



Report of the prior hearing – determination of 26.5.2006

**REPORT OF THE PRIOR HEARING ON THE ALTERATIONS TO
THE REFERENCE CONDUIT ACCESS OFFER (RCAO) OF THE
CONCESSIONAIRE PT COMUNICAÇÕES, S.A. (PTC)
AND
ASSESSMENT OF THE REPLY OF PTC TO THE DETERMINATION OF ICP-
ANACOM OF 02/09/05, REITERATING THE DETERMINATION OF 17/07/04
ON THE CONSTRUCTION, MAINTENANCE AND UPDATE OF A DATABASE
WITH DESCRIPTIVE INFORMATION ON CONDUITS AND ASSOCIATED
INFRASTRUCTURE**

1. FRAMEWORK	2
2. PRIOR HEARING ON THE ALTERATIONS TO THE REFERENCE CONDUIT ACCESS OFFER OF THE CONCESSIONAIRE PTC	
2.1. GENERAL COMMENTS	3
2.2. SPECIFIC COMMENTS	7
3. ASSESSMENT OF THE REPLY OF PTC TO THE DETERMINATION OF ICP-ANACOM OF 02/09/05, REITERATING THE DETERMINATION OF 17/07/04 ON THE CONSTRUCTION, MAINTENANCE AND UPDATE OF DESCRIPTIVE INFORMATION ON CONDUITS AND ASSOCIATED INFRASTRUCTURE	
3.1. DESCRIPTION OF THE DATABASE DESIGN (INCLUDING TECHNICAL SPECIFICATIONS)	65
3.2. TIME-TABLING OF THE DATABASE OPERATION PROCESS AND OF THE RECORD CATALOGUE OPERARION PROCESS	65
3.3 DESCRIPTION OF SPACE IN CONDUITS AND ASSOCIATED INFRASTRUCTURE DEEMED NECESSARY FOR THE DEVELOPMENT OF INFRASTRUCTURES, WHICH IS EXPECTED TO BE USED DURING THE PERIOD THE RCAO REMAINS IN FORCE	67
4. CONCLUSION AND ACTION PROPOSAL	68

1. FRAMEWORK

By determination of 02/09/05¹, ICP-ANACOM decided:

1º To reinforce that PT Comunicações, S.A. (PTC), in compliance with the determination of 17/07/04, should create, maintain and update a database with descriptive information on conduits and associated infrastructure, as provided for therein. Within this context, up to 20/09/05, PTC should submit to ICP-ANACOM a description of the database design and a detailed and phased time-tabling of the database operation process (namely including the respective technical specifications) and of the comprehensive catalogue of records of conduits and associated infrastructures, per geographical area, throughout the national territory.

2º To reiterate likewise that PTC should submit to ICP-ANACOM the description of the space available in conduits and associated infrastructure, considered necessary for the development of its own infrastructures and which would likely be used during the period the reference offer remained in force, up to 20/09/05, in compliance with the provisions of the determination of ICP-ANACOM of 17/07/04².

In the scope of this determination, ICP-ANACOM decided also to submit the draft decision (DD) on alterations to be introduced in the Reference Conduit Access Offer (RCAO) of the concessionaire PTC to the prior hearing of interested parties, under articles 100 and 101 of the Code of Administrative Procedure, having received comments from PTC, REN Telecom Telecomunicações, S.A. (REN), TVTEL Grande Porto Comunicações, S.A. (TVTEL), Vodafone Portugal – Comunicações Pessoais, S.A. (Vodafone), ONITELECOM Infocomunicações, S.A. (Onitelecom), NOVIS Telecom, S.A. (Novis), TELE2 Portugal (TELE2), SGC Telecom – SGPS, S.A. (SGC) and COLT Telecom Portugal (Colt).

Follows the assessment of the reply of PTC to the above-mentioned points 1º and 2º (comprised in a letter dated 20/09/05 with the reference 050420051), a summary of the replies to the DD and the current view of this Authority on raised issues, being highlighted that the stated view should be reflected both in the body of the offer and in the annexes thereto, in particular the standard contract. Given the abridged nature of this document, the assessment thereon does not override the need for a full consultation of replies.

¹ <http://www.anacom.pt/template12.jsp?categoryId=162784>.

² <http://www.icp-anacom.pt/template12.jsp?categoryId=162883>.

2. PRIOR HEARING ON THE ALTERATIONS TO THE REFERENCE CONDUIT ACCESS OFFER OF THE CONCESSIONAIRE PTC

2.1. GENERAL COMMENTS

A. Replies received

Entities in general, except for PTC, deemed the DD to be broadly positive, as it will make the RCAO viable, having been stressed the accurate and in-depth analysis performed by this Authority. Without prejudice, some aspects aimed at a possible refinement were mentioned, and are discussed below.

B. View of ICP-ANACOM

ICP-ANACOM verifies that, except for PTC, operators have welcomed the DD on alterations to the RCAO. It should be stressed that REN applauded the effort this determination represents for the improvement of the market balance, however, as it has not yet made use of PTC's conduits, it is not in a position to comment any further. It must be highlighted that in the assessment made by ICP-ANACOM (i), the confidential information is identified between the references [SCI] (start of confidential information) and [FIC] (end of confidential information) and that the prices put forward do not include VAT.

2.1.1 Scope of the Determination

A. Replies received

Novis, Vodafone, Onitelecom, Colt and SGC are of the opinion that the RCAO should comprise the access and use of other infrastructures, owned and/or managed by the concessionaire, such as poles and masts, conduits and sub-conduits in the exchange buildings of PTC, conduits which connect the sub-frames of the local access network to the respective distribution points, cable busways, situations of bridge and overpass crossing.

Vodafone considers, moreover, that the obligations of access to PTC's conduits should apply to other companies wherein the PT Group has a shareholding and who own conduits and infrastructures of their own.

B. View of ICP-ANACOM

As regards the possible extension of the scope of the RCAO, it is deemed, as referred in the decision of 17/07/04, that the possible difficulties remaining entities may face in effectively replicating the investment of the concessionaire in poles and masts have not been evident to date. This is especially relevant in metropolitan regions with densely populated areas where the competition level is intense, and where the investment in poles and masts may be more effectively made. It must be reiterated that there have been no disputes as regards situations of access to poles and masts, a fact not contested in the replies received.

Thus, ICP-ANACOM takes the view that, at the moment, there are grounds for only determining upon PTC the provision of a reference offer of access to conduits. The minimum elements approved on 17/07/04 concern this reference offer only, and it is from this process that the decision to be issued now arises. It is thus unnecessary to consider again in this field, the scope of the reference offer to be provided by PTC in compliance with the established determination.

As regards the sharing of other installations and premises of the concessionaire, such as the co-installation space in exchange buildings of PTC, this situation has been provided for in the Reference Interconnection Offer (RIO) and in the Reference Unbundling Offer (RUO).

It should be also taken into accounts that, according to the adopted definition of conduits, the conduits owned by PTC that are installed in bridges and overpasses are also comprised in the RCAO.

The determinations of ICP-ANACOM have the aim of facilitating the access to conduits and associated infrastructures, whereas cable busways may comprise all busways through which cables run (overhead or underground), namely in external walls, top of buildings, busways on bridges and overpasses and even on watercourses (such as brooks, etc.). According to the *Dicionário da Língua Portuguesa* (Dictionary of Portuguese Language) (Porto Editora; 8th Edition), “caminho” (“way”) means a terrestrial communications route intended mainly at rural transit; distance travelled; length; passage; direction; course; means. Thus, and according to the above-mentioned meaning, cable busways, besides not being infrastructures, are not necessarily owned by PTC. It therefore has clearly to be assumed that they are not comprised in the RCAO.

As far as the extension of the RCAO to all conduits and infrastructures of the PT Group are concerned, it should be clarified that the obligation to provide access to conduits follows from the Law – article 26 of Law no. 5/2004. This provision applies only to PTC and not to the business group the concessionaire belongs to. It is thus not binding on other companies of the PT Group to provide access to conduits, as is currently done for obligations applicable to this economic group following a market analysis procedure.

2.1.2 Access by accredited collaborators

A. Replies received

PTC proposes that the physical access to conduits, for the installation and intervention in cables be subject to a procedure of accreditation of installers of beneficiary entities, which should be undertaken by PTC.

Vodafone and TVTEL refer that the installation of cables, route deflection and removal of means should be extended to collaborators from subcontracting companies, duly identified and accredited by the beneficiary entity.

B. View of ICP-ANACOM

ICP-ANACOM agrees with the view that the physical access to conduits, namely for purposes of cable installation, route deflection and removal of means, should be

extended to collaborators from subcontracting companies supporting beneficiary entities, which should be subject to accrediting general principles and rules.

ICP-ANACOM deems that the technical competence of entities and workers who shall be performing duties in conduits, namely for purposes of cable installation, route deflection and removal of means, should be safeguarded. To this end, it is considered that this issue comprises both the technical specification that governs this work and entities performing it, and the assessment and acknowledgement of the technical competence of such entities.

As regards the technical specification, it is deemed that the RCAO should incorporate a handbook proposed by PTC, which must be validated by ICP-ANACOM and disclosed to all beneficiary entities and subcontracting companies.

Concerning the safeguard of the technical competence of entities necessary for their access to conduits, several alternatives may coexist. The work may be performed by:

- a) a service provider engaged by the beneficiary entity for the purpose, the latter acknowledging the technical competence of the former in the light of the technical specification above-mentioned, provided that the service provider is duly escorted by representatives of the concessionaire PTC;
- b) a service provider engaged by the beneficiary entity for the purpose, among the providers qualified by the concessionaire in the light of the same technical specification;
- c) a service provider engaged by the beneficiary entity for the purpose, among the providers qualified or accredited within an accrediting system, yet to be established, and managed by an entity co-owned by the beneficiary entities and the concessionaire, in compliance with the mentioned technical specification.

It is considered that the period of time necessary to render concrete the three alternatives will vary, and thus, in order to implement the RCAO swiftly, beneficiary entities may operate, initially and provisionally, on the basis of the alternative stated in point b), resorting to providers already qualified by PTC for this purpose, without prejudice to the subsequent evolution of the accrediting system. Nevertheless, the evolution as soon as possible to solution c) is considered useful, in order to provide the system with a higher level of transparency and independency.

Concomitantly, PTC must promote the establishment of a system of accreditation in order to enable the functioning thereof within six months from the approval of this decision. In parallel, PTC shall publish a handbook of procedures and technical specifications, also within six months from the approval hereof.

The rules established by PTC for the purpose of being complied with by beneficiary companies must be defined in abstract, but applied in a concrete, reasonable and proportional fashion, resulting in efficient and effective procedures.

To this effect, PTC shall publish and keep updated in annex to the RCAO a list of entities who have been accredited, in order to promote transparency as regards the conditions of access to conduits. PTC shall likewise publish the accrediting general principles and rules in force (clause 3 of the standard contract comprised in Annex 6 must be amended accordingly).

2.1.3 Removal of capacity limits

A. Replies received

PTC did not agree with the removal of several capacity limits established in the RCAO, concerning namely: (i) the processing of drafts regarding information on underground infrastructure per geographic area, (ii) access feasibility, (iii) installation in underground infrastructures, (iv) removal of cables in infrastructures, (v) assessment of requests for occupation feasibility.

The concessionaire refers also that, in view of the alteration/removal of the limit of capacity to process drafts, this would imply an indexation of the levels of service to the compliance with forecasts on the demand of beneficiary entities.

B. View of ICP-ANACOM

PTC did not justify the imposition of the capacity limits established in the RCAO, except as regards the need to define a maximum number of sections per request for occupation feasibility (and number of sections per alternative route). It must thus be restated that the remaining limits should be removed, being incumbent upon PTC to adjust the capacity according to the forecasted number of requests from beneficiary entities. The limit to the maximum number of sections per request for occupation feasibility (and number of sections per alternative route) shall be assessed in detail in section 2.2.6.

On the other hand, ICP-ANACOM fails to make out how the removal of these limitations would imply a reassessment of the involved levels of service and costs, in view of the fact that, as the beneficiary entity is bound to submit a forecast of services to be engaged, covering a two-year period, PTC is able to adapt its resources accordingly.

2.1.4 Standard contract

A. Replies received

Tele2 and Onitelecom refer that the alterations to the RCAO should be reflected in the contract minute, and in case contradictions or incoherencies between the RCAO and the minute are found, the interpretation most favourable to beneficiary entities should prevail.

PTC infers that, in the RCAO, ICP-ANACOM mistakenly recommends the inclusion of annexes (ii), (iii) and (iv) in the standard contract, given the specific and confidential nature of information comprised therein, namely and respectively, record of the beneficiary entity, contacts of the beneficiary entity and insurance certificate of the beneficiary entity.

B. View of ICP-ANACOM

Naturally, the alterations to the RCAO must be reflected in the annexes thereto. As regards the standard contract, PTC must integrate in the RCAO the forms on the record

of the beneficiary entity [annex (ii)] and on contacts and communications [annex (iii)]. Relatively to annex (iv), on the insurance certificate, a standard form must be presented.

The arguments put forward by PTC regarding the confidentiality of information on standard contracts are not clear, as a standard contract does not include confidential information, only the fields for such information.

2.2. SPECIFIC COMMENTS

2.2.1 Entry into force of the RCAO

The ORAC shall enter into force thirty days after the final decision of ICP-ANACOM on the “Alterations to be introduced in the PTC RCAO” has been issued.

A. Replies received

PTC refers the need for a period of up to three months, following the final decision of ICP-ANACOM, for the entry into force of the RCAO (even with non-automatic procedures and without the necessary conditions for the application of levels of service). This time limit is due to the alleged complexity of the RCAO implementation and to the lack of stable offer conditions.

Onitelecom deems a minimum period of thirty days for the entry into force of alterations to the RCAO should be complied with after the offer has been published, while Novis, in view of the urgent need for the RCAO of beneficiary entities, prefers a fifteen-day time limit.

B. View of ICP-ANACOM

It should be noted that the first DD on the offer of access to conduits of the concessionaire dates from 29/04/04³, and the subsequent decision dates from 17/07/04, having been determined on that date that the RCAO should be published thirty days in advance of the entry into force thereof. Consequently, PTC has been provided the necessary time to prepare the entry into force of the offer.

On the other hand, having regard to the fact that PTC and the beneficiary entities may not be prepared for a reduction by fifteen days of the time limit established in the DD, it is deemed not to be advisable to establish such a reduction.

Thus, the thirty-day time-limit for the entry into force of the RCAO, after the final decision of ICP-ANACOM on the alterations to be introduced in the RCAO has been issued, shall be maintained.

2.2.2 Expressions and definitions

Where the ORAC refers the expression “underground infrastructures”, this shall be replaced by “conduits and associated infrastructure”, according to the wording adopted in the determination of ICP-ANACOM of 17/07/04. The following definition of

³ <http://www.anacom.pt/template13.jsp?categoryId=113979>.

associated infrastructure shall be considered: “manholes and other infrastructures deemed indispensable for the installation, withdrawal, maintenance or repair of electronic communications cables in conduits and sub-conduits”, according to the definition comprised in the above-mentioned determination. As regards the definition of “manholes”, the reference to the underground manholes shall be removed, thus making the definition consistent with the determination of 17/07/04, that is, “boxes for access to the cables installed along the conduits, which are integral part of the electronic communications network”.

A. Replies received

Operators generally agree with the definitions comprised in the DD. Without prejudice, PTC proposes that the definition of “associated infrastructure” be restricted to “permanent manholes” (which should replace the definition “manholes”). PTC deems also that the concept of associated infrastructure should be made clear, being interpreted to include underground/overhead upflow transition tubes and/or cable tunnels in buildings, which were not comprised in this offer.

B. View of ICP-ANACOM

PTC does not present any grounds to support the alteration of the concept of manhole. The inclusion of the word “permanent” in the concept does nothing to clarify its content and has the effect of restricting its scope, which is thus subject to the meaning conferred to a concept with a more or less undetermined content.

Underground infrastructures are generally brought to an end close to poles and/or buildings, the transition of conduits to those infrastructures being thus required. This transition may be performed by means of upflow tubes, usually galvanized tubes with one inch diameter, and so the number of cables they may accommodate is quite limited. Thus, it is deemed that each beneficiary entity may easily replicate the transition to their own cables, and as a result it would be pointless to share underground/overhead upflow transition tubes.

On the understanding that the underground/overhead upflow transition tubes and/or cable tunnels in buildings are not comprised by the RCAO, the alterations suggested by PTC are deemed unnecessary.

ICP-ANACOM does not agree, as referred in the report of decision dated 17/07/04, with the imposition of provisions requiring the access to building telecommunications infrastructure. Article 26 of Law no. 5/2004 does not confer upon ICP-ANACOM any mandate thereon nor does it entitle this Authority to take any action on that matter.

2.2.3 General Conditions

2.2.3.1 Physical access of beneficiary entities to conduits

The RCAO shall provide that the physical access of beneficiary entities to conduits and associated infrastructure may be carried out by workers of the beneficiary entity, escorted by representatives of PTC.

A. Replies received

In the view of PTC, the model proposed [according to which it would up to the beneficiary entity to decide, for each request, the entity (PTC or the beneficiary entity) that would carry out the physical access to conduits] could prevent the concessionaire from complying with its obligations, namely as far as the access and maintenance of the network integrity and security are concerned. Moreover: (i) the adjustment of resources to the compliance with levels of quality of service would be rendered impossible; (ii) given the multiplicity of procedures, inefficient situations which could potentially raise conflicts would be promoted; (iii) in case of damages, the risk of liability dissemination would be promoted; (iv) the implementation of a system of register and handling of information with details on the conditions of each intervention would be required.

Instead, PTC proposes that the physical access be conferred exclusively to the beneficiary entity that would undertake the work of installing, intervening and removing cables (installers being accredited following a certification procedure under the responsibility of PTC) according to procedures adopted by PTC.

Onitelecom and TELE2 consider that the monitoring performed by P staff should only take place where necessary, SGC being of the opinion that such monitoring would be unnecessary when carrying out the supervision and technical assistance to cable of the beneficiary entity, provided that the technical staff performing the intervention is accredited. TVTEL suggests that, in case of cable operators, PTC should be notified, forty-eight hours in advance, of the places where work is to be performed, deciding thereafter if the monitoring should take place.

Onitelecom seeks to be specified that the access comprises the installation, operation, maintenance and removal of cables and TELE2 wishes that access would be applied both the cases where PTC owns the conduit as well as those in which it guarantees the management thereof.

