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Determination of 21.12.2001

**DRAFT DECISION ON THE NOTIFICATION OF PT COMUNICAÇÕES, S. A.
IN REGARDS TO SIGNIFICANT MARKET POWER IN THE FIXED
TELEPHONE NETWORKS MARKET AND/OR FIXED TELEPHONE SERVICE
FOR THE PURPOSES OF NUMBER 1 OF ARTICLE 3 OF THE
REGULATIONS OF THE OPERATION OF THE FIXED TELEPHONE
SERVICE
-2001-**

On 22/11/01, ICP's Board of Directors approved the Institute's preliminary understanding through which it was concluded that, in principle, PT Comunicações (PTC) has significant market power (PMS) in the fixed telephone networks market and/or the fixed telephone service (FTS), under the terms of Article 3 of the Regulations of the Operation of the Fixed Telephone Service. This deliberation was communicated to PT Comunicações (PTC) and the Directorate-General of Commerce and Competition (DGCC).

On 12/12/01, the DGCC expressed its agreement in terms of demarcation of the relevant market, and the indicator used in order to quantify market shares, and also in terms of the conclusions reached by ICP from analysis of additional criteria. The DGCC also considered to be pertinent the reasons identified by ICP to not include the Internet market within the market under assessment. On this basis, the DGCC agreed that PTC has SMP in the fixed telephone networks market and/or fixed telephone service.

PTC - the interested party in this process - considered that the form in which Internet traffic is to be analysed is unclear, arguing that since Internet traffic was to be excluded from the fixed telephone networks market and the fixed telephone service, it would be difficult to include Internet access within the framework of the interconnection market in 2000.

In this regard, it should be emphasised that the DGCC agreed with ICP's assumptions for Internet traffic, as well as the Institute's assessment of significant market power. It should also be noted that the analysis of SMP in the interconnection market, for the purposes specified in Decree-Law no. 415/98 of 31/12, is presently underway and this analysis effectively includes suitable analysis of Internet traffic.

In this context, the draft declaration on significant market power in the fixed telephone network markets and/or fixed telephone service for the purposes of Article 3, number 1 of the Regulation of Operation on the Fixed Telephone Service – 2001 is provided in the annex.

**DRAFT DECISION ON THE DECLARATION OF ENTITIES WITH
SIGNIFICANT MARKET POWER IN THE FIXED TELEPHONE NETWORKS
MARKET AND/OR FIXED TELEPHONE SERVICE FOR THE PURPOSES OF
NUMBER 1 OF ARTICLE 3 OF THE REGULATIONS OF THE OPERATION
OF THE FIXED TELEPHONE SERVICE**

-2001-

1. Under the terms of Decree Law no. 474/99 of 08/11, that transcribes the norms of Directive 98/10/EC of 26/02/98, of the European Parliament and Council, ICP is responsible, after the issue of an opinion by the Directorate-General for Commerce and Competition (DGCC), to annually determine and declare the entities with significant market power (SMP) in the fixed telephone markets and/or the fixed telephone service (FTS).
2. The objectives of notification of entities with SMP, within the framework of Decree-Law no. 474/99 (Regulations of Operation of the Fixed Telephone Service - ROFTS), are related to the imposition of specific obligations on such entities (in addition to obligations imposed on all providers) such as:
 - The provision of specific services, special access to the network and special access facilities;
 - Compliance with the principle of cost orientation for access and utilisation prices of fixed telephone networks and the FTS;
 - Implementation of cost accounting systems suitable for application of tariff principles of equality, transparency, non-discrimination and cost orientation.
3. In accordance with article 3 of the ROFTS, ICP is responsible, after a prior opinion issued by the Directorate-General for Commerce and Competition (DGCC) for annually determining and declaring which entities have significant market power (SMP) in the fixed telephone networks market and/or the fixed telephone service (FTS).
4. It is presumed (in accordance with number 2 of Article 3 of the ROFTS that entities are considered to have SMP when they have a market share equal to or above 25% of the relevant market for fixed telephone networks market and/or the FTS in the geographic area where they are empowered to exercise their business activity.
5. Despite the preponderance of the above mentioned criterion, the ROFTS nonetheless foresees the possibility that an entity whose market share is

below 25% may also have SMP, as well as the possibility that an entity whose market share is above 25% may not have SMP.

