after covering the aforementioned origination and billing and collection costs.

4.2.2.2. Calls made from FTS customers

As regards calls made to “707” and “708” numbers from FTS customers, an approach similar to that referred to in point 4.2.2.1 was adopted, namely the consideration of the origination tariffs charged by the main FTS providers for calculating the average costs (origination and billing and collection) of a service provider based on non-geographic numbers for a call with an average duration of 3 (three) minutes.

Against this background, it was necessary to consider, not only MEO – Serviços de Comunicações e Multimédia, SA (MEO), formerly PTC, whose wholesale call origination prices on the fixed network were regulated¹², as maximum values, but also providers with wholesale call origination tariffs, which were never subject to regulation.

¹² By decision of 14.12.2017, the wholesale market for call origination on the public telephone network at a fixed location for special services supported by non-geographic numbering was deregulated. Accordingly, the obligations imposed on MEO in this market ceased to be applicable from the date of adoption of the aforementioned final decision, except for the obligation to control prices, which was only abolished within 6 months of that decision. Available on the ANACOM website, at <https://www.anacom.pt/render.jsp?contentId=1425565>.

Therefore, the wholesale call origination prices in the fixed network included in the Reference Interconnection Offer (RIO), applied by the then PTC in 2003¹³ (RIO used as reference for the 2004 decision) were considered, and an average value was calculated weighted by 2003 usage profiles according to the different levels of interconnection. Account was also taken of the maximum price set for the billing and collection service in effect at that time.

Compared to the other providers and considering that, at the end of 2003, they had different prices for the wholesale call origination service on their respective networks and for wholesale billing and collection, an average price was estimated considering the tariffs then in force and their weighting by market shares in terms of traffic (minutes) of these providers in the FTS retail market.

The average prices obtained for PTC and for the other providers were weighted according to the shares of traffic originating from FTS customers destined for non-geographic numbering ranges (since there are no estimates only for traffic destined for “707” and “708” numbers), with PTC at the time holding around 75% of the market, and the other providers, the remaining 25%.

Accordingly, it was estimated that, at the end of 2003, the average cost (origination and billing and collection) per minute of a call with an average call duration of 3 (three) minutes originating from FTS customers and destined for “707” and “708” numbers was 0.0297 euros. This figure indicates an absolute margin for the holder of the numbering, after deduction of interconnection costs, in the order of 0.0703 euros per minute, for a call with the aforementioned average duration, which represents 70% of the price of those calls.

For the present, the most recent wholesale call origination and billing and collection tariffs applied by the operators (with reference to the information obtained in July 2018) were considered, and an average price weighted by those providers’ market shares was calculated in terms of traffic (minutes) of the FTS.

As with the methodology followed in the mobile market, the use of other weighting criteria was also considered here. However, in order to allow a better comparison with 2003, and in line with the criterion used in the mobile market, the use of FTS traffic shares (minutes)

¹³ The prices concerned (maximum prices) were determined by ANACOM on 21.03.2003. Information available at: <https://www.anacom.pt/render.jsp?contentId=418271>.

as a weighting factor was chosen in both years. Based on the weighting performed, the average origination and billing and collection costs on the networks of the FTS providers were obtained.

It is therefore estimated that the average cost (of origination and billing and collection) per minute for a call with an average duration of 3 (three) minutes is 0.0356 euros, which indicates that the maximum retail price established (0.10 euros) incorporates an absolute margin of 0.0644 per minute for a call with an average duration of 3 minutes, or approximately 64% of the price of such calls, after deduction of interconnection costs.

Therefore, it was found that, compared to 2003, there was a rise of around 20% in average origination and billing and collection costs per minute of a call with an average duration of 3 (three) minutes. However, this represents an increase of only 0.0059 euros. This is mainly due to a rise in the average origination and billing and collection costs of calls originated under the provision of the FTS by MEO.

In addition, the rise in average origination and billing and collection costs on the fixed network, which contrasts with the decrease in the average cost of calls originating from mobile customers, is also due to the fact that many wholesale tariffs charged by the remaining providers remained unchanged or without relevant fluctuations, and in some cases increased, while in parallel, their market share also increased.

A decrease in margins was thus observed, after deducting interconnection costs, of around 6%, although, as mentioned above, in absolute terms, this translates into a very minor reduction (0.0059 euros per minute).

However, it should be noted that, while under the 2004 regulatory intervention on calls originating from MTS customers, a margin for providers holding the numbering ranges under analysis, after deducting interconnection costs, of 0.0505 euros per minute for calls originating from FTS customers was guaranteed, the margin was around 0.0703 per minute.

