

DECISION OF ICP-ANACOM ON THE PRICE OF ACCESS TO THE DATABASE ON THE CONDUITS OF PT COMUNICAÇÕES

I. BACKGROUND

1. PT Comunicações, S.A. (PTC) notified ICP-ANACOM by fax on 26.11.2007 with respect to the provision of the service of access to the conduit database through an Extranet¹ (hereinafter the ORAC² DB access service), whereby it stated that the price of said service was in the final stage of definition.
2. Subsequently, ICP-ANACOM questioned PTC as to the unavailability of information concerning the occupation of conduits, in response to which PTC reiterated on 21.12.2007 that the release of such information would be disproportionate and asked ICP-ANACOM to conclude that the information available thereto was reasonable, adequate and proportionate, which situation is currently being reviewed.
3. Notwithstanding the above, on 25.01.2008 PTC sent ICP-ANACOM the conditions applicable to the ORAC DB access service³ and the grounds therefor.
4. Also according to PTC, as a result of the operation of the ORAC DB access service, there is no justification for maintaining the information service with respect to provision of plans along the lines provided for thereto.⁴ whereby such would be discontinued as of 01.04.2008⁵.
5. Subsequently, ICP-ANACOM, by determination of 12.03.2008, determined to PTC that:
 - (a) it maintain the two schemes⁶ for the provision of information on conduits for a further period of three months; and
 - (b) that it provide clarification with respect to the costs and assumptions used in setting the price of the ORAC DB access service and that it may additionally submit a tariff reformulated in the light of comments made by ICP-ANACOM and the subsequent responses.
6. PTC complied with the stipulations of point 5(a) through the publication of a new version of ORAC on 28.03.2008⁷, wherein it is stated that "*the information service, based on the provision by e-mail of plans in PDF and on requests for information placed through forms will be discontinued from 1 July 1 2008, due to its replacement by access through the Wholesale Extranet*".

¹ Accessible through the "wholesale portal".

² Reference Offer of Access to Conduits.

³ Which entered into force on 28.01.2008.

⁴ That is, requests for information made through forms and the provision of plans in pdf format via email.

⁵ That is, between 28.01.2008 and 31.03.2008, the two forms of provision of information shall remain applicable.

⁶ Through access to the Extranet and through forms with the provision of plans in PDF format by email.

⁷ ORACv2.7.

7. By letter dated 04.04.2008, PTC provided ICP-ANACOM with the required clarifications - see point 5(b) - and, because of "new information", it enacted an upwards revision to the previously presented tariff.
8. After examining the available information, on 11 June 2008, ICP-ANACOM gave approval to the draft decision on the price of access to PTC conduit databases, which called for:
 - (a) Amendment to the ORAC, taking into account the maximum price of the service of access to the database on conduits indicated in the draft decision;
 - (b) Maintenance of the two schemes providing information on conduits and associated infrastructure (through access to the Extranet and using forms with plans provided in PDF by email) until such time as the price which will be defined as a result of the final decision comes into force.
9. This determination was submitted to the prior hearing procedure of interested parties, under the terms of the Code of Administrative Procedure, whereby a period of 10 working days was set for comments.
10. The analysis of comments received is set out in the report on the prior hearing, which report is an integral part of the present decision, which also reflected the outcome of said analysis.

II. ANALYSIS

11. The obligation to build a database on conduits for access by the beneficiaries of the ORAC results from the decision of ICP-ANACOM of 17.07.2004⁸ which set out the minimum requisites of an ORAC of PTC.
12. In the annex to said decision it was stated that "*the needs of the description and identification of the conduits and associated infrastructure of the concessionaire involves a complex flow of information between the parties, whereby, for the sake of transparency and provision of information to beneficiary entities, the concessionaire shall construct, maintain and update a database that provides information describing the conduits ...*".
13. This obligation was reiterated in the decision of 26.05.2006⁹ of amendments to the ORAC, which stated in paragraph 21 that "*PTC shall make available information comprised in the database regarding conduits and associated infrastructure on an Extranet page to which each beneficiary shall have access by means of the respective access code. ...*".
14. ICP-ANACOM further stated, in paragraph 67 of Decision of 26.05.2006, that information on conduits and infrastructure "*shall be provided on an Extranet page, with the respective price oriented to costs*".
15. It is, therefore, in this context of cost orientation of prices that analysis of the prices of the ORAC DB access service should be based and it was in this context

⁸ <http://www.anacom.pt/template31.jsp?categoryId=235182&languageId=1>.

⁹ <http://www.anacom.pt/template31.jsp?categoryId=193403&languageId=1>.

that ICP-ANACOM put a number of questions to PTC and sought additional information¹⁰, the objective of which was for PTC:

- (a) To provide greater detail and breakdown of the presented cost categories, given that the details of the costs presented were insufficient to allow a critical assessment of said costs at all levels;
- (b) To provide a detailed explanation as to the derivation of the costs with reference to 2004 and 2005, prior to the presentation by PTC of the timetable regarding the activities to be undertaken for the delivery of information records through the Extranet;
- (c) To clearly identify the additional costs (incremental) that arose as a result of the obligation to provide access to the ORAC DB;
- (d) To provide an estimate for the total annual cost for the provision of access to ORAC DB, for the coming years, taking into account the depreciation considered for CAPEX;
- (e) To give grounds for the estimation of (i) operation and maintenance costs and (ii) commercial and billing costs and collection costs, which, in absolute terms, appeared excessive;
- (f) To consider the use of the common costs coefficient in terms of direct and joint costs calculated based on the results of the regulatory costing of PTC determined by accounting capital ;
- (g) To provide due and reasoned explanation of the estimated cost for the purchase of cartographic information, confirming whether such information was used solely for the purpose of said Extranet;
- (h) To provide clarification as to how PTC intended to ensure the recovery of costs in the event that the adopted assumptions¹¹ were not confirmed;
- (i) To evaluate other forms of cost allocation that took better account of the benefits of the ORAC DB access service for PTC and for the beneficiaries of the ORAC, such as, for example, the allocation of annual costs based on the number of kilometres of fibre installed by each operator, including PTC and the companies of Grupo PT, since the entry into force of the ORAC and / or a spot consultation scheme, indexed, for example, to the number of plans generated.

