

DECISION RELATED TO THE COLLOCATION CONDITIONS TO BE ADOPTED WITHIN THE SCOPE OF RIO AND RUO

1. BACKGROUND AND CURRENT SITUATION

ANACOM has attentively followed the evolutions that have taken place, at national and community level, in the Local Loop Unbundling (LLU), intervening, whenever deemed necessary, with the objective of intensifying the competition and fostering technological evolution in the local access market, so as to encourage competitiveness in service provision and electronic communications.

Also as far as interconnection is concerned, ANACOM is intervening, namely, so as to promote the establishment and development of national services networks, to foster a competitive market and to ensure the protection of the users interests.

Specially, in order to foster a leased lines interconnection service offer, which allows the Other Licensed Operator (OLO) to offer an end-to-end leased lines service to the final user with at least one of the local ends offered by PT Comunicações, ANACOM wants to guarantee that the OLOs may access, with its own infrastructure and in an economically efficient and rational manner, PT Comunicações' exchanges.

Those interventions take also into account the evolution of the national and community market interests, fostering the development of a harmonized regulatory framework.

During the LLU initial phase, five operators ordered a set of 14 exchanges (Group of Exchanges no. 1¹). During the second phase, only one OLO put a pre-order, informing later that it would suspend any order, in view of the incurred costs.

Note that ANACOM intervention, related to the specification of the minimum requirements to be met in the above-mentioned infrastructures, led, during the initial phase, to a reduction of the estimated costs foreseen in the budgets associated to the preparation of infrastructures for the physical collocation of around 30% as compared to the first budgets. At that time, it was mentioned that such intervention would not hinder physical collocation with no need to create an Operators Room.

The reduced OLOs interest for the LLU shown in Portugal has also occurred at community level. In fact, except for Germany, the number of unbundling loops in the various Member-States is still reduced. Among the several reasons put forward for this situation, the Commission underlines the lack of fair and effective conditions for access to the notified operator's exchanges.

A solution that is raised at community level as susceptible of ensuring a greater competition and growing economic efficiency is the physical collocation in open space (also referred to as "*co-mingling*"), where the OLOs equipment is collocated inside the notified operator's exchanges, with no need to set up a specific room for that purpose and without disturbing the operation of the already installed equipment.

¹ Group composed of the following exchanges : Campo Pequeno; Amoreiras; Areeiro; Estrela; Trindade; Gaia; Maia; Oeiras; Graça; Laranjeiras; Foz; Cascais; S. Hora; and Lumiar

This option was first raised, in the context of the Reference Offer for the Unbundling of Local Loop (ROU), being also adopted, in several Member-States, in the RIO. As far as this is concerned, the Board of Directors of ANACOM established, by Determination of 26.10.01, that the collocation conditions set out in the RIO framework must be in line with the ones practised within the scope of ROU, namely at the level of the applicable prices and procedures.

Taking into account that the collocation conditions integrated in the RIO project submitted on 11.03.02 by PT Comunicações, for purpose of interconnection lines termination, did not contain all the collocation conditions foreseen in the ROU, the Board of Directors of ANACOM, by Determination of 23.05.02, asked PT Comunicações to submit a collocation proposal, containing more economical, effective and reasonable solutions, maintaining the safety of the network, taking also into account the current practices in the European Union as far as this matter is concerned.

On 10.07.02, PT Comunicações sent to ANACOM a proposal containing the conditions and prices associated with the interconnection service provision using a line supplied by another operator, which broadly repeats the conditions adopted within the scope of ROU.

2. ANALYSIS AND DETERMINATIONS

The proposal submitted by PT Comunicações, on 10.07.02, does not contain a more economic, effective and reasonable solution, as requested by ANACOM. Furthermore, in the cases where the exchanges correspond to a Point of Interconnection (PoI), there was an unnecessary duplication of infrastructures and services.

Once aligned the conditions associated with collocation to be observed within the scope of ROU and RIO, it seems that there aren't impediments anymore, of technical or another nature, that may prevent the use of only one collocation space, regardless of the intended purpose (interconnection or LLU), thus avoiding duplication of investments and making the existing ones more profitable.

