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Determination of 19.9.2002

DECISION RELATED TO THE LEASED LINES OFFER RESTRUCTURING OF PT COMUNICAÇÕES, S.A.

I. BACKGROUND

1. The leased lines market is essential for the development of electronic communications, holding a decisive importance for the adequate operation of Information Society and e-Europe”.

2. In this context, Autoridade Nacional de Comunicações (ANACOM) has identified factors that may increase the correct development of this market, aiming at the implementation of regulatory measures that can contribute, when applicable, to enforce the principles of transparency, non-discrimination, cost orientation, promotion of a healthy competition and safeguarding of the interests of users.

3. In particular, some episodes recently occurred have contributed to reevaluate the conditions of PT Comunicações, S.A. (PTC)’s leased lines offer, in its capacity as basic network concessionaire and notified operator with significant market power under the terms and for the purposes foreseen in the Regulations for the Operation of Public Telecommunications Networks.

4. We would like to underline in this scope, namely (a) the European Commission investigation on the condition of competition in the leased lines market of several Member-States (including Portugal) and the results of several studies carried out by ANACOM related to (b) the current and foreseeable competition development conditions in this market; (c) the current and foreseeable operability conditions of the 3rd generation mobile networks; (d) the little significant recent evolution of most circuit prices and the relative positioning of prices practiced in Portugal as compared to the remaining European Union countries (namely the positive deviations that took place in most 2 Mbps and 34 Mbps residential lines as compared to the average of prices of the remaining European Union historic operators, with impact on the global economy competitiveness); (e) the registered and foreseeable variation in cost and margins associated with the offer (which reflects margins not fully balanced in some circuit typologies, namely as far as the 2 Mbps lines are concerned); (f) the evolution of the service quality conditions; (g) and finally some concerns expressed by the several market agents.

5. Taking into account the performed analysis and having the objective of complying with the principles referred to above, the Board of Directors of ANACOM, on 29/11/01, decided to ask PTC to reformulate their leased lines offer until 14/12/01, according to the principles of transparency, non-discrimination and cost orientation, considering essential, namely (a) a global reduction in the price of leased lines, (b) the revision of the discount system in force (aiming at its simplification and bearing always in mind the necessary relation between the allocated discounts and savings of incurred costs,

regardless of its nature) and (c) the development of the high capacity leased lines offer.

II. PTC PROPOSAL

6. PTC sent to ANACOM a tariff proposal to be applied to the digital leased lines with capacities between 64 kbps and 34 Mbps on 14/12/01, which was forwarded for comments to the public telecommunications networks operators, Associação Portuguesa de Bancos, Associação Empresarial de Portugal, Associação Industrial Portuguesa and Confederação da Indústria Portuguesa. Comments were received from Jazztel, Associação Portuguesa de Bancos, ONITELECOM, Optimus, RDP and Vodafone.

7. The proposal submitted by PTC consists, in short, of:

a) A significant decrease, in global terms, of the leased lines gross prices, which were reformulated, except for the national 64Kbps lines, which registered a price increase for most distances.

b) A revision of the discount policy, which consisted in a very significant reduction of the average level of discounts, followed by the elimination of the current debit aggregation, band aggregation, digitalisation and retail discounts, replaced by a volume discount and by a permanence premium, which, according to PTC, would contribute to increase the correct perception of prices.

c) A rebalancing in the lines monthly fee, in its fixed part (increase) and in its variable part (reduction) for some distance intervals, namely for lines with a main link under 30 km.

d) In the case of lines with a main link higher than 300 km, the payment of the additional kilometres, at present not considered for billing purposes.

e) Extension of the routes concept, currently applicable to 2 Mbps lines only, to 34Mbps lines.

f) Elimination of payment exemption, when currently applicable, regarding installation and change of digital lines.

III. PROPOSAL ANALYSIS

8. The proposal submitted by PTC is translated into a rebalancing of prices and would consist in a more transparent structure of tariffs, which would be more in agreement with the European current practices.