16. A key and transversal aspect of the analysis is connected to the principles of cost allocation in the setting of the price of the ORAC DB access service, which are analysed below.

¹⁰ Under the terms of determination of 12.03.2008.

¹¹ In particular the assumptions that (i) all operators concerned will engage the services and, additionally, (ii) that they will contract access to all the districts where they are present.

II.1. PRINCIPLES TO BE TAKEN INTO ACCOUNT IN THE ANALYSIS OF THE COSTS OF EXTRANET ACCESS

17. In addition to the principle of cost orientation of prices, mentioned above, there are other principles that should be employed in the analysis of the cost of the ORAC DB access service and definition of its price.
18. A key principle is that only those incremental costs arising as a result of the obligation imposed on PTC to develop an ORAC DB for access by the beneficiaries of this offer shall be considered relevant.
19. That is, any costs that PTC has incurred or would incur, in the absence of the imposition of the obligation concerned, should not, *a priori*, be accepted for the purpose of setting the price of the ORAC DB access service.
20. Therefore no regard should be given to costs connected to:
 - (a) local surveys needed for the provision of information on conduits;
 - (b) updating records; or
 - (c) the acquisition of cartographic information.
21. This is in the light of the fact that PTC will always be required to perform local surveys, to update records or acquire cartographic information, irrespective of whether it is obliged to build, maintain and update a database that provides descriptive information on conduits and grant access to the beneficiaries of the ORAC
22. The clarifications put forward by PTC indicate that it is the position of the company that the above costs, incurred after 2004, should be considered in full for the purposes of allocation to the beneficiaries of ORAC (although it is also included as a beneficiary), even in the event that such costs did not directly arise as a result of the imposition of the obligation in question.
23. Such signifies, for example, that in the absence of the obligation in question, PTC would face a cost of several million euros in the development of its own records and associated information systems, whereas, following the imposition of the obligation, it intended to recover these costs (in large part) from the beneficiaries of the ORAC.
24. That is, instead of establishing an obligation (whereby PTC would, in some way, be compensated for incremental costs arising as a result of this obligation¹²), the ORAC DB access service would result, alternatively, in a significant benefit for PTC, allowing it to distribute its own costs among the beneficiaries.
25. This is not acceptable, whereby it is not seen how PTC can affirm, that "*the obligation of providing information under the terms imposed, is not only unfair and disproportionate*".

¹² In truth, PTC incurs some additional costs (incremental) related to the provision, on the part of third parties, with respect to the database providing a record of conduits.

26. PTC may argue that access to the Extranet has a value for operators that goes beyond the incremental costs arising from the provision of such access.
27. Indeed, PTC announced that the service was viewed as one of "selling" information and of value (based, obviously, on cost).
28. It also announced that *"the cartographic information is not used only solely for the Extranet. However, this information and its availability, has a value which we believe should be borne by those who make use of it and not solely by PTC"*.
29. That is, PTC is using the cartographic information which it effectively requires for various purposes, seeking to recover its total value from the beneficiaries of the ORAC (including itself as a beneficiary under the same conditions as other beneficiaries of the ORAC).
30. Without granting, even where costs related to local surveys, record updating or acquisition of cartographic information were taken into account in setting the price, that the benefits to PTC and the OSPs would not be identical, such would lead to the definition of other criteria, perhaps not as direct as that defined by PTC, for the allocation of costs¹³.
31. As such, ICP-ANACOM expressed to PTC, as a result of the determination of 12.03.2008, the position that an incremental investment of various millions of euros ([SCI] [ECI] million euros), of which about 75% of the value ([SCI] [ECI] million euros) is due to labour costs, to achieve access to the Extranet with the above information, raised major reservations.
32. At that time, the Authority noted that in 2005, PTC had a geographic information system (GIS-PT) comprising the information in respect of the records of outside and network access infrastructure and that, as presented by the description PTC on 20.09.2005, *"the GIS-PT is the geographical information system of PT Comunicações, whose entire remit comprises the exterior record plan, consisting of manholes, conduits, sub-conduits and their respective transversal profiles, aerial routes, cables, joints, sub-distribution frames, distribution points, distribution points, cartography etc.. This system is an integral part of the architecture of corporate records, with its scope confined to the physical infrastructure network and cables and to mapping [...]"*.
33. In this context, PTC was requested to clearly identify the information that this company held as at the end of 2005 and what level of information it was necessary to develop, compile or supplement, as well as the systems which required adaptation in order to prepare the Extranet concerned. That is, in light of the IS that PTC had, the specific activities and additional investments which were necessary in order to enable access by the beneficiaries of the ORAC to the Extranet concerned should be identified in a detailed manner.
34. PTC was also requested to provide suitable reasoning for the costs referring to the acquisition of cartographic information, particularly in terms of incremental

¹³ For example, the annual allocation of costs proposed by ICP-ANACOM with respect to the number of kilometres of fibre installed by each operator, including PTC and the companies of Grupo PT, since the entry into force of the ORAC and / or a scheme of spot consultation, indexed, for example, to the number of plans generated.

needs for purposes of the ORAC Extranet¹⁴ and to clarify whether such information was used solely for the purpose of said Extranet - see, in this regard, response of PTC in paragraph 28.