B. View of ICP-ANACOM

The DD does not require PTC to undertake the work of installing, intervening and removing cables owned by the concessionaire, and ICP-ANACOM thus agrees with the suggestion put forward by this entity, that the physical access be performed by beneficiary entities that would be responsible for all work involved in the installation, intervention and removal of cables. Without prejudice, and in case the parties reach an agreement, PTC may provide the services of installing, intervening and removing cables. Clause 3 and paragraph 1 of clause 7 of the standard contract must be amended accordingly.

Relatively to the monitoring pursued by collaborators of PTC, it is acknowledged that it is useful in order to ensure the safeguard and security of conduits, and for this reason, PTC, if it so desires, may monitor the work performed by the beneficiary entity. Note also that, where PTC carries out such monitoring and in case damages are found in the conduits before the intervention by the beneficiary entity takes place, PTC is able to acknowledge the situation and immediately launch the necessary repair action.

The concept of access was provided for in the minimum elements to be included in the RCAO, approved by ICP-ANACOM on 17/07/04. The specification of this concept may not result in the extension of the scope defined in the minimum elements, which has stabilized following the consultation procedure and prior hearing of interested parties.

The adaptation proposed by ONI, which implies an extension of the concept set by ICP-ANACOM, must thus be rejected. Furthermore, in a context wherein PTC is required to admit the access to conduits by beneficiary entities, it would be highly questionable to alter the concept of access in the terms proposed.

As the chapter on expressions, abbreviations and definitions indicates, the access includes conduits and manholes, and the respective use, and as referred in the determination of 17/07/04, the access and use of conduits and associated infrastructures is carried out in order to install, maintain and remove systems, equipments and other resources necessary to the provision of publicly available electronic communications networks and services.

It should be restated that, according to the determination of 17/07/04, it is incumbent upon PTC to provide the access to and use of conduits and associated infrastructures it owns or the management of which falls under its responsibility. In addition, in case PTC decides to establish rules to be complied with by beneficiary companies when accessing conduits, such rules must be defined in abstract and applied in a concrete, reasonable and proportional fashion, resulting in efficient and effective procedures.

Lastly, it should be noted that as the work of installing, maintaining, repairing and removing cables is to be carried out by the beneficiary entity, the conditions concerning the delivery of material to PTC for installation work purposes do not apply, thus the condition provided in the final part of the last paragraph of page 10/29 of the RCAO must be removed.

2.2.3.2 Reservation of free space

The determination of 17/07/04 establishes that the concessionaire should leave, to be used by the beneficiary entities, in each route, a surface corresponding to at least 20% of the internal surface of each conduit (or of each tube in the cases where the conduits accommodate several tubes, or of each sub-conduit in the cases where the conduits or tubes accommodate sub-conduits).

It was also referred on 17/07/04⁴, in the report of the public consultation on the offer of access to the conduits of the concessionaire, that the Lisbon Civil Court, in its judgement of 09/02/04, given in the scope of proceedings with the reference 5776/03.0TVLSB, concluded that there were several areas in the Oporto municipality where conduits present one hole, and through this single hole pass the cables owned by PTC. In some cases, cables of PTC and of TV Cabo coexist in this single hole. The court demanded of PTC that it opened the conduit at the request of TVTEL, provided that the available space corresponded at the least to 10% of the circular section of the conduit.

A. Replies received

PTC considers that it may be unable to perform services requested following the entry into force of the RCAO, as it would be prevented from providing services associated with cables or other equipment installed in conduits, by virtue of requests put forward during the period the RCAO is in force, in view of the fact that it could not determine the needs of customers of PTC or of infrastructures development one year in advance.

⁴ <http://www.anacom.pt/template15.jsp?categoryId=113919>.

The concessionaire mentions also, that the judgement in the TVTEL proceedings concerned an individual case (access to conduits in Greater Oporto) and did not represent reason enough for the reservation of free space for concessionaires.

Onitelecom considers the reservation by 20% of internal area of each conduit for beneficiary entities to be insufficient, when compared to the area PTC wishes to reserve for itself for operation and maintenance work and deems fundamental that information (in electronic format) on the available of space in infrastructures of PTC is made available for consultation in advance.

B. View of ICP-ANACOM

As mentioned in the report of the public consultation on the offer of access to the conduits of the concessionaire PTC, launched on 29/04/04, ICP-ANACOM fails to understand the difficulties mentioned by PTC as regards the definition of the forecasted network development as well as the strategic nature of the information under consideration, in view of the fact that, by virtue of the Cooperation Protocol concluded between this company and the *Associação Nacional de Municípios Portugueses – ANMP – (National Association of Portuguese Municipalities)*, the concessionaire undertook to notify Municipal Councils, up to 31 October each year, the planning of activities for the following year, obtaining from Municipal Councils information on plans of other operators that intervene in public roads “in order to promote interaction with the plans of PTC” – article 8, paragraphs 2 and 3 of the Protocol.

The TVTEL proceedings is in fact an individual case, however it is conclusive as regards the need for the reservation of space for the concessionaire itself, having been considered at the time that PTC would not need an empty tube to carry out maintenance and repair work. It is thus not possible to infer that the referred judgement contradicts (it rather stresses) the position of ICP-ANACOM on this matter.

Relatively to the reservation of space, the determination of 17/07/04 is reiterated, having been pointed out at the time that, according to a study carried out by an independent consultancy firm working for the European Commission and dated December 1998, practises recommended for the reservation of capacity are as follows: (i) the access provider must be entitled to reserve 50% of the available capacity for a period not exceeding two years; (ii) the access provider shall keep documental evidence of reservations made for itself and information of the existence and extension thereof; (iii) the applicant for access shall not be entitled to reserve capacity in case it is limited and where there is a large number of interested entities, except where the applicant has taken a significant part in the investment.

In this context, ANACOM opts for the definition of a more practical and operational standard, reserving in the first place a minimum 20% of internal area of conduits, a measure which is thus restated.

2.2.3.3 Removal of “dead” or clearly obsolete cables

Following a request by beneficiary entities to occupy space in conduits and associated infrastructures, where no space is found and the existence of one or more “dead” cables (that is, with no possibility of usage for reasons of technical disability) is identified, PTC shall remove such cables. Where such cables are under the responsibility of the beneficiary, the latter shall bear the costs of the respective removal.

A. Replies received

PTC deems the removal of “dead” cables should only occur in viable situations (this would depend on the age of cables, their mechanical resistance, their accommodation in conduits and type of conduit), the removal costs being borne by beneficiary entities, as their requests would thus be met, and also as some of the cables to be removed would likely not be owned by PTC.

TELE2 agrees with the DD, and refers that PTC should remove any unnecessary cables, forty-eight hours after a situation of saturation of conduits for which access is intended has been acknowledged.

B. View of ICP-ANACOM

It is reaffirmed that following a request by beneficiary entities to occupy space in conduits and associated infrastructures, where no space is found and one or more “dead” cables (that is, with no possibility of usage for reasons of technical disability) or clearly obsolete cables (that is, cables that have not been used for more than one year, and that are not expected to be used within a reasonable period of time) are identified, such cables must be removed, save where this is physically or technically unfeasible, the costs resulting from this removal being borne by the respective owner.

Where it is physically or technically unfeasible to remove “dead” or clearly obsolete cables, PTC shall inform the beneficiary entity of this fact, presenting duly justified information thereon, together with the reply to the feasibility request.

The RCAO shall provide for all the reasons for the lack of feasibility as far as cable removal is concerned. Without prejudice to other additional factors that PTC may present, and which shall be subsequently assessed by ICP-ANACOM, the factors that may be included in the RCAO to substantiate the physical and technical lack of feasibility to remove cables are as follows:

- i) The free space in the conduit/sub-conduit is lower than the space occupied by the cable of the wider diameter in the conduit/sub-conduit.

The free space in the conduit/sub-conduit corresponds to the difference between the total space of the conduit/sub-conduit, and the occupied space in the conduit/sub-conduit. The total space of the conduit is achieved through the following formula: $\pi \times R^2$, where $R = \text{Diameter conduit or sub-conduit} / 2$. The occupied space in the conduit/sub-conduit corresponds to $\pi \times (D_{\text{tube}}/2)^2$, where D_{tube} can be found from the formula:

$$D_{\text{Tube}} = 1.6x\sqrt{d_1^2 + d_2^2 + \dots + d_n^2};$$

- ii) The cables have exceeded their useful life as estimated by the manufacturer, which may imply their damage upon removal, as they are no longer in appropriate conditions;

- iii) The cables to be removed are bigger and heavier than the ones to remain installed, which may result in damages to smaller and lighter cables installed in the same conduits/sub-conduits.

In case no agreement is reached as regards deeming a cable as “dead” or obsolete, the issue shall be submitted to ANACOM, for monitoring and decision-making purposes, attaching the necessary particulars that allow for checking whether the cables are effectively being used.

Where the “dead” or clearly obsolete cables are owned by the beneficiary entity, the concessionaire shall notify the latter of their existence, so the beneficiary entity may promote their removal. The time limit for removal of the “dead” or clearly obsolete cable is considered to be thirty calendar days from the date of reception of PTC’s notification, the application of a mere forty-eight hour deadline, suggested by TELE2, not being deemed viable. Following the expiry of this time limit, where the beneficiary entity has not removed the “dead” or clearly obsolete cable, PTC shall promote this removal, in case the owner of the “dead” or clearly obsolete cable has not submitted a request for access.

Likewise, PTC is granted a time limit of thirty calendar days to remove the “dead” or clearly obsolete cable, in this case either from the date the situation has come to the attention of the company, in case PTC is the owner of the cable under consideration, or the cable has belonged to a dissolved company of the PT Group, or from the expiry of the time limit the cable owner has been given for this purpose.

The RCAO shall also provide that the removal shall only be promoted where it is demonstrated that the cable owner received the notification provided for.

The costs of removing “dead” or clearly obsolete cables shall be borne by their owner, having regard to the principle of proportional and causal costs. In case the “dead” or clearly obsolete cables are owned by a third party who has ceased to exist in law, the costs shall be shared 50/50 between the beneficiary entity and PTC, save where this entity has been part of the PT Group, in which case the referred costs shall be borne solely by PTC.

2.2.3.4 Reservation of space for maintenance and repair work

The rule provided for in pg. 6/29 of the offer, regarding the space to be reserved, by PTC, for maintenance and repair work, shall be amended so as to reserve only the space that corresponds to the larger diameter cable.

A. Replies received

PTC intended to reserve an empty tube (or in the absence thereof, the necessary space for a cable of a diameter equivalent to the larger diameter cable) for maintenance and repair operations, in order to ensure the integrity and functioning of the remaining elements supported in the conduit. In that regard it is also significant that in some conduits there were obstructing objects and materials. For example: (i) work to replace a copper cable of a large capacity could result in damage to cables of a smaller dimension and resistance, such as in optic fibre cables, given the physical characteristics

(dimension and weight) of the cable; and (ii) the replacement of a cable could result in the increase of its diameter.

The remaining operators generally agree, and Novis proposes that the space that corresponds to the larger diameter cable be reserved, for maintenance and repair work purposes, while Onitelecom deems it should be provided that this work should comprise both the cables of PTC and those of the beneficiary entity.

B. View of ICP-ANACOM

Currently, the replacement of a cable for another cable of an equivalent capacity (or even a higher capacity) may result in the installation either of a larger diameter cable, or of a smaller diameter cable (for example, where optic fibre cables are used). It is thus restated that PTC must reserve only the space that corresponds to the larger diameter cable.

ICP-ANACOM disagrees with the possibility of reserving the space that corresponds to the larger diameter operational cable, being deemed that its activation both by beneficiary entities and by the concessionaire is likely in the short term. The space that corresponds to its diameter must thus be reserved, for maintenance and repair purposes.

Lastly, it must be stressed that, as referred in the report of the consultation of 29/04/04, the surface reserved for cable maintenance and repair work, may be used for this purpose both by PTC and by beneficiary entities.

2.2.4 Information on conduits and associated infrastructure

2.2.4.1 Provision of information at an Extranet page

PTC shall make available information on conduits and associated infrastructures at an Extranet page to which each beneficiary shall have access by means of the respective access code. This Extranet represents the access of beneficiary entities to the information comprised in the database regarding conduits and associated infrastructure of PTC.

A. Replies received

For PTC it is important to clarify whether the provision of information applies in paper as well as at the Extranet, as the latter is risky at the level of national security and civil protection, protection of confidentiality of data of communications networks and infringement of copyright applicable to cartographic production. Moreover, i) the information on conduits and associated infrastructures is frequently owned by municipalities, thus the provision of drafts in digital format would depend on the prior authorization given by these entities, and ii) if a use license was required, the respective cost should be borne by beneficiary entities.

Vodafone, Onitelecom, Novis and TELE2 consider that the provision of information at the Extranet, the access to which is achieved by means of the respective access code, would be more transparent and more easily and quickly accessed. In particular,

Vodafone considers that PTC should assign a sequence number to requests submitted by each beneficiary entity, on the dates they are received, providing this information at the Extranet, in order to render the procedure more transparent.

TELE2 considers that the deadline for creating and developing the computer system necessary for the provision of information should correspond to the entry into force of the RCAO. In alternative, from the entry into force of the RCAO until the start of operation of the database in Extranet access, PTC should implement an efficient information provision system, by phone or email, which should also be used as a resource system in case of failure or malfunction of the Extranet page.

B. View of ICP-ANACOM

As referred in the DD, it must be reiterated that the provision of drafts in paper is inefficient and carries substantial costs with it (for example, ink cartridges, paper rolls, labour force), thus PTC must provide information on conduits and associated infrastructures at the Extranet⁵, without prejudice to the provision of such information in paper, if the company so wishes.

This Extranet represents the access of beneficiary entities to the information comprised in the database regarding conduits and associated infrastructure of PTC. Without prejudice to the obligation upon PTC to create, maintain and update a database with descriptive information on conduits and associated infrastructure, ICP-ANACOM considers that the date from which the information on conduits should be made available at the Extranet corresponds to the date the Extranet itself is made available. The date of the last update of the database, as well as the date on which the on-ground survey concerning the provided information took place, shall be provided at all times for information to the beneficiary entities.

In case of failure or malfunction of the Extranet page, PTC must adopt an efficient resource system for the provision of information, by phone or email, the access and functioning conditions of which must be established in the RCAO. Naturally, the Extranet must be also available to the ICP-ANACOM at any time.

As regards the possible risks at the level of national security and civil protection resulting from the provision of information on conduits and associated infrastructures to beneficiary entities, they were not supported by any reasoning at all. In any case, it should be noted, as referred above, that PTC already provides municipal councils with descriptive information on conduits and associated infrastructures, in the scope of a Protocol signed on April 2004 by this company and the *Associação Nacional de Municípios Portugueses* – ANMP – (National Association of Portuguese Municipalities). Moreover, the precise location of PC's network exchanges, which is a more tricky issue than the design of the network, as it affects communications in a more immediate and global fashion, has already been disclosed by the concessionaire in the scope of the RIO, RIAO and RUO.

Still on this subject, it should be highlighted that the 2nd Office of the Administrative Court of Lisbon rejected the protective measure (suspension of validity of two issues of

⁵ An Extranet is a page, usually interactive, provided at the World-Wide-We, through which an entity performs business or exchanges information with its customers, suppliers or workers, duly authorized. It is called Extranet on account of using typically public Internet technology (TCP/IP and browsers), which may be accessed by customers and suppliers through their ISPs.

the determination of 17/07/04⁶) requested by PTC, referring in the judgement given on 05/08/05 that: “In fact, the applicant submits that the obligations imposed, as regards the construction and maintenance of a database providing descriptive information on conduits and associated infrastructures, by promoting the awareness of the design of the network and conduits, opens the door to situations of sabotage, vandalism, terrorism, improper obtaining of information, and compromises safety and public order; however, the conclusions stated are not supported on any facts.”

By determination of the Council of Ministers of 18/03/04, the preparation of a National Charter of Critical Points (NCCP) was decided, having been set up a workgroup for this purpose, joining representatives from several bodies. According to the “Methodology Bases and Theoretical Foundations” regarding the NCCP (document from March 2005), critical points mean any space, infrastructure or installation, the total or partial destruction, dysfunction or undue use of which may affect, directly or indirectly, permanently or for a long period, the functioning of: i) the sector it belongs to (or any other strategic sectors); ii) sovereign bodies; iii) national security bodies; iv) basic values and collective symbols, thus affecting the social well-being.

Within the scope of the European Programme for Critical Infrastructure Protection (EPCIP), and of the Communication from the Commission to the Council and the European Parliament on the Critical Infrastructure Protection in the fight against terrorism (Com(2004) 702 Final), from which that programme follows, it is considered that:

“Critical infrastructures consist of those physical and information technology facilities, networks, services and assets which, if disrupted or destroyed, would have a serious impact on the health, safety, security or economic well-being of citizens or the effective functioning of governments in the Member States. Critical infrastructures extend across many sectors of the economy, including banking and finance, transport and distribution, energy, utilities, health, food supply and communications, as well as key government services.”

Critical infrastructures include communications and information technology (e.g. telecommunications, broadcasting systems, software, hardware and networks including the Internet). The referred communication considers also that: “The criteria for determining the factors that make a particular infrastructure or element of an infrastructure “critical” need to be studied. These selection criteria should also be based on a sectoral and collective expertise. Three factors might be suggested for identifying potential critical infrastructure:

- a) scope - the loss of a critical infrastructure element is rated by the extent of the geographic area which could be affected by its loss or unavailability - international, national, provincial/territorial or local;
- b) magnitude - the degree of the impact or loss can be assessed as None, Minimal, Moderate or Major. Among the criteria which could be used to assess potential magnitude are: i) public impact (amount of population affected, loss of life, medical illness, serious injury, evacuation); ii) economic (GDP effect, significance of economic loss and/or degradation of products or services); iii) environmental (impact on the public and surrounding location); iv)

⁶ <http://www.anacom.pt/template12.jsp?categoryId=162883>.

interdependency (between other critical infrastructure elements); v) political (confidence in the ability of government);

- c) effects of time - this criteria ascertains at what point the loss of an element could have a serious impact (i.e. immediate, 24-48 hours, one week, other).”

As a result, it is considered that in the case of possibly critical conduits and associated infrastructures, the access thereto by beneficiary entities must be performed following special conditions yet to be defined.

Concomitantly, if PTC so desires, it may propose to ICP-ANACOM: (a) the precise and substantiated identification of conduits and associated infrastructure deemed critical; (b) special conditions of access to conduits and associated infrastructure deemed critical.