PT Comunicações proposal does not contain either a clear concern in using the current European Union practices associated with this matter, namely (i) the use of the same space within the scope of interconnection using a line supplied by the OLO, leased lines interconnection and LLU, and, (ii) collocation under a "*co-mingling*" regime.

In addition, through a letter dated 09.04.02, PT Comunicações informed ANACOM that they were practising, temporarily, commercial collocation conditions – similar to the ones that are being demanded by the OLOs – whereby several network operators and service providers are taking advantage of it, having submitted a written agreement entered into with another entity. Note that PT Comunicações, in their capacity as notified entity as holder of significant market power in the fixed telephone services market and fixed telephone networks market pursuant to Decree-Law no. 415/98, is committed to ensure compliance with the principles of non-discrimination, fair competition, economic efficiency and maximum benefit for consumers, foreseen in the above-mentioned Decree-Law and in Regulations (EC) no. 2887/2000.

It is also important to consider that both “PT ADSL Network” offer and PT Comunicações leased lines offer currently benefit from more flexible collocation conditions than the ones foreseen in RIO and ROU. In fact there is a set of exchanges that, being subject of selection, for instance, in the “PT ADSL Network” offer, are only illegible, within the framework of LLU, for purposes of remote collocation.

Finally, it is important to refer that the use of radio-links by the OLOs, namely for the transmission of the signal between the collocated equipment and the OLO sites, constitutes an additional solution, taking into account that the conditions and the deadlines associated with the feasibility of the alternatives to the radio-links for transmission of broad-band signals, namely the use of coaxial cable and optical fibre may not be, on certain circumstances, the most efficient ones from the economical point of view, or have some conditionings that will affect the real concretion of the LLU.

Thus, the Board of Directors of ANACOM determined, pursuant to paragraph no. 1 of article 13 of Decree-Law no. 415/98, of 31/12, and to subsection a), of paragraph no. 2 and paragraph no. 3 of article 4 of Regulation (EC) no. 2887/00 of the European Parliament and Council, that PT Comunicações must change RIO and ROU within 20 days – including the prices associated with the various collocation services, sending the respective basis to ANACOM – taking as reference the collocation conditions foreseen in the service rendering agreement that establishes the terms and conditions on which PT Comunicações grants the right of use of its infrastructures, equipment and installations, forwarded by PT Comunicações to ANACOM on 09.04.02.

The following should specially be taken into account:

1. It is the responsibility of PT Comunicações to foresee an open-space collocation possibility in its premises (“*co-mingling*”), notwithstanding the existence of impediments of technical nature duly justified case-by-case. “*Co-mingling*” is understood as the collocation of OLOs equipment inside PT Comunicações’ exchanges, as close as possible to the MDF, with no need to set up a specific room for that purpose.

The minimum area to be considered for purposes of determination of the monthly fee associated with the collocation in technical spaces should be two square meters.

Areas in offices and areas in warehouses may also be considered for collocation purposes provided that both parties are interested in it, whenever collocation in technical areas is considered clearly unstable.

In any case, the space for purposes of physical collocation in an open space regime must be compatible with the physical dimension of the equipment to be collocated, following an efficient rationalization of space.

Since there are exchanges where the Operators Room is already finished and operational, PT Comunicações is only committed to meet in those exchanges “*co-mingling*” requests whenever the existing Operators Room is already full.

2. Should the evolution in demand represent, at any time, the interest of a certain number of OLOs in a certain exchange with an Operators’ Room bigger than the space available there, it is the responsibility of the already collocated entities to choose either the possibility of maintaining the space up till then occupied in the Operators’ Room or the collocation in an open space regime. In any case, the

specific costs, already incurred or to be incurred by PT Comunicações, with the preparation of infrastructures for physical collocation, provided that duly founded, will have to be shared by all the entities interested in those exchanges.

3. PT Comunicações will have to submit a reasonable and economically feasible proposal for a diligent access of the technicians and workers under the responsibility of the beneficiary OLOs to PT Comunicações installations, for installation, inspection, maintenance and equipment repair actions.
4. In duly well-founded specific cases where it is not possible to choose “co-mingling”, the conditions contained in Determination of 22.11.01 should prevail, as far as the requirements to accomplish in the collocation space are concerned.