35. In response, PTC stressed that *"the presented costs relate, in essence, to updates to information systems supporting infrastructure records which we have developed in order to provide information to third parties within the periods required"*.
36. PTC further stated that *"one situation is to develop the systems in line with the needs and availability of human and capital resources of PT Comunicações, and another situation, which is completely different, is that we have reliable and current information available for the whole country, for information and provision of services to third parties"*.
37. The referenced investments were accelerated according to PTC, to fully respond to the obligation to which it was subject. In other words, it should be underlined that PTC would always incur such costs.
38. PTC sent information on the evolution of the records, in terms of kilometres of tubing and conduit (without tubing) and number of permanent manholes, concluding from the data available that between 2005 (inclusive) and 2007 around 0.9% of the km¹⁵ of tubing was recorded compared to that already recorded (see Table 1). In other words, much of the information of the recorded was already loaded in the record system prior to 2005.

Table 1. Record indicators provided by PTC

[SCI]

Area	Km of tubing					
	Without date ¹⁶	≤ 2004	2005	2006	2007	2008
Mainland						
Ponta Delgada						
Funchal						

Area	Km of conduit ¹⁷					
	Without date	≤ 2004	2005	2006	2007	2008
Mainland						
Ponta Delgada						
Funchal						

¹⁴ PTC was asked to send ICP-ANACOM the respective invoices of the entities from which PTC acquired cartographic information, with the necessary detail.

¹⁵ Assuming that the undated information refers mainly to information prior to 2004.

¹⁶ According to PTC, the "date" field is not obligatory whereby there are items without dates.

¹⁷ Where users will not be associated with tubes

Area	FMC					
	s / day ¹⁸	≤ 2004	2005	2006	2007	2008
Mainland						
Ponta Delgada						
Funchal						

[ECI]

39. Accordingly, the previously raised reservations are reinforced with the information now sent by PTC.
40. That is, an incremental investment of **[SCI]** **[ECI]** million euros between 2005 and 2007 in labour costs to update the register is not acceptable, nor as little as **[SCI]** **[ECI]** million (workforce and IS), with regard to access by the beneficiaries of the ORAC to the conduit database.
41. ICP-ANACOM also asked PTC to identify the area of national territory covered by vector mapping and with explanation of the plans, at the time, for expansion of this coverage and the reasons therefor, whereby PTC submitted the following plans:
 - (a) plan for acquisition of cartography up to 2008;
 - (b) plan for updating cartography (forecast);
 - (c) detailed cartography plan.
42. From analysis of these comprehensive plans, it appears that much of cartographic information was acquired prior to 2005 (in some cases, subsequently updated).
43. That is, it is confirmed that prior to the imposition on PTC of the obligation to grant access to the database, the company already had a need to acquire cartographic information, whereby said obligation did not give rise to significant additional incremental costs over those incurred by the company in the absence of this obligation.
44. It is noted that in relation to the acquisition costs of cartographic information, PTC reviewed them, arguing that instead of **[SCI]** **[ECI]** thousand euros per year, the real cost spent on mapping in the immediately preceding year should be considered.
45. The value calculated by PTC for the period between 2004 and 2007, was **[SCI]** **[ECI]** euros¹⁹, with the following detail:

¹⁸ The "date" field refers, according to PTC, to the date of construction of the CVP (loaded by the user of the system) and not the actual date of the loading of the record system.

¹⁹ PTC sent ICP-ANACOM the invoices of the entities from which PTC acquired cartographic information.

Table 2. Annual costs incurred by PTC through cartography

[SCI]

Designation	CAPEX					
	2004	2005	2006	2007	Total	Total ex 2004
Values that had been considered in labour						
Correction of VAT from 21% to 19% in one of the invoices						
Invoice of 2007 not included by omission						
TOTAL CORRECTED						

[ECI]

46. For the purposes of presenting the evolution of the total annual cost associated with the provision of the Extranet, PTC considered a mapping cost for 2008 and subsequent years corresponding to the average cost between 2005 and 2007 (**[SCI]** **[ECI]** euros) instead of **[SCI]** **[ECI]** thousand euros annually.

In conclusion:

The costs of local surveys, record updating and acquisition of cartographic information are not to be accepted given that these costs do not result from the obligation to build a database on conduits for access by the beneficiaries of the ORAC, and have been used for other purposes, without prejudice to the consideration of duly documented financial costs arising due to investment being brought forward.