6. For the purposes of a full analysis of market power, consideration must also be made of the criteria mentioned in number 4 of Article 3 of the ROFTS.
7. In the assessment of market shares - the key question for assessment of entities with SMP – emphasis was drawn to the guidelines laid down by the European Commission (EC), specifically those laid down in the document, *“Determination of organisations with significant market power (SMP) for implementation of the ONP Directives”*, presented on 01/03/99, in which a methodology is suggested for determination of organisation with SMP within the framework of ONP Directives (Open Network Provision).
8. It was also considered that grounds do not exist for adoption of a different methodology than that adopted after the notification made in 2000:
 - a) For the purposes of determination of the relevant market, the FTS is defined as the provision to the general public of direct transport of voice communications in real-time, in fixed locations, enabling any user, via equipment connection to a network termination point, to communicate with another termination point. On the other hand, the fixed telephone network is defined as a commuted public telecommunications network serving as a support for the transfer, between network terminal points in fixed locations, of voice and audio information with a band frequency of 3,1 kHz to support, namely, the fixed telephone service, facsimile communications of the group ni, in accordance with UIT-T recommendations of the «T series», and the data transmission on vocal frequency via modems with a debit of at least 2,400 bit/s, in accordance with the UIT-T recommendations of the «V series».
 - b) The geographic market is defined as the entire national territory (including international connections).
 - c) Revenues in the market under analysis are considered to be the most appropriate means of measuring market size and market share, and to constitute an intrinsic criterion for the concept of market power itself, offering a less distorted perspective of market activity and being relatively easy to measure. In this regard, it should be noted that data on number of customers and volume of traffic, although important, may have a similar overall value between different entities, and yet be composed of diversified elements (e.g. different characteristics for the definition of residential and business customers, or local and inter-urban calls) which result in different relative positions for each operator.
 - d) In this context, it is considered that retail revenues from the following should be accounted for: (i) direct access calls destined for the fixed telephone network of the same operator or for the fixed telephone

networks of other operators; (ii) indirect access calls destined for the fixed telephone network of the selected provider or for the fixed telephone networks of other operators; (iii) direct and indirect access calls destined for mobile networks (in this case, taking into consideration the alteration in the ownership of fixed-to-mobile traffic only from 30/09/01 onwards); (iv) installation of a subscriber's line (v) monthly subscription fee for a subscriber's line.

- e) The particular characteristics of Internet traffic were specifically recognised in ICP's deliberation of 21/02/01 on Internet access conditions, which established the transition for this traffic to an interconnection model based on a logic of payments for access origination. As a result, it is advisable to assess such traffic principally within the framework of Decree-Law no. 415/98 of 31/12, in order to ensure that the respective revenues are not considered within the framework of the present deliberation.
 - f) In this context, attention should be drawn to the aforementioned EC document which indicates that within the framework of Directive 98/10/EC, revenues resulting from activities that are not directly related to the network or provision of the FTS (such as installation and rental of terminal equipment) should not be considered in order to calculate market size and market share of the operator/service provider.
9. Taking into consideration the above criteria, and after having heard PT Comunicações, S.A. and received the respective opinion from the DGCC, the concessionaire company, PT Comunicações, S.A., is declared to be an entity with significant market power in the fixed telephone networks market and/or fixed telephone service, under the terms of, and for the purposes specified within, the Regulations of Operation of the Fixed Telephone Service.
10. Taking into consideration the relationships between PT Comunicações, S.A, and the following entities: TMN – Telecomunicações Móveis Nacionais, S.A., PT-Prime – Soluções Empresariais de Telecomunicações e Sistemas, S.A. and CPRM – Companhia Portuguesa Rádio Marconi, S.A.; ICP will monitor the evolution recorded in their business activity and may re-evaluate market power in the fixed telephone networks market and/or fixed telephone service, in less than 1 year after the present declaration, in the event of verifying alteration in the *de facto* and *de jure* conditions that serve as the basis for definition of operators with market power.