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Determination of 14.2.2002

COMPENSATION FOR FAILURE TO COMPLY WITH THE DEADLINES DEFINED WITHIN THE FRAMEWORK OF UNBUNDLED ACCESS TO THE LOCAL LOOP

Regulation (EC) n° 2887/00 of the European Parliament and Council specifies in recital 10 and n° D.2 of the annex to the same appendix to the same law, that the Reference Offer for Local Loop Access (RUO) to be presented by the notified operator should contemplate, whenever appropriate, compensations for failure to comply with deadlines for responding to supply requests.

This matter was subject to a National Communications Authority determination on 28/06/01 in the framework of “Alterations to be Introduced in the Reference Offer for Local Loop Unbundling 2001”, but PT Comunicações, S.A. has not integrated this matter into its RUO to date.

The absence of provisions for compensations within the scope of the RUO means that the notified operator is not bound, in a clear and unequivocal manner, to comply with the quality of service levels defined in the RUO. Hence, any form of non-compliance in this regard will cause prejudice to the market offer and public image of Other Licensed Operators (OLOs) providing this service, and will affect customer confidence and have a direct impact on the dissemination of the services offered.

For this reason, it is considered appropriate, at this stage of the implementation of LLU, to set compensation amounts for failure to comply with deadlines for responding to supply requests, that, in addition to serving as an incentive to comply with the defined objectives, should be proportional to the losses suffered by the respective OLO.

Taking into account the scarcity of information available at present to estimate the possible returns of the OLO and consequently their potential losses, a number of services offered at present and which are similar to those which will be provided by new operators as a result of the splitting up of the local loop are to be used as a reference. Thus we have the following possibilities:

- (a) the offer of Full Access may be evaluated in this phase on the basis of estimates regarding the services provided in the retail market supplied by the “PT ADSL Network” service;
- (b) the prices of services based upon LLU will be similar to prices of services currently offered in the market, and may compete with services supported by the “PT ADSL Network” and the FTS;
- (c) customers of OLOs will, in an initial phase, be uniformly distributed across services that are similar to those currently provided in the retail market supported by the “PT ADSL Network” service;

- (d) The additional losses suffered by the OLO, which may originate an equivalent amount, must be added to the revenue lost. In fact, other situations that may occur must be considered besides that of the revenue lost due to customers not served in the time lapse caused by the delay. These are (i) loss in revenue from customers that, due to the delay, no longer want the service; (ii) loss in revenue from customers that, as a result of the delay, have chosen to subscribe to retail services of other competing operators based on the “PT ADSL Network” service, (iii) potential users of the service who desist upon hearing third parties complain about negative experiences seen with the OLO in question. At this moment it is hard to estimate the probability of occurrence of each of these situations.

In the event of collocation, there will be an amount of lost revenue that will be proportional, in addition to the number of days of the delay period, to the number of potential users for the service.

Also in this case, and due to the scarcity of information available, the following possibilities are to be considered: (i) in an initial phase, adhesion to the service by operator, will be similar to that seen in the first six months of 2001, for services currently provided by the historic operator’s subsidiary for the residential market. It is likely that with the competition in broadband services, advertising and dissemination of the offer and the development of multimedia content, the number of adhesions to DSL services will register significant growth. Portugal Telecom recognises in its first half report for 2001 that “demand for broadband Internet access has had a slow start”. This suggests that the pace of adhesion is likely to increase. Such estimates may even be conservative in the light of the penetration levels of DSL services in the other EU Member States, (ii) considering that the priority exchanges for the OLO will be made available in an initial phase, it is likely that they will be those of major interest to the end user:

- (e) the exchanges opened by PT Comunicações, S.A. in 2001 for the “PT ADSL Network” offer (70 exchanges) were attributed on a homogeneous basis throughout the year;
- (f) customers are uniformly distributed across the exchanges in question;

On the basis of the above assumptions it is possible to estimate the average number of potential customers per day and per exchange that each operator will have within the scope of LLU. This amount should be weighted for each exchange taking the number of existing PT Comunicações, S.A. customers per exchange into consideration.

Finally, it is considered appropriate in this phase to set a maximum limit for individual compensations in order to safeguard against anomalous situations.

Under the terms of the Administrative Procedures Code, the Board of Directors of the Autoridade Nacional de Comunicações approved a draft decision on 22/11/2001 relative to compensations for failure to comply with the deadlines defined within the LLU framework, after hearing the opinions of the interested parties.