II.2. THE COSTS FOR THE YEARS 2004 AND 2005

47. As mentioned in paragraph 15(b), PTC was questioned as to the existence of costs in 2004 and 2005, since that company presented the timetable concerning the activities to be undertaken for the provision of record information through the Extranet only at the end of 2005 and envisaging that the first two months would be taken up with the preparation of the pre-start - see detailed timetable in **Appendix**.
48. This fact naturally also raised questions about the appropriateness of the costs submitted for 2006 and 2007.
49. In part, this issue will be covered by the concerns expressed in the previous section (II.1). That is, even in the absence of the specification of the obligation and the definition of the timetable by PTC, this company would identify (part of) the costs already incurred (even in the absence of such obligation), stating, however, that it would only consider those costs identified in 2005 and subsequent years (i.e., according to PTC, the year in which the ORAC entered into force)²⁰.
50. PTC stated that, following the decision of ICP-ANACOM of 17.07.2004, it was forced to take action and adapt their systems so that the company could have accurate and updated information available for the entire country, for information

²⁰ In this respect, it was explained to PTC that in the event that criterion for considering the costs was the year in which the ORAC entered into force, said offer only came into force in 2006 (and not in 2005).

and provision of services to third parties, having stated on 01.09.2005 that it was taking the steps necessary for the preparation of the records and for the subsequent construction of the database.

51. It should be noted, however, that the letter of PTC sent on 01.09.2005 came *"following the ruling issued under the precautionary procedure granting a stay of validity of two of the measures set forth in the determination"* of 17.07.2004 - which ruling was issued on 05.08.05.
52. PTC confirms that *"prior to the ORAC entering into force and even in 2005, it had to undertake actions and adapt their systems to enable it to provide the services associated with this offer, to have reliable and updated information for the entire country, for information and provision of services to third parties"*.
53. There is no reference, however, as to the derivation of the costs which were reported for 2004 but not considered for the purposes of price setting.
54. It should be noted that:
 - (a) in 2004 costs are identified which relate to the acquisition of cartography, updating of records, and labour costs related to the development of the core and front-end record system;
 - (b) the same cost categories are identified in 2005 (except for the labour costs related to the development of the front-end record system) whereby development costs are still presented with respect to the parts of the IS which complement part of the network registry.
55. The detail of costs presented by PTC lead to the conclusion that that many of the costs (CAPEX) refer to the years 2004 and 2005 (see tables below), more precisely:
 - (a) 2/3 of the labour costs;
 - (b) 60% of the cost of cartography acquisition/upgrade; and
 - (c) 42% of IS category costs.

Table 3. Relative annual labour costs with respect to the development of the service of access to information via Extranet

Designation	2004	2005	2006	2007	Total
Record Update	2%	20%	12%	15%	49%
Core Record System Evolution	31%	8%	6%	1%	47%
Front-End Record System Evolution	3%	0%	0%	0%	3%
Total	37%	28%	18%	16%	100%

Table 4. Relative annual cartography costs

Designation	2004	2005	2006	2007	Total
Cartography	22%	38%	29%	11%	100%

Table 5. Relative annual costs respecting the part of the IS associated with the development of the service of access to information via Extranet

Designation		2005	2006	2007	Total
Core Record System Evolution		30%	36%	15%	81%
Front-End Record System Evolution		12%	0%	4%	16%
PT SI	Front-end (128 hrs)	0%	0%	0%	0%
	Integration (378 hrs)	0%	0%	1%	1%
Novabase	Development of SIG@NET Operators interface	0%	0%	0%	0%
	Various deployments	0%	0%	2%	2%
TOTAL (total IS costs)		42%	36%	22%	100%

56. Whereas it may be accepted that there are specific (and incremental) costs for the service in question related to the development of the core record system (part of IS) between August 2005 (date of the ruling referenced in paragraph 51) and the end of 2005, it is not reasonable to accept the proportion of labour and cartography acquisition costs realised in 2005 (and, much less in 2004).

In conclusion:

No cost with respect to 2004 may be accepted (indeed, PTC itself did not consider them); likewise, from the outset, no 2005 labour costs may be accepted, without detailed proof of such and of their direct derivation from the obligation imposed on PTC.

II.3. DETAILS OF COSTS

57. Following the request of ICP-ANACOM - see paragraph 15(a) - PTC presented the costs with a greater level of detail, including labour costs (in order to show separately the costs associated with local surveys needed for the provision of information on conduits) and cost categories with respect to "*developments [in IS] which complement part of the network record*".
58. In relation to labour costs, PTC submitted the following breakdown of costs (see Table 6), having subtracted the costs incurred with respect to the acquisition of cartographic information (to the amount of [SCI] [ECI] euros), which had, according to PTC, been incorrectly considered:

Table 6. Annual labour costs in the development of the service of access to information via Extranet

[SCI]

Designation	CAPEX					Total without 2004
	2004	2005	2006	2007	Total	
Aveiro Record Update						
Lisbon and VT Record Update						
Porto Record Update						
Setubal Record Update						
Record Updates						
Core Record System Evolution						
Front-End Record System Evolution						
Total						

[ECI]

59. It is noted that PTC included a category referring to "record updates" not making explicit reference to "local surveys".
60. In relation to the categories in question PTC states that:
- (a) the "record updates" category relates to the verification and loading of record information, in their respective systems, resulting from the development and maintenance of the network, and / or requests from the beneficiaries²¹;
 - (b) the "evolution of core and front-end systems" category relates to the implementation of new functionalities, associated respectively with the record system itself and to its model of web visualisation.
61. In view of that established in paragraph 22 of the decision of ICP-ANACOM of 26.05.2006, according to which "any local surveys needed for the provision of information on conduits should not be charged to the beneficiaries" the position is taken that the costs of updating records (particularly related to local surveys) should not, *a priori*, be accepted for purposes of allocating costs to beneficiaries.
62. Moreover, such are considered costs of updating an (existing) record and that, in any event, these would be incurred by PTC (with or without the imposition of the obligation to develop a conduit database under the terms developed by PTC), insofar as it appears inconceivable that such would not be necessary within the framework of its activity as an operator of electronic communications networks and as core network concessionaire.
63. As far as the cost of the IS component is concerned, PTC presented (see Table 7) a breakdown of costs with respect to IS development, complementing part of the network record²², having removed an amount of **[SCI]** **[ECI]** euro in 2005, corresponding, according to PTC, to labour costs associated with updating the register.