9. The implementation of the tariffs proposal submitted in 01/12/14 would lead to a reduction in the gross price of leased lines, with capacities between 64 Kbps and 34 Mbps, in about 32%, whereas, as a result of the discount policy restructuring, the variation between the current tariffs and the proposed tariffs, in terms of net revenue, would be of –1%.

10. This amendment would approximate (in terms of discount volume), although slightly, the maximum discount level practised by PTC to the maximum discount levels practised by the remaining EU historic operators.

11. The implementation of this proposal, in terms of international price comparisons, would be translated into gross prices lower than the ones practised by the historic operators of the remaining EU countries, amounting up to 42% and 57% in the cases of the national 64 Kbps and 2 Mbps lines, respectively.

12. Still within the scope of international comparisons, taking into account the 34 Mbps leased lines, there is an improvement in the relative position of lines with 2 Kms, 10 Kms, 50 Kms and 200 Kms. However, the prices of national 34 Mbps lines would still be higher than the ones practised by the counterpart operators in the remaining EU countries and there would be an aggravation of the relative positioning of PTC prices for lines with 400 Kms, essentially due to the abolishment of the maximum price per line (corresponding to a 300 Kms line).

13. As far as the prices of the international 64 Kbps and 2 Mbps digital lines are concerned, PTC proposal would lead to an improvement, as compared to the European average, in the average price of lines for the most representative destinations (Spain, France, Germany, United Kingdom, Brazil and United States of America), with special emphasis to the gross price of the 2 Mbps lines.

IV. RESULTS OF THE PTC PROPOSAL ANALYSIS

14. Taking into account the performed analysis, we draw, mainly, the following conclusions:

- i) The proposal submitted by PTC translates a price variation that is not fully coherent with the cost orientation principle.
- ii) In leased lines where there are margins that are not fully balanced, one should take into account a step-by-step approach in the rebalancing, in order to avoid sharp variations in the costs of the leased lines customers, this without prejudice of taking into account in the analysis the price variation of a full line and not only of the sections thereof.
- iii) This price proposal could present contradictory effects as compared to previous determinations of ANACOM on the price of lines, namely concerning the lines to the Autonomous Regions (CAM).
- iv) PTC did not submit an appropriate justification that would give the basis of the price variation of the national 34 Mbps digital lines, namely in view of the growing importance of the services supported in broadband in the development of the Information Society.

v) Any forecast of the future leased lines demand will have associated an uncertainty due to the current market circumstances.

V. ACTION

15. Taking into account:

a) The former ANACOM recommendation of 29/11/01 on the guiding principles that should be observed at the time of reformulating the leased lines offer of PTC;

b) The proposal submitted by PTC on 14/12/01 and the conclusions of its analysis;

c) The hearing of the interested parties, including the draft tariff list sent by PTC pertaining to it, which is compatible with ANACOM draft decision, except regarding the international 64Kbps, n*64Kbps and 2Mbps lines;

The Board of Directors of ANACOM decided, in their ordinary meeting of 19/09/02, that PTC will have to rewrite, within ten days, the leased lines tariff proposal submitted on 14/12/01, according to the following principles and registering the following minimum reduction in revenue, net of discounts (according to the information about discounts corrected by PTC in its letter of 08/05/02 with reference no. 019217), in view of the submitted proposal and taking as reference the leased lines park that existed in June 2001:

i) 9% for the set of leased lines with a capacity between 64 Kbps and 2 Mbps.

ii) 10% for the set of 34 Mbps leased lines.

iii) 21,4% for the main links of 64 Kbps lines, with a length up to 10 Kms.

iv) 18% for the set of n*64 Kbps digital lines with a length up to 10 kms.

v) 26% for the main links of 2 Mbps lines, with a length up to 10 kms.

vi) 47% for the main links of 34 Mbps lines, with a length up to 10 Kms.

vii) 31% concerning the CAM lines.

viii) 17%, 14% and 15%, regarding the 64 kbps, n*64 Kbps and 2 Mbps international lines, respectively.

ix) The readjustments in PTC proposal that arise from the concretion of this determination will have to comply, case by case and on a well-founded basis, with the cost orientation principle.