In this context and under the terms of paragraph a) of n° 2 and n° 3 of article 4 of Regulation (CE) n° 2887/00 of the European Parliament and Council, the Board of Directors of the

Autoridade Nacional de Comunicações decided, in a regular meeting held 14/02/2002, that PT Comunicações, S.A. make the following changes to the RUO rules within a period of not more than 10 days:

1. In the event that the objective, per operator, defined in the decision of 28/06/01, has not been attained for reasons that are of PT Comunicações, S.A. sole responsibility or companies subcontracted by PT Comunicações, S.A., and excluding grounds of *force majeure*, this entity must compensate the operator in question under the following terms:

LOCAL LOOP ACCESS SERVICE INDICATORS	COMPENSATION PER LOOP
VERIFICATION OF CLIENT AND ELIGIBILITY DATA	$d \times l$
TRIALS AND TESTS	
SUPPLY DEADLINE	
SHARED ACCESS TO FULL ACCESS TRANSFER DEADLINE	$d \times \frac{l}{3}$
CO-INSTALLATION SERVICE INDICATORS	COMPENSATION PER OLO INVOLVED AND PER EXCHANGE
DEADLINE FOR SUPPLY OF THE OPERATORS ROOM	$\frac{d}{2} (d + 1) \times c \times k \times l$
DEADLINE FOR SUPPLY OF MODULES IN EXISTING OPERATOR ROOMS	
DEADLINE FOR SUPPLY OF EXTERNAL CABLE (600 PAIRS)	

SIGNAL TRANSPORT SERVICE INDICATORS		COMPENSATION PER OLO INVOLVED AND PER EXCHANGE
SUPPLY DEADLINE	OPERATOR BOX TO BE INSTALLED	$\frac{d}{2} (d+1) \times c \times k \times l$
	OPERATOR BOX ALREADY FUNCTIONAL	

where

- d , is the number of working days of delay in the exchange in question;
- l , is the compensation per working day of delay per local loop, calculated at €7.50 (PTE 1,503);
- c , is the average number of potential customers per day and per exchange that each operator would have within the scope of LLU. For this purpose, in this phase, it is considered that $c = 1$, based on assumptions (e) and (f);
- $k = \frac{u}{m}$, is the factor associated to the number of existing customers per exchange (to the nearest decimal point)
- u , is the number of PT Comunicações, S.A. FTS customers in the exchange in question.
- m , is the average number of PT Comunicações, S.A. FTS customers connected per exchange. For this purpose, in this phase, during which POI exchanges are provided that $m = 20,000$;

QUALITY OF SERVICE LEVELS		COMPENSATION
FULL ACCESS SERVICE TO THE LOCAL LOOP	IQSL1 – REPAIR DEADLINE	Amount which, based on the monthly payment associated with the local loop, will correspond with the duration of the non-availability verified (beyond the level indicated).
	IQSL2 – AVAILABILITY OF LOCAL LOOP	
SIGNAL TRANSPORT SERVICE	IQSL3 – REPAIR DEADLINE	Amount which, based on the monthly payment

	IQSL4 – AVAILABILITY OF THE SIGNAL TRANSPORT SERVICE	associated with the local loop, will correspond with the duration of the non-availability verified (beyond the level indicated), multiplied by the number of loops affected.
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2. The maximum compensation for each instance of non-compliance is: i) the price of each service in the case of failure to comply with the indicators for unbundled access to the local loop service, and ii) 20% of the price in the case of failure to comply with the indicators for the collocation of services and the signal transport services.
3. The objectives should be analysed on a six-monthly basis and any eventual adjustments to accounts made at most in the month following that in which the notification is sent by the OLO for the previous six-month period. The evaluation of the first six months of 2002 must be made as from the 1st of March, i.e. based on the 4-month period 01/01 to 30/06.
4. In situations where the indicator has been defined for 95% of cases, this percentage should be based on the relationship between the number of units supplied to a specific operator in the set deadline and the number of units requested by the same operator. In the event of non-compliance with the defined service level, the compensations should be applied to the total number of units overdue to the operator in question.
5. The amounts set herein and the service quality indicators and levels defined in the decision of 28/06/01 may be revised or complemented, depending upon the evolution of market offer and the experience acquired in the interim period.