It must be also referred that at any point shall the DD be interpreted as favouring a violation of the confidentiality of data of communications networks and infringement of copyright applicable to cartographic production, which must be observed. To that effect, PTC, as referred in the determination of 17/07/04, must take all the necessary reasonable measures to ensure the safety and integrity of networks and confidentiality of communications, and immediately report any infringement in this area.

As regard the possible costs of license of use, these may be reflected in the future in the provision of information through the Extranet, provided these costs are efficient, incremental (regarding costs incurred by PTC itself in its licenses of use) and duly substantiated.

2.2.4.2 Local surveys

Any local survey deemed necessary for the provision of information on conduits and associated infrastructure of PTC shall not be charged to the beneficiary entities, in view of the fact that the identification and location of all conduits and associated infrastructures are obligations upon PTC at the level of the concession inventory.

A. Replies received

PTC considers that it should not bear the costs of surveys necessary in order to provide beneficiary entities with information on conduits and associated infrastructures, as it is bound only to keep undated an inventory of property engaged in the concession, which is different from the obligation to establish and keep updated a detailed record with a detailed description of means installed in conduits.

Onitelecom explicitly agrees with the fact that amounts should not be collected on account of local surveys, as the latter result from malfunctions at the level of the management and record of the basic network.

B. View of ICP-ANACOM

It must be reiterated, as referred in the DD, that the identification and location of all conduits and associated infrastructures is an obligation at the level of the concession inventory (article 19 of the concession contract⁷), thus the absence of a record is

⁷ <http://www.anacom.pt/template20.jsp?categoryId=97281&contentId=89968>.

irregular, and, as such, any surveys necessary to provide such a record must not be charged.

2.2.5 Access to conduits and associated infrastructures

2.2.5.1 Civil liability insurance

Insurance against civil liability beneficiary entities are forced to engage and to update permanently shall cover potential damage caused by installed facilities or people at their service.

A. Replies received

Colt considers that the civil liability insurance should list the specific coverage items to be included in the policy. According to Onitelecom, the terms of the standard contract should only render the beneficiary entity responsible for acts or respective consequences it may be accounted for, leaving the beneficiary entity to choose how it intends to provide compensation for any damages caused, either through insurance made for this purpose or by direct payment intended to restore conditions prior to the event.

B. View of ICP-ANACOM

As regards coverage items to be included in the policy, those which are included in the civil liability insurance engaged by Colt seem to be appropriate, in the scope of the contract of provision of services of access to conduits, concluded with PTC on 18/10/05, comprising damages in the property of the beneficiary entity or people at its service.

It should be taken into account, naturally, than the beneficiary entity may opt for a direct payment to the concessionaire in situations of compensation for damages caused.

Without prejudice to possible damage being covered by insurance, the injurious and repeated non-compliance on the part of the beneficiary entity (handbook of effective procedures for the installation, intervention and removal of cables) with procedure rules may result in PTC requesting the intervention of ANACOM, under the terms provided for in point 8 of the approved minimum elements, a precondition for the valid adoption of measures deemed appropriate to the case.

2.2.5.2. Exceptions to the provision of access

The ORAC shall provide for an ex ante way of assessing potential deterioration of the network and equipment operation and/or potential harm of the network integrity, in order to avoid discretion capable of giving rise to conflicts. The following exceptions to the provision of access and use of conduits and associated infrastructures of PTC must

be removed: i) deterioration of the network and equipment operation; ii) harm of the network integrity and/or quality of services provided.

A. Replies received

PTC considers that it would not be possible to describe exhaustively an *ex ante* way of assessing potential deterioration of the network and equipment operation, and thus rejects the provision of access and/or use to its conduits and infrastructures to a beneficiary entity, where it is verified that the means of the latter may deteriorate the network and equipment operation or may harm the integrity of PTC's network or that of other beneficiary entities, and/or the quality of services.

Onitelecom considers that it is incumbent upon ICP-ANACOM to assess the physical impossibility of accessing infrastructures of PTC and that the exception on the situations of risk to the health or safety of collaborators of PTC should be made more explicit. Colt considers that PTC should demonstrate the unfeasibility of a request from a beneficiary entity.

B. View of ICP-ANACOM

ICP-ANACOM deems that where it is physically or technically unfeasible for PTC to meet the requests for access submitted by beneficiary entities, it shall send, together with the grounds thereto, proposals of alternative routes as close to the initial request as possible.

As PTC has not clearly spelt out a means to assess deterioration in the operation of its network and equipment, through the means of the beneficiary entity, ICP-ANACOM fails to understand how PTC intends to identify "intuitively" similar situations, which would bring about opaque situations and generate conflicts.

Moreover, the mere running of cables does not hinder the network or equipment operation, provided that the proper installation practises are safeguarded, as well as all rules concerning the reserve of space for these cables to run through. Nevertheless, there are in fact some situations, namely those resulting from interference problems in the scope of electromagnetic compatibility which may cause the degradation of the functioning of the network and which may should be resolved in the scope of legislation on electromagnetic compatibility and, namely, of the new Directive published in December 2004.

Thus, it is deemed that the RCAO should comprise an *ex ante* way of assessing potential deterioration of the network and equipment operation and/or potential harm of the network integrity, which must be clear, objective and substantiated, in order to avoid discretion capable of giving rise to conflicts. In the absence of a provision concerning the procedure referred, the exceptions to the provision of access and use of conduits and associated infrastructure of PTC, referred to in section 5, points c) and d) of the RCAO, must be removed. Without prejudice, ICP-ANACOM shall monitor and assess all the situations where the possible deterioration of the network and equipments, as well as the harm to the respective integrity and/or quality of services provided, is alleged, as evidence to support the refusal of access.

ICP-ANACOM thus considers, as referred in the report supporting the decision of 17/07/04, that it is evident that situations causing a risk for the health and security of

staff working in the infrastructures may occur (having been referred in replies situations such as conduits running through high or medium voltage networks, or gas networks or networks in tunnels), considering that, *ab initio*, it was not possible to foresee all the situations likely to have harmful consequences to the health and security of staff. The legislation on occupational health and safety is known and it is expected that all operators comply therewith.

It should be highlighted that all operators are generally provided with security and health plans, which state the guideline principles on the prevention of occupational risks.

2.2.6. Requests for occupation feasibility

2.2.6.1 Maximum number of sections per request for occupation feasibility and for alternative routes

The limitations concerning a maximum of fifteen conduit sections per each request for occupation feasibility and a maximum of ten sections for an alternative route with regard to the original route, which have not been substantiated, shall be removed from the RCAO.

A. Replies received

PTC deemed that the section limits per request for occupation feasibility and per each alternative route should be maintained.

Onitelecom considers that, in the cases where the beneficiary entity solicits the indication of alternative routes, PTC must indicate them, whereas Novis considers that beneficiary entities should be able to put forward alternative routes to PTC, in the absence of conditions of occupation of the original route.

B. View of ICP-ANACOM

Whenever a beneficiary entity presents a request for occupation feasibility, PTC must promote the opening of permanent manholes to verify cables installed in that conduits section and assess the existence of available space for the cables of the beneficiary entity and of possible free cable space. In the analysis of occupation feasibility, PTC must take also under consideration the need to develop its own network and to meet requests from other beneficiary entities. There is also a need to guarantee the necessary maintenance space, according to the rules defined in the RCAO.

It is also considered that a feasibility request must have a maximum size, that is, a limited number of consecutive sections, in order to meet the request within a specific deadline. The time limit to reply to a request for occupation feasibility depends on the number of permanent manholes that must be opened, that is, on the number of sections included in that request, and an assessment of the alternative permanent manholes may be required, in case a specific permanent manhole is not feasible. Likewise, in case the request for occupation feasibility is attached to a request for an alternative route, the

number of sections of that alternative route, with regard to the original route requested by the beneficiary entity, must be limited.

In the light of the above, an upper limit for the number of sections to be integrated in each access request must be determined, as the time limit to reply to these requests largely depends on resources allocated to the analysis of each section. Without prejudice, it is considered that PTC has not presented a clear reasoning as regards the conditions attached to the determination of a maximum limit to sections to be included in each request (fifteen). It is thus deemed that the definition of a maximum of twenty consecutive sections to be integrated in each request shall enable an acceptable balance between the established time limits and the engagement of specific resources in this task. Without prejudice, it must be stressed that limits have not been imposed on the number of requests each beneficiary entity may present.

In case one or more sections included in the request put forward by the beneficiary entity do not have the available capacity to accommodate cables/equipment to be installed, PTC must present alternative routes, after verifying the existent capacity for the sections of such routes. As a matter of fact, sub-point iii) of point a) of paragraph 6 of the decision of 17/07/04 provided that where it is physically or technically unfeasible for PTC to meet the requests for access, it must send to beneficiary entities proposals of alternative routes. Beneficiary entities are however not prevented from presenting to PTC their own proposals for alternative routes, if they so desire. As a result, the request for occupation feasibility may be solicited by the beneficiary entity together with an alternative route. As regards the maximum number of alternative routes, the provision in the RCAO is deemed acceptable, that is, an alternative route shall not comprise more than ten sections with regard to the original route.

2.2.6.2 Tidying up and cleaning

Beneficiary entities shall not be charged any amounts for costs which are not, by their very nature, incremental costs allocated to such entities, such as tidying up and cleaning PTC's own infrastructures.

A. Replies received

PTC considers that it would not be proportional to allocate to that company the costs involved in tidying up and cleaning, as the need to tidy up and to identify cables in manholes does not imply that cables are not kept in order or that infrastructures are not in a proper state of preservation and functioning. It refers also that the maintenance of infrastructures of the basic network in a proper state of preservation and functioning does not imply that water is drained from all manholes, in case water appears in infrastructures as a result of bad weather.

Onitelecom considers that the tidying up and cleaning tasks are incumbent upon PTC, while Novis refers that the beneficiary entity should charge PTC for any water pumping or drainage work performed in manholes, which beneficiary entities are forced to carry out in order to install cables.

B. View of ICP-ANACOM

The arguments presented by PTC are paradoxical. In particular, ICP-ANACOM fails to understand the need to tidy up cables that are in fact kept in order, and of course the lack of identification of cables does not correspond to an acceptable practise at record level. Moreover, it is considered that the pumping and water draining work performed in manholes represent periodical maintenance work. On the other hand, as the cleaning and preservation of infrastructures are incumbent upon the concessionaire, beneficiary entities should not charge PTC for water pumping or draining work.

Thus, as referred in the DD reasoning, it is restated that, under the Bases of Concession approved by Decree-Law no. 31/2003, of 17 February, along the lines of the provisions laid down in Decree-Law no. 40/05 of 15 February, it is incumbent upon PTC to maintain the basic network infrastructures in good working order, safely and well maintained, as well as to watch over its functioning and appropriate operation.

In addition, part of sections regarding the access and distribution networks owned by PTC have been built by individuals (ex. Urbanizers) and granted to PTC at no additional cost, and have already been amortized, and it would thus be inappropriate for the beneficiary entity to be burdened with such costs, in addition to “current” costs.

Thus, it is in PTC’s own interest to keep its infrastructures in order, and beneficiary entities shall not be charged any amounts that do not reflect incremental costs for which they are in fact responsible.

2.2.6.3 Current or expected needs

The RCAO shall establish, in any case, that the concessionaire may not install in conduits, tubes, sub-conduits and associated infrastructure, cables or any other equipment that do not correspond to the current or expected needs in terms of service provision and that, as a result of the undue excessive space occupation, prevent or limit the access to infrastructures by beneficiary entities.

Where a request made by a beneficiary entity for feasibility of occupation of certain conduits and associated infrastructure is not deemed feasible by PTC, as no space is found for the installation of cables of the beneficiary entity, PTC shall demonstrate that the cables/equipment occupying such conduits and associated infrastructure correspond to its current or expected needs as far as the service provision is concerned, and thus that the access of beneficiary entities to such infrastructures is not prevented or limited as a result of an undue excessive occupation of space.

A. Replies received

PTC considers that demonstrating that cables/equipment that occupy conduits and associated infrastructures correspond to its current or expected needs would not be proportional, comparing the length and necessary engagement of resources to the purpose intended.

For TEL2, the expected needs should not be considered grounds to render unfeasible the requests for occupation of conduits and associated infrastructures, and thus, where cables or equipment owned by the concessionaire were not effectively being used, they should be removed at the expense of the latter.

Novis proposes that the concept of “current or expected needs” corresponds to cables and equipment of PTC which are to be rendered operational within thirty days from installation. Colt and SGC consider that it should be explained how PTC intends to demonstrate that the occupation of conduits corresponds to its current or expected needs. In particular, SGC considers that this demonstration should include active customer and interconnection circuits, available PI capacity, architecture of used network and evidence that PTC does not have any physical alternatives for the use of the section under consideration.

B. View of ICP-ANACOM

It is part of any investment process to foresee the expected demand and to plan and manage the activity on the basis of such information, thus the argument presented by PTC must be rejected. For example, when a retail service is launched, the expected demand must be also foreseen as accurately as possible, given the available information. There are no known cases in which PTC has restricted *a priori* any retail offers of its own, based on its own limitations of a provisional nature.

As referred in the report of the decision of 17/07/04, the existence of available capacity enabling the concessionaire to promote an appropriate development of the concessionary services does not seem to represent, *a priori*, a discriminatory practise having regard to the different types of obligations upon PTC (as concessionaire and provider of the Universal Service) and beneficiary entities. In fact, under the Bases of Concession, it is incumbent upon the concessionaire, namely, to develop and operate infrastructures which integrate the telecommunications basic network, in articulation with the territorial planning and the needs of citizens regarding security and civil protection; to guarantee the functioning of telecommunication services during crisis, emergency or war situations; to maintain the basic network infrastructures in good working order, safely and well maintained; to develop the infrastructures of the telecommunications basic network, in order to ensure quality levels appropriate to the services they support.

It should be reiterated, as referred in the decision of 17/07/04, regarding the available space in conduits and sub-conduits, that, in any case, the concessionaire is not entitled to install in conduits, tubes, sub-conduits and associated infrastructure, cables or any other equipment that do not correspond to the current or expected needs in terms of service provision and that, as a result of the undue excessive space occupation, prevent or limit the access to infrastructures by beneficiary entities.

Thus, PTC must demonstrate, in these cases, that the cables/equipment occupying such conduits and associated infrastructure correspond to its current or expected needs.

On the other hand, as referred in the report of the decision of 17/07/04, it should be laid down that PTC is entitled to reserve space for a future use, in order to promote an appropriate development of concessionary services, and for this reason the argument invoked by TELE2 must be rejected.

In the view of this Authority, the time limit of one month, within which cables/equipment that occupy conduits and associated infrastructures and that correspond to current and expected needs, are supposed to be used, is insufficient. Thus, it is deemed that the concessionaire is entitled to reserve space for its own future end use, for one year at the most, in the conduits and associated infrastructure it operates,

provided that this reservation is duly grounded based on the guarantee of an appropriate future development of concessionary services, ICP-ANACOM being entitled to lift the reservation, in case it proves to be unfounded.

2.2.7 Installation of cables in conduits and associated infrastructure

2.2.7.1 Exclusive use of sub-conduits by the beneficiary entity

The 3rd paragraph of page 10/29 of the offer refers that PTC provides sub-conduits, exclusive per beneficiary entity, for cable installation purposes. The reference to the exclusive use of sub-conduits by the beneficiary entity shall be removed, and the text shall be amended to read: “PTC provides access to conduits and associated infrastructure to beneficiary entities for cable installation purposes”.

A. Replies received

PTC, the only entity to oppose to the proposed alteration to the DD, refers that cables owned by beneficiary entities should be installed in exclusive sub-conduits per each beneficiary entity, except where this is not feasible, namely on account of lack of space, in view of the fact the use of sub-conduits would facilitate the installation, operation, maintenance, and removal of elements in the underground infrastructure, while safeguarding the integrity of networks during the handling of cables.

B. View of ICP-ANACOM

As referred in the DD, ICP-ANACOM restates that there are no grounds that justify the need for exclusive sub-conduits per each beneficiary entity, as it has not been demonstrated that the systematic installation of sub-conduits is the best practise in order to protect cables already installed, and as such exclusivity could ultimately render unfeasible the access of other beneficiary entities to conduits and associated infrastructures.

Without prejudice, it is recommended that the handling of cables be performed with the utmost accuracy so as to avoid network damage, and for this purpose, PTC must attach to the RCAO a handbook of procedures for the installation, intervention and removal of cables, which shall be followed by beneficiary entities. In addition, cables shall be identified in permanent manholes with a code enabling the identification of the respective owner.

2.2.7.2 Monitoring by staff of PTC of work performed by the beneficiary entity

The beneficiary entities shall submit to PTC a request for access and installation in underground infrastructures, so that PTC, if it so desires, may monitor and supervise the cable installation work of beneficiary entities in its own conduits and associated infrastructure.

A. Replies received

TVTEL does not agree with the need for monitoring by representatives of PTC, as this: i) is not standard practice in the scope of the establishment of networks of cable operators; ii) would create delays to the work of the beneficiary entity; iii) would enable PTC to obtain the construction “know-how” that enables other companies to be more efficient as regards the network construction. Thus, it suggests that, alternatively, and specifically for cable operators, only the notification to PTC, forty-eight hours in advance, of the location where the beneficiary entity will carry out its work should be provided for, being left to PTC to decide whether to monitor this work or not.

B. View of ICP-ANACOM

As the cable installation, intervention, maintenance and removal work is to be carried out by the beneficiary entity, the provision already included in the DD must be reaffirmed, that the beneficiary entity must submit to PTC a request for access and installation in underground infrastructures, so that the concessionaire, if it so desires, may monitor and supervise the cable installation work of the beneficiary entity performed in its own conduits and associated infrastructure.

ICP-ANACOM fails to understand how the monitoring by representatives of PTC contributes towards creating delays in the work. As regards the “know-how”, it is acknowledged that a possible transfer of knowledge may be reciprocal, as the access by the beneficiary entity to conduits of PTC may enable the former to gain operational knowledge on PTC’s conduits. Thus, the proportional nature of the measure regarding the monitoring by representatives of PTC of work carried out by the beneficiary entity must be regarded on the whole.

On the other hand, taking into account the legitimate interests of all parts involved, the monitoring conditions must not be discriminatory. Namely, as referred on 17/07/04, the technical and operational quality of the monitoring of works by beneficiary entities in conduits and manholes must be equivalent to the quality PTC provides itself and its affiliates or entities in a relationship of dominance.

In line with the above, PTC must submit every quarter information on the number of monitoring services performed concerning work carried out on conduits by beneficiary entities, broken down by number of monitoring services concerning access requests submitted by other companies of the PT Group *versus* access requests made by other beneficiary entities, a difference above 5% of the number of monitoring tasks concerning companies of the PT Group *versus* other companies not being accepted. PTC must submit to ICP-ANACOM every quarter, fifteen days after the end of each quarter and broken by beneficiary entity: i) number of access requests; ii) number of access requests in the scope of which PTC undertook a monitoring service.