4.2.2.3. New maximum retail prices

As explained above, it has been found that, in recent years, there has been a decrease in the average costs of origination and billing and collection of calls to “707” and “708” numbers, originating from MTS customers, of around 62%, and an increase in the average costs of origination and billing and collection of calls originating from FTS customers of

around 20%. However, the decline in average origination and billing and collection costs for calls originating from MTS was not reflected in retail prices for calls to these numbers, which generally remain in line with the regulated maximum retail prices.

Taking into account the different trends in the average costs per minute of origination and billing and collection of such calls, depending on whether they originate from MTS or FTS customers, the updating of the maximum retail prices of calls to “707” and “708” numbers should be weighed by analysing traffic separately according to its respective origin.

Based on the figures presented in points 4.2.2.1 and 4.2.2.2 above, the setting of new maximum retail prices is based on information regarding changes in origination and billing and collection costs and on absolute values of gross margins for providers holding the numbering ranges under analysis, after deduction of interconnection costs.

The prices to be set for calls originating from MTS customers should therefore be adjusted based on the change in absolute value of the average origination and billing and collection costs, which translates into the maintenance of absolute gross margins at around 2003 levels, after deduction of interconnection costs. The maximum retail prices, per minute, to be set for such calls should not exceed 0.13 euros.

Even so, this reduction ensures a gross margin after deduction of interconnection costs of 41%, which is much higher than in 2003, when it stood at around 20%.

In the case of calls originating from FTS customers, and although there has been an increase in interconnection costs (although, it should be noted, this is reflected a very small reduction of around 0.0059 euros), it is not considered proportional or justified to maintain a gross margin that is completely different in absolute terms and higher than that guaranteed for calls originating from MTS customers.

In fact, the costs related to the management of the infrastructure, technologies and information necessary for the “707” and “708” ranges to be made available by the providers holding the numbers will not be significantly different according to the origin of the calls, as a result of which it is not expected that, after deducting wholesale call origination and billing and collection costs (which differ between calls originating from FTS and MTS customers), there will be any need to maintain in those calls an absolute margin that is completely different from that in calls originating in MTS customers.

In this case, the approximation of the margins obtained with calls to “707” and “708” numbers originating from MTS customers will allow the maximum retail price of calls originating from FTS customers to be set at 0.09 euros, still guaranteeing a gross margin in absolute terms for the providers holding these numbering ranges very slightly higher than those guaranteed for calls originating from MTS customers.

These tariff ceilings unequivocally result in lower maximum retail prices than those currently in force, both for calls of fixed origin (FTS customers), of around 10% and, above all, for calls of mobile origin (MTS customers), of around 48%.

Therefore, and given that:

- a. The values indicated were calculated based on average call origination and billing and collection prices, i.e. based on the effective prices that were weighted by the operators’ market shares, as a result of which the actual costs of call origination and billing and collection may not exactly match the average costs obtained (they may be slightly lower or higher);
- b. The calculations made do not take into account the fact that part of the traffic may originate from the numbering provider itself. Such traffic is not subject to wholesale origination and billing and collection costs (although it is subject to internal costs, which, however, are not necessarily equivalent to the average wholesale costs), in which case the wholesale costs are overstated;
- c. No reasons can be found for the absolute (and also relative) gross margins, after the deduction of interconnection costs, for providers holding the numbering ranges under consideration to be completely different depending on the origin of the calls. Likewise, after an update of the maximum retail prices for calls originating from MTS, no reason can be found for these margins for calls originating from FTS customers to be considerably higher than those resulting from calls originating from the MTS.
- d. The maximum call prices for “707” and “708” numbers have not been updated for around 15 years, and providers holding such ranges have absorbed the savings they have gradually achieved by reducing wholesale origination and billing and collection prices, with an increase in traffic originating on their networks and destined for the access operator’s own numbering ranges (and, as such, not subject to wholesale payments associated with call origination and billing and collection), as

well as, in the case of calls originating from FTS customers, with the margins they were allowed to operate with;

- e. The number of complaints regarding these numbering ranges has been increasing, and focus on the high prices of the calls made;

ANACOM believes that:

- (i) the new maximum price per minute for calls originating from FTS customers for “707” and “708” numbers should be **0.09 euros**, with billing per second from the first minute (excluding VAT);
- (ii) the new maximum price per minute for calls originating from MTS customers for “707” and “708” numbers shall be **0.13 euros**, with billing per second from the first minute (excluding VAT).