²¹ According to PTC, with this Authority having determined that PTC provide updated information, said company will have to necessarily proceed with the verification and regular logging of record information.

²² First line of the previous table.

Table 7. Annual costs of the IS component associated with the development of the service of access to information via Extranet

[SCI]

Designation		CAPEX			
		2005	2006	2007	Total
Core Record System Evolution					
Front-End Record System Evolution					
Value corresponding to labour, that due to omission had been considered twice as IS					
Total					
TOTAL CORRECTED					
PT IS	Front-end (128 hrs)				
	Integration (378 hrs)				
Novabase	Development of SIG@NET				
	Operators interface				
	Various deployments				
TOTAL (total IS costs)					

[ECI]

64. Accordingly, following the corrections made by PTC, estimated CAPEX by that company totals [SCI] [ECI] euros instead of [SCI] [ECI] euros as initially presented (see Table 8).

Table 8. Investments made by PTC since 2005 (euros)

[SCI]

CAPEX	25.01.2008	08.04.2008
Labour component		
IS Component		
Total		

[ECI]

65. This difference of [SCI] [ECI] euros is due to the non-consideration of the cartography acquisition costs as labour costs (to the amount of [SCI] [ECI] euros) and the elimination of the duplicate counting of costs regarding record updating in 2005 (to the amount of [SCI] [ECI] euros), as IS costs.

In conclusion:

In line with that stated in Section II.1, the costs related to local surveys needed for the provision of information on conduits are not to be accepted, while those related to information systems are accepted under the terms set out in the position referring basically to the new features necessary for the provision of information through more appropriate and functional models.

II.4. OPERATION AND MAINTENANCE COSTS AND COMMERCIAL, BILLING AND COLLECTION COSTS

66. PTC was requested - as mentioned in paragraph 15(e) - to detail the costs of items and activities that could justify an estimate of 5% and 2.5% of the value of the investment, respectively, for:
- (a) operation and maintenance (O+M) costs; and
 - (b) commercial costs and billing and collection (B+C) costs.
67. In response, PTC stated that it used the values concerned to the extent that these estimates are generally used for these costs, in the definition of monthly prices of regulated and non-regulated offers.
68. However, the company states that it will take the concerns expressed by ICP-ANACOM into account, insofar as in the future it will appraise the costs incurred through O+M and B+C in order to reflect whether such coefficients continue to appropriately reflect reality.
69. Without prejudice to the need for PTC to assess whether the assumption with respect to the estimation of O+M and F+C costs remains valid, it is considered that, especially in relation to the F+C costs, the fact that billing and collection is annual, the range of values is reduced²³ and that a limited set of operators is covered, there are grounds, with respect to the service under review, for a lower price than that estimated by PTC and, given the structure of the proposed tariff, tending to zero - it is noted that the commercial costs and costs of billing and collection which result from the estimates and assumptions of PTC is [SCI] [ECI] euros.

In conclusion:

In view of the tariff structure defined by PTC and the fact that billing and payment is made on an annual basis, commercial costs and billing and collection costs should be negligible, which, in the absence of better information, are assumed to be 0.5% of the amortisation of the investment.

II.5. COEFFICIENT OF COMMON COSTS

70. This Authority informed PTC that, with respect to common costs, it was considered to be more accurate to use the coefficient of common costs in terms of direct and joint costs (calculated according to the results of the regulatory costing of PTC determined by the accounting capital), whereby in 2006 this percentage was [SCI] [SCI].
71. PTC states that it considers that the coefficient of common costs which it uses is correct, insofar as the coefficient to be used in a determined global model of costing is that which results from the weighting of the common costs of this model

²³ Unlike other services, such as interconnection (which requires the accounting of minutes and the application of variable prices depending on the time) or leased circuits (whose billing and collection, by operator, requires accounting of the number of circuits, the local extensions and the main sections, with a price depending on the distance).

with respect to the direct and joint costs which are the basis of distribution of such common costs.

72. PTC states that *"the coefficient referenced by ICP-ANACOM is the average of the entirety of the model, which should not be applied when the specific cost structure of each product is known, given that the distribution by product of the set of costs excluded from the distribution base is not uniform"*²⁴.
73. PTC concludes by noting that *"in theoretical terms, when it is intended to estimate the common costs associated with determined direct and joint costs (excluding cost of capital), the % of common costs which impacts the distribution base of the model used should be applied to the amount of those costs incorporated in this distribution base"*.
74. As stated by ICP-ANACOM on previous occasions (notably of the analyses PRI), it is understood that the variation seen in terms of common costs is largely reflective of the management policies of PTC, not specifically reflecting the costs directly incurred through the provision of certain services.
75. In particular, the level of common costs may be affected by decisions taken by the management of PTC in a given year, giving rise to a factor of uncertainty to which the alternative operators purchasing PTC wholesale services could be subject.
76. Accordingly, it is not justifiable for alternative operators to be subject to possible instability resulting from changes in the internal management of PTC (since variations in the cost of their inputs would be subject to internal issues of PTC and not to reasons resulting from market forces and the development of services), whereby the position is taken that fluctuations in common costs which are not specifically related to the provision of wholesale services should not have an impact on the prices practiced.
77. It is also noted that it is commonly accepted internationally that the common costs represent approximately 10% of the remaining costs, as forecast, including in Commission Recommendation of 08.04.1998 (in the meantime updated)²⁵, wherein it is stated that a well defined system of cost allocation will allow at least 90% of costs to be allocated on the basis of direct or indirect cost causality, in efficient terms and with a long term approach.
78. The use of this "mark-up" reduces subjectivity and allows reflection of an appropriate level of common costs (excluding, in part, the high cost of curtailment that have been incurred by PTC in the process of restructuring), the promotion of regulation visibility and the encouragement of investment and of the development of healthy competition, preventing wholesale inputs to which the other operators are subject from being affected by unilateral decisions by PTC.
79. With respect to the cost of curtailment, the comments forwarded opportunely by PTC are being reviewed, which comments aim to support this policy for

