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Determination of 29.5.2002

DETERMINATION CONCERNING INTERVENTION IN THE PRICES FOR NATIONAL TERMINATION IN THE MOBILE NETWORK OF CALLS ORIGINATED IN MOBILE TERMINALS, TO BE IN FORCE IN 2002.

I Background Facts

1 On 04.12.2001, ANACOM's Board of Directors approved a draft decision on prices for interconnection services practised by Mobile Telephone Service Operators (MTSO), that specified the maximum average prices for national termination in the mobile network of calls originated in mobile terminals (hereinafter called prices for mobile-to-mobile termination) and of calls originated in fixed terminals (hereinafter called prices for fixed-to-mobile termination):

- (a) €0.2270, from 01.01.2002;
- (b) €0.2170, from 31.03.2002;
- (c) €0.2070, from 30.06.2002;
- (d) €0.1970, from 30.09.2002;
- (e) €0.1870, from 31.12.2002,

with prices per minute, for each call of 100 seconds duration, with per-second billing being applied utmost after the first minute.

2 During the procedure of prior hearings, carried out under the terms of article 100 and following articles of the Administrative Procedure Code, Optimus - Telecomunicações, S.A. (hereinafter called Optimus) and Vodafone Telecel - Comunicações Pessoais, S.A. (hereinafter called Vodafone) communicated to ANACOM, on 17.12.2001 and 18.12.2001 respectively, that they had concluded an interconnection agreement signed on 10.12.2001 to be in force in 2002 (subsequently submitted to this Authority).

The above-mentioned agreement established the amount of €0.1870 per minute, with per-second billing from the 1st second, for the mobile-to-mobile termination service.

3 On 24.01.2002, by determination of ANACOM's Board of Directors, the following prices were established: maximum termination prices for international calls in the mobile network (€0.1870 per minute, with per-second billing from the first second, from 31.03.2002), maximum prices for origination of calls in the mobile network (€0.1870 per minute with per-second billing from the first second, from 31.03.2002) and maximum average prices of fixed-to-mobile termination, per minute, for a call of 100-seconds duration, with per-second billing being applied utmost after the first minute:

- (a) €0.2170, from 31.03.2002;
- (b) €0.2070, from 30.06.2002;
- (c) €0.1970, from 30.09.2002;
- (d) €0.1870, from 31.12.2002.

In relation to prices for mobile-to-mobile termination, the Board of Directors,

- (a) Considering that in 2000 the mobile telephone service operators freely agreed that from the date on which the ownership of fixed-mobile traffic was altered, the mobile-to-mobile termination price would be PTE 55.00 per minute, with per-second billing from the first second, and the agreement signed for 2001, between TMN - Telecomunicações Móveis Nacionais, S.A. (hereinafter called TMN) and Vodafone, also established the price of PTE 55.00 per minute for mobile-to-mobile termination;
- (b) Considering that there is no technical evidence to uphold the existence of differentiated prices for the termination of traffic in mobile networks (fixed-to-mobile or mobile-to-mobile);
- (c) Considering that, in spite of that described in the previous two paragraphs, another transitory solution restricted to the price adjustment process may be analysed if negotiated by market operators;
- (d) Taking into consideration that, following the notification of interested parties of ANACOM's draft decision, Optimus and Vodafone informed this Authority that they had agreed a price for mobile-to-mobile termination, to be in force in 2002, compatible with the maximum price established in the draft decision of 04.12.2001, as a result of which it would be appropriate to foresee a reasonable time-period for the market players to exercise the principle of freedom of negotiation and conclude all interconnection agreements,

It was decided that the Mobile Telephone Service Operators should conclude negotiation of interconnection agreements between each other, to be in force in 2002, within a maximum of 20 days, and observing the following principles:

- (a) The price of the termination service is established by the operator terminating the traffic;
 - (b) Those entities notified as having significant market power are subject to the principle of non-discrimination in the interconnection offer;
- 4 Following the above-mentioned determination, TMN proposed to Vodafone and Optimus, on 29.01.2002, that they apply, in TMN's network, the fixed-to-mobile termination prices defined in the determination of 24.01.2002 for mobile-to-mobile termination. On the same date, Optimus proposed to TMN to apply a price of €0.1870 per minute, with per-second billing from the first second, and without peak and off-peak periods, for termination in its mobile network, to be in force in 2002.
- 5 On 08.02.2002, TMN communicated to Optimus that it accepted the price for termination of calls in Optimus' mobile network, contained in the proposal made by that company, but maintained in full the proposed prices for termination of calls in TMN's mobile network, as stated in its letter of 29.01.2002. Optimus did not agree with this proposal.
- 6 In addition to the said interconnection agreement signed between Vodafone and Optimus, ANACOM was informed of the conclusion of an interconnection agreement signed on 07.05.2002, between TMN and OniWay - Infocomunicações, S.A. (hereinafter called OniWay) that established the following evolution for mobile-to-mobile termination prices (prices per minute, with per-second billing from the first minute and without peak or off-peak periods):
- (a) €0.2369, from 01.01.2002 to 31.03.2002;
 - (b) €0.2170, from 31.03.2002;
 - (c) €0.2070, from 30.06.2002;
 - (d) €0.1970, from 30.09.2002;
 - (e) €0.1870, from 31.12.2002.