Taking into account the volume of traffic recorded annually in these numbering ranges, and if the trend of alignment continues between the prices for “707” and “708” numbers and the maximum prices defined for calls originating in the MTS and FTS, it is estimated that the new maximum retail prices will allow, at least, overall annual savings for end-users of around 6 to 7 million euros. However, it should be noted that setting a maximum retail price does not prevent providers holding “707” and “708” numbers from applying lower prices than the tariff ceilings set out in this determination, as a result of which, in these cases, the annual savings for end-users may be higher.

4.2.3. NUMBERING RANGES “808” AND “809”

As far as the call prices for “808” and “809” numbers are concerned, as mentioned above, these are currently set for the “808” range according to the price of a local call within the US and for the “809” range according to the price of a national call, during peak hours, also under the US tariff.

However, various changes have occurred since the approval of ANACOM’s determination of 16.01.2004, for example to the US tariffs. In addition to being updated, with various prices for calls made to fixed networks being included, they no longer differentiate between local and national calls, which more recently ceased to exist. Thus, it can be seen that the price of calls for “808” and “809” numbers remains distinct, and in the case of the “808” range in

general, it does not exceed the lowest price of calls to another network (fixed) of the most recent tariff of the US (in the first minute and following minutes, during peak and off-peak hours) (before its suppression), and there are several situations in which the price charged is even lower. In the case of the “809” range, the respective prices have been set lower than the lowest prices for calls to another (fixed) network of the same US tariff, during peak hours (this value normally being applied for the first minute and for the following minutes).

Thus, bearing in mind the changes that have been introduced in these tariffs, and more recently their suppression, since June 2019 with the termination of the contracts signed between the Portuguese State and the former ZON TV Cabo Portugal, SA and Optimus - Comunicações, SA, on 19.02.2014, for the provision of the universal service for connecting to a public communications network at a fixed location and for services accessible to the public, and it remaining relevant that there should be low-priced non-geographic numbering ranges that can be equated with the prices of telephone calls made to geographic and mobile numbering ranges, ANACOM believes it is essential to maintain tariff ceilings for such numbering ranges and to unambiguously detail/specify the maximum ceiling applicable to telephone calls to said numbering ranges.

Thus, the maximum price set for calls to the “808” numbering range should correspond to the price that has been generally applied, resulting in a maximum value of **0.07 euros** for the first minute and the maximum values of **0.0277 euros** per minute, during peak hours, and **0.0084 euros** per minute, during off-peak hours, in the following minutes, with charging per second starting from the first minute (excluding VAT). The aforementioned maximum ceilings correspond to the lowest price of a call to other fixed networks under the US tariff, during the respective peak hours and during the respective off-peak hours.

The maximum price set for calls to the “809” numbering range shall should correspond to the price that has been mostly applied, resulting in a maximum value of **0.0258 euros**, with charging per second starting from the first minute (excluding VAT).

Although the US tariff is the historical reference for setting the aforementioned maximum prices, given that it has been discontinued, due to the US contract terminating at the end of May this year, it is considered that this situation should not have an impact on the values set, and that the tariff ceilings indicated in calls to the “808” and “809” numbering ranges should remain unchanged. Accordingly, it is not justified that the designation of the ranges

under consideration in the NNP should continue to make reference to the US tariff, as a result of which it should be abolished.

Considering that the vast majority of the prices charged by the various providers holding these numbering ranges are in line with or below the figures set herein, this Authority considers that the impact of this measure on these providers will be insignificant, in these cases not requiring the amendment of the tariffs charged.

5. REPLACEMENT OF ANACOM DETERMINATION OF 16.01.2004

As already mentioned, ANACOM intends to update the maximum retail prices of calls made to “707” and “708” numbers and to “808” and “809” numbers.

The *updating* of the prices concerned implies the replacement of the administrative act in force - ANACOM's determination of 16.01.2004 - given that this concerns new calculation formulas and tariffs, with repercussions for the maximum amounts to be charged, per minute, for calls originating from FTS and MTS customers under the “707” and “708” ranges, as well as calls to “808” and “809” numbers.

We are therefore dealing with a *valid* administrative act, which was carried out under the discretionary powers of the Administration (hereinafter referred to as ANACOM) and which is not constitutive of rights, as a result of which there are no legal constraints on the intended replacement.

In accordance with the provisions of Article 173 (1) of the Code of Administrative Procedure (CAP), the *replacement* (and also the *amendment*) of administrative acts, as intended herein, is subject to the rules governing *revocation* provided for in Articles 165 et seq. of the same statute.