²⁴ PTC excluded from this shared basis *"a significant value of costs consisting mainly of the entire cost of capital included in the direct and joint costs and subcontracts"*.

²⁵ Relative to the interconnection in a liberalised telecommunications market (Part 2 - separation of accounts and cost accounting).

regulatory purposes. It is shown however, as already conveyed to PTC, that given the medium/long-term nature of the curtailment policy, the recovery of these costs could be set out over a broader timeframe.

80. It does not seem appropriate therefore to consider curtailment costs in determining the costs of this service, given the possibility of negative effects on the stability and development of a competitive market.
81. Furthermore, Recommendation 2005/698/EC of 19.09.2005 on accounting separation and cost accounting systems recommends in paragraph 3 thereof that "*national regulatory authorities take due regard to further adjustments to financial information in respect of efficiency factors, particularly when using cost data to inform pricing decisions since the use of cost accounting systems may not fully reflect efficiently incurred or relevant costs.*".
82. Given the above, it is reiterated that for the determination of the price of the ORAC DB access service only direct and joint costs shall be considered, allowing the existence of a final margin able to cover the current common costs, which it is considered, as recommended by EC, should not exceed 10%.

In conclusion:

ICP-ANACOM considers that for the determination of the price of the ORAC DB access service only direct and joint costs shall be considered, allowing the existence of a final margin able to cover the current common costs, which it is considered, as recommended by EC, should not exceed 10%.

II.6. CRITERIA FOR ALLOCATION OF ANNUAL COSTS

83. As referenced in 15(h) and 15(i), PTC was asked to:
 - (a) Clarify how it intended to ensure the recovery of costs in the event that the assumptions adopted²⁶ were not confirmed;
 - (b) Evaluate other forms of cost allocation that took better regard of the benefits of the ORAC DB access service for PTC and for the beneficiaries of the ORAC, such as, for example, the allocation of annual costs taking as a reference the number of kilometres of fibre installed by each operator, including PTC and the companies of Grupo PT, since the entry into force of the ORAC and/or a scheme of spot consultation, indexed, for example, to the number of generated plans.
84. In relation to point (a), PTC assumed, for 2008, that the beneficiaries would contract the districts where they are already present, which would constitute a risk which it intended to minimize subsequent years²⁷.

²⁶ In particular the assumptions that (i) all operators concerned will engage the services and, additionally, (ii) that they will contract access to all the districts where they are present.

²⁷ Given that in December the beneficiaries must contract the Districts for which they seek access in the following year, it will be possible for PTC to revise the prices practised in respect of these contracts, while costs not recovered in the previous year may be reflected. However, this should not preclude the possibility of any operator being able to contract the service on another date.

85. Regarding point (b), PTC believes that what is at stake is the provision of information on conduits and not the supply of space in conduits for installation of cables.
86. For PTC the value of information about conduits is thereby dependent on concentration in terms of space.
87. Therefore PTC does not consider it to be at all appropriate or justified that the allocation of annual costs has reference to the number of kilometres of fibre installed by each operator²⁸, much less, the number of plans generated²⁹.
88. PTC concluded that after considering various alternative models, it considers that the defined model is the most appropriate by better reflecting the remuneration of the service which is being provided (information), the balance between its use by different stakeholders (in terms of scale and volume of use) and minimising the resale of information.
89. It is considered, as stated earlier, that the benefits for PTC and for the beneficiaries of ORAC are not identical, particularly in terms of the use that PTC and the latter companies make of the database for the purposes of conduit installation.
90. This asymmetry of benefits may be considered either in the costs to be included for the purpose of setting the price (incremental costs over those of PTC) or in the mechanism for cost recovery.
91. Therefore, in the event that the costs to be considered are the incremental costs arising from the obligation of PTC, ICP-ANACOM does not object to the criteria of allocation of annual costs defined by PTC.

In conclusion:

ICP-ANACOM does not object to the criteria of allocation of annual costs, which results in an annual price per District and per beneficiary, regardless of the number of consultations or the number of conduits used, provided that the price is based on the incremental cost of providing the service.

II.7. DEPRECIATION PERIODS

92. The CAPEX depreciation period adopted by PTC was 10 years for human capital (labour) and 3 years for the information systems.
93. The period now presented by PTC for depreciation of information systems (3 years) had been considered previously under other tariff analyses, e.g. number portability³⁰.

²⁸ Because, according to PTC, the information available to an operator is independent of the length and/or all types of cables installed by the operator.