2.2.7.3 Unblocking of conduits

*Beneficiary entities shall not bear in full the burden of costs resulting from unblocking, as this is not solely in their interest. In this sense, the following unblocking cost sharing formula shall be considered: on the basis of the number of beneficiary entities ($i > 1$), each one shall pay PTC a percentage of the unblocking cost of $(1/i) * 100\%$, while each*

*beneficiary entity shall receive from PTC the equivalent to $(1/i) - 1/(i+1)$ *100% per each new beneficiary entity that subsequently shares the same section.*

A. Replies received

PTC is of the opinion that the cost of unblocking a conduit section should be borne by the beneficiary entity that is interested in such unblocking, which would be reasonable and acceptable by all parties involved.

Novis explicitly agrees with the sharing of costs of any unblocking, considering that the contribution of beneficiary entities would be justified in the cases where the obstruction is caused by grounds of *force majeure*.

In the view of Onitelecom, TELE2 and TVTEL, beneficiary entities should not be forced to bear costs of conduit unblocking, as: i) it is incumbent upon PTC to maintain infrastructures in proper conditions; ii) this requirement falls upon it in its capacity as the provider of a service; iii) beneficiary entity with performed work or iv) sharing costs would be a complex task. Alternatively, Onitelecom suggests that, where the unblocking is necessary, the request is met by means of an alternative route to be proposed by PTC, any additional costs being borne by the latter.

B. View of ICP-ANACOM

It must be restated that the unblocking of a section of the conduit is not in the exclusive interests nor of the beneficiary entity nor of PTC, having regard to the fact that after the unblocking has been carried out, that section may be used by PTC itself or by other beneficiary entities. Thus, it would not be proportional to allocate the initial cost of the unblocking either to PTC or to the beneficiary entity. As regards the sharing of unblocking expenses, similar systems have been applied in Australia, and, also in Portugal, as far as the co-installation space in the RUO is concerned, and it does not amount to be a highly complex procedure.

As regards the alternative proposed by Onitelecom, the establishment thereof in the RCAO would not be proportional, as it would introduce an additional complexity, in view of the fact that the offer already provides a feasible solution for the identified problem. Without prejudice, beneficiary entities are free to agree with PTC a different type of solution.

2.2.7.4 Sending of occupation record following the completion of work

After the cable installation works of the beneficiary entity in the conduits and associated infrastructure of PTC have reached an end, the latter shall submit to the former the occupation record, without prejudice to the information update in the Extranet page to which each beneficiary shall have access by means of the respective access code.

A. Replies received

PTC considers that it should only submit to the beneficiary entity the occupation record of conduits in the situation where PTC itself undertakes the installation of cables, and further adds that the beneficiary entity should submit thereto the detailed overall project when the latter is responsible for promoting the installation.

B. View of ICP-ANACOM

Since beneficiary entities will be performing the cable installation, intervention and removal work, it is considered that the latter should submit to PTC the Detailed Overall Project.

2.2.8 Intervention in cables installed in conduits and associated infrastructures

It is referred in the RCAO that the beneficiary entity is responsible for supervising the appropriate functioning of cables forming part of its property installed in conduits and associated infrastructures of PTC. To ensure an effective supervision, the DD established that beneficiary entities shall have physical access to conduits and associated infrastructures of PTC.

A. Replies received

PTC fails to understand the need of beneficiary entities to access conduits in order to supervise cables, since the monitoring of systems is performed by remote control (by means of equipment connected to the end of the cable). It refers however that where the beneficiary entity, in the scope of the operation and maintenance, wishes to access cables installed in PTC conduits, it should be able to request of PTC the respective access as provided for in the RCAO.

Onitelecom and TELE2 strongly support that the access of beneficiary entities to conduits and associated infrastructures is safeguarded of and SGC adds that, as regards the supervision and technical assistance to cables owned beneficiary entities, the presence of representatives of PTC in the physical access to conduits would not be necessary, provided that the technical staff performing the intervention is accredited in compliance with the requirements established by PTC to collaborators and service providers that carry out similar tasks.

B. View of ICP-ANACOM

As referred in the DD, the beneficiary entity must have access to conduits and associated infrastructures in order to supervise appropriately the functioning of cables in its property (clause 6 of the standard contract must be amended accordingly), being considered that the monitoring thereof by PTC is important to ensure the preservation and security of conduits, as the latter may thus be aware of possible damage in the network and launch immediately the necessary action to repair it.

2.2.9 Route deflection and alteration of occupation

PTC shall state the reasons which may lead to the need to eliminate or to deflect a certain route by imposition of third parties, presenting concrete examples thereto. The provision for cases in which, after deeming a request as feasible and having granted the access to the beneficiary entity for the installation and or maintenance of the respective systems, equipments and other resources, this company invokes the restructuring of the network to impose on the beneficiary entity the need to remove the means and to release space in conduits and associated infrastructure, shall be removed.

A. Replies received

PTC considers that there are situations that justify the elimination and deflection of conduit routes by imposition of third parties, which are subject to time limits and rules controlled by external entities. On the other hand, it considers that deleting the possibility of invoking the restructuring of its network to impose on the beneficiary entity the removal of means and the release of space in conduits would limit its rights and hinder the compliance with its obligations.

For Onitelecom and TELE2, it is unacceptable that, after a route has been completed, PTC imposes on the beneficiary entity the need to remove cables on account of a route deflection resulting from the restructure of its network. In this context, Onitelecom suggests that clarification is provided on the conditions for the imposition of route alterations by third parties, that would force the removal of the installed network, both on the part of the beneficiary entity and of PT (and in this case, PTC should guarantee an alternative route, at no additional cost to the beneficiary entity), while TELE2 refers that in the cases of substantiated restructuring, PTC should ensure that services provided by beneficiary entities are not interrupted during the restructuring work.

B. View of ICP-ANACOM

PTC has not presented reasons or concrete examples that substantiate the elimination or deflection of a specific route by imposition of third parties or for network restructuring purposes. It must thus be restated that after having enabled a request and granted access to the beneficiary entity for the installation and/or maintenance of its systems and equipments, PTC is not entitled to invoke subsequently the restructuring of its network to impose thereon the removal of means and the release of space in conduits and associated infrastructures.

ICP-ANACOM acknowledges, however, that the continuity of the service provided by the beneficiary entity in case of the elimination and deflection of routes by imposition of third parties (whose conditions for imposing route alteration must be duly clarified and notified to beneficiary entities) may not depend on PTC, and thus considers that PTC must make its best efforts together with beneficiary entities in order to pursue the best possible restore of the service.

2.2.10 Removal of means of beneficiary entities installed in conduits and associated infrastructure

Where PTC pursues the removal of cables of beneficiary entities, it shall ensure the physical conditions of removed cables. In case damage occurs in the course of the removal process (which may be accompanied by the beneficiary entity), PTC shall compensate the beneficiary entity.

A. Replies received

PTC considers that it may not ensure the physical conditions of cables removed and in case the beneficiary entity requests a removal of cables with the possibility of reuse, where cables are not in fact reused, the service should be charged at the price of removal without the possibility of reuse. As regards the removal of means of the beneficiary entity, it considers that where such removal is carried out by the beneficiary entity, a maximum time limit must be defined for this purpose.

For Onitelecom, the removal of means should be pursued by the beneficiary entity itself as a priority, with the possibility of PTC monitoring the work where appropriate, the provision of the DD as far as cable damage is concerned being agreed with.

B. View of ICP-ANACOM

As the cable removal work is to be pursued by the beneficiary entity, the latter shall be responsible for ensuring the physical condition of removed cables.

As mentioned before, the beneficiary entity shall remove the “dead” (that is, with no possibility of usage for reasons of technical disability) or clearly obsolete cables within thirty calendar days from the date of reception of PTC’s notification. Following the expiry of this time limit, where the beneficiary entity has not removed cables, PTC shall promote this removal.

Without prejudice, where PTC cables are not kept in order, so as to enable the removal of “dead” or clearly obsolete cables, that prevent the installation of cables by the beneficiary entity, the latter shall inform PTC thereof, and PTC must accordingly set its cables in order, within a ten-calendar-day time limit from the date of reception of the notification. ICP-ANACOM deems, however, that at the moment a performance target should not be set for this time limit. Without prejudice, ICP-ANACOM shall monitor the development of the offer, which will enable the access to more detailed information, and may establish figures for compensation for non-compliance with the time-limit herein defined, in whatever form this Authority ultimately decides.

2.2.11 Project and construction of new conduits and associated infrastructure

2.2.11.1 Access to information

The way beneficiary entities gain access to information on plans for the construction of new conduits and associated infrastructure, namely how the beneficiary entity is notified of the existence of such information, shall be made clear.

A. Replies received

PTC proposes that documents exchanged with beneficiary entities in the scope of the project of construction of new conduits be submitted by letter or any other means agreed.

For Onitelecom and TELE2, the information on new construction projects should be made available at the Extranet (in addition to being sent electronically to operators, according to TELE2).

According to Onitelecom, in clause 5 of the standard contract, in addition to making available information to beneficiary entities at the Extranet, namely in paragraphs 2 and 3 thereof, paragraph 4 should be removed, as it would not be acceptable for PTC to cancel the construction of new conduits and associated infrastructures formerly announced and regarding which there had been signs of interest on the part of beneficiary entities, as well as the final part of paragraph 2 (“... save where...”) and paragraph 3, as they favour abusive situations.

B. View of ICP-ANACOM

According to the determination on minimum elements, PTC must inform beneficiary entities of the construction of new conduits two months in advance of the date of notification to the municipal authority of the construction. As regards the form of notification by PTC of projects of new conduits, ICP-ANACOM deems it should be left to PTC to decide the best way to do so, being incumbent upon that company also to demonstrate that the notification has been made. Thus, the information on the forecasted construction of new conduits may be notified, for example, by registered letter with acknowledgement of receipt or by any other established means, being recommended that such information be also provided at the Extranet.

PTC is entitled to cancel the construction of new conduits and associated infrastructure, provided that the RCAO states the reasons therefor, and grounds are presented in the subsequent notification to the beneficiary entity.

2.2.11.2 Bank Guarantee

The bank guarantee lodged to ensure that the obligation to pay the monthly instalments on account of occupation is complied with shall cover a three-year period (not a five-year period as provided for in the current offer), its existence being justified only where PTC bears costs resulting from the physical access of beneficiary entities to its conduits and associated infrastructure.

A. Replies received

PTC considers that regardless of the adopted access model, the RCAO should determine that a bank guarantee must be lodged by the beneficiary entity.

Onitelecom, TVTEL and Vodafone consider that the beneficiary entity should not be forced to lodge bank guarantees. In particular, Onitelecom deems there are no grounds

for the guarantee period, referring that the possibility of paying the monthly instalments remaining to complete two years of operation should be considered only in case the beneficiary entity opts for termination (accordingly, in clause 5 of the standard contract paragraphs 5 and 7 should be removed, as the requirement for a bank guarantee is not acceptable, and paragraph 2 of clause 7 should be removed as well). Vodafone is of the opinion that the bank guarantee should be progressively released as payments are made, and in proportion thereto, as beneficiary entities shall operate installations and pay thereafter the corresponding charges.

B. View of ICP-ANACOM

As referred in the DD, a three-year period for the bank guarantee has been chosen, as the five-year period initially proposed by PTC, which has not been substantiated, was deemed excessive. On the other hand, the application for the progressive release of the bank guarantee as payments are made, and in proportion thereto, is accepted, in view of the fact that, as payments are made, the risk decreases, and thus the guarantee must have a lower value.

In parallel, it is deemed that beneficiary entities that show an interest in the access to conduits and associated infrastructures, within a three-year period after their construction, must be granted conditions similar to the ones described above for operators that have presented a request for reservation of space in new underground infrastructures, as far as the bank guarantee is concerned. Namely, a bank guarantee must be lodged to ensure the compliance with the obligation to pay, of an amount corresponding to the monthly payments of occupation, relating to the surface and length solicited, for the period between the moment the access is granted by PTC and the elapse of three years from the infrastructure construction. As referred above, as payments are made, the risk decreases, and thus the guarantee must have a lower value.

In addition, it is considered that beneficiary entities that show an interest in the access to conduits and associated infrastructure, within a three-year period after their construction, and after the concessionaire has verified the existence of available space (without prejudice to the reservation of space for the future development of concessionary services and maintenance activities), shall pay PTC the amount that corresponds to the use during the period between the end of the construction of new conduits and associated infrastructure and the moment the access is eventually granted. It is considered that this measure shall contribute towards stimulating the rationalization of investments and the existence of appropriate interaction between beneficiary entities and PTC, aiming to optimize the planning and construction procedure.

2.2.12 Indicators and levels of quality of service

2.2.12.1 Definition of indicators

Indicators of quality of service shall be defined according to the provisions of the determination of 17/07/04 and, in particular, the start and end of the time counting shall be specified. Clause 9 of the standard contract provides that indicators and levels of quality are the ones specified in the RCAO, except where others have been agreed between the parties, in writing.

A. Replies received

For PTC, indicators should reflect services provided by the concessionaire, whereas the presented definitions (time limit to install infrastructures, time limit to remove infrastructures and time limit for maintenance and repair operations) concern actions performed by the beneficiary entity, and should thus be adjusted accordingly.

The concessionaire does not agree with time limits to be complied with for 100% of observations, as one occurrence would be enough to infringe the level of service. It adds also that it is a common rule for targets of 100% of occurrences to apply to average time limits, whereas maximum time limits apply to percentages below 100%.

Novis considers that indicators were defined for a model, which is not deemed the best, in which PTC holds exclusively several tasks, such as the installation of cables or maintenance intervention. It considers that the relevant time limits should concern, in the stages of the procedure in which the direct physical access to infrastructures by beneficiary entities is allowed, to the maximum periods within which PTC should guarantee the monitoring, by a representative, of work carried out by beneficiary entities.

Vodafone mentions, also, that the Extranet should make available a measurement of quality indicators defined in the RCAO, broken down per companies of the PT Group and the remaining beneficiary entities. In the view of Onitelecom, the assessment of indicators should be performed every three months and not every six months, as PTC proposes.

Lastly, Onitelecom mentions that clause 9 of the standard contract, by allowing levels of quality of service agreed between operators, would pave the way to discrimination between beneficiary entities.

B. View of ICP-ANACOM

The reassessment of defined indicators, which must reflect the activities of the concessionaire, is appropriate. Thus, indicators of the time limit for the installation, maintenance, repair and removal of infrastructures may be withdrawn from the offer. As beneficiary entities have the option of engaging other entities for pursuing these tasks, it would not be proportional to define indicators concerning these activities, as well as time limits for the pursue thereof by PTC. Without prejudice, the beneficiary entity may agree specific indicators and time-limits with PTC, as well as compensation for non-compliance, for services agreed to be performed by the concessionaire.

The RCAO shall provide also for the following indicators:

- (i) Readiness level of the monitoring service, which shall be calculated by means of the following formula:

(Number of monitoring services performed on the dates scheduled with the concessionaire / Total number of monitoring services performed)

- (ii) Time limit to schedule the monitoring of non-urgent intervention operations to be carried out by the beneficiary entity (installation, maintenance, repair and removal of infrastructures) - time duration, in consecutive hours, from the hour the concessionaire receives a repair intervention request up to the

hour scheduled by the concessionaire to perform the necessary monitoring service;

- (iii) Time limit to schedule the monitoring of urgent⁸ intervention operations (repair) to be carried out by the beneficiary entity - time duration, in consecutive hours, from the hour the concessionaire receives a repair intervention request up to the hour scheduled by the concessionaire to perform the necessary monitoring service.

As regards the reports on the quality performance, it is deemed that they contribute towards promoting transparency. Thus, the reports on the quality performance of each beneficiary entity shall be submitted to the respective beneficiary entity, no later than fifteen days after the end of the quarter concerned. The reports on the quality performance to be sent to beneficiary entities and to ICP-ANACOM shall be prepared on a monthly basis. PTC shall submit to ICP-ANACOM the levels verified, broken down by beneficiary entity, no later than fifteen days after the end of the quarter concerned.

Contrary to the view of Onitelecom, clause 9 of the standard contract does not pave the way for discrimination between beneficiary entities. The RCAO sets a minimum level which must be complied with. The offer provided for in the RCAO, at the established price, must be ensured, but this does not prevent PTC, on the basis of compensating measures agreed specifically, from providing differentiated offers in a non-discriminatory way.

Without prejudice to establishing target levels different from those provided for in the RCAO for quality indicators, in compliance with the principle of non-discrimination, these levels, where they exist, should be extended, in the same conditions, to any interested beneficiary entity.

2.2.12.2 Time limits

Time limits are maximum periods to be complied with for 100% of observations, penalties being provided for in case of non-compliance. Thus, for 100% of the cases, the maximum time limit to reply to an information request is of 5 working days, the maximum time limit to reply to an access request (that is, feasibility assessment) is of 15 days where there is no alternative route, and of 30 days with an alternative route. The DD defined also maximum time limits for the installation and removal of cables, and for starting cable intervention.

A. Replies received

The time limit to reply to a request for information, which in the opinion of Novis would apply exclusively to situations where beneficiary entities solicited of PTC the supply of drafts in paper (as the access to information on underground infrastructures would be immediately available by consulting the Extranet), should be forty-eight hours at the most, in the view of Vodafone. Onitelecom agrees with the proposed time limit (5

⁸ Urgent intervention means the intervention following from situations of risk to the integrity of the network (for example, cabling damage resulting from work in public roads).

working days) but solely during the period of transition to the electronic provision of records.

As regards requests for access, SGC proposes the reduction of the time limit to reply to seven days (with no alternative route) and fifteen days (with alternative route). Vodafone, Onitelecom and Novis consider that the time limit to reply should be independent of the issue of whether the request comprises an alternative route or not, and put forward a time limit of ten (Vodafone) and fifteen (Onitelecom and Novis) working days.

According to Vodafone, in the scope of programmed and urgent interventions, in addition to the defining the maximum time limits for their commencement, the moment from which beneficiary entities have physical access to conduits and associated infrastructures should be defined, this operator deeming that the maximum time limit for the start of a programmed intervention should be at the most forty-eight hours.