II Current situation

TMN (on 27.02.2002), Optimus (on 06.03.2002) and Vodafone (on 14.03.2002), requested ANACOM's intervention under the terms of Decree-Law n. 415/98, in order to establish the mobile-to-mobile termination prices to be in force from 01.01.2002.

III Hence:

- a. Considering the background facts stated in I, and the current situation stated in II, in terms of the intervention requests submitted to ANACOM by the Mobile Telephone Service Operators under the terms of Decree-Law n. 415/98;
- b. Given that, under the terms of n. 1 of article 16 of Decree-Law n. 415/98, and taking into account the objectives and main guidelines defined in article 4 of the same legal diploma, ANACOM may, at any time, on its own initiative, and should, when requested by any party, intervene in the negotiations of interconnection agreements, specifically determining the inclusion of specific matters in the interconnection agreement and/or establish conditions that must be observed by one or more parties intervening in the interconnection agreement;
- c. Considering that Vodafone and Optimus, on the one hand, and TMN and OniWay, on the other, exercising the principle of freedom of negotiation, settled in Decree-Law n. 415/98, concluded negotiations of the respective interconnection agreements to be in force in 2002;
- d. Considering the express intentions manifested by the various interested parties in the negotiation of the interconnection agreements;
- e. Considering that, and following the draft decision and the resulting determination, there is no technical evidence to uphold the existence of differentiated prices for termination of traffic in mobile networks (fixed-to-mobile or mobile-to-mobile, including the termination of international calls in the mobile network), and that no reasons are found for the existence of price differences for the same service, and that it is intended to achieve alignment on the basis of a reference price of €0.1870 per minute – the average price practised in the EU on the date of the determination 04.12.2001 -, wherein it is

advantageous to maintain price stability in the market, avoiding price oscillations;

- f. Considering that in the same decision, ANACOM admitted the possibility that another transitory solution restricted to the price adjustment process may be analysed if negotiated by market operators;
- g. Having verified that, within the framework of the respective interconnection agreements, the parties in question did not reach any other solution and requested ANACOM's respective intervention;
- h. Aware that, and specifically taking the current circumstances into consideration, the termination price of mobile-to-mobile calls corresponds, in effect, to the price for providing a service;
- i. Considering the overall evolution of interconnection prices in mobile networks for 2002, in line with ANACOM's determination (see I.3);
- j. Considering that it is desirable to guarantee a progressive adjustment of termination prices for mobile-to-mobile calls in relation to the price in force in 2000 and that established in the interconnection agreement signed between TMN and Vodafone for 2001;
- k. Considering in general, that ANACOM should pursue objectives of promotion of competition, and pondering the terms of the previous paragraphs and taking into consideration the regulatory practise in terms of progressive adjustment of prices, it can be concluded that the termination price for mobile-to-mobile calls may progressively converge towards the reference price of €0.1870 per minute at a faster rate than that for fixed-to-mobile termination;
- l. Taking into consideration that the arguments of the interested parties have already been extensively presented to ANACOM since the publication of the draft decision on 04.12.2001 of the prices of interconnection services to be practised by the Mobile Telephone Service Operators, regarding the questions addressed by the decision;

ANACOM's Board of Directors in an ordinary meeting held on 29.05.2002, issued the following determination:

1. Under the terms of paragraphs b) and c) of n. 1 and paragraphs a) and c) of n. 2 both of article 16 of Decree-Law n. 415/98, of 31/12, that:
 - 1.1. The maximum (average) prices for national termination in the mobile network of calls originated in mobile terminals, to be included in interconnection agreements to be signed between the Mobile Telephone Service Operators, must evolve as follows during 2002:
 - (a) €0.2070 per minute, for a call of 100 seconds duration, with per-second billing being applied utmost after the first minute, from 01.01.2002;
 - (b) €0.1870, per minute, with per-second billing from the first second, from 30.06.2002.
 - 1.2. Optimus, TMN and Vodafone must conclude negotiations of interconnection agreements to be signed between them, within a maximum of 10 days, specifically taking into consideration the maximum amounts defined above and that:
 - (a) The price of the termination service is established by the operator terminating the traffic;
 - (b) Those entities notified as having significant market power are subject to the principle of non-discrimination in the interconnection offer;
2. Not to impose the introduction of alterations in the freely negotiated interconnection agreements, as specified in the terms of article 17 of Decree-Law n. 415/98. Nonetheless, ANACOM does not foresee any obstacles to Mobile Telephone Service Operators reviewing the interconnection agreements that have already been signed in order to achieve greater approximation with the above mentioned prices, specifically bearing in mind the principle of non-discrimination.
3. To dispense with prior hearings with interested parties, in light of the above-mentioned fundamental consideration I), under the terms of paragraph a) of n. 2 of article 103 of the Administrative Procedure Code.