²⁹ Because, according to PTC, the amount of information contained in each plan depends on its location and varies from plan to plan.

³⁰ Letter 017631 of 11.03.2002.

94. The legally accepted period for the amortisation of computer programmes is 3 to 6 years, depending on whether the minimum or maximum period of useful life is considered. For example, the use of software licences are amortised by PTC in 3 years, which period is justified by rapid changes and updates. As such, it is likely that the useful life of these assets will be short because they are subject to technological obsolescence.
95. The tangible assets must be amortised on a systematic basis according to the best estimate of its useful life, although there is a refutable presumption that this is unlikely to exceed 20 years after the asset is available for use.
96. PTC was asked³¹ to submit a forecast of the total annual costs for the provision of the Extranet, for the coming years, taking into account the amortisation considered for CAPEX.
97. In response, PTC presented said forecast, having assumed that there would be no additional investments in the coming years (except the acquisition of cartographic information).
98. It is natural that following the acquisition or updating of cartographic information, the adaptation or realisation of investments in IS and the updating of record information, the main cost over the useful life of the assets will be the maintenance of the service, such maintenance having taken into account the costs of operation and maintenance.

In conclusion:

If there are no additional investments over the period of the useful life of current assets, specifically 10 years for human capital and 3 years for IS, the forecast evolution in the total annual cost for the provision of *Extranet* is accepted.

II.8. TARIFF REVIEW

99. Taking into account the findings of each of the preceding sections, the maximum annual costs that ICP-ANACOM considers eligible for the purposes of setting the price of the ORAC DB access service are as follows:

³¹ As mentioned in As mentioned in 15(d).

Table 9. Annual labour costs in the development of the service of access to information via Extranet

[SCI]

Designation	Annual CAPEX				
	2004	2005	2006	2007	Total
Aveiro Record Update					
Lisbon and VT Record Update					
Porto Record Update					
Setubal Record Update					
Record Update					
Core Record System Evolution					
Front-End Record System Evolution					
Total					

[ECI]

Table 10. Annual costs of the IS component associated with the development of the service of access to information via Extranet

[SCI]

Designation		Annual CAPEX				
		2004	2005	2006	2007	Total
Core Record System Evolution						
Front-End Record System Evolution						
PT SI	Front-end (128 hrs)					
	Integration (378 hrs)					
Novabase	SIG@NET Development					
	Various deployments					
TOTAL (total IS costs)						

[ECI]

Table 11. Annual costs incurred by PTC through cartography

[SCI]

Designation	Annual CAPEX				
	2004	2005	2006	2007	Total
Cartography					

[ECI]

100. Given the annual costs above, the annual cost is determined in calculated in accordance with the following assumptions, in which, compared to the assumptions used by PTC, commercial costs and billing and collection costs are considered as trending to zero (0.5%) and the coefficient of common cost is considered as not exceeding 10%:

Table 12. Assumptions used to estimate the annual cost associated with the provision of information on conduits over the Extranet

[SCI]

Deadline for amortisation of CAPEX (years)	Human capital (Labour)	10
	IS	3
Annual cost of capital ³²		
Annual cost of O+M ³³		5.0%
Commercial costs and annual billing and collection costs ³⁴		0.5%
Annual common costs		10%

[ECI]

101. Given the previous assumptions and following the methodology of PTC, the total annual cost for providing the Extranet is given as:

Table 13. Total annual cost for providing the Extranet in 2008

[SCI]

CAPEX	Human capital (Labour)		
	IS		
CAPEX amortization period	Human capital (Labour)	10	
	IS	3	
Cost of annual amortisation			
Annual cost of capital			
Annual cost of O+M		5.0%	
Commercial costs and annual billing and collection costs		0.5%	
Annual common costs		10%	
Annual PTC internal cost for providing the Extranet			
Annual value paid to entities for acquisition of cartographic info.			
Total cost for annual provision of Extranet			

[ECI]

102. By adopting the criterion of cost allocation defined by PTC, that is, grouping the Districts on the basis of conduit kilometres existing in each (four Groups of Districts) and applying the ratios between the average kilometres of each group of Districts and the average kilometres in the Districts of the Group with fewer total kilometres of conduit, prices of each group of Districts and the price of the Districts of Group D:

³² Percentage applicable to the average book value in the period of working life, which is equivalent, in theory, to the average value of the investment. The provisional value 2008 is **[SCI]** **[ECI]**, according to the MGC for 2006).

³³ Percentage applicable to the value of the investment.

³⁴ Percentage applicable to the amortisation of the investment, the cost of capital and the costs of O+M.

Table 14. Groups of Districts and average no of kilometres of conduits in each group

[SCI]

Group of Districts	Districts	Average no of kilometres of conduit in the Group of Districts	Ratio between the price of each district
A	Lisbon, Porto		13,6
B	Setubal, Aveiro, Faro, Braga		4,9
C	Santarém, Leiria, Viana, Viseu, Coimbra, Évora		2,0
D	Guarda, Vila Real, Castelo Branco, Bragança, Portalegre, Beja, Madeira, Azores		1,0

[ECI]

103. and taking into account the operators with access to conduits in each District (including PTC) and with the objective of recovering the total annual cost involved in providing the service for access to *Extranet*, the annual price for each district is given as:

[SCI]

$$(\text{ }) \times p = \text{...}$$

[ECI]

104. In other words:

$$p = 1,390 \text{ euros}$$

whereby p is the value to be charged in the Districts of Group D.

