

Determination of 24.1.2002

### **Declaration of Entities with Significant Market Power in the Fixed Telephone Networks Market and/or the Fixed Telephone Service for the Purposes of nº1 of Article 3 of the Regulations for Operation of the Fixed Telephone Service**

1. Under the terms of Decree-Law no. 474/99 of 08/11, that transposes the norms of Directive 98/10/EC of 26/02/98, of the European Parliament and Council, and after consultation with the Directorate-General for Commerce and Competition (DGCC), it is the responsibility of ICP - now the Autoridade Nacional das Comunicações (ANACOM) - to determine and declare, on an annual basis, which entities have significant market power (SMP) in the fixed telephone networks market and/or fixed telephone service (FTS).

2. The objectives of notification of entities with SMP, within the framework of Decree-Law no. 474/99 (Regulation of Operation of the Fixed Telephone Service - ROFTS), are related to the imposition of specific obligations on such entities (in addition to obligations imposed on all providers) such as:

- The provision of specific service facilities, special network access and special access facilities;
- Compliance with the principle of cost orientation for access and utilisation prices for the fixed telephone networks and the FTS;
- Implementation of accounting systems suited to application of tariff principles of fairness, transparency, non-discrimination and cost orientation.

3. In accordance with article 3 of the ROFTS, and after consultation with the Directorate-General for Commerce and Competition (DGCC), it is the responsibility of ANACOM, to determine and declare, on an annual basis, which entities have significant market power in the fixed telephone networks market and/or fixed telephone service (FTS).

4. It is presumed (in accordance with number 2 of Article 3 of the ROFTS) that entities are considered to have SMP when they have a market share equal to or above 25% of the relevant market for fixed telephone networks market

5. Despite the preponderance of the above mentioned criterion, the ROFTS nonetheless foresees the possibility that an entity whose market share is below 25% may also have SMP, as well as the possibility that an entity whose market share is above 25% may not have SMP

6. In order to pursue a complete analysis of market power, the criteria mentioned in no. 4 of article 3 of the ROFTS must also be taken into consideration.

7. In the assessment of market shares - the key question for assessment of entities with SMP - emphasis was drawn to the guidelines laid down by the European Commission (EC), specifically those laid down in the document, "Determination of organisations with significant market power (SMP) for implementation of the ONP Directives", presented on 01/03/99, in which a methodology is suggested for determination of organisation with SMP within the framework of ONP Directives (Open Network Provision).

8. It was also considered that grounds do not exist for adoption of a different methodology than that adopted after to/in the case of the notification made in 2000:

a) For the purposes of determining the relevant market, the fixed telephone service was considered as the offer to the general public of direct transport of voice in real time and in fixed places, allowing any user, by means of equipment connected to a terminal network point, to communicate with another terminal point. On the other hand, the fixed telephone network is defined as switched public telecommunications network serving as a support for the transfer, between network terminal points in fixed locations, of voice and audio information with a band frequency of 3,1 kHz to support, namely, the fixed telephone service, facsimile communications of the group ni, in accordance with UIT-T recommendations of the «T series», and the data transmission on vocal frequency via modems with a debit of at least 2,400 bit/s, in accordance with the UIT-T recommendations of the «V series.

b) The entire national Portuguese territory (including international connections) was considered as the geographical market.

c) Revenues in the market under analysis are considered to be the most appropriate indicator for assessment of market size and market shares, and to be an intrinsic criterion of the concept of market power itself, as well as supplying a less distorted perspective of business activity and is relatively easy to measure. It should be emphasised that data on number of customers and traffic volume, although significant, may present a similar overall value between different entities, and yet be composed of different constituent elements (e.g. different definitions of residential customers and business customers or local and inter-city calls) which thus result in different relative positions for each operator.

d) In this context, account should be taken of retail revenue resulting from (i) direct access calls destined for the fixed telephone network of the operator itself or to fixed telephone networks of other operators; (ii) direct access calls destined for the fixed telephone network of the selected provider or to the fixed telephone networks of other operators; (iii) indirect or direct access calls destined for mobile networks (in this case, given the alteration of the ownership regime for fixed-to-mobile traffic, only from 30/09/01 onwards); (iv) installation of subscriber lines (v) monthly rental fees for subscriber lines.

e) The particular characteristics of Internet traffic, specifically recognised in ANACOM' s deliberation of 21/02/01 on Internet access conditions, which established a transition for this traffic to an interconnection model based on a logic of origination payments, makes it advisable to assess such traffic principally within the framework of Decree-Law no. 415/98 of 31/12, in order to ensure that the respective revenues are not considered within the framework of the present deliberation.

f) In this context, it should also be noted that the aforementioned EC document indicates that, in relation to the relevant market in the framework of Directive 98/10/EC, the revenues arising from business activities that are not directly related to the network or provision of the FTS (such as installation and rental of terminal

equipment) should not be considered for purposes of calculation of market size and market share of the operator/services provider.

9. Taking into account the above criteria, and having heard PT Comunicações, S.A. and received the respective opinion from the DGCC, the concessionaire company, PT Comunicações, S.A., is hereby declared as an entity with significant market power in the fixed telephone networks market and/or fixed telephone service, under the terms and for the purposes specified within the Regulations of Operation of the Fixed Telephone Service.

10. In regards to TMN - Telecomunicações Móveis Nacionais, S.A.; PT-Prime - Soluções Empresariais de Telecomunicações e Sistemas, S.A. and CPRM - Companhia Portuguesa Rádio Marconi, S.A.; ANACOM, is currently analysing the present situation, specifically taking into account the relationship between these entities and PT Comunicações, S.A; and will issue a decision in the near future.