In the case of urgent interventions, operators (except for PTC) are of the opinion that the maximum time limit for the commencement of the intervention should be shortened, a time limit up to eight consecutive hours being indicated, in order to ensure levels of service agreed with end-customers. Novis adds that PTC ensures to beneficiary entities, under point 1 of clause 13 of the standard contract for provision of services (annex 6 to the RCAO) a permanent technical assistance service which is available twenty four hours a day, seven days a week, thus there are grounds to set in consecutive hours the maximum time limit for the necessary monitoring by PTC of corrective maintenance operations pursued by beneficiary entities. Vodafone considers that indicators should contemplate a time limit for the update of information provided in the Extranet.

B. View of ICP-ANACOM

As mentioned above, the maximum time limit for the installation and removal of cables, and for intervention, must be withdrawn from the RCAO.

The information on conduits and associated infrastructures must ideally be available for immediate consultation at the Extranet page. At an initial stage, however, this may not occur for all cases. Thus, it is relevant to define a maximum time limit for the provision of information on conduits and associated infrastructures, restating that a five-working day time limit should be complied with. This time limit should apply, even after the information in electronic format is available, to all requests of drafts in paper.

According to information submitted by PTC (on the grounds for prices proposed in the RCAO), the analysis of the feasibility of occupation with alternative route implies an additional assessment to be performed by a TSL (*técnico superior licenciado*) (graduate advanced technician) of, in average [SCI] [ECI] minutes. Concomitantly, it is deemed that the difference between the time limits for reply to feasibility requests with and without alternative route is not duly substantiated. It must be stressed that the concessionaire must reply within a reasonable time limit to requests for access, being considered that fifteen calendar days should be the maximum time limit for requests for access with and without alternative route.

As regards the maximum time limit to schedule the monitoring of urgent intervention operations (repair), the concerns of operators, namely the guarantee of levels of service to end-customers, are deemed justified, and so this time limit should be altered to eight consecutive hours.

Without prejudice to the identification of new indicators, it is deemed that the information included in the Extranet is updated at the moment PTC updates the database providing descriptive information on conduits and associated infrastructures; nevertheless, this issue may be reviewed in the light of the Extranet evolution.

The RCAO should provide for levels of quality for indicators now defined. Thus:

- (i) Readiness level of the monitoring service.

PTC must guarantee that 95% of the monitoring services take place on the dates the company agrees to perform them, per month and per each beneficiary entity. The situations in which the causes for non-compliance are due to the beneficiary entity shall not be accounted for. It is considered that the establishment of a minimum percentage of 95% for monitoring services to be performed on the dates the concessionaire agreed to do so enables the appropriate development of work to be carried out by the beneficiary entity and the implementation of the planning made, enabling also a margin which is deemed appropriate to cover any unexpected situations that render impossible the pursue of such monitoring.

- (ii) Time limit to schedule the monitoring of non-urgent intervention operations to be carried out by the beneficiary entity (installation, maintenance, repair and removal of infrastructures).

The maximum time limit is, for 100% of cases, of twenty-four consecutive hours. It is deemed that covering 100% of cases is important so that there are no delays in the scheduling of monitoring services which fall upon PTC itself, which may result in delays in the maintenance services to be performed by the beneficiary entity, which in turn will be reflected in the swiftness the latter may provide services to potential customers.

- (iii) Time limit to schedule the monitoring of urgent intervention operations (repair) to be carried out by the beneficiary entity.

The maximum time limit is, for 100% of cases, of eight consecutive hours. The coverage of 100% of cases is considered justified as the potential impact of cable failure recommends the respective repair as soon as possible, in view of the fact that the number of customers potentially affected by cable failure may be substantial.

PTC shall send to each beneficiary entity, each quarter, the respective results of indicators achieved in the interaction with that beneficiary entity.

2.2.12.3 Periods of time not to be considered

Periods of time not to be considered for the above time counting shall be exclusively the following: (i) reasons of force majeure; (ii) reasons for which the beneficiary entity is responsible. The remaining periods of time (such as: obtaining licenses and authorizations, namely council licences and authorizations for public road cuts; (ii) situations where it is impossible to access visit chambers; (iii) situations where conduit sections are blocked) shall be removed, as they correspond to exceptional events and therefore should be comprised in the percentage of facts not included in indicators.

A. Replies received

PTC considers that the periods of time for which it is not responsible, such as those connected to obtaining authorizations from third parties or to situations of access impossibility, should be deducted from the performance time limits.

Onitelecom refers the need to define the conditions indicated in the RCAO for situations where the time limit is not defined in the proposed indicators, namely in situations of impossibility to access manholes, on account of blockage and emergencies. As regards situations of *force majeure*, that company considers that paragraph 3 of article 195 of Decree-Law no. 59/99, which should be made clear, should apply.

B. View of ICP-ANACOM

It should be restated that the calculation of mentioned time limits do not consider the periods of time associated to reasons for which the beneficiary entity is responsible or those connected to reasons of *force majeure* or emergency⁹. As regards situations where it is impossible to access manholes or where conduit sections are blocked, although they correspond to events of an exceptional nature, and given that time limits defined are to be observed in 100% of the cases, it is considered that the associated periods of time should not be calculated. Nevertheless, PTC must present a clear justification as regards the grounds for the impossibility of access.

As regards the time for obtaining authorizations, it is considered that it is irrelevant, as far as the responsibility of PTC is concerned, in a model where the access is carried out by the beneficiary entity, and thus is not relevant for the issue under consideration.

No reasons for any impediment preventing beneficiary entities of the RCAO to request of administrative authorities the necessary authorization to perform cuts of public roads to access manholes are known of, municipal regulations and by-laws (which may vary according to the municipality where the intervention is to take place) or specific rules set by administrative authorities responsible for issuing authorisations being applied. In some cases, it may be requested of the company performing the intervention to present documentary evidence that the access to manholes was authorized by the respective owner or responsible entity. In case there are conduits installed on private property, there may be specific access restrictions imposed by owners of the location where the conduits/manholes are installed. In these cases, as well in all other cases where a similar need arises, it is incumbent upon PTC to provide the beneficiary entity of the RCAO with all the necessary elements to prove that the latter is entitled to access the referred infrastructures.

⁹ Cases of *force majeure* mean the unexpected and insuperable event the effects of which are produced irrespective of the will of the operator, such as natural disaster, acts of war, declared or not, subversion, civil disorder, economic blockade and fires.

2.2.13 Compensation for non-compliance with time limits to reply

2.2.13.1 Daily compensation penalty value for non-compliance with time limits

The daily compensation penalty value due to the beneficiary entity for non-compliance of PTC, regarding delays in replies to information requests or feasibility requests shall be at the least 50€, in order to encourage compliance therewith.

A. Replies received

PTC does not agree with the amount of daily penalties proposed for delays in providing replies to information or feasibility requests, in view of the fact that, as these services are not services of access to end-customers, they are not be the sole way to construct a network and are necessary only for the analysis on the part of the beneficiary entity of the interest of using conduits.

Operators in general consider that the compensation for non-compliance with time limits and levels of quality as regards requests for information on infrastructures and requests for feasibility should be discouraging. In this context, TELE2 mentions that the defined amount is too low considering the dimension of PTC, and, as Vodafone also refers, the damage caused to operators. Vodafone adds that the compliance should be encouraged through the monitoring action of ICP-ANACOM.

As far as penalties are concerned, Vodafone proposes that they increase in proportion to number of days of delay (for example < five days, payment of 50€/day, between five and 10 days, payment of €60, and so on). Onitelecom proposes a penalty of €300 per day of delay, TELE2 €500 per day, and Colt €50 per day per metre of non-compliance.

Lastly, Onitelecom mentions that the DD refers compensation for non-compliance with information requests and feasibility requests, with the remaining compensation presented by PTC thought to be acceptable.

B. View of ICP-ANACOM

The compensation for non-compliance with the time limit to install cables in underground infrastructures, with the time limit to remove cables from infrastructures, and with the time limit to start an intervention on an installed cable may be removed from point 8 of the RCAO, as it is not proportional to maintain such compensations, given that beneficiary entities may now choose to carry out such intervention for themselves, without prejudice to an agreement between beneficiary entities and PTC on possible compensation.

ICP-ANACOM deems that the grounds put forward by PTC as regards the amount of penalties should be rejected, restating that, according to Law no.5/2004, of 10 February, it is incumbent upon the concessionaire to provide an offer of access to conduits. In this scope, the difficulties felt by many operators when trying to replicate the investment in infrastructures in an economically effective way must be stressed. It is thus extremely important that beneficiary entities are aware of existing infrastructures and of the possibility of using them, the definition of discouraging compensation for non-compliance being fundamental.

It is important that compensation for non-compliance be both discouraging and proportional, and it is deemed that an amount of €50 per day meets these requirements,

stimulating the compliance with the time limits to provide a reply. As regards monitoring, it must take into account both the priority nature of this issue and available resources.

As regards the compensation for non-compliance with the time limit to schedule the monitoring of urgent and non-urgent intervention operations and with the readiness level of the monitoring service, having regard to the initial stage of the offer, it is considered that at the moment, the respective values should not be defined. Nevertheless, ICP-ANACOM shall monitor the development of the offer, which will enable the access to more detailed information, and may establish figures for compensation for non-compliance with the indicators herein defined, in whatever form this Authority ultimately decides.

Without prejudice, it is considered that the penalties for non-compliance as regards the time limit to reply to a request for information on underground infrastructures and requests for feasibility should be maintained, as these indicators seem to have a more strategic impact, and interested entities have already been heard on this matter.

2.2.13.2 Limit to compensation for non-compliance with time limits

Compensation for non-compliance shall be limited to sixty working days of delay per each time limit.

A. Replies received

PTC considers that the maximum limit for compensation should correspond to the price of each service (which would imply the provision thereof free of charge).

PTC and Novis consider that the maximum limit for compensation, as regards the services of installation, intervention and removal of cables should correspond to calendar days, PTC adding that this limit should correspond to sixty calendar days.

Vodafone, Onitelecom, Novis and TELE2 oppose to the setting of limits to the amount of compensation, as this would dilute its discouraging effectiveness. Vodafone adds that the beneficiary entity should be given the opportunity, following a delay from the concessionaire above, for example, sixty days, to look for an alternative solution without bearing the costs involved in the withdrawal. For Onitelecom, it should be made clear whether the limit presented applies to all indicators provided.

B. View of ICP-ANACOM

The definition of a limit in the same unit as the definition of the indicator seems appropriate. In this scope, the maximum limit for compensation shall be ninety calendar days (sixty working days and ninety calendar days correspond approximately to twelve weeks).

Taking into account the principle of proportionality, it is deemed reasonable to define a maximum limit for compensation for non-compliance (such compensation has been provided likewise for the RUO) with information and feasibility requests, given that this limit is associated to maximum time limits defined for 100% of occurrences.

ICP-ANACOM considers reasonable that beneficiary entities, following the elapse of the limit of compensation for non-compliance (ninety calendar days), look for

alternative solutions without bearing the costs incurred up to that moment directly connected with that request.

2.2.13.3 Forecast plans

The beneficiary entity shall submit a forecast plan on services to be engaged, covering a two-year period, in order for PTC to undertake the payment of compensation for non-compliance.

A. Replies received

Onitelecom is of the opinion that the payment of compensation for non-compliance should not be subject to the forecast plan, being unacceptable in the view of this operator that any service provider ceases to comply with the agreed levels of service on account of the absence of forecasts of supplies.

B. View of ICP-ANACOM

It must be restated that, just as is the case for other offers, namely the RIO and the RUO (in which the forecast plans cover a two-year period), the two-year coverage period is in accordance with the promotion of an appropriate planning and optimization of resources necessary to the evolution of the offer.

ICP-ANACOM restates that the delivery of forecast plans by the beneficiary entity to PTC will enable a correct planning and optimization of resources necessary to the provision of the RCAO, and thus it is deemed that the concessionaire should be subject to the payment of compensation, provided that the beneficiary entity has submitted the forecast plans on services to be engaged.

In short, the RCAO must provide for the following indicators and respective penalties for non-compliance:

Table I. Indicators and penalties for non-compliance.

	Time limit / Target	% of observations	Penalties for non-compliance	Limit of compensations
Time limit to reply to a request for information on underground infrastructures	5 working days	100%	€ 50/dia	60 working days
Time limit to reply to a request for occupation feasibility	15 calendar days	100%	€ 50/dia	90 calendar days
Time limit to schedule the monitoring of non-urgent intervention operations	24 consecutive hours	100%	Having regard to the initial stage of the offer, ICP-ANACOM has decided not to define any values for these indicators. Without prejudice, this Authority shall monitor the development of the offer, which will enable the access to more detailed information, and may establish figures for compensation for non-compliance with the indicators herein defined, in whatever form this Authority ultimately decides.	
Time limit to schedule the monitoring of urgent intervention operations	8 consecutive hours	100%		
Readiness level of the monitoring service	PTC must guarantee that 95% of the monitoring services take place on the dates requested	100%		

Finally, and having regard to the grounds defined in the DD, wherein it is established

that the non-compliance on the part of PTC results in the payment to beneficiary entities of penalties comprised in the RCAO, the time limits and procedures provided for in the RCAO for the settlement of disputes on penalties must be maintained, and paragraph 3 of clause 10 of the standard contract must be reviewed accordingly.

2.2.14 Pricing of services provided in the RCAO

2.2.14.1 General assessment of prices

The DD defined the following ceiling prices applicable to the RCAO services:

Table II. RCAO prices proposed by PTC and defined by ICP-ANACOM in the DD (no VAT included)

Service		Prices proposed by PTC on 23/11/04	Maximum prices defined by ICP-ANACOM in the DD of 02/09/05	
Provision of information on conduits and associated infrastructure		45	37	
Assessment of occupation feasibility	(base with no alternative route)	70	61.6	
	(base with alternative route)	80	71.3	
	(per permanent manhole)	75	43.2	
Access to points of entry		120	103.0	
Cable installation in conduits and associated infrastructure (base price)		5	2.9	
Monthly occupation of space in sub-conduit per Km	(Lisbon and Oporto)	315	To be defined following presentation of grounds by PTC	
	(Other municipalities)	245		
Monthly occupation of space in sub-conduit per Km, per cm ² of the surface	(Lisbon and Oporto)	25		
	(Other municipalities)	20		
Monthly occupation of space per PdE		3.2	3.1	
Intervention in cables installed in conduits	Programmed	Peak hours	155	136.6
		Remaining period	270	243.6
	Urgent	Peak hours	200	176.8
		Remaining period	355	318.7
Removal of cables in conduits and associated infrastructure (base price)		5	2.9	
Communication of project for the construction of new infrastructures		50	42.4	
Sending of project for the construction of conduits and associated infrastructure		75	64.3	

Without prejudice to the provision of information on conduits and associated infrastructure in paper, such information shall be also provided at an Extranet page, the respective price being cost-orientated.

A. Replies received

Operators in general consider that the prices set in the DD are excessive when compared to the current market practise, although they represent a reduction as regards the proposal of PTC, referring also that the concessionaire had benefited from very favourable conditions in the construction of infrastructures.

TVTEL and Novis draw attention to differences between the conditions proposed by PTC and the ones currently made available to cable television operators, which, according to TVTEL, represented prices three times lower than those stated in the RCAO.

PTC and Colt refer that the assessment of ICP-ANACOM was based on the results of PTC's analytical accounting system for 2004, proposing the update for 2005 (COTL) or 2006 (PTC).

PTC refers that the prices presented in the RCAO in November 2004 were based on a model where the physical access to conduits was carried out by PTC. Following the DD of 02/09/05, PTC reviewed those prices, based on the update of the assumptions that had been used, having obtained the following values for the different services to be provided in the scope of the RCAO:

Table III. Prices proposed by PTC to integrate the RCAO:

Services		Prices (no VAT included)
Provision of information on conduits and associated infrastructures		42,00€
Assessment of occupation feasibility	Base with of alternative route not identified	68,00€
	Base with identified alternative route	79,00€
	Per permanent manhole	72,00€
Monitoring of access to point of entry in permanent manholes, per access to each point of entry		117,00€

Services		Prices (no VAT included)
Cable installation in conduits and associated infrastructure	Base	3,10€
	Per permanent manhole	23,00€
	Per meter of monotube installation	1,00€
	Per meter of optic fibre installation	1,25€
	Per meter of installation of other types of cables	1,40€

Services			Prices (no VAT included)
Cable connection in conduits and associated infrastructure	By optic fibre connection	Base	110,00€
		By fusion	8,00€
	By connection to copper pair cable with no. of pairs <=200		70,00€
	By connection to copper pair cable with no. of pairs between 210 and 8000		195,00€
	By connection to copper pair cable with no. of pairs > 800		415,00€
	By connection to coaxial cable RG Type		3,00€
	By connection to coaxial cable C Type		7,50€
	By connection to other types of cables		Budget on a case-by-case-basis

Services		Prices (no VAT included)
Monthly occupation of space in sub-conduit per Km	(Lisbon and Oporto)	210,00€
	(Other municipalities)	160,00€
Monthly occupation of space in conduit per cm ² of surface per Km	(Lisbon and Oporto)	17,00€
	(Other municipalities)	13,00€
Monthly occupation of space per point of entry in permanent manhole		2,15€

Services			Prices (no VAT included)
Intervention in cables installed in conduits and associated infrastructures	Per programmed intervention	Peak hours (from 9 a.m. to 6 p.m.)	156,00€
		Remaining period	272,00€
	Per non-programmed intervention	Peak hours (from 9 a.m. to 6 p.m.)	202,00€
		Remaining period	357,00€

Services			Prices (no VAT included)
Removal of cables in conduits and associated infrastructure	Base		3,10€
	With reuse	Per meter of removal of monotube	0,60€
		Per meter of removal of optic fibre cable	0,60€
		Per meter of removal of other types of cables	1,45€
	With no reuse	Per meter of removal of optic fibre cable	0,50€
		Per meter of removal of other types of cables	1,00€

Services		Prices (no VAT included)
Communication of a project for the construction of new infrastructures		48,00€
Sending of project for the construction of conduits and associated infrastructure		73,00€

Prices now presented by PTC were prepared according to the following assumptions:

- (i) the physical access to conduits is carried out, solely and exclusively, by PTC, the costs in man-hours (Mh) of internal personnel (according to PTC, as regards prices and periods of time of IP Mh, 2005 presented no changes compared to 2004), having been updated to the values for 2005, according to the following table:

Table IV. PTC IP Mh costs for 2005 [SCI]

Classes of PTC IP	Normal hours	Overtime
PTE		
ATM (1)		
PJT		
GAT		
TCT		

[ECI]

PTE: Principal Telecommunications Electrotechnician;
 ATM: Administrative Technician for Management support;
 PJT: Project Technician;
 GAT: Graduate Advanced Technician;
 TLT: Telecommunications Technician;
 (1) The Mh cost for this class was not subject to alteration.