Pursuant to Article 167 (1) of the CAP, administrative acts are revocable, except “*where their irrevocability results from legal imposition or where they result, for the Administration, in legal obligations or non-waivable rights*” - which is not the case. And, if they are acts constituting rights - which is not the case either - they may only be revoked in the situations expressly listed in paragraphs 2 (a) to (d) of the aforementioned article.

Thus, Article 169 (1) of the CAP states that “*Administrative acts may be revoked (...) on the initiative of the competent bodies (...)*”, paragraph 2 providing that, unless subject to special

provision, *“those enacting them shall be competent for the repeal of administrative acts (...)”*.

As regards form and formalities, the legislator stipulated in Article 170 (1) of the CAP that the act of repeal must take the form prescribed by law for the repealed act, and the formalities required for the commission of the repealed act *“that prove indispensable to guaranteeing the public interest or the legally protected rights and interests of the parties concerned”* must be observed (see paragraph 3). And, under Article 171 (1), *“As a rule, revocation shall take effect for the future (...)”*.

As regards the replacement intended herein, it may take place *of its own motion*, in this case, at the behest of ANACOM itself, which is, moreover, the competent authority in this regard, as the Enactor of the administrative act concerned (determination of 16.01.2004).

And, in terms of its effects, this act aims to replace, for the future, the act adopted on 16.01.2004.

Finally, and aware of the multiple “subjective” effect of the act, it should be noted that this replacement is based on motivations underlying the pursuit of the public interest in the area of electronic communications, which also includes the interests of end-users. As such, good management is required, as effectively considered in paragraph 3 above.

Accordingly, considering the assumptions set forth in the CAP for the *replacement* of administrative acts, ANACOM believes that the act of *“Setting of maximum retail prices for calls to “707”, “708” (universal access service) and “809” (shared-cost calling services)”*, adopted by determination of 16.01.2004, may and shall, pursuant to Article 165 (1), Article 169 (1) and (2), Article 170 and Article 171 (1) (ex vi Article 173 (1)) of the CAP, all be replaced, in the light of the updates explained above, with effect from the entry into force of this determination.

6. DETERMINATION

Thus, bearing in mind the reasons explained in the preceding points, in the performance of the tasks provided for in Article 8 (1) (f) and (h) of the Charter, as approved by Decree-Law 39/2015, of 16 March, in the exercise of the powers provided for in Article 9 (2) (b) of the same Charter, as well as the powers provided for in Article 17 (2) (a) and (b) and Article 37

(1) (a) of the ECL, the Management Board, acting in accordance with Article 26 (1) (q) of the Charter, decides:

- a. To determine that the maximum retail price (excluding VAT) for calls to “707” and “708” numbers and originating from FTS customers shall be **0.09 euros** per minute, with billing per second from the first minute.
- b. To determine that the maximum retail price (excluding VAT) for calls to “707” and “708” numbers, originating from MTS customers, shall be **0.13 euros** per minute, with billing per second from the first minute.
- c. To determine that the maximum retail price (excluding VAT) for calls to “808” numbers shall be set at a maximum of **0.07 euros** for the first minute and for the following minutes at a maximum of **0.0277 euros** per minute during peak hours (working days from 9:00 AM to 9:00 PM) and **0.0084 euros** per minute, during off-peak hours, with billing per second from the first minute.
- d. To determine that the maximum retail price (excluding VAT) for calls to “809” numbers shall be set at a maximum of **0.0258 euros** per minute, with billing per second from the first minute.
- e. To determine that the maximum prices defined in a., b., c. and d. above shall enter into force 9 (nine) months after the adoption of the final decision by ANACOM, notwithstanding the possibility that it may be implemented earlier on the initiative of the providers bound by it.
- f. To replace ANACOM’s determination of 16.01.2004 with effect from the date referred to in subparagraph e.
- g. To determine that the definitions contained in the NNP for the numbering ranges “808” and “809” shall be updated, in the case of the range “808” being replaced by *“Shared cost call service, where the maximum price to be borne by the caller shall be 0.07 euros for the first minute, and in the following minutes 0.0277 euros per minute during peak hours and 0.0084 euros per minute during off-peak hours, with billing per second from the first minute (excluding VAT)”* and in the case of the “809” range, shall be replaced by the *“Shared cost call service, where*

the maximum price to be borne by the caller shall be 0.0258 euros per minute, with billing per second from the first minute (excluding VAT)”.