In this particular case and provided that the OLO interest is confirmed, PT Comunicações must launch the preparation of infrastructures for the physical collocation using an Operators Room, under the terms established in due time, which can be used for collocation of equipment within the scope of the RIO and ROU. However, the Operators Room does not need to be delimited with masonry or pladur walls since it can be delimited with marks on the ground and by using a wire netting.

5. In the exchanges where the available space does not allow “co-mingling” or the construction of an Operators Room, PT Comunicações must supply, nearby and whenever possible, outside areas, i.e. space in portions of land next to the exchange in question and belonging to PT Comunicações and to carry out the necessary works in order to allow the passage of exterior cables.

Should the OLO renounce this option, or in the proven absence of conditions for the collocation in plots of land next to the exchange belonging to PT Comunicações, the conditions foreseen in the ROU for remote collocation in sites of OLOs responsibility shall apply.

6. Similar to what was foreseen in RIO as far as the coaxial distribution frame, the OLO may, if deemed appropriate, renounce to PT Comunicações’ works related, within the scope of RUO, to HDF installation, being up to PT Comunicações to revise, in line with this presupposition, the prices for internal and external connection offer.
7. Should the “co-mingling” option be considered unfeasible in a certain exchange, PT Comunicações should calculate the budget or the specific cost regarding the adaptation of infrastructures for physical collocation, using an Operators Room, in line with the deadline currently defined in the ROU, except in the case of a duly well-founded impediment (i.e. should the number of physical collocation requests put forward by the OLOs be clearly high and not in accordance with the means available for that purpose).
8. It is the responsibility of PT Comunicações to define the conditions applicable to the beneficiary OLOs visits to the locations in which physical collocation, open space regime or remote collocation in plots of land next to the exchange and belonging to PT Comunicações is refused due to lack of capacity.
9. Taking into account that it is not expected the need for complex procedures in order to identify the available spaces for purposes of “co-mingling”, and in line with the provisions contained in Determination of 28.03.02, the collocation requests for any MDF in PT Comunicações network may, from now on, be put

forward, being the responsibility of PT Comunicações to inform the OLOs about the availability of spaces in the requested MDFs. Thus, PT Comunicações must also eliminate the reference related to the addition, in a sequential manner, of 20 new exchanges every two months, until all local exchanges are covered.

10. In any case, and taking into account that possible conditionings of technical nature might occur, it is up to the OLO to choose the collocation modality that is best adapted to its specific needs.
11. The possibility to use only one collocation space for the purposes of ROU and RIO must be foreseen, whenever technically possible.

Within this framework, the OLO may install in the same space the necessary equipment to the good operation of the services provided to final users served by the loops associated to the exchange in question, as well as the necessary equipment for interconnection purposes using a line supplied by the OLO and of interconnection of leased lines.

Within the scope of the transmission support connections, one multi-operator transfer chamber may be used both for purposes of interconnection and LLU, thus avoiding the duplication of infrastructures and encouraging the services efficiency. In any case, whenever there is already a multi-operator chamber next to the exchange area with availability capacity, this one must firstly be used for purposes of RIO and RUO.

12. The possibility for the OLOs to install the necessary equipment for the radio-links must be foreseen both within the scope of RIO and RUO and it is the responsibility of PT Comunicações to submit, upon request and as soon as possible, the necessary information for getting the licenses and authorizations and for OLO to prepare the projects and studies deemed necessary to its operation. Whenever it is not technically possible, it is the responsibility of PT Comunicações, case by case and within a reasonable time period, to submit a well-founded justification.

Since there is a need to effectively rationalize the infrastructures, the shared use of the towers installed by PT Comunicações should be foreseen, except as otherwise impossible due to a well-founded technical reason.

13. PT Comunicações must submit a reasonable proposal containing the principles that apply to the effective operation of radio-links including, for due purposes, the conditions, prices, deadlines and compensation in case of non-compliance.
14. PT Comunicações must submit a quality of service proposal containing the indicators and parameters applicable to “co-mingling” and to the several types of the above-mentioned collocations, including, namely, the deadline to meet the requests, the deadline to supply the service as well as the respective compensations in case of non-compliance.