105. Therefore, the maximum prices per District which allows recovery of annual costs are as follows:

Table 15. Table summarising the recovery of the annual cost

[SCI]

Districts	Group of Districts	Annual price of Districts in each Group	No of beneficiaries. with access in each district incl. PTC	Annual Revenue
Porto	A	18,842		
Lisbon		18,842		
Setúbal	B	6,781		
Aveiro		6,781		
Faro		6,781		
Braga		6,781		
Santarém	C	2,775		
Leiria		2,775		
V. Castelo		2,775		
Viseu		2,775		
Coimbra		2,775		
Évora	D	2,775		
Guarda		1,390		
Vila Real		1,390		
C. Branco		1,390		
Bragança		1,390		
Portalegre		1,390		
Beja		1,390		
Madeira		1,390		
Azores		1,390		
Total				

[ECI]

III. DETERMINATION

With basis in the grounds presented above and those presented in the report on the prior hearing, the Board of ICP-ANACOM in the exercise of powers conferred upon it by points b) and e) of article 6 of its Statutes, as approved by Decree-Law no 309/2001 of 7 December, in pursuit of the regulation objective set out in point a) of paragraph 1 of article 5 of Law no 5/2004 of 10 February, and pursuant to the provisions of paragraph 4 of article 26 of the same Law, determines the following:

1. PT Comunicações, S.A. shall modify and publish, within a period of ten working days, the reference offer of access to conduits (ORAC), taking into account the following maximum price of the service of access to the database on conduits:

Districts	Group of Districts	Annual price of Districts in each Group
Porto	A	18,842
Lisbon		18,842
Setúbal	B	6,781
Aveiro		6,781
Faro		6,781
Braga		6,781
Santarém	C	2,775
Leiria		2,775
V. Castelo		2,775
Viseu		2,775
Coimbra		2,775
Évora	D	2,775
Guarda		1,390
Vila Real		1,390
C. Branco		1,390
Bragança		1,390
Portalegre		1,390
Beja		1,390
Madeira		1,390
Azores		1,390

2. PTC shall maintain, on a transitory basis, the two schemes for the provision of information on conduits and associated infrastructure (through access to *Extranet* and through the use of forms with the provision of plans in pdf format via email) until 31 October 2008, following which date access to information about conduits shall be performed exclusively through the ORAC *Extranet* (without prejudice to the requests logged prior to 31 October 2008 using forms being met with the provision of plans in pdf format by email).

APPENDIX

Timetable

- 17.07.04: Determination in which the obligation is imposed on PTC to proceed with the construction, maintenance and updating of a database that provides information describing the conduits and associated infrastructure.
- 04.11.04: ICP-ANACOM received a summons for opposing the request for a stay of validity of the determination of 17.07.04, instigated by PTC with reference to the following obligations
- Description of the space on conduits and associated infrastructure, considered necessary for the development of own infrastructure and that will probably be used over the validity of ORAC.
 - Construction, maintenance and updating of a database with descriptive information on the conduits and associated infrastructure and respective provision to the beneficiaries.
- 15.11.04: Subsequently PTC brought special administrative proceedings in respect of acts of administration against ICP-ANACOM, seeking the annulment of the determination of 17.07.04.
- 23.11.04: Without prejudice to this litigation, PTC sent ICP-ANACOM the first version of ORAC, while omitting the points provisionally suspended.
- 05.08.05: The 2nd Office of the Administrative Court of Lisbon ruled against the precautionary procedure of a stay of validity sought by PTC
- 02.09.05: ICP-ANACOM requested that PTC submit a description of the database design and a detailed and phased time-tabling of the database operation process (namely including the technical specifications thereof) and of the comprehensive catalogue of records of conduits and associated infrastructures, per geographical area, throughout the national territory.
- 20.09.05: PTC stated that it does not have information with respect to conduit occupation, whereby a survey was necessary of the correct occupation of cables in the corresponding holes in all conduit segments, consisting of the following actions:
- adaptation of existing information systems of PTC for the provision of the record information, consisting of the addition of information fields on cables and conduits not existing in current systems (this was expected to take four months to perform).
 - field survey to compile information and update records of the GIS, consisting of the loading / updating of information in the system, in order to provide information on the occupation of PTC conduits with the identification and characterisation of the cable or cables installed in each hole of the conduit/sub-conduit (given the volume of work to be

undertaken, equivalent to the opening of more than 250,000 manholes, the expected duration of this action would be three years).

- In this context, PTC identified the following activities to be undertaken in the development of the database and submitted the respective timetable:

Tasks	Months				
	1	2	3	4	5 ... 41
Pre-start preparation					
Award of services					
Organisation and preparation of operators and teams					
Adapting the current IS of PTC for processing and provision					
Preparation of work to be performed in the field surveys					
Field survey to compile record information					
Load/update the necessary record information in the GIS-PT					

26.05.06 After analysing the responses submitted by interested parties (including the letter of PTC of 20.09.05), ICP-ANACOM determined that PTC accommodate the following aspects in the processes of construction, maintenance and updating of a descriptive database of conduits and associated infrastructure:

- The adaptation of existing information systems for the provision of record information and field surveys to compile record information shall be conducted in parallel rather than sequentially.
- The work of the field survey to compile record information should begin in the main urban centres.
- PTC shall provide, on the date of provision of the Extranet, the results of field surveys to compile record information already concluded as of that date and all available record information.
- PTC shall make use of all the work teams necessary to ensure that the field survey to compile record information is completed at most within eighteen months from the approval date of the present determination.