- (ii) The common costs coefficient used by ICP-ANACOM was established by PTC's analytical accounting system for 2004, based on the capital gain according to its accounting value. However, as the definition of prices to be in force for 2006 is now under consideration, the most correct common costs coefficient would be obtained from the forecast results for 2006, which would correspond to [SCI] [ECI] considering the results achieved based on the capital cost gain resulting from the accounting value.
- (iii) The main inputs used in forecasts are the following:
 - a. Operation budget for 2006, based on accounting resources;
 - b. Investment budget for 2005 (including completion up to August 2005) and 2006, for the calculation of variations induced in depreciation and net value of fixed assets;
 - c. Sales volume of telecommunications services forecasted for 2006 at the level of installations, traffic and parks (namely access and leased lines);
 - d. Rate of yield on invested capital of [SCI] [ECI];
 - e. Allocation of 1/8 of curtailment total annual costs between 2003 and 2006, the value for 2003 and 2004 being of [SCI] [ECI] and [SCI] [ECI] respectively, and values forecasted for 2005 and 2006 being [SCI] [ECI] respectively.

B. View of ICP-ANACOM

As referred in the DD, in the regulatory costs of PTC, common costs are allocated to the different products/services in proportion to direct and joint costs. Thus, for purposes of estimating common costs of new products/services, for which regulatory cost information has not yet been provided, an estimate of the ratio of common costs compared to direct and joint costs must be considered, which must be compatible with the 10% reference value generally acknowledged at international level for an acceptable level of common costs, and this ratio being applied to direct and joint costs budgeted for these new products/services.

As regards the curtailment policy, without prejudice to considering that it may, on the long run, promote rationalization and productivity, possibly resulting therefrom gains in terms of efficiency and more effective operation conditions, ICP-ANACOM notes that, to date, PTC has not reflected, in the costs values presented in the analytical accounting system, any efficiency gains resulting from the curtailment policy. Nevertheless, for cost assessment purposes, a period of depreciation of curtailment costs over eight years was considered, as notified to PTC, without prejudice to ICP-ANACOM being entitled to consider its applicability for regulatory purposes.

Concomitantly to the view of ICP-ANACOM stated on previous occasions, namely in the scope of the definition of prices applicable to wholesale offers of PTC, ICP-ANACOM deems that, given the medium/long term nature of the curtailment policy, the recovery of these costs are likely to be envisaged within an extended time-frame, when the results of this policy, in terms of competitiveness, rationalization and efficiency, are clear.

Notwithstanding, ICP-ANACOM considers that the ceiling price must be built around a margin which is deemed sufficient enough to address costs resulting from the curtailment policy PTC proposes to apply, provided that such costs do not represent an excessive and unjustified weight regarding other costs.

It is important to consider more recent cost elements, in order to enable that prices reflect the structure and level of costs incurred by the concessionaire; however, it is noted that the most recent data of PTC's analytical accounting system concern the 1st half of 2005. Thus, the analysis of ICP-ANACOM is based on historic data supplied by the analytical accounting system of PTC, and where necessary and applicable, on estimates presented by PTC.

In the light of the above, the common cost coefficient used by ICP-ANACOM is based on the results of the analytical accounting system for the 1st half of 2005, resulting from the capital gain according to its accounting value, which is in practise of [SCI] [ECI] (in case the curtailment costs are considered)¹⁰. It must be highlighted that this value complies with the 10% reference value generally acknowledged at international level for an acceptable level of common costs, as referred above.

Relatively to the rate of capital cost used by ICP-ANACOM, it is deemed that the impact of the depreciation value applied thereon must be stressed, having been

¹⁰ In case curtailment costs included in the analytical accounting system for the 1st half of 2005([SCI] [ECI]) were not considered, the indicated ratio would be [SCI] [ECI].

considered the value presented by PTC in the results of the analytical accounting system for the 1st half of 2005¹¹, [SCI] [ECI].

As regards the costs of internal personnel (which are thus accepted, without prejudice to a future review of prices, where appropriate), the updated data of PTC represent, for most classes of technicians, an increase of Mh costs, as it is evident in the following table:

Table V. Evolution of costs of internal personnel for 2004-2005. [SCI]

Classes of PTC personnel	2005		2004		2004-2005 Variation	
	Base costs	Overtime base costs	Base costs	Overtime base costs	Base costs	Overtime base costs
PTE						
ATM						
PJT						
GAT						
TLT						

[ECI]

According to the above-stated, the cable installation and intervention work shall be performed by collaborators of the beneficiary entity, this service not being included in the RCAO. Moreover, it is deemed that, in case the beneficiary entity wishes PTC to perform these services, the remuneration conditions may be agreed between the interested parties in the scope of an agreement to be established between the operators. Notwithstanding, in case PTC decides to monitor the work carried out by beneficiary entities, it may charge the latter a price not exceeding the price of the monitoring and supervision services analysed in point 2.2.13.2.6 of this document (“Monitoring and supervision of work to be performed by the beneficiary entity”).

As far as the cable removal service is concerned, the view expressed above applies, in the sense that it is incumbent upon the beneficiary entity to remove its own cables, being stressed the specific case of situations where the beneficiary entity does not promote the removal of “dead” cables within the time limits defined above, PTC being entitled in this case to remove the cables, subsequently charging the respective cost to the beneficiary entity, according to the price established for the service.

2.2.14.2 Specific assessment of prices

2.2.14.2.1 Provision of information on conduits and associated infrastructure

The ceiling price defined in the DD was €37, compared to the €45 intended by PTC, on 23/11/04.

¹¹ It should be noted that in the 1st half of 2005, PTC decided to introduce alterations to the capital cost calculation method, a decision which did not follow from any recommendation from ICP-ANACOM. Without prejudice to a future review of this rate, in compliance with information provided by PTC, it must be stressed that the value applied in the calculations reflects these alterations.

A. Replies received

PTC deems that the costs of the record local survey should be borne by beneficiary entities, and thus prices proposed include these costs. According to the information conveyed by PTC, the cost structure associated to the service under consideration would be as follows:

Equipment: 50 meter roll, at a cost of €29,00, with capacity for 50 A1 drafts per roll; set of 4 ink cartridges, at a cost of €18,00 per ink cartridge, with a capacity for 100 A1 drafts per set of 4 ink cartridges;

Personnel: 15 minutes of an ATM for handling, registering, validating the request and submitting information; 1,5 hours of a PJT for producing and supplying a topographical map (in paper, size not exceeding A1 and scale 1/1000).

B. View of ICP-ANACOM

As referred above, in the scope of its inventory obligations at the level of the concession contract, PTC must be provided with up-to-date records of cables and additional equipment, the absence of a record being deemed irregular. Accordingly, and in the absence of additional contributions on the part of the remaining entities, the view stated in the DD is reiterated, the cost information used in the analysis having been updated, based on the cost structure regarding the service provision under consideration as conveyed by PTC. Thus, the ceiling price for the provision of information in underground infrastructures is €38.2.

2.2.14.2.2 Assessment of occupation feasibility (base with no alternative route; base with alternative route; and per manhole)

Ceiling prices defined by ICP-ANACOM in the DD were set at € 61,6 (base price with no alternative route), €71,3 (base price with alternative route) and €43,2 (price per permanent manhole), in contrast, respectively, to the values presented by PTC, of €70, €80 and €75, for each of the items referred.

A. Replies received

Novis is of the opinion that the ceiling prices proposed by ICP-ANACOM are excessive, and questions the need of PTC to analyse the feasibility for each access request presented by beneficiary entities, as it would be provided, in the scope of its inventory obligations at the level of the concession contract, with up-to-date records of cables and additional equipment. As regards additional equipment installed by other beneficiary entities, Novis refers that PTC is provided with information on the occupation of used space, as it charges beneficiary entities for such occupation. Concomitantly, Novis proposes that the analysis of feasibility for a specific route be charged only once, being implemented a formula to divide costs among beneficiary entities who eventually occupy that route.

Novis alleges also that PTC does not charge cable network operators for feasibility assessments, and requests that the payment of feasibility assessments be withdrawn from the RCAO, or, in alternative, that a ceiling price corresponding to the amount currently charged to cable operators be set in order to enable the compliance with the

non-discrimination obligation to which PTC is bound, in the scope of the determination of ICP-ANACOM of 14/12/04.

As regards the feasibility assessment per permanent manhole, Novis deems that this service for assessment of feasibility to occupy conduits or sub-conduits is not autonomous, thus there would be a duplication of cost components. It thus proposed that the DD be reviewed to restrict the scope of application of ceiling prices to permanent manholes wherein the equipment of beneficiary entities is installed.

According to the information provided by PTC, the cost structure associated to the service under consideration is as follows:

Base costs:

Equipment: 50 meter roll, at a cost of €29,00, with capacity for 50 A1 drafts per roll; Set of 4 ink cartridges, at a cost of €18,00 per ink cartridge, with a capacity for 100 A1 drafts per set of 4 ink cartridges; Paper and ink with a cost of €1,00 for the elaboration of a Detailed Overall Project;

Personnel: 15 minutes of an ATM for handling, registering, validating the request and submitting information; 2 hours of a PJT for preparing a Detailed Overall Project, which includes supplying a topographical map (in paper, size not exceeding A1 and scale 1/1000, indicating a feasible route); 15 minutes of a GAT for analysing the alternative route (where appropriate);

Travelling: €13,06 associated to the costs connected with a vehicle.

Costs per permanent manhole:

Personnel: 30 minutes of a PJT for preparing the request (elaborating a form per permanent manhole, design indicating the location for the opening of a hole, printing of draft); 3,2 hours of a class L contractor for cleaning the permanent hole (includes the drainage of water), being estimated that 50% of permanent manholes need to be cleaned; 0,28 hours of a class L contractor for identifying and setting each cable in order in a permanent manhole, being estimated that there are in average 8 cables per permanent manhole, and that 50% of permanent manholes require that cables are set in order; 1,5 hours of a PTE for collecting information of conduits occupation, holes and monotubes.

B. View of ICP-ANACOM

As regards the assessment of feasibility for each access request made by beneficiary entities, notwithstanding the inventory obligations to be complied with by PTC, it is considered that this is justified by the need to ensure that each route is available, preventing situations of blockage of available space.

ICP-ANACOM deems that the existence of a cost for the assessment of feasibility is evident, and thus it is appropriate that it is reflected in an autonomous price, given its substantial nature and the principle of causal costs.

In the determination of 17/07/04, ICP-ANACOM imposed upon PTC the provision of a reference offer for the access and use of conduits and associated infrastructures it owns or the management of which falls under its responsibility, which should comply with the principles of transparency, non-discrimination and cost orientation.

It must be highlighted that the prices practised by PTC must comply with the referred principles, in particular the principle of non-discrimination, and thus the conditions established in the RCAO must apply to all beneficiary entities.

As regards the arguments presented by Novis regarding assessments of feasibility not collected to cable operators, grounds therefor were not supplied. Thus, taking into account the existence of substantial costs, and the principle of causal costs, and given the cost structure associated to the performance of feasibility assessments conveyed by PTC, ICP-ANACOM deems that the conditions established in the DD should be maintained, the respective price having been reviewed according to updated assumptions. Prices are thus defined at €63,3 (service of assessment of occupation feasibility – base with no alternative route), €72,8 (assessment of occupation feasibility – base with alternative route) and €46,1 (assessment of occupation feasibility – per permanent manhole). In any of these cases, according to the applicable regulatory framework, in particular the principle of non-discrimination, if PTC does not charge cable operators for assessments of feasibility, these conditions must apply as well to the remaining operators.

Relatively to the distribution of costs incurred in carrying out the feasibility assessments, it is deemed that the base price charged for the feasibility assessment corresponds to equipment and personnel costs, which are entered into at all times regardless of the number of assessments already performed, and as result it is not viable to implement a mechanism of division of costs incurred with the feasibility assessments.

2.2.14.2.3 Access to points of entry

The ceiling price defined in the DD was of €103, compared to €120 intended by PTC, on 23/11/04.

A. Replies received

Novis and TVTEL are of the opinion that this price item should be withdrawn, as there are no grounds for the charge thereof by PTC, taking into account that beneficiary entities already bear costs resulting from promoting the connection to their network or from performing bypass connections for expansion purposes.

Novis notes in addition that, in case the ceiling price proposed by ICP-ANACOM refers exclusively to the monitoring of services to be performed by beneficiary entities, this process does not correspond to the monitoring by PTC of the installation work concerning cables and other equipment, and concomitantly requests the suppression of this price item.

Onitelecom deems that the monitoring price for performing the access to a point of entry should not exceed €60.

B. View of ICP-ANACOM

It is deemed that the monitoring of work for access to points of entry, to be performed by PTC, is justified, as the concessionaire needs to ensure the integrity of equipment already installed.

ICP-ANACOM thus believes that the ceiling price to be charged in the access to points of entry by PTC should correspond to the price of the service of monitoring and supervision of work to be performed by the beneficiary entity, analysed in point 2.2.14.2.6 of this document.

2.2.14.2.4 Monthly occupation of space in sub-conduit (Lisbon and Oporto and Other municipalities) and Monthly occupation of space per PdE

As regards the monthly occupation of space in sub-conduit (Lisbon and Oporto and Other municipalities) it was decided to await the submission of a substantiated proposal, by PTC, in order to define ceiling prices.

As far as the monthly occupation of space per PdE is concerned, ICP-ANACOM defined a ceiling price of €3,1, in contrast to the price proposed on 23711/04 by PTC, of €3,2.

A. Replies received

- *Monthly occupation of space per PdE*

Novis and TVTEL see as unjustified the requirement for a monthly payment for a structure beneficiary entities have constructed themselves, PTC having been paid already an amount on a monthly basis for the occupation of infrastructures under consideration. Colt considers that prices proposed by PTC are significantly higher than the current market practises.

- *Monthly occupation of space in sub-conduit (Lisbon and Oporto and Other Municipalities)*

Novis indicates the following as factors that should be taken under consideration when determining ceiling monthly prices applicable to the service of occupation of space in conduit and sub-conduit:

- (a) calculation and determination of the current level of depreciation of fixed assets regarding conduits of the local access network and the interconnection-conduit component;
- (b) inflation of certain cost components considered by PTC (for example: an average of 5 permanent manholes per 100 meters of network in the municipalities of Lisbon and Oporto);
- (c) conditions provided currently to cable television operators.

Novis, Vodafone and SGC refer also that, in certain underground infrastructures routes, PTC possibly did not bear any costs (in view of the fact that, being the concessionaire, it had possibly been granted a special access to infrastructures established by third parties), or bore lower costs (in the cases of infrastructures constructed in the scope of urban rehabilitation programmes) and benefited from the exemption from fees for the occupation of municipal public domain.

TVTEL disagrees with the price differentiation according to geographical areas, believing that this could represent a way to limit the access on the part of other operators to economically more attractive areas.

For SGC and Onitelecom, the prices proposed by PTC were substantially above market practises, SGC proposing the price of €1 per linear meter for the lease of conduits in Lisbon and Oporto and the proportional review of the remaining values.

PTC reassessed the assumptions used in its analysis, and reached the conclusion that the annual capital cost should not fall on the investment value, rather on the average accounting value during the useful period, the accounting value for each year corresponding to the investment value deducted from the depreciation accumulated up to that year.

Taking into consideration that the conduits and associated infrastructures of PTC have depreciated, in average to [SCI] [ECI], regarding the concession inventory (31 December 2003), that is, that its accounting value amounts to [SCI] [ECI] of the acquisition value, PTC deems that this assumption should be used when estimating the cost of space occupation.

Nevertheless, PTC adds that the accounting value of investments has effects only as regards the capital cost, not as regards the annual depreciation value, as a theoretical investment value of [SCI] [ECI] and [SCI] [ECI] is used, per meter of construction of conduits and associated infrastructures, in the municipalities of Lisbon and Oporto and remaining municipalities of the country, respectively, the value of the annual depreciation being constant, regardless of the values of accumulated depreciation and the respective accounting value.

Concomitantly with the above, and assuming an occupation by 70% (to reflect the average occupation of infrastructures of PTC), the following values are presented for the review of monthly prices for space occupation:

Table VI. Prices and costs associated to monthly payments of space occupation.

Costs	Occupation of space in sub-conduit (monotube) and in conduits		Occupation of space per PdE
	Municipalities of Lisbon and Oporto	Remaining Municipalities of the Country	
Cost per meter of construction of drainage channels + conduits (no permanent manhole) with an average typology of 4 holes of 110mm (with capacity for 3 monotubes of 40mm per hole) + 1 tritube of 40mm (equivalent in terms of space to another hole of 110mm)	[SCI] [ECI]	[SCI] [ECI]	
Costs per permanent manhole NR2 (Equipment + Installation Personnel)	[SCI] [ECI]	[SCI] [ECI]	
Average number of permanent manholes per 100 meters	5	3	
Cost per meter of construction of drainage channels + conduits (4 holes + 1 tritube) + permanent manhole	[SCI] [ECI]	[SCI] [ECI]	
Cost per N10 permanent manhole (Equipment + Installation Personnel) – in 30% of situations NR2 permanent manholes are enlarged to N10 permanent manholes of a larger size, given the total occupation of PdE in the NR2 permanent manholes			[SCI] [ECI]

Average cost resulting from a general permanent manhole (Equipment + Personnel)				[SCI] [ECI]
Depreciation time limit of conduits and permanent manholes (years)	[SCI] [ECI]			
% of investment yet to be depreciated (ratio between the accounting value and the acquisition cost)	[SCI] [ECI]			
Cost of annual depreciation		[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]
Cost of annual capital (% applicable on the average accounting value in the useful period, which in theory is equivalent to the investment average value)	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]
O&M annual cost (% applicable on the investment value)	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]
Commercial costs and annual billing and collecting costs (% applicable on the investment depreciation, on the capital cost and on the O&M costs)	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]
Annual common costs (% applicable on costs identified above)	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]
Total annual cost of the conduit, per meter		[SCI] [ECI]	[SCI] [ECI]	[SCI] [ECI]
Total monthly cost of the conduit, per meter		[SCI] [ECI]	[SCI] [ECI]	
Total monthly cost of the conduit, per Km		[SCI] [ECI]	[SCI] [ECI]	
Total monthly cost of the general permanent manhole				[SCI] [ECI]
Diameter of each hole (mm)	[SCI] [ECI]			
Diameter of each monotube (mm)	[SCI] [ECI]			
No. of holes per conduit	[SCI] [ECI]			
No. of monotubes per hole	[SCI] [ECI]			
Average no. of holes in a general permanent manhole (2 surfaces x 5 holes)	[SCI] [ECI]			

per surface)				
Monthly cost of the conduit per hole, per Km		[SCI] [ECI]	[SCI] [ECI]	
Monthly cost of the conduit per monotube, per Km		[SCI] [ECI]	[SCI] [ECI]	
% of occupation of conduits and associated infrastructures	[SCI] [ECI]			
Monthly cost of the conduit per monotube, per Km considering the % of occupation		[SCI] [ECI]	[SCI] [ECI]	
Monthly price of occupation of space in sub-conduit (monotube), per Km		€210.00	€160.00	
Monthly cost of the permanent manhole, per hole (or PdE in the permanent manhole)				[SCI] [ECI]
Preço mensal de ocupação de espaço por PdE				€2.15
Surface in cm ² occupied by a monotube with 40mm (4cm) with diameter: $\pi \times (4 / 2)^2$	[SCI] [ECI]			
Monthly cost of occupation of space in conduit per cm ² of surface, per Km		[SCI] [ECI]	[SCI] [ECI]	
Monthly price of occupation of space in conduit per cm² of surface, per Km		€17.00	€13.00	

B. View of ICP-ANACOM

- *Monthly occupation of space per PdE*

It is deemed that the occupation of space in PdE consists of the occupation of PTC's infrastructure, and thus the remuneration granted to the concessionaire by beneficiary entities is justified, according to the elements the latter occupy.

According to the above, ICP-ANACOM has updated the pursued analysis based on the personnel costs updated by PTC, the ceiling price applicable to the occupation in space in PdE being defined at €1,8, per month.

- *Monthly occupation of space in sub-conduit (Lisbon and Oporto and Other Municipalities)*

ICP-ANACOM analysed the grounds presented by PTC for the prices established for monthly occupation of space in conduit and sub-conduit, and accepts the reasons put forward by PTC as regards the accounting value of investments, which, reflecting the depreciation verified at the level of investment in conduits and associated infrastructures, does not have any direct impact in the annual depreciation value, as it is

independent from the value of accumulated depreciations and the respective accounting value.

Relatively to the value of depreciation of conduits and associated infrastructures, ICP-ANACOM updated the value used in the DD, consistently with the information provided by PTC¹², according to which the conduits and associated infrastructures of PTC have depreciated, in average, by [SCI] [ECI], compared to the concession inventory (31 December 2004), that is, its accounting value amounts to [SCI] [ECI] of the acquisition value.

Nevertheless, as referred above, the impact of the value of depreciation on the capital cost must be stressed. Relatively to the rate of capital cost used by ICP-ANACOM, the value presented by PTC in the results of the analytical accounting system for the 1st half of 2005 was considered, [SCI] 10,45% [ECI].

As regards the application of a coefficient of conduit occupation by 70%, the view stated in the DD must be reiterated, thus PTC may only charge the costs in a fair proportion to the space effectively occupied by the beneficiary entity.

Relatively to the differentiation of prices according to geographical areas, it is considered to be justified on account of the variation of prices associated to the occupation of land in the municipalities of Lisbon and Oporto compared to the remaining geographical areas, thus the price structure defined in the DD must be maintained.

As the DD refers, by comparison with the pricing of underground and overhead infrastructure lease PTC provides exclusively to CATV distribution operators, according to information submitted by PTC to ICP-ANACOM by fax dated 26/03/04 in reply to a request for information of ICP-ANACOM (fax ICP-S04766/2004 dated 12/03/04), the monthly price per Km of sub-conduit (€108,95) is lower than the price proposed on 23/11/04 by PTC for the occupation per Km of conduit in Lisbon and Oporto (€315), as well as the price included in the proposal of October 2005 (€210).

As far as the price of sub-conduits is concerned, the proposal of PTC represents a value independent from the surface of cables occupying it, which results from the fact that PTC “sells” sub-conduit occupation exclusively per beneficiary entity. Without prejudice to acknowledging that the use of sub-conduits facilitates cable installation, maintenance and removal operations, ICP-ANACOM rejected such exclusivity in the DD, as it could ultimately render unfeasible the access of other beneficiary entities to the conduits of PTC.

Concomitantly, it is necessary to establish a means of calculation in alternative to the proposal of PTC, which reflects the possibility of occupation of space in sub-conduit by several beneficiary entities, related specially to the surface occupied in the sub-conduit by cables of each beneficiary entity.

The definition of identical prices for the space occupied in conduits and in sub-conduits could be weighted. However, this possibility is not deemed proportional given the additional costs PTC would have to incur when installing monotubes for sub-conduits, as this entity refers¹³. The specific costs associated to the sub-conduit, which add to the

¹² Letter of PTC dated 28/12/05, with reference ANACOM-E46439/2005, regarding the concession inventory on 31/12/04.

¹³ Letter of PTC dated 23/11/04, with reference 19404472.

value indicated by PTC for conduits, correspond to the installation (equipment and personnel) of a monotube, and described below.

Base costs:

Equipment: Monotube with 40mm diameter with a cost of €0,40 per meter.

Personnel: 0,061 hours of a class L contractor for the installation of each meter of monotube.

Taking into account the assumptions referred above for the calculation of the cost of occupation of conduits, the following values were estimated for each cost component used in the determination of the total cost of occupation in sub-conduits, according to the following table:

Table VII. Costs associated to the monthly prices of occupation of space in sub-conduits. Values in euros. **[SCI]**

	Lisbon and Oporto	Remaining municipalities
Monthly price of occupation of space in sub-conduits per Km		
Additional monthly cost, per km, corresponding to the existence of the sub-conduits		
Total cost per Km		
Surface related to each monotube (cm ²)		
Monthly occupation of space, per cm ² of surface		

[ECI]

It should be reiterated that prices practised by PTC should comply with the applicable regulatory framework, in particular the principle of non-discrimination, the conditions established in the RCAO being applied to all beneficiary entities.

In the light of the above, the assessment was updated based on the costs of personnel for 2005 and the depreciation value on 31 December 2004. Thus, it is deemed that the ceiling prices applicable to the monthly occupation of space in conduit and sub-conduit (Lisbon and Oporto and remaining municipalities) should be as follows:

Table VIII. Ceiling prices applicable to the monthly occupation of space in conduit and sub-conduit (Lisbon and Oporto and remaining municipalities)

Geographical area	Monthly occupation of space, per Km and cm ² of surface	
	Sub-conduit	Conduita
Lisbon and Oporto	€10.6	€9.8
Remaining municipalities	€8.3	€7.5

Ceiling prices thus defined present a gap between -35% and -42% compared to the prices proposed by PTC, as the following table shows.

Table IX. Gap between the ceiling prices of ICP-ANACOM applicable to the monthly occupation of space in conduit and sub-conduit (Lisbon and Oporto and remaining municipalities) and prices proposed by PTC

Geographical area	Monthly occupation of space, per Km and cm ² of surface					
	Sub-conduit			Conduita		
	PTC ¹⁴	ICP-ANACOM	Gap	PTC	ICP-ANACOM	Gap
Lisbon and Oporto	€16.7	€10.6	-37%	€17.0	€9.8	-42%
Remaining municipalities	€12.7	€8.3	-35%	€13.0	€7.5	-42%

2.2.14.2.5 Communication and sending of a project for the construction of new infrastructures

Ceiling prices defined in the DD were, for the service of communication of a construction project, of €42,4 (compared to the €50 intended by PTC on 23/11/04) and for the sending of a project for the construction of conduits, of €64,3 (compared to the €75 intended by PTC on 23/11/04).

A. Replies received

Novis and Colt propose the withdrawal from the RCAO of this price item. In particular, Novis is of the opinion that, as all projects of underground intervention carried out by PTC must be notified to the competent Municipal Council, being also provided for in the Operators General Agreement that the exchange of information is free of charge, beneficiary entities should not be charged any amount.

Colt requests also the clarification of the access conditions to the Extranet whereat information is to be provided (particularly prices).

PTC deems that the provision of information on conduits and associated infrastructures at an Extranet page, which would include the record of the network of PTC and of the occupation of each beneficiary entity, would be quite expensive, estimating that the establishment of a database would imply costs of the order of [SCI] [ECI], the annual maintenance costs probably amounting to [SCI] [ECI]. Furthermore, PTC considers that the investment and annual maintenance costs should be divided by all entities that will consult the page, including companies of the PT group and PTC itself. PTC deems that the price applicable to the provision of information on conduits and

¹⁴ To achieve values comparable to the ceiling prices defined by ICP-ANACOM for the occupation of space in sub-conduit, the price proposed by PTC for sub-conduit occupation was divided by the surface relative to that sub-conduit.

associated infrastructures associated to the Extranet page should correspond to an annual amount, to be billed to beneficiary entities.

According to the information provided by PTC, the structure of costs associated to the service of communication of a project for the construction of new infrastructures is as follows:

Equipment: 50 meter roll, at a cost of €29,00, with capacity for 50 A1 drafts per roll; Set of 4 ink cartridges, at a cost of €18,00 per ink cartridge, with a capacity for 100 A1 drafts per set of 4 ink cartridges;

Personnel: 15 minutes of a PJT for preparing a topographical map (in paper, size not exceeding A1 and scale 1/1000); 15 minutes of a GAT for handling and submitting information.

B. View of ICP-ANACOM

As referred in the DD, it is considered that as regards the communication of the construction of new infrastructures, the provision of drafts in paper is insufficient, thus the provision of this type of information should also be carried out in an Extranet page, to which each beneficiary entity may access by means of the respective access code, and at cost-orientated prices.

In the scope of the concession contract, PTC is under several obligations as regards the inventory of the assets and infrastructures engaged in the basic network, and the maintenance of updated records of cables and additional equipment. Concomitantly, PTC does not incur in principle in incremental costs by providing information to beneficiary entities.

The comments made by PTC as regards the costs of provision of the referred information at an Extranet page are not clear nor are they duly substantiated.

Without prejudice, considering the assumptions referred by PTC, namely as regards the equipment and personnel involved in the service provision (with updated values as regards the personnel, as referred above), it is established that the ceiling price for communication in paper of a project for the construction of new infrastructures is of €43,5. Without prejudice, in case PTC wishes to establish a price for the provision of information at the Extranet, it should be duly substantiated, without prejudice to this provision taking place on the date of entry into force of the determination on the alterations to be introduced to the RCAO.

As regards the sending of a project for the construction of new infrastructures, the established price is of €66,3.

2.2.14.2.6 Monitoring and supervision of work to be performed by the beneficiary entity

A. Replies received

PTC considers that in case ICP-ANACOM decides to define a model according to which it is incumbent upon the beneficiary entity to decide, for each request, which is the entity performing the physical access to conduits, the prices proposed for the monitoring and supervision of work on the part of PTC are based on the following assumptions:

Personnel: 10 minutes of an ATM for handling, registering, validating the request for monitoring; 4 hours of an ETP class technician for monitoring and supervising the work to be performed by the beneficiary entity during a monitoring period (morning or afternoon).

Travelling: costs connected with a vehicle.

Based on these assumptions, PTC proposes a price per monitoring period (morning or afternoon) of €120 for peak hours or €205 for the remaining periods.

B. View of ICP-ANACOM

The determination of the price applicable to the service under analysis is based on the engagement of an ETP class technician during a 4-hour period, being also applied a value associated to the handling of a request and the cost connected to a vehicle.

Since it is not possible to determine precisely the period of time necessary to perform the monitoring and supervision services, ICP-ANACOM considers that the price charged to the beneficiary entity should be calculated based on a unit price per hour, distinguishing between the cost of the first hour (which comprises the monitoring cost plus the request handling and the travelling) and the cost of following hours.

Accordingly, ICP-ANACOM deems that prices associated to the monitoring and supervision of work to be performed by the beneficiary entity must be the ones in the following table. Notwithstanding, ceiling prices to be charged by PTC must not exceed €120, for the monitoring and supervision of work to be performed by the beneficiary entity during peak hours (from 9 a.m. to 6 p.m.) and €205 for the remaining periods.

Table X. ICP-ANACOM ceiling prices for the monitoring and supervision of work to be performed by the beneficiary entity

Services			Prices (no VAT included)	
			1 st hour	Following hours
Monitoring and supervision of work to be performed by the beneficiary entity	Per hour of monitoring	Peak hours (9 a.m. to 6 p.m.)	€39.4	€23.5
		Remaining periods	€61.4	€43.1

2.2.14.3 Summary of prices that apply to each service

The following table summarizes the prices applicable to services provided for in the RCAO, presenting values which represent the first proposal made by PTC, values proposed by ICP-ANACOM in the DD, reviewed prices proposed by PTC following the DD and ceiling prices now defined by ICP-ANACOM, having weighted the contributions received in the scope of the prior hearing.

Table XI. Summary of information on RCAO prices.

Services		Prices proposed by PTC on 23/11/04	Maximum prices defined by ICP-ANACOM in the DD of 02/09/05	Prices proposed by PTC RCAO October 2005	Maximum prices defined by ICP-ANACOM	
Provision in paper of information on conduits and associated infrastructure		45	37	42	38.2	
Assessment of occupation feasibility	(base with no alternative route)	70	61.6	68	63.3	
	(base with alternative route)	80	71.3	79	72.8	
	(per permanent manhole)	75	43.2	72	46.1	
Access to points of entry		120	103.0	117	The price of the monitoring and work supervision service applies	
Cable installation in conduits and associated infrastructure (base price)		5	2.9	3.1	Not applicable (1)	
Monthly occupation of space in sub-conduit	(Lisbon and Oporto)	315/Km	To be defined following presentation of grounds by PTC	210/Km	10.6/Km and cm ² (2)	
	(Other municipalities)	245/Km		160/Km	8.3/Km and cm ² (2)	
Monthly occupation of space in sub-conduit	(Lisbon and Oporto)	25/Km and cm ²		17/Km and cm ²	9.8/Km and cm ²	
	(Other municipalities)	20/Km and cm ²		13/Km and cm ²	7.5/Km and cm ²	
Monthly occupation of space per PdE		3.2		3.1	2.15	1.8
Intervention in cables installed in conduits	Programmed	Peak hours		155	136.6	156
		Remaining period	270	243.6	272	Not applicable (1)
	Urgent	Peak hours	200	176.8	202	Not applicable (1)
		Remaining period	355	318.7	357	Not applicable (1)
Monitoring and supervision of work to be performed by the beneficiary entity	Peak hours	Not defined	Not defined	120	39,4 for the first hour and 23,5 for the following hours. The maximum amount shall not exceed €120	
	Remaining period			205	61.4 for the first hour and 43.1 for the following hours. The maximum amount shall not exceed €205	
Removal of cables in conduits and associated infrastructure (base price)		5	2.9	3.10	2.9 (3)	
Communication in paper of a project for the construction of new infrastructures		50	42.4	48	43.5	
Sending of project for the construction of conduits and associated infrastructure		75	64.3	73	66.3	

(1) It should be stressed that the concessionaire may charge the beneficiary entities for the service of monitoring and supervision of work to be performed;

(2) Taking into account the absence of sub-conduits exclusive per beneficiary, ICP-ANACOM has tracked an occupation price of conduits per Km and per cm², in contrast to the prices proposed by PTC, which are independent of the occupied surface in the sub-conduit. [Example: for the occupation by 20mm diameter cables (single cable) and 10mm diameter cables (two cables), all of which with 1 Km length, in the Lisbon area, PTC receives a total amount of 10,6 x surface occupied by each cable in cm², the surface occupied by each cable being calculated through the formula $\pi \times r^2$, where $\pi = 3.14$ and r^2 =cable radius, in cm, squared. In this case, the amount to be received by the concessionaire results from the formula: $(10.6 \times 3.14 \times 1^2) + (10.6 \times 3.14 \times 0.5^2) + (10.6 \times 3.14 \times 0.5^2)$, which amounts to €49,9].

(3) To be charged by PTC in the situations where beneficiary entities do not remove “dead cables” within the defined time limits.

According to the applicable regulatory framework, particularly the principle of non-discrimination, PTC shall apply in the scope of the RCAO the conditions applied to other companies of the PT Group, except where a lower price results from the analysis of costs and from the application of the principle of cost orientation of prices, in which case this price shall be applied.

2.2.15 Service management, planning and billing

In order to prevent situations where beneficiary entities are billed for services requested which were not in fact provided, such as information on conduits and associated infrastructure which possibly may not yet be identified and/or located, the sentence comprised in the first paragraph of pg. 24/29 of the offer shall be completed with the following indication: “and duly provided”.

As regards the payment of bills issued by PTC, its time limit must correspond, along the lines of other offers, such as the RIO, to the period of time indicated in the agreement to be concluded between PTC and the beneficiary entity, not an “ad-hoc” time limit indicated in the bill.

In case the beneficiary entity decides to present a complaint on any bills issued by PTC, it must do so with ninety days at the most from the date of the respective issue, PTC being granted a one-month time limit to assess a billing complaint.

Paragraph 2 of clause 17 of the standard contract provides that PTC may offset any claims of the beneficiary entity with the amounts due by the beneficiary entity under the RCAO.

A. Replies received

PTC agrees with the alterations proposed on the billing of services offered, provided that it is safeguarded that when the beneficiary entity cancels the order while it is being executed, it remains bound to pay the full amount of services solicited.

The concessionaire considers that a one-month period for the assessment of a billing complaint is not sufficient, given its complex nature, compared to the ninety-day period established for submitting a complaint. In particular, bills issued under the RCAO may imply the assessment of several manholes and conduit routes (and respective lengths), as well as of several tariff elements, both of fixed and variable tranches. It thus requests the extension of this time limit to ninety days.

TELE2 and Onitelecom consider that the alterations indicated by ICP-ANACOM are appropriate, and Onitelecom adds, as regards the billing of services, that the alteration

introduced by ICP-ANACOM should be completed as follows: “and effectively provided, following the respective conclusion” and proposes that the time limit for payment be set, from the start, at sixty days following the reception of bills from beneficiary entities.

Onitelecom deems that 2 of clause 17 of the standard contract should be removed, or in alternative, that it should be stated that under this contract only claims resulting from the exercise thereof should be used (and not claims resulting from other offers of PTC).

B. View of ICP-ANACOM

ICP-ANACOM fails to see the need to alter clause 17 of the standard contract, in order to provide that beneficiary entities bear the costs incurred up to the moment the order is cancelled, except where these entities prove that the cancelling is associated to non-compliance on the part of PTC.

It is considered that it is on the interest of PTC to assess complaints on any bills it has issued as soon as possible, given that the payment of disputed tranches is suspended until an agreement is reached, ICP-ANACOM deeming the period of one month as reasonable for the assessment thereof.

It must be added that the arguments presented by PTC to justify the insufficiency of the time limit must be rejected. Not all complaints have the same degree of complexity. It may not even be implied from the fact that a complaint is presented within a three-month time limit that the question raised therefrom is necessarily complex. PTC billing must result from services provided in reply to requests presented by beneficiary entities, confirmed by replies to these requests given by PTC. Thus, the need to analyse manholes for the purpose of assessing these billing complaints is not justified.

As regards paragraph 2 of clause 17 – claim conversion – it should be stressed that the form and requirements of claim conversion are established in the Civil Code. As it has been provided for, the regime set in this contract is not contrary to the rules of that statutory instrument. However, the claim conversion provided in this scope, where it takes place, shall not be contrary to the imperative rules established in the Civil Code, and must thus comply with the rules set therein.

2.2.16 Settlement of disputes and interruption/suspension of service provision

The information exchanged between PTC and the beneficiary entity intended for the amicable settlement of any disputes shall be treated as confidential, except where such information is conveyed to a public authority under applicable law.

The repeated delay in paying due amounts, and not a simple default in payment, shall be deemed as cause for interruption or suspension of services provided in the scope of the ORAC. Beneficiary entities shall thus lose their right to the ORAC only where they fail to comply three times per year with the time limit to pay bills to PTC.

PTC's need to carry out control operations, adjustments or routine maintenance (provided for in the second paragraph of pg. 28/29 of the ORAC), aiming to ensure the proper functioning of its network, shall be notified ten days in advance to the beneficiary entity.

As a comment to the general conditions of the RCAO, ICP-ANACOM refers that any dispute arising between PTC and the beneficiary entity shall be resolved through agreement, and where this is not possible, through an appeal made to ICP-ANACOM.

A. Replies received

PTC deems that the inclusion of any reference to the regime of dispute settlement in the RCAO general conditions should be dispensed with, as it is already provided for in the part regarding the legal provisions of the RCAO.

Vodafone considers it fundamental that PTC defines the procedure for the settlement of disputes between the beneficiary entity and the concessionaire, or even between beneficiary entities, where they wish for example to access the same space.

Onitelecom considers that the information exchanged between the Parties (in the course of negotiations aimed at the amicable settlement of the dispute, namely statement of position or agreement offers) should be treated as confidential information (clause 32, paragraph 4 of the standard contract), except for information from and originating on each of the parties, which, in spite of being confidential, may be used by the party that originated it (author) without the authorization of the other.

For Onitelecom, the matter concerning the final instance for the settlement of disputes in the scope of this contract (clause 34, paragraph 3, of the standard contract) must be subject to a legal review, as the appeal to the arbitral court should be replaced by an appeal to the Lisbon Local Court, given the high cost of the former solution.

B. View of ICP-ANACOM

Given that the settlement of disputes is already provided for in the part on legal provisions of the RCAO, ICP-ANACOM accepts that the reference to the regime of dispute resolution is made solely in that context.

The procedure for the settlement of disputes between the beneficiary entity and the concessionaire has already been defined in the RCAO, there being no need for establishing procedures in case of disputes between beneficiary entities, as the latter do not directly interact among themselves in this context.

As regards information from and originating on each of the parties, it is deemed that it may be used by the party that originated it without the authorization of the other, in order to avoid an additional complexity to the procedure.

As regards the replacing the appeal to the arbitral court by an appeal to the Lisbon Local Court, it is considered that this issue should be agreed between the parties.

It is considered that the repeated delay on the part of the beneficiary entity in paying due amounts may result in PTC requesting the intervention of ANACOM, under the terms provided for in point 8 of the approved minimum elements, for the valid adoption of measures deemed appropriate to the case.

2.2.17 Effects of alterations to the RCAO

Any alteration to the RCAO shall have immediate effects on the relationships with beneficiary entities, unless specifically provided otherwise by ICP-ANACOM.

A. Replies received

PTC notes that the alterations to the RCAO may be of different types and levels of complexity, as has been the case for other reference offers, being required, in several cases, procedure alterations which are implemented slowly and are subject to development at the level of information systems. In these situations, the application of such alterations, in the relationship with beneficiary entities, with immediate effect, is only possible provided that, prior to the entry into force of such alterations in the RCAO, ICP-ANACOM has provided both PTC and beneficiary entities with a sufficient time limit for its appropriate implementation.

B. View of ICP-ANACOM

It is considered that any alteration to the RCAO must have immediate effects on the relationships with beneficiary entities, unless specifically provided otherwise by ICP-ANACOM, which will take under consideration the executability of this rule.

2.2.18 Other issues

2.2.18.1 Responsibilities

A. Replies received

According to Novis, the wording of paragraph 1 of clause 19 of the standard contract should be reviewed, establishing the responsibility of PTC for damages resulting from negligent action of its own (not only from fraud or serious misconduct), an alteration to which PTC had explicitly agreed by letter sent to Novis.

According to Onitelecom, paragraph 2 of clause 19 (according to which the beneficiary entity is liable for all damages incurred by PTC on account of interruption, suspension or any other failure in the provision of services provoked or aggravated by means of the beneficiary entity installed in infrastructures) would only make sense during the period of installation or removal of cables, and where this type of operations was performed by staff of the beneficiary entity, thus the respective contents should be altered accordingly.

B. View of ICP-ANACOM

ICP-ANACOM agrees that PTC should be liable for damage resulting from negligent action of its own. Thus rule should be provided for.

It is deemed that the position of Onitelecom should be accepted, and shall thus be added to the final part of paragraph 2, given that any damage that may occur will result solely from the installation or removal of cables.

2.2.18.2 Administrative Procedure

A. Replies received

PTC highlights the fact that it is likely that all the elements and information related to the administrative procedure that led to the adoption, by ICP-ANACOM of the

Determination of 2 September 2005, and requested by the former, have not been delivered. This seems to result from opinions submitted and which in several occasions refer the opinion of DRM, Information ICP-ANACOM -103049, which is not among the submitted documents. It refers also, as a previous issue, that the DD comprises certain elements that – if approved – represent a new determination, and not a mere execution of the Determination of 17/07/04, as ICP-ANACOM proposes the introduction of new minimum elements, such as the model for access to conduits on the part of beneficiary entities, and the removal of “dead cables”, in addition to elements approved in the determination of 17/07/04. For this reason PTC reserves the right to use all means provided for in the Law.

B. View of ICP-ANACOM

Information ICP-ANACOM -103049, of the DRM, is a mere rough draft of the view of that Direction, which was made available to the public at the customer service of ICP-ANACOM, and is consistent with the original, the referred draft not being part of the administrative procedure that led to the DD.

2.2.18.2 Termination of Contract

A. Replies received

According to Onitelecom, the eight-day time limit provided for in paragraph 2 of clause 23 to stop a situation of non-compliance is rather short (the Party that intends to use the right to terminate the contract must notify the non-compliant party, by registered letter with acknowledgement of receipt, invoking the grounds therefor, that it intends to terminate the contract, granting it a time limit not exceeding eight days to stop the situation of non-compliance), being deemed that the alteration to twenty or thirty calendar days should be provided for.

Novis is of the opinion that the time limit should be fifteen consecutive days, an alteration to which PTC has explicitly agreed with.

According to Onitelecom, the immediate contract termination would only be justified after situations where an acknowledged serious misconduct has occurred, and thus, in point a) of paragraph 4 of clause 23, “...serious or reiterated non-compliance...” should be replaced by “...serious and reiterated non-compliance...”.

According to paragraph 5 of clause 23, the following are also deemed as grounds for immediate termination of contract on the part of PTC, which is not subject to the procedure provided for in paragraphs 2 and 3 of this clause: (a) default or delay on payment of bills, for a period exceeding ninety days from the date of issue; (b) loss, on the part of the beneficiary entity, of the registration title that qualifies it to provide electronic communications networks and services.

Onitelecom fails to see any reasons for separating from paragraph 4 the conditions for termination indicated in points a) and b) of paragraph 5 of clause 23, since paragraph 4 is also not subject to procedures provided for in paragraphs 2 and 3 thereof.

Moreover, the contents of point a) of paragraph 5 are comprised within the framework of reiterated non-compliance stated in point a) of paragraph 4, thus that point should be removed.

B. View of ICP-ANACOM

Following an assessment of replies from beneficiary entities, which deem the eight-day time limit to be short, it is considered that the time limit should be extended to fifteen consecutive days, and such alteration must likewise be reflected in the scope of clause 23, paragraph 7, according to which PTC, in the termination letter, notifies the date and hour for cable removal to the beneficiary entity.

As regards the suggestion made by Onitelecom, in order to restructure paragraphs 2, 3, 4 and 5 of the clause under consideration, it is considered that this does not affect the respective contents and will only simplify the reading, thus being accepted.

2.2.18.4 Intellectual property

A. Replies received

According to paragraph 1 of clause 29, all material, written or in any other support, originals or copies, developed under this contract, are considered to be property of PTC, the beneficiary entity undertaking to maintain the strictest confidentiality with regard thereto, being prevented from using it for any purpose other than the use in the scope of the contract. In compliance with paragraph 2 of the above mentioned clause, all material under the possession of the beneficiary entity at the moment of termination of the contract shall be returned immediately to PTC, at no additional compensation or remuneration to the beneficiary entity.

According to Onitelecom and Novis, clause 29 should be amended so as to grant conditions of reciprocity to the beneficiary entity, Novis stating that PTC has agreed to this point.

B. View of ICP-ANACOM

Given that there will be material developed under the contract which is intellectual property of the beneficiary entity, it is considered that conditions of reciprocity should be included.

3. ASSESSMENT OF THE REPLY OF PTC TO THE DETERMINATION OF ICP-ANACOM OF 02/09/05, REITERATING THE DETERMINATION OF 17/07/04 ON THE CONSTRUCTION, MAINTENANCE AND UPDATE OF DESCRIPTIVE INFORMATION ON CONDUITS AND ASSOCIATED INFRASTRUCTURE

3.1. DESCRIPTION OF THE DATABASE DESIGN (INCLUDING TECHNICAL SPECIFICATIONS)

By determination of 02/09/05, it was determined upon PTC to submit to ICP-ANACOM a description of the database design and a detailed and phased time-tabling of the database operation process (namely including the technical specifications thereof).

A. Replies received

PTC informed that the information on records of access network and exterior infrastructures of PTC are comprised in the PT Geographical Information System (GIS), the conduit record computerising system being still at an initial stage of implementation. In this context, that entity attached to the letter a description of the GIS and specifications of the operation process of the records of conduit occupation.

B. View of ICP-ANACOM

The GIS system enables the description of records comprising manholes, conduits, sub-conduits, cables, seals, sub-frames, distribution points, etc, based on an Oracle database, and enables the consultation of information through the Internet, thus being considered that the description presented by PTC of the system under consideration complies with the provisions stated in the determination of 02/09/05.

3.2. TIME-TABLING OF THE DATABASE OPERATION PROCESS AND OF THE RECORD CATALOGUE OPERARION PROCESS

It was determined upon PTC to submit the time-tabling for preparing a comprehensive catalogue of records of conduits and associated infrastructures, per geographical area, throughout the national territory.

A. Replies received

PTC referred that from the determination of 17/07/04 did not result the obligation to provide the information on conduit occupation, the level of detail of the database not having been specified, nor the fact that PTC should maintain the information on the degree of conduit occupation.

PTC informed that, although it is aware of the composition of each conduit section and of cables installed in each section, it was not provided with information on conduit occupation, that is, the precise hole where each cable is installed in. Within this context, it informed that it was necessary to prepare a catalogue with the correct occupation of

cables in the corresponding holes in all conduit sections, which generally would consist in two types of actions:

- a) Adjustment of current PTC information systems for the provision of record information, meaning the inclusion of information fields on cables and conduits not present in current systems (this action takes approximately four months).
- b) On-ground survey to gather information and update records at GIS level, meaning the download/updating of information in the system, in order to supply information in PTC conduit occupation, by identifying and characterizing the cable or cables installed in each hole of conduits/sub-conduits (given the level of work to be performed, equivalent to the opening of more than 250.000 manholes and connection shafts, the forecasted period for this action is three years).

PTC presented the time-tabling for the database operation process and the detailed time-tabling (forecast) for the on-ground survey and for download/updating the record catalogue:

Table XII. Time-tabling and operation process of the on-ground survey and of the record download/updating.

Tasks	Months						
	1	2	3	4	5 41
Preparing the pre-start							
Assigning services							
Organizing and preparing operators and teams							
Adapting current PTC IS for processing and provision purposes							
Preparing work to be performed in on-ground surveys							
On-ground surveys to gather record information							
Downloading/updating the necessary record information in the PT GIS							

B. View of ICP-ANACOM

The line of argument followed by PTC to fail to indicate the detail level of information to be provided on conduits remains, as referred on the report to the decision taken on 17/07/04, incomprehensible and unjustified. Namely, it is not true that from the referred determination does not follow the obligation to provide information on conduit occupation. In fact, point e) of paragraph 6 of that determination states that PTC must disclose the size of conduits and occupied space, for purposes of space leasing; and in providing for the existence of a database on conduits and associated infrastructures, in the annex to the determination, ICP-ANACOM made clear that it must be updated permanently. It is thus reiterated that the provision by PTC of information on the size, occupied volume and space in conduits is fundamental for promoting transparent situations.

The concession contract, concluded pursuant to Decree-Law no. 40/95, of 15 February, already bound PTC to prepare and update an inventory of assets engaged in the concession, which should be submitted to ICP-ANACOM every year. This obligation was reaffirmed in article 19 of Decree-Law no. 31/2003 of 17 February. In fact, issues at the level of infrastructure record have been undertaken very clearly at the level of

State policies. The National Broadband Initiative, approved by the Council of Ministers of 26/06/2003, demonstrates this, the UMIC stressing the following measure: “to implement a system that enables the permanent and systematic listing and updating of infrastructures of electronic communications networks and supporting infrastructures, already being used or potentially available in Portugal.”

PTC presented, as determined by ICP-ANACOM, a detailed and phased time-tabling both of the database operation process and of the comprehensive catalogue of records of conduits and associated infrastructures. The on-ground survey to gather record information may be carried out independently of the adjustment of current PTC information systems for the purpose of processing and providing record information. It is considered that the three-year period of time indicated by PTC to prepare the survey of infrastructures record is not reasonable, being inappropriate given the interests of beneficiary entities, specially taking into account the need to enhance the optimization of that offer by making the database available.

It is considered also that: i) both phases proposed by PTC (adjustment of current PTC information systems and on-ground survey) may be carried out in parallel; ii) surveys should start in the main urban centres given that a significant part of potential customers of beneficiary entities are gathered there; iii) PTC must make available catalogues concluded and the available record information, as soon as the Extranet is ready; iv) the time limit of thirty-six months for the on-ground survey is not deemed reasonable, being inappropriate given the interests of beneficiary entities, specially taking into account the need to enhance the optimization of that offer by making the database available. Thus, PTC must be provided with several teams on the ground to ensure that this time limit does not exceed eighteen months from the date of the present determination. As regards this time limit, it should be stressed that PTC already was provided with a reasonable period of time since its communication of 20/09/05, in which PTC replies to the decision of ICP-ANACOM of 02/09/05, according to which it had started the on-ground survey of the record of conduits and associated infrastructures.

3.3 DESCRIPTION OF SPACE IN CONDUITS AND ASSOCIATED INFRASTRUCTURE DEEMED NECESSARY FOR THE DEVELOPMENT OF INFRASTRUCTURES, WHICH IS EXPECTED TO BE USED DURING THE PERIOD THE RCAO REMAINS IN FORCE

It was determined upon PTC that it submitted to ICP-ANACOM the description of the space available in the conduits and associated infrastructure, considered necessary for the development of its own infrastructures and that will probably be used during the period when the reference offer is valid.

A. Replies received

PTC, alleging being unaware of the date of entry into force of the RCAO, presents information on network planning developed in the scope of its 2005/2006 Technical Plan (by nature, a forecast of needs), which does not correspond to the comprehensive identification of needs.

B. View of ICP-ANACOM

The forecast plan presented by PTC is divided in: i) optic fibre cables in the CORE network; ii) routes in the CORE network; iii) optic fibre cables in the access network; iv) copper cables in the access network; v) routes in the access network.

As regards the forecast plan for optic fibre cables (in the CORE network and in the access network) and for copper cables in the access network, PTC presents its needs in terms of the number of fibres, number of copper pairs, length in conduit Km, identifying the terminal points and the groups of networks where such points are included. As regards the forecast plan for routes (in the CORE network and in the access network), PTC presents its needs in terms of length for each route, identifying the terminal points and the groups of networks where such points are included.

For example, PTC states that in the route between Aboboda and A5 highway (Lisbon-Cascais) it would need [SCI] [ECI] optic fibre cables. Considering each cable with, for example, 1cm diameter, the occupied surface of this cable would be 0.79cm^2 , which would imply a total necessary surface ¹⁵ of [SCI] [ECI]. If a monotube of 110mm diameter was used in that route, the total available surface would be $78,5\text{cm}^2$, which is lower than the capacity PTC intends to reserve, even if the minimum diameter necessary to the coexistence of these cables in admissible technical conditions was not considered.

Thus, as the number of conduits existent in routes, the total capacity of such conduit (s) (in terms of total surface – measured in cm^2) and the capacity currently occupied therein are unknown, the space (surface) in conduit likely to be used by beneficiary entities in those routes remains unknown as well. Within this context, it is deemed that the information submitted by PTC should be completed with the description of the concrete space in conduit (surface values, in cm^2 , relatively to the total available surface) necessary for the development of its own infrastructures that will probably be used during the period when the RCAO is valid, that is, which is reserved for future expansion. It must be stressed that, when the full catalogue of records of conduits and associated infrastructures is at a more development stage, ICP-ANACOM may reassess whether this measure remains appropriate.

In any case, in compliance with the determination of 17/07/04, the concessionaire is not entitled to install in conduits, tubes, sub-conduits and associated infrastructure, cables or any other equipment that do not correspond to the expected needs in terms of service provision and that, as a result of the undue excessive space occupation, prevent or limit the access to infrastructures by beneficiary entities.

4. CONCLUSION AND ACTION PROPOSAL

ICP-ANACOM shall reflect the assessment comprised in this report in the final decision on the alterations to the RCAO of the concessionaire and on procedures for the construction, maintenance and update of a database with descriptive information on conduits and associated infrastructures.

¹⁵ Total surface in cm^2 occupied by a 10mm (1cm) diameter cable = $\pi \times (1/2)^2 = 0,79 \text{